

**EMBASSY OF THE DEMOCRATIC REPUBLIC OF \_\_\_\_\_ CONGO IN  
PRETORIA \_\_\_\_\_**

Pretoria, 3<sup>rd</sup> May 2002

N/Ref.: 0056/ARDC-PTA/ANS/01/02

**To: Mr. Kamel Rezag Bara  
Chairman of the African Commission  
on Human and Peoples' Rights,  
Banjul/ The Gambia**

Subject: Submission of the Initial Report

Mr. Chairman,

We are honored to submit herein to the African Commission on Human and Peoples' Rights the Initial Report of the Democratic Republic of Congo (DRC) covering mainly the period from May 1997 to December 2001.

Please accept, Mr. Chairman the assurances of my highest considerations.

Signed: Professor NTUMBA LUABA LUMU  
Minister in charge of Human Rights Affairs

**DEMOCRATIC REPUBLIC OF CONGO  
MINISTRY IN CHARGE OF HUMAN RIGHTS**

**REPORT TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES'  
RIGHTS**

**INITIAL REPORT  
OF THE DEMOCRATIC REPUBLIC OF CONGO  
(CONGO-KINSHASA)  
UNDER THE PROVISIONS OF THE AFRICAN CHARTER ON HUMAN AND  
PEOPLES' RIGHTS  
(MAINLY COVERING THE PERIOD MAY 1997 TO DECEMBER 2001).**

KINSHASA, 30<sup>TH</sup> APRIL 2002

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## **Introduction**

The Democratic Republic of Congo (former Zaire) ratified the African Charter on Human and Peoples' Rights on 20<sup>th</sup> July 1987 in accordance with its relevant provisions and by virtue of those stipulated in the ratification decree no. 87-027 of 20<sup>th</sup> July 1987.

Under the provisions of the Charter's article 62, the Democratic Republic of Congo should have submitted, since 20<sup>th</sup> July 1989 its initial report on the measures it has taken to give effect to the fundamental rights and freedoms guaranteed by the said Charter. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> periodic reports should have been submitted successively on the 20<sup>th</sup> July of 1991, 1993, 1995, 1997, 1999 and 2001.

Different types of constraints regarding the long period of dictatorship that the country underwent and the financial difficulties, as well as the war of aggression that Rwanda, Uganda and Burundi have been waging for some years now on the Democratic Republic of Congo, have moreover delayed the submission of this reports.

Due to this delay, the Government of the Democratic Republic of Congo sincerely hopes that this initial report would be treated as a substitute for the three (3) last periodic reports, which the Democratic Republic of Congo should have submitted on the above-mentioned dates. This request is, in particular premised on the African Commission's note verbal ACHPR/PR/1046 of 30<sup>th</sup> March 1995 as well as item 18 of the Commission's 13<sup>th</sup> Activity Report in which the "African Commission made a vibrant call on State Parties with backlogs to submit their reports as quickly as possible and if the need arises, to compile into a single document all the reports.

Taking into consideration the "General guidelines for the preparation of the periodic Reports pursuant to the provisions of article 62 of the African Charter on Human and Peoples' Rights, as elaborated by the African Commission on Human and Peoples' Rights and harmonized at the Harare and Tunis seminars, the following plan will be adopted for this report: Chapter I (An overview of the situation in the Democratic Republic of Congo), Chapter II (The Legal system, Government and the relationship between the different Institutions), Chapter III (The National Human Rights Conference's contribution to human rights' protection and promotion), Chapter IV (main domestic legal documents relative to the promotion and protection of human and peoples' rights), Chapter V (Major regional and international human rights instruments to which the Democratic Republic of Congo has adhered), Chapter VI (Measures taken by the Democratic Republic of Congo to ensure the effective enjoyment of rights guaranteed by the African Charter on Human and Peoples' Rights), Chapter VII (Measures taken by the Government with a view to

improving the livelihood of women, children, and other vulnerable groups as well as protect the family and strengthen its cohesiveness), Chapter VIII (Relations between the Government and human rights NGOs in the Democratic Republic of Congo), Chapter IX (The Democratic Republic of Congo adherence to the provisions of the African Charter on Human and Peoples' in the conduct of relations with African and other international partners).

This initial report will end with a brief conclusion.

## **1<sup>ST</sup> CHAPTER:**

### **AN OVERVIEW OF THE SITUATION IN THE DEMOCRATIC REPUBLIC OF CONGO**

The Democratic Republic of Congo (DRC) is a former Belgian colony that was an emanation of the Berlin Treaty of 26<sup>th</sup> February 1885 and the 1908 annexation Treaty. It attained independence on 30<sup>th</sup> June 1960. It is a member of the United Nations; the Organization of African Unity (OAU) and therefore of the African Union (whose charter it signed on 1<sup>st</sup> March 2001); the Economic Community of Central African States (ECCAS), SADC as well as other international organizations. Similarly, it was a signatory to the treaty that set up the African Economic Community on 3<sup>rd</sup> June 1991 before ratifying it on 19<sup>th</sup> June 1993 (the instruments of ratification were deposited on 21<sup>st</sup> June 1993).

#### **A. Geographic characteristics and demographic (or human resources) data.**

FRANTZ FANON once described Africa's shape as that of a revolver with the Democratic Republic of Congo serving as the trigger. This phrase explains the situation and the strategic position that this country has in the center of Africa whilst at the same time bordering the ocean. This justifies, among other things, the solicitations it is subjected to by foreign powers with African countries unfortunately serving often as their agents. The country's endowment in a wealth of natural resources is also at the origin of these solicitations..

The DRC has a surface area of 2,345,406 km<sup>2</sup> and has borders with nine countries, namely: Zambia, Angola, Congo-Brazzaville, Central African Republic, Rwanda, Burundi, Tanzania, Sudan and Uganda. It has a tropical climate that is divided into two seasons, with the rainy season lasting eight months whilst the dry spell lasts four months. The rainfall is obviously important but with variations in both time and space (800 – 1,800mm).

The equatorial forest and the central basin cover large areas that, for the past four years, are being indiscriminately exploited by the occupying forces. Millions of hectares are consequently doomed to disappear very soon. A wide basin covers the center and western part of the country (300 – 500 meters of altitude); whilst high plateaus (700 – 1,200 meters) run alongside the basin on the east and south. In addition, a volcanic chain (1,500 – 5000 meters) interspersed with lakes occupies the eastern relief. This chain separates the basin of the Congo from that of the Nile.

It has a dense hydrography comprising in particular of thirty or so big rivers amounting to over 20,000 km of riverbanks. These waterways all flow into the Congo River, which is one of the major rivers in the world.

The Congo River is 4,370 km long and has its sources in the Lualaba (Katanga region) and flows into the Atlantic Ocean, through its mouth (in the Lower Congo region) with its second position, is one of the highest rate of flow in the world (30,000 m<sup>3</sup> of water per second). However, with less than 100 km of coastline on the Atlantic, the Democratic Republic of Congo is a semi-landlocked country. The country also has fifteen or so lakes, amounting to over 180,000 km<sup>2</sup> of surface area. The population of the Democratic Republic of Congo presently stands at 50.3 million inhabitants with more than four hundred ethnic groups spread in the 11 regions it comprises of. These regions are:

- Bandundu
- Lower Congo
- Equator
- Western Kasai
- Eastern Kasai
- Katanga
- Maniema;
- North Kivu;
- Eastern region
- South Kivu
- Kinshasa is the capital city, but is also considered as a region.

The government's decree no 031 of 8<sup>th</sup> October 1997 provides for the designation of administrative authorities and areas in the Democratic Republic of Congo.

The main cities in the country are Kinshasa (administrative and political capital), Lubumbashi (economic capital and presently seat of parliament), Mbuji-Mayi, Matadi, Kananga, Mbandaka, Kisangani, Kindu, Bukavu, Goma, Uvira, and Kikwit.

There are 450 ethnic groups in the Democratic Republic of Congo. This is the reason why it is justly referred to as an ethnic medley.

The major local languages are Lingala, Kikongo, Swahili and Tshiluba. French is the official language.

It should be noted that the North-Kivu, South-Kivu, Maniema, Eastern, and parts of the Equator and Katanga regions are, since 2<sup>nd</sup> August 1998 illegally occupied by the forces of aggression comprising of the regular armies of Rwanda, Uganda and Burundi.

## **B. Socio-economic Data**

The Democratic Republic of Congo has, since 30<sup>th</sup> June 1998, adopted a new currency (Congolese Franc) thereby abandoning the New Zaire currency (outcome of the monetary reform instituted in 1993) whose outstanding balances could not be managed due to the economic chaos that took root in both the formal and informal sectors of the economy under President MOBUTU's regime. Decree no. 068 of 22 April 1998 related to the creation of the Fiscal Franc, whilst the ministerial order no. 022 of 30<sup>th</sup> April 1998, which was modified and complemented by the ministerial order no. 008/CAB/FIN/2000 of 17<sup>th</sup> July 2000, defined the fiscal franc's parity.

The government's decree no. 080 of 17<sup>th</sup> June 1998 instituted the new monetary unit in the Democratic Republic of Congo, whilst the government's decree no. 098 of 3<sup>rd</sup> July 2000, defines the tax penalties reform.

The Government has made significant strides to ensure that the salaries of civil servants are regularly paid, even though the scales need to be increased significantly in order to take into account the cost of living and increase the purchasing power of consumers.

However, as a result of the on-going war in the country, foodstuffs coming from producer regions occupied by the aggressors become scarce. This contributes to further aggravate the socio-economic conditions of the population since the economic operators are constrained or restricted in their commercial transactions whilst investors at same time are despondent.



A joint action involving the Government (Ministry for Economic affairs and other relevant agencies) – the Federation of Congolese Businessmen – Central Bank of Congo and ANEP (National Association of Investment Companies) is striving to remedy the situation, particularly by making a sustained effort at resolving inflation, exchange rate, and hydrocarbon related problems. This has consequently led, among others, to the signing of the government decree no. 004/2001 of 31<sup>st</sup> January 2001 relating to transactions on domestic and foreign currencies in the Democratic Republic of Congo. This new text modified, among other things the government's decree no. 177 of 8<sup>th</sup> January 1999 regarding the system of transaction in domestic currency (including circular no. 283 of 11<sup>th</sup> March 1999 of the Governor of the Central Bank concerning procedures for its implementation), as modified and complemented by the government's decree no.131/2000 of 8<sup>th</sup> October 2000.

The government's decree no. 004/2001 of 31<sup>st</sup> January 2001 in particular stipulates that all services rendered on the national territory are assessed and remunerated in the local currency. They could also be settled in foreign exchange according to the procedures instituted by the Central Bank of Congo.

In the hydrocarbons sector, the President of the Republic has, in particular promulgated bill no.003/2001 of 10<sup>th</sup> July 2001 regarding the financing of importation of petroleum products.

The country has, since 2<sup>nd</sup> January 2002, elaborated a budget for the current fiscal year, the 1<sup>st</sup> of its kind in the past ten or so years covering the transition period. The budget has been passed by the parliament at the end of its October 2001 session in Lubumbashi. And in order to stabilize the currency, Government has adopted a floating exchange rate system.

## **D. Administrative and political framework**

### **1. Administrative structure**

Governors and Assistant Governors, who are appointed by the President of the Republic, administer the 11 regions in the Democratic Republic of Congo.

It should be noted here that at the level of each regional Executive, there is at least one female Assistant Governor.

The Democratic Republic of Congo is a unitary, decentralized, indivisible, secular, and democratic state.

The Government decree no. 081 of 2<sup>nd</sup> July 1998 provides for the administrative and territorial structure of the Democratic Republic of Congo. Besides Kinshasa (whose status is determined by Government's decree no. 82-008 of 25<sup>th</sup> February 1982, each region is subdivided into Districts and these are divided into divisions. The latter are in turn subdivided into Sectors and Chieftaincies comprising of groups of villages.

Urban centers are subdivided into Districts and areas.

The table below provides the administrative structure of the Democratic Republic of Congo.

<b>Regions</b>	<b>Main town</b>	<b>Surface area</b>	<b>Number of Districts</b>	<b>Number of Areas</b>	<b>Number of Sectors</b>
<b>1. Kinshasa</b>		9,965.2	-	24	-
<b>2. Lower Congo</b>	Matadi	53,920.0	4	16	55
<b>3. Bandundu</b>	Bandundu	259,658.0	5	23	94
<b>4. Equator</b>	Mbandaka	403,292.0	7	28	87
<b>5. Eastern region</b>	Kisangani	503,239.0	5	30	198
<b>6. North Kivu</b>	Goma	59,483.0	1	6	17
<b>7. South Kivu</b>	Bukavu	65,070.0	2	11	23
<b>8. Maniema</b>	Kindu	132,250.0	1	7	34
<b>9. Katanga</b>	Lubumbashi	496,877.0	7	35	92
<b>10. Eastern Kasai</b>	Mbuji-Mayi	170,302.0	4	21	84
<b>11. Western Kasai</b>	Kananga	154,741.8	3	15	53
<b>TOTAL</b>		<b>2,344,858</b>	<b>40</b>	<b>216</b>	<b>737</b>

Source: National statistical institute (1993), Demographic forecast, Zaire and regions, 1984-2000.

## **2. Political structure**

Political parties and groups are established and operate under the law. 441 parties were approved under the provisions of bill no. 90-007 of 18<sup>th</sup> July 1990, as amended by the bill no.90-009 of 18<sup>th</sup> December 1990 covering the organization and functioning of political parties.

Unfortunately, this political pluralism foundered to the extent that the political parties were simply formed to simply cater to “food needs” (created particularly for the purpose of taking part in the Sovereign National Conference and comprising solely of the family members of the movement’s founder) and others disrupting, through their perpetual cross-carpeting, the peaceful existence of the population. Hence, at the time of 17<sup>th</sup> May 1997 revolution, the need was felt to temporarily suspend the activities of political parties in order to sanitize the legal framework. Close to two years after, a government decree was passed with a view to regulating the operations of political parties and groups; this was the Government decree no.194 of 29<sup>th</sup> January 1999 relative to political parties and groups. Under the provisions of this law, that many consider to be sufficiently rigorous, only four political parties were approved (UGC, MDD, UDPS-KIBASA and URC).

For instance, an application for assent had to contain in particular a written, signed and duly certified undertaking by at least 150 founding members residing or living in all the regions in the country; none of the regions could be represented by less than 10 or more than 15 founding members; this undertaking should cover:

- Respect for existing constitutional, legislative and regulatory provisions;
- Without prejudice to the provisions of articles 17 and 18 of this Government decree, the convening of a party congress in accordance with its constitution and in any case before the holding of elections. (Article 12, para. 2 of the Government decree)

This Government decree was repealed and replaced by bill no. 001/2001 of 17<sup>th</sup> May 2001 covering the organization and operations of political parties and groups.

Under the provisions of this new and existing law, 14 political parties and 10 groups were formally registered to date and 167 old political parties have fulfilled the requirements stipulated in articles 36 and 37 of the 2001 law. As at date, there are over 200 political parties actively engaged in political activity.

It should be noted that, after having lived under an authoritarian government since the coup of 24 November 1965, the Democratic Republic of Congo found itself brought into the process of political pluralism and democratization by the end of 1989, following the Perestroika and Glasnost. Hence, after consultations referred to as “popular”, the former Head of State MOBUTO SESE SEKO, announced on 24<sup>th</sup> April 1990 democratic changes, which naturally led to total confusion that was encouraged by the leaders themselves. Consequently, we participated in:

- The Sovereign National Conference, which was on several occasions closed down by the Prime Minister after it was transformed into a field for political confrontation and settling of scores. However, this forum made an important contribution in terms of inventorying the socio-economic evolution that the country underwent. The desire for reconciliation, as symbolized by a monument, was never attained.
- Large scale destruction of public and private properties, on two occasions, in September 1991 and in 1993, leading to a significant dislocation of the country’s economic fabric;
- Prior political consultations, under the auspices of a mediator, with a view to achieving a just and balanced power sharing system;
- Duplication of institutions (two governments: Tshisekedi and Birindwa; two parliaments: the Transitional parliament which was the offshoot of the Political Conclave held in Kinshasa and the High Council of the Republic which emanated from the Sovereign National Conference).

Although the two Parliaments were subsequently merged into one, the political chaos lasted, culminating in the outbreak of the liberation struggle from the end of 1996 up to 17<sup>th</sup> May 1997. It was therefore in this context that the AFDL Council, under Chairman Laurent-Desire Kabila, seized power.

The preamble to the “Seizure of Power Declaration” done in Lubumbashi on 17<sup>th</sup> May 1997 is quite revealing in that respect:

- “Considering the war of liberation that has been going on since 14<sup>th</sup> September 1960 and which today has been confirmed by the AFDL (Alliance of Democratic Forces for the Liberation of Congo) against the dictatorship and for the institution of a democratic system and the rule of law;
- Considering the power vacuum at the head of the State created by the unforeseen flight of President MOBUTO, after having stalled negotiations for the peaceful resolution of the crisis, and that, in spite of the mediation efforts deployed by

President NELSON MANDELA, friendly countries and the international community,

- Recognizing that this vacuum has the potential for disrupting the peace, national unity and security of persons and goods;”

To date, it is the Constitutional bill no. 003 of 27<sup>th</sup> May 1997 relating to the organization and the exercise of power in the Democratic Republic of Congo, as amended then, which governs the country after the suspension of what remains of MOBOTU’s Transitional Constitutional text. It provides for the creation of institutions such as:

- President of the Republic
- Constituent Assembly and Legislative;
- Government
- Courts and Tribunals.

Four major government decrees were signed on 29<sup>th</sup> January 1999 and published in February 1999 (ref. Official Bulletin of the Democratic Republic of Congo, 40<sup>th</sup> year, Special edition, February 1999). They cover political parties and groups (no.194); not for profit organizations and public utility institutions (no.195), public events (no.196) and Congolese citizenship (no.197) respectively. It should be noted that a new bill, government decree no. 196 for the regulation of public events and meetings was promulgated on 28<sup>th</sup> May 2001.

Within the national reconciliation framework, “National Consultations” were organized end February 2000 at the Protestant Centenary Temple in Kinshasa with a view to removing the obstacles to the democratic process and adopting some options for the future of the nation.

The war of aggression launched on 2<sup>nd</sup> August 1998 will result in the death of the President of the Republic, Mzee Laurent-Desire KABILA, assassinated on 16<sup>th</sup> January 2001.

It was then that the Congolese People, through an extraordinary Council of Ministers on 17<sup>th</sup> January 2001 including the Army Chief of Staff, entrusted power to Major-general Joseph KABILA, with a view to pursuing the nation’s democratization process initiated by President Laurent-Desire KABILA.

The new Head of State was henceforth entrusted with “the leadership of governmental action and the Army High Command, whilst the institutions of the Republic continue to operate normally.”

The Constituent Assembly and the Transitional Legislative-Parliament (ACL-PT) met in an extraordinary session convened by the Committee's decision no. 003 of 22nd January 2001, proceeded to endorse Major-General Joseph KABILA as Head of State and President of the Republic.

The Supreme Court swore him, in that capacity on 16<sup>th</sup> January 2001.

A new Government was put in place by decree no. 25/2001 of 14<sup>th</sup> April 2001. The Government of the Republic has since its investiture distinguished itself by several overtures it made thereby easing the tension in the nation's political life.

The Head of State, Major general, consequently represented it at the highest level in the meeting preceding the inter-Congolese dialogue, which was held in Gabarone (Botswana) from 20<sup>th</sup> to 25<sup>th</sup> August 2001 under the mediation of Botswana's Masire KETUMILE and brought together representatives of various opposition political parties, Civil Society, and even the opposing army fighting on the side of the troupes of aggression from Rwanda, Uganda and Burundi who were illegally occupying Congolese territory.

Participants at the inter-Congolese peace negotiations agreed on a Republican Pact according to which they undertook solemnly and unconditionally to implement in the entire national territory, the following provisions:

1. Ensure the immediate, effective and total liberalization of the political and associative life, abstain from any behavior likely to impede the said liberalization, and promote tolerance in the exercise of political and associative activities;
2. Guarantee the citizen's fundamental human rights and freedom, in particular the right to life and integrity, freedom of the press and opinion as well as access for all to the public media;
3. Free immediately and unconditionally all political detainees and prisoners of opinion, hostages and those who were detained or imprisoned due to their place of origin or past political and/or legal activities under the supervision of the ICRC and Congolese human rights NGOs;
4. Guarantee freedom of movement for civilians and licit goods, freedom of entry and exit of the national territory and the provision of travel documents to citizens who request for them;
5. Grant permission or re-establish air, rail, river, lakeside, road, telephone and postal networks;
6. Return immediately and unconditionally assets illegally seized and/or confiscated for political reasons or considerations as well as buildings occupied without title or right;

7. Provide the civilian population with protection against roundups, arbitrary arrests, requisitioning, despoilment, forced labor, massacres, indiscriminate bombings, torture, raping of women, child mutilation, deportations and end totally all forms of collaboration with the genocide forces;
8. Protect the national in heritage and resources and combat all forms of plundering of them;
9. Ensure respect for the provisions of the Lusaka peace Accord as well as other relevant resolutions passed by the United Nations Security Council for bringing back peace to the Democratic Republic of Congo;
10. Abstain from any activity likely to impede the national reconciliation process;
11. Guarantee humanitarian organizations access to disaster victims;
12. Ensure return to normal life in their natural environment for displaced or regrouped populations;
13. Not to use refugees for political or military ends and abstain from all forms of provocation before and during the inter-Congolese peace talks;
14. Suspend the exercise of military jurisdiction on all civil matters:

At the end of this forum, the inter-Congolese Talks were slated for the 15<sup>th</sup> October 2001, in Addis Ababa (Ethiopia).

However, given the principle of non inclusion regarding the representatives of parties as provided for in Gabarone in relations to the under representation and non participation of other major groups such as Religious denominations in the life of the nation, the Addis Ababa talks raised the issue once more before the talks actually scheduled for the 25<sup>th</sup> February 2002 in Sun City (South Africa).

It is, nonetheless important to note that the dissenting voices raised in Addis Ababa on 15<sup>th</sup> October 2001 were addressed at the meeting of the belligerents held, under the auspices of the Assistant Secretary General of the United Nations, Mr. Ibrahim Fall, in Abuja from 6<sup>th</sup> to 8<sup>th</sup> December 2001.

Besides this meeting, an “Informal” meeting that brought together members of the political opposition and the civil society was held, under the patronage of the Belgian Minister of foreign Affairs, Mr. Louis Michel, in Bruxelles from 15<sup>th</sup> to 17<sup>th</sup> January 2002 with a view to further preparing the ground for the Sun City talks.

In addition, a meeting was organized in Geneva in early February 2002 with a view to harmonizing the positions of the delegates from the government of the Democratic Republic of Congo as well as those of the RCD and the MLC.

In any case, the National Dialogue in South Africa opened as planned through facilitation as from 25<sup>th</sup> February 2002 in spite of some problems relating to the representation of opposition political groups, which was still a reality.

Five important Commissions were formed during the deliberations, namely:

- The Defense and Security Commission;
- The Political and Legal Commission;
- The Peace and Reconciliation Commission;
- The Social, Cultural and Humanitarian Commission;
- The Economic and Financial Affairs Commission.

At the end of these talks, close to 40 resolutions were adopted and the Agreement for a consensual administration of the transition period was signed on 19<sup>th</sup> April 2002 by the participants and groups involved in the Talks, except for members of the RCD/Goma and some parties.

The agreement reached with the MLC, other sections of the RCD, Mai-Mai, the Civil Society and the Political Opposition allowed for the reunification of 70% of the national territory.

Apart from the regular institutions (President of the Republic, National Assembly, Senate, Government, Courts and Tribunals), citizens' institutions were established, namely:

- Independent Electoral Commission;
- Truth and Reconciliation Commission;
- National Human Rights Institute;
- High Council in charge of the Media;
- Ethic and Anti-corruption Commission

The adoption of the transitional constitution happened at the same time as the establishment of the new transitional institutions.



## CHAPTER II:

### LEGAL SYSTEM, GOVERNMENT AND THE RELATIONSHIP BETWEEN THE DIFFERENT INSTITUTIONS

#### A. The Legal system

The Congolese legal system is mainly governed by written texts, even though some areas fall under customary law. It belongs moreover to the monist system that implies that international law has priority over the domestic law. There is presently a provision in the constitution that forms part of the Congolese legal framework and which is not contrary to the present government's constitutional decree no. 003 of 27<sup>th</sup> May 1997 that stipulates: "International treaties and conventions that are regularly ratified or approved have, upon their publication, priority over domestic laws".

The legal system in the Democratic Republic of Congo is governed by different documents, including:

- The government's constitutional decree no.003 of 27<sup>th</sup> May 1997 relating to the organization and the exercise of power in the Democratic Republic of Congo as amended and perfected to date;
- The legal decree no. 82-020 of 31<sup>st</sup> March 1982 called the organization and legal competence code (as we await the adoption of the new transitional constitution);
- Bill no. 86-127 of 2<sup>nd</sup> May 1986 relative to the organization of the High Council of the Magistracy as amended to date;
- Legal decree no. 88-056 of 29<sup>th</sup> September 1982 regarding the status of magistrates;
- Legal decree no. 79-08 of 28<sup>th</sup> September 1979 relative to the organization of the Bar, legal practitioners and state attorneys;
- Legal decree no. 72/060 of 25<sup>th</sup> September 1972 instituting the military justice code as amended to date;
- Act no. 81-003 of 17<sup>th</sup> July 1981 governing the status of public services employees;
- Legal decree no. 80-008 of 18<sup>th</sup> January 1980 governing the attributions of the Ministry of Justice;

- Act no. 87-010 of 1<sup>st</sup> August 1987 instituting the Family code;
- Decree no. 78/289 of 3<sup>rd</sup> July 1978 relating the attributions and functions of officers and agents of the judicial police force operating under the common law jurisdictions;
- Legal decree no. 019 of 23<sup>rd</sup> August 1997 instituting the establishment of the Military Order Court;
- Act no. 002/2001 of 3<sup>rd</sup> July 2001 instituting the establishment, organization and operations of the commercial courts;
- Legal decree no. 344 of 17<sup>th</sup> September 1965 governing the organization of prisons;
- Decree of 6<sup>th</sup> December 1950 on juvenile delinquents;
- Decree of 21<sup>st</sup> June 1937 on the rehabilitation of convicts;
- Government decree of 15<sup>th</sup> April 1926 on customary jurisdictions as amended to date
- Decree of 6<sup>th</sup> August 1959 updated on 30<sup>th</sup> June 1985 instituting the criminal procedure code;
- Decree of 7<sup>th</sup> March 1960, updated on 30<sup>th</sup> June 1985 instituting the civil procedure code;
- Civilian code
- Criminal code
- Financial act no. 83-003 of 23<sup>rd</sup> February 1983 as amended and updated, particularly by the government decree no. 87-004 of 10<sup>th</sup> January 1987;
- Labor act;
- Act no. 73-009 of 5<sup>th</sup> January 1973 focusing specifically on trading activities, as amended and updated;
- Decree no. 89-033 of 30<sup>th</sup> January 1989 instituting the establishment of the High Council for Investors.

The competent authorities assure the justice delivery system in the Democratic Republic of Congo. The common law jurisdiction comprise of:

- The Supreme Court;
- The Court of Appeal;
- County courts;
- Peace tribunals.

The commercial courts (established by act no. 002/2001 of 3<sup>rd</sup> July 2001) are part of the common law jurisdiction and the professional judges that seat in them have secure tenure. A commercial court falls under the purview of the county courts. Each commercial court is headed by a judge belonging to the judicial cadre and could eventually be removed from office by the Minister of Justice (article 2 of act no. 002/2001).

Besides the common law courts, is the office of the public prosecutor. In military matters, the Military Order Court serves as the war council as a result of the exceptional circumstances that the country is faced with. It should be noted that major reforms in the military justice system are on the way and emanate from a joint action undertaken by the Ministries of Justice, Defense and Human Rights.

The Ministry for Human Rights very recently organized from 8<sup>th</sup> to 9<sup>th</sup> October 2001 a seminar on “the reform of the military justice system and human rights safeguards”.

The Supreme Court is the highest jurisdiction in the country. It passes as first and last resort judgments on matters affecting entities that belong to a privileged category and serves as the final authority for matters concerning other subjects. It makes rulings and issues directives. It is unique (and is located in the Capital) in that it serves the entire Republic.

The Appeal courts are in theory located in each of the major regional cities. For Kinshasa city, it has exceptionally two: the Gombe Court of appeal and that of Matete.

## **B. The Government**

The government constitutional decree no. 003 of 27<sup>th</sup> May 1997 regarding the organization and exercise of power in the Democratic Republic of Congo, as modified and amended to date, institutes a presidential system with the separation of powers between the Executive, Legislature and the Judiciary. The Head of State is at the same time the head of the Government.

The texts amending and updating the government’s constitutional decree no.003 of 27<sup>th</sup> May 1997 are:

- Government's constitutional decree no. 074 of 25<sup>th</sup> May 1998 providing for the revision of the provisions of chapter II of the government's constitutional decree no. 003 of 27<sup>th</sup> May 1997;
- Government's constitutional decree no. 122 of 21<sup>st</sup> September 1998;
- Government's constitutional decree no. 180 of 10<sup>th</sup> January 1999 amending and updating government's decree no. 003 of 27<sup>th</sup> May 1997;
- Government's constitutional decree no. 096/2000 of 1<sup>st</sup> July 2000.

The President of the Republic is the Head of State. He represents the Nation. He is the Head of the Executive and the Armed Forces. He exercises the regulatory function through decrees. He has the right to mint money and issue paper money by law.

He ensures that a bill passed by the Constituent Assembly and the Transitional Legislature-Parliament is promulgated to become laws of the Republic. He negotiates and ratifies on behalf of the Democratic Republic of Congo international conventions and treaties.

The Government conducts, as defined by the President of the republic the nation's policies. It enforces the laws of the Republic and the decrees passed by the head of State. It negotiates under the supervision of the Head of state international conventions; it oversees the Administration and the Armed Forces (art. 34 of the government's constitutional decree). It meets in the council of ministers with the head of State or one of the ministers presiding over the meeting.

The Ministers are responsible and accountable for the management of their ministries to the president of the Republic. They take decisions through departmental orders (art.35 of government's constitutional decree). Decree no. 018/2000 of 27<sup>th</sup> February 2000 relates to the organization and operations of the Government whilst circular note no. CAB/PR/DC/1.033/00 of 26<sup>th</sup> September 2000 of the principal private secretary of the Head of State reminds the areas of competence of the different ministries.

The Constituent Assembly and Legislature exercise the legislative authority during the transition period and elaborate and adopt legislative texts relating to elections, especially the law on political parties, law on associations, law on citizenship, law on the National Elections Commission, the Electoral code. The Parliament also oversees the activities of the Government and other public and Para-public institutions. It represents the State in parliamentary sessions and assumes other functions inside and outside the country within the framework of the on-going democratization process.

The judiciary comprises of all the courts and tribunals, and is independent from the legislature and the executive. The High Council of the Magistracy attempts through its restructuring exercise to consolidate this autonomy.

Following a long period of hibernation, the High Council of the Magistracy managed to meet for close to two weeks in October 2001 to exercise its normal functions relating to the management of careers in the magistracy.

### C. Relations between Institutions

In accordance with the provisions of article 18 of the government's constitutional decree no. 003 of 27<sup>th</sup> May 1997 regarding the organization and exercise of power in the Democratic Republic of Congo, the Constituent Assembly and the transitional Legislature-Parliament has means at its disposal to oversee and be informed about the activities of the Government and the public and para-public institutions. These means are:

- Written question;
- Oral question with or without debate that is not followed by a vote;
- Topical question;
- Commission of enquiry;
- Questioning.

The President of the Republic ensures that bills passed by the Parliament are promulgated into the laws of the Republic.

The mandate of the Constituent Assembly and the transitional Legislature-Parliament ends when the parliament elected through universal adult suffrage takes up office. However, if the higher national interest requires it, the President of the Republic can in a message to the Nation, dissolve before the end of their term the Constituent Assembly and transitional Legislature-Parliament; in which case he will rule by government decree.

The Office of the Constituent Assembly and the Legislature are responsible for the management, organization and the coordination of the parliament. It serves as the link between the former and the other institutions of the Republic.

It is important to note here that in the Democratic Republic of Congo there is a General Secretariat responsible for Communications with the Parliament which is under the purview of the Ministry of Justice and Attorney Generals Chambers.

According to the provisions of decree no.113/2000 of 1<sup>st</sup> September 2000 relative to the appointment of members of the Government of National Salvation, the Minister of Justice is, among others mandated to oversee parliamentary matters, with a Deputy Minister assigned to strengthening relations between the Government and the Parliament.

Following the introduction of decree no. 025/2001 of 14<sup>th</sup> April 2001 relative to the appointment of members of the Government, we reverted to the traditional designation of the Minister (Minister of Justice).

Members of the Constituent Assembly and the Legislature enjoy parliamentary immunity. Except when caught in flagrante delicto, no member can be neither be prosecuted, arrested nor taken to court without permission from the Office of the Assembly.

In accordance with the provisions of article 12 of the government's constitutional decree no. 003 of 27<sup>th</sup> May 1997, the Courts and the tribunals are mandated to interpret the law and are independent of both the Legislature and the Executive. The judge is consequently independent in the execution of his function. In the exercise of his function, the law only binds him.

We should, however point out here that the judicial authority has been deeply shaken by dismissal of 315 magistrates by Decree no. 144 of 6<sup>th</sup> November 1998 without any respect for the due process that includes referring the matter to the High Council of the Magistracy. Many people have consequently protested, including the National Human Rights Conference of the Democratic Republic of Congo, requesting the reinstatement of the said magistrates or at least making sure that their cases be heard on a case-by-case basis.

The discussion on the issue has recommenced again in September 2001 in the relevant courts. The Supreme Court's decision dated 26<sup>th</sup> September 2001 did not produce a final solution on the matter. It declared that it is not competent to decide on the case.

Although limited in some ways, there have been other cases of the Executive interfering in the workings of the Judiciary particularly through the suspension and deferral of judicial decisions. Here are some examples:

- The Supreme Court's decision no. RC 009 of 28<sup>th</sup> December 1998, which is a follow-up to its decision no. RC 51577/61,611 of 27<sup>th</sup> September 1993 of the County court and the RCA 17,272 of 16<sup>th</sup> December 1993 of the Kinshasa/Gombe/Appeal Court;
- The Gombe Appeal court decision no. RCA 17,550/17,552/17,559R 25,907/96,002 relating to a civil matter.

## CHAPTER III:

### THE CONTRIBUTION OF THE NATIONAL CONFERENCE TOWARDS HUMAN RIGHTS PROMOTION AND PROTECTION

#### A. Framework, function and recommendations

##### 1. Framework.

The National Human Rights Conference (C.N.D.H) was convened by presidential decree no. 007/01 of 23<sup>rd</sup> February 2001. Under the enforcement of this decree, the Minister of Human Rights' instituted a preparatory Commission for the forum by order no CAB/MDH/003/2001 OF 7<sup>TH</sup> march 2001. The preparatory Commission's deliberations were held in Kinshasa from 14<sup>th</sup> March to 25<sup>th</sup> April 2001; seven sub-commissions were formed, namely:

- Technical;
- Assessment of war damages and reparation;
- Justice- armed forces, police-security;
- Scientific;
- Press;
- Finance and Budget;
- Family, women and children.

It should be noted that 359 members actually took part in the preparatory sessions.

The meeting of the National Human Rights Conference was actually held from 24<sup>th</sup> to 30<sup>th</sup> June 2001 in Kinshasa with 429 participants including 57 national and international observers. The Human rights' Minister prior to the commencement of the national Human Rights issued two orders:

- Order no. 009/CAB/MDH/C0418/2001 of 9<sup>th</sup> June 2001 relative to the establishment and organization of the National Human Rights Conference Technical Secretariat;

- And order no. 010/CAB/MDH/C0419/2001 of 9<sup>TH</sup> June 2001 on the appointment of members of the National Human Rights Conference Technical Secretariat.

Technical committees were then formed to ensure that the Conference deliberations were held under the best conditions at the technical level.

It should, finally be pointed out that the National Human Rights Conference was first broached by the President of the Republic, Joseph KABILA in Washington in February 2001, during his euro-American tour and confirmed in an important address he made on 30<sup>th</sup> March 2001 at the 57<sup>th</sup> session of the United Nations Human Rights Commissions in Geneva.

## 2. Functions

In accordance with the provisions of article 3 of decree no. 007/01 of 23<sup>rd</sup> February 2001 convening the National Human Rights Conference of the Democratic Republic of Congo, three tasks were assigned to this forum:

- Reaffirm the Democratic Republic of Congo's will to respect, promote and protect Human Rights with a view to facilitating the consolidation of the rule of law, and that after having done a prior assessment of the situation on the ground;
- Draw the attention of the international community on the massive human rights violations occurring in the occupied areas and reaffirm the urgent need for an immediate and unconditional withdrawal of the forces of aggression from the national territory in accordance with the relevant United Nations Security Council resolutions;
- Improve the National Human Rights Protection and Promotion Plan of Action in the Democratic Republic of Congo.

In order to attain these objectives, eight specialized Commissions were set up during the actual deliberations of the N.H.R.C. These Commissions are:

- Commission no. I : Civil and political rights.
- Commission no. II : Economic and social rights.
- Commission no. III : Cultural rights and human rights education.
- Commission no. IV : Protection and guarantee of the rights of disadvantaged persons.



- Commission no. V : Congolese peoples' right to peace and sovereignty over their resources.
- Commission no. VI : Administration of Justice and human rights.
- Commission no. VII : Defense, security and law and order forces and the human rights problematic.
- Commission no. VIII : Promotion and protection structures and mechanisms.

### **3. Recommendations**

The different Commissions freely put forward many recommendations at the end of the deliberations of the National Human Rights Conference. Among these recommendations, we can particularly mention the following:

#### **1) For the Civil and political rights promotion and protection Commission:**

- Formal admission by the Government that international human rights instruments have priority over domestic law;
- Abolition of the death penalty and commutation of death sentences already passed;
- Suppression of the Military Order court;
- Criminalization of torture and the rehabilitation of victims of acts of torture;
- Returning assets seized to their owners;
- Reinstatement of the 315 magistrates that were unlawfully dismissed;
- Urgent enactment of measures geared towards free access to the public media for the lifeblood of the country, especially for the political parties;
- Immediate and unconditional withdrawal of all forces of aggression first, to be followed by scheduled withdrawal of troops called in;
- Setting up of an international criminal tribunal to judge war crimes, crimes against humanity and genocide committed in the Democratic Republic of Congo;
- Convening as soon as feasible and under conditions that will guarantee the safety of all, a national reconciliation meeting; etc.

2) For the Economic and Social Rights promotion and protection Commission, the recommendations made reaffirmed the need to:

- Reform the present labor act in order to adapt it to international standards;
- Grant decent salaries to workers;
- Promote, expand and protect the freedom of unions;
- Establish a national policy for the rapid integration of the informal sector;
- Complement basic social security with other forms of protection (mutual insurance, associations, etc);
- Reorganize and strengthen the social security system with a view to providing cover to all socio-professional groups in accordance with the international standards set by the ILO;
- Establish housing departments and banks;
- Put in place a national housing policy;
- Pass a law in the area of house letting lease;
- Rehabilitate the Matadi-Kinshasa railway (electrification) as well as the Banana deep water port;
- Formulate appropriate laws on forestry, water and protected zones;
- Allocate resources generated by the forest regeneration fund in the provinces with a view to facilitating the reforestation process;
- Build the capacity of the Congolese Department for Quality Control and acquire a national verification laboratory for the quality of medicines, foodstuffs, raw materials, reagents, cosmetic products, water. This laboratory should be placed under the purview of the Ministry of health, with referral laboratories located in the provinces;
- Elaborate, in accordance with the United Nations guidelines for consumer protection, a code for the protection of consumers' rights by regulating the different production, conservation, trading and consumption sectors;
- Strengthen the protection of intellectual property rights;

- Take all the necessary measures to ensure that the means of production in the enterprises are rehabilitated with a view to the restoration of activities and return to normal of the workers' situation (ex. : CINAT, SOSIDER, B.C.A., etc)

3) For the Cultural rights and the Human rights education Commission:

- Organization by the Government in the formal structures of an official human rights education program (nursery, primary, secondary and tertiary levels), in the informal structures and in favor of professional groups;
- Put in place a follow-up committee to assess the human rights aspect of the United Nations Education Decade (1995-2004);
- Elaboration and dissemination of a vade mecum on human rights meant for all categories in the population. Translation into the local languages of all international, regional and national human rights instruments. Dissemination of the said rights through the theatre, cartoons, music, sculpture and paintings, etc;
- Dissemination of cultural rights in the national languages;
- Provide citizens with the different cultural rights legal texts, before and after their adoption;
- Rehabilitation of existing cultural centers and the cultural promotion fund;
- Rehabilitation of the national languages and arts education;
- Provide prisoners with the possibility of access to information (library, television, radio,);
- Encourage the holding of democratic elections in the appointment of officers in the secondary and professional as well as higher and university institutions;
- Review and update copy right and related laws;
- Establish a public institution geared towards cultural development to replace the existing SONECA;
- Reactivate relations with the World Intellectual Property Organization.

4) For the Commission on the Protection and Guarantee of the Rights of disadvantaged persons;

- The government should ensure the adherence, protection and promotion of all legal texts adopted in favor of women, prohibition of all forms of discriminations between men and women;
- Criminalize sexual harassment and pedophilia and impose severe sanctions on them;
- Raise the marriageable age for boys to 21 years and that for young girls to 18 years;
- The Government should take all necessary measures to change the socio-cultural behavioral models and symbols of men and women with a view to eliminating prejudices (inferiority of women or under estimation of women's competence) and traditional or any other type of practices (such as female excision among the Ngbaka; obligatory scarification in some tribes, arranged marriages...);
- Sensitize parents to register new born at the state registry;
- Rehabilitate Government pharmaceutical laboratories;
- Separate juvenile from adult prisoners in detention centers;
- The adherence by the Democratic Republic of Congo to the United Nations' International Declaration on the Rights of Handicapped persons and that of the mentally deficient;
- Sensitization of handicapped persons on the exercise of rights and civic obligations as well as the culture of non violence;
- Establishment of sporting and recreational centers for handicapped persons;
- Declare national days for the screening of genetic malfunctioning;
- Recognize albinos as disadvantaged persons;
- Construct some old people homes;
- Grant state subsidies to institutions that they take care of the elderly persons;

- Urge religious denominations to fulfill their pastoral duties by encouraging family unity as opposed to its separation.

5) For the Commission on the Right of Congolese to peace and sovereignty over their resources.

- Obtain the establishment of an International Criminal Tribunal for the Democratic Republic of Congo with a view to punishing war criminals, establishing the responsibility of aggressor states in the massacres, destruction of infrastructure and plundering of the resources of the Democratic Republic of Congo following the unlawful and irregular occupation by the regular troops of the armies of Rwanda, Uganda and Burundi and that in violation of the international legal instruments and to determine the modalities, mechanisms for reparation and compensation of victims;
- Call on MONUC to deploy its troops along the borders with the aggressor countries in order to eliminate the security excuse advanced by the aggressors from their borders;
- Form a follow-up Commission that should be visiting the occupied territories in order to assess the facts relating to the damage done and evaluate the real damage with a view to eventually determining reparations;
- Take urgent measures to convince the Security council to approve the decisions adopted by the panel on the looting in order to put a stop to the said plundering of the resources of the Democratic Republic of Congo;
- That the traditional leaders of the occupied areas that were removed from their positions be reinstated.

6) For the Commission on the Administration of Justice and human Rights:

- Strengthen the professional team of magistrates through the appointment of Heads of departments and courts;
- Improve the living and working conditions of magistrates;
- Declare as null and void decisions taken by non certified OPJs;
- Rehabilitate the OPJ schools in Matete and kasapa;
- Strengthen the disciplinary system among lawyers and enforce criminal sanctions;

- Liberalize the functions of bailiffs;
- Abolish the Military Order Court;
- Establish a private chamber for arbitration
- Restore the independence of the judiciary by restructuring the High Council of the Magistracy and by appointing a career judge to be its chairperson;
- Establish peace Tribunals where traditional tribunals are still operating in;
- Reinstate the 315 magistrates irregularly dismissed;
- Create a constitutional court;
- Rehabilitate existing State-run Day Care and Educational Centers (EGEE) (case of Nkanda-Kanda) and/or establish EGEE for juvenile delinquents.

7) For the Commission on defense, security, law and order forces and the human rights problematic:

- Elaboration of a text (decree) establishing and organizing the civilian security services providing for: the creation of a single national service bringing together all the research and security services; the technical supervision of the OMP (Officer of the Public Prosecutor) through the swearing-in of OPJ (Officer of the Criminal Investigation Department) before the designated public prosecutor; the oversight mechanism including parliamentary supervision;
- Continuous training of agents;
- Improvement of the working conditions of Officers and agents of the security services by allocating sufficient budget and logistics to their operations to ensure that their operations cover the whole territory;
- The decree for the establishment and organization of the services should render obligatory self-executing military services for the benefit of civilian services each time they are approached on a matter relating to the latter and when the military is not affected.

## 8) For the Commission on the Structures and mechanisms for the Promotion and Protection of Human Rights

- Setting up of a totally independent, autonomous and permanent National Human Rights Commission;
- Adherence to and enforcement of the UNO Declaration on human rights defenders as adopted by the UNO General Assembly in its resolution 53/144 of 9<sup>th</sup> December 1998;
- Setting up of an institution called the National Ethical Council;
- Elaboration of a law relative to the protection of other Human Rights Promotion structures.

### B. Congolese Charter on Human and Peoples' Rights.

At the end of the National Human Rights Conference, the participants decided to adopt the Congolese Charter on Human and Peoples' Rights. However, the finalization of the important document was confided to an ad hoc Commission comprising of the Conference committee and approved by the plenary. The deliberations of this Commission were held from 2<sup>nd</sup> to 4<sup>th</sup> July 2001 in Kinshasa.

This Charter comprising of 78 articles, was adopted with a view to responding to deeply felt concerns and the desire expressed by the Congolese society to put a stop to the generalized and systematic violations of human rights which characterized the public life in Congo since its inception as a State.

In fact, before and since the Independent State of Congo (I.S.C) became a Belgian colony in 1908 and up to 30<sup>th</sup> June 1960, the colonial power never behaved as a model in the field of human rights.

The Congolese as a Belgian subject instead of a citizen could never claim equality with the white man and a system of racial segregation characterized relations between the black and white men. And it was only because it was forced by circumstances that the Kingdom of Belgium had to accede to the Congolese people right to self-determination and independence on 30<sup>th</sup> June 1960.

After independence, the Democratic Republic of Congo did not immediately witness an era of Human Rights promotion as a result of many events in particular the hasty departure of managers (all Belgian) from the administration, the mutiny by the security forces, the secession of Katanga as from 11 July 1960 followed by that of the South-

Kasai, the removal followed by the arrest and assassination of the Country's Prime Minister, Patrice-Emery LUMUMBA.

A dictatorship began on 24<sup>th</sup> November 1965 and continued to expand up to 16<sup>th</sup> may 1997, and it was characterized by arbitrary arrests and detentions, foul crimes and odious political assassinations, freedom of expression flouted, torture and degrading and inhuman treatments inflicted on the population and particularly on political actors.

By opting for a CHARTER, the delegates at the National Human Rights Conference were motivated in their general statement by the ardent desire to put in place adequate and efficient legal and institutional mechanisms aimed at putting a stop to all these violations.

In accordance with the desire of the National Human Rights Conference, the Congolese Charter on Human and Peoples' Rights is a document with a constitutional value, which establishes the human and peoples' rights of the Congolese. It draws an inventory of the obligations of persons, the State and the society in general. These rights are prerogatives and the aspirations inherent to the Congolese people and citizens and "are not favors" done to them.

In accordance with articles 70 to 74 of the Charter, the Democratic Republic of Congo is, through its promotion and protection mechanism, the Congolese Human and Peoples' Rights Commission placed among the first African nations that opted for a legal type of human rights protection structure.

The Charter lists down a series of Congolese peoples' rights such as the right to peace, security, development, sovereignty on their national resources, self-determination, a healthy environment, etc... These rights co-exist with individual rights such as they are generally established in the international legal instruments and those to which the Democratic Republic is party.

In addition, the Charter lays particular emphasis on the notions of equality and non-discrimination, - particularly in relations between men and women- and establish the priority of the rule of law in relations to the restrictions or other exceptions to be added to it.

It is finally important to point out that the Democratic Republic of Congo, by adopting this Charter through the delegates at the National Human Rights Conference intended to proclaim and affirm its attachment to the fundamental values of the United Nations Charter and in particular the freedoms and rights enshrined in the instruments adopted within the framework of the ONU and the OAU as stipulated in one of the paragraphs of the preamble of the Congolese Human and Peoples' Rights Charter.

Furthermore, the human rights situation has clearly evolved since the organization of the National Human Rights Conference. The Government has consequently decided at its extraordinary meeting on 1<sup>st</sup> February 2002 at Matadi (Lower Congo region) to promulgate in the very near future the Congolese Human and Peoples' Rights Charter.



## B. The National Human Rights Promotion and Protection Plan of Action

The Democratic Republic of Congo features among the first African countries to come up with a National Human Rights Plan of Action. In that regard, it places itself on the same level as the Republic of South Africa and Malawi.

Before being perfected in June 2001 at the National Human Rights Conference, the National Human Rights Promotion and Protection Plan of Action for the Democratic Republic of Congo was formulated in 1999. Many general objectives were incorporated in its formulation, especially:

- Turn the Democratic Republic of Congo into a country that promotes and guarantees the overall development of the human being under conditions in which the respect, protection, defense and promotion of human rights are assured through the full exercise of civil, political, economic, social, and cultural rights as well as those to peace, a healthy environment and development that are considered as fundamental, indivisible and interdependent; similarly the rights of disadvantaged groups of persons (women, children, displaced persons, refugees), handicapped and elderly persons;
- Provide a framework which facilitates the coordination of promotion and protection activities undertaken by various actors, namely: authorities, civil society, private sector and external partners;
- Contribute towards the development and building of national human rights promotion and protection capacities;
- Strengthen cooperation between actors involved in human rights activities;
- Intensify exchanges and create a permanent consultative framework to obtain a consensus on human rights matters;
- Have a document and a frame of reference for the formulation and implementation of technical cooperation, bilateral and multilateral human rights activities.

The National Plan of Action comprises mainly of two major parts the first part of which entails a diagnostic of the key elements and the key priority intervention areas; whilst the second section stipulates the implementation modalities of the said plan. In this document, the operational, monitoring and oversight structures were specified; the operational program of action, funding and the implementation schedule.

The Commission no. VIII entrusted with the Structures and Mechanisms for the Promotion and Protection of human rights has, among others recommended that the National Action Plan, after having incorporated improvements brought by the Preparatory Commission for the National Human Rights Conference in April 2001, be adopted and that the Human Rights Ministry work in partnership with the “National Human Rights Commission” (to be established) to monitor and implement it.

#### D) Setting up of the National Human Rights Promotion and Protection Commission

The National (Congolese) Human and Peoples’ Rights Commission (C.D.H.P) is a human rights promotion and protection mechanism provided for under the Congolese Human and Peoples’ Rights Charter to ensure effective and efficient respect for the rights and freedoms recognized by the Congolese Charter and other relevant documents.

According to the provisions of article 70 para. 2 of the Congolese Human and Peoples’ Rights Charter, this commission is meant to operate as an autonomous, independent and permanent public institution endowed with a legal status.

It comprises of chambers, a Clerk’s office as well as regional subdivisions called “Regional Human and Peoples’ Rights Commissions”.

The Headquarters of the C.D.H.P is located in the country’s capital city (Kinshasa), whilst those of the regional commissions are situated in the different county towns.

The C.D.H.P operates as a legal entity that has, among other things competence to receive individual and collective communications with a view to acknowledging, providing remedy and reparation for violations of human and peoples’ rights. It is equally competent to address violations that are not covered by the courts and tribunals in the exercise of their normal duties of interpreting the law.

The Congolese Charter provides as such in its article 71 that the National Commission is competent to promote and protect human rights in the Democratic Republic of Congo within the limits of its attributions, and in that regard, it:

- Receives individual and/or collective requests submitted for violations of rights and freedoms; report the violation(s) of these rights and freedoms; instruct all measures for reparation, remedy or equitable satisfaction;
  
- Ensure the translation, dissemination and education by all adequate means of human rights standards in the Democratic Republic of Congo;
  
- Provide advice to the authorities on the concordance of laws and public or private practices with rights and freedom standards;
  
- Is the only competent authority in the interpretation of human rights standards in the Democratic Republic of Congo.

Article 73 of the Charter stipulates that any or group of persons that is/are a direct or indirect victim(s) of a violation of rights and freedoms guaranteed by national and international human rights standards, could lodge an individual or collective complaint with the National Human and Peoples' Rights Commission aimed at seeking a remedy or a reparation of the violation reported. In case the violation of a right or a freedom constitutes a criminal offence or a civil dispute, the victim refers the case to the Courts and the Tribunals; if the violation of the right or freedom remains, in spite of the definitive decision made by the judiciary, he/she could refer the case to the Commission (C.D.H.P) for remedy to the violation or equitable satisfaction. It should be noted that this rule does not apply if the recourse to the Courts and the Tribunals has not been exhausted.

In order to better assume these attributions, the C.D.H.P will comprise of 15 members to be called "Human and Peoples Rights Commissioners", at least 2/3 of whom would be jurists that possess a solid knowledge and experience in human rights and judicial proceedings. These members should be of high moral and intellectual probity; they should equally refrain from any activity that is incompatible with the exercise of their function with the requisite independence, impartiality, morality and commitment.

Since the end of the deliberations of the National Human Rights Conference in the Democratic Republic of Congo on 30<sup>th</sup> June 1960, there are on-going efforts to put in place a National Human and Peoples' Rights Commission.

#### CHAPTER IV:

#### MAIN DOMESTIC TEXT RELATIVE TO HUMAN AND PEOPLES' RIGHTS PROMOTION AND PROTECTION

The most important texts on human and peoples' rights protection and promotion derived from the domestic laws of the Democratic Republic of Congo are the following:

- The government's constitutional decree no. 003 of 27<sup>th</sup> May 1997 relating to the exercise of power in the Democratic Republic of Congo as amended and updated and its article 2 provide for: "The exercise of individual rights and freedoms in the Democratic Republic of Congo is guaranteed subject to the respect of law and order and accepted standards of behavior";
- The Congolese Human and Peoples' Rights Charter of 30<sup>th</sup> June 2001;
- The political agreement on the consensual administration of the transition into the Democratic Republic of Congo signed on 19<sup>th</sup> April 2002;
- Bill no. 87-010 of 1<sup>st</sup> August 1987 relative to the family code;

- Bill no. 86-127 of 2<sup>nd</sup> May 1986 relative to the organization of the High Council of the Magistracy;
  
- Bill no. 001/2001 of 17<sup>th</sup> May 2001 relating the organization and operations of political parties and groups;
  
- Bill no. 004/2001 of 20<sup>th</sup> July 2001 relating to general rules for not for profit associations and public utility institutions
  
- Order/law no. 82-020 of 31<sup>st</sup> March 1982 relating to the organization and judicial authority code;
  
- Bill no. 81-003 of 17<sup>th</sup> July 1981 on the staff service rules of civil servants;
  
- The Congolese labor act and the ministerial order no. 68/13 of 17<sup>th</sup> March 1968 concerning the enforcement of this code;
  
- Criminal code
  
- Civil code;
  
- Government decree of 20<sup>th</sup> March 1961 relating to the price as amended and updated by decree no.83-026 of 12<sup>th</sup> September 1983;
  
- Government decree no. 197 of 29<sup>th</sup> January 1999 amending and complementing bill no. 81-002 of 29<sup>th</sup> June 1981 regarding Congolese citizenship;

- Decree dated 10<sup>th</sup> July 1974 defining territorial waters;
  
- Decree no. 344 of 17<sup>th</sup> September 1965 defining the prison system;
  
- Decree no. 78-016 of 4<sup>th</sup> July 1978, which on the penal level, reduces in particular the age of minority from 18 to 16 years;
  
- Decree of 6<sup>th</sup> December 1950 on juvenile delinquency;
  
- Decree of 6<sup>th</sup> August 1959 updated on 30<sup>th</sup> June 1985 defining the criminal procedure code;
  
- Decree of 7<sup>th</sup> March 1960 updated on 30<sup>th</sup> June 1985 defining the civil procedure code;
  
- Decree of 21<sup>st</sup> June 1937 on the rehabilitation of prisoners;
  
- Decree no. 008/01 of 23<sup>rd</sup> February 2001 defining the establishment and organization of a permanent consultative framework on economic affairs;
  
- Government decree no. 006/01 defining the ratification of the DRC's donors agreement no. 020224 reached on 16<sup>th</sup> October 2000 between the Democratic Republic of Congo and the Bank for International Reconstruction and Development;

- Decree no.007/01 of 23<sup>rd</sup> February convening the National Human Rights Conference of the Democratic Republic of Congo;
- Decree/bill no. 81-013 of 2<sup>nd</sup> April 1981 defining the overall regulation for mines and hydrocarbons;
- Decree/bill no 72/060 of 25<sup>th</sup> September 1972 instituting a Military Justice Code as amended to date;
- Decree/bill no. 79-08 of 28<sup>th</sup> December 1979 defining the organization of the Bar, legal practitioners including defense and state counselors;
- Decree no. 74-305 of 11<sup>th</sup> September 1952 relating to the International Health Regulations;
- Decree no. 78/289 of 3<sup>rd</sup> July 1978 relative to the exercise of the functions of Officer and Agent of the Criminal Investigation Department at the level of common law courts;
- Bill no. 78-002 of 6<sup>th</sup> January 1978 defining the overall regulation of public enterprises as amended and updated to date particularly by government decree no. 152 of 9<sup>th</sup> November 1998;
- Decree/bill no. 88-056 of 29<sup>th</sup> September 1988 defining the status of magistrates;
- Decree of 1<sup>st</sup> June 1998 instituting establishment of the Human Rights Ministry.

Among the other human right related texts adopted before 17<sup>th</sup> May 1997, we may mention:

- Decree no. 86-268 of 31<sup>st</sup> October 1986 instituting establishment of the Department for Citizens' Rights and Freedoms;
- Decree no. 0018 of 8<sup>th</sup> May 1995 instituting establishment of the Human Rights Protection and Promotion Commission;
- Draft human rights agreement of 21<sup>st</sup> August 1996 between the UNO and the Democratic Republic of Congo.



## CHAPTER V:

### MAJOR REGIONAL AND INTERNATIONAL HUMAN RIGHTS INSTRUMENTS TO WHICH THE DEMOCRATIC REPUBLIC OF CONGO HAS ADHERED

The Democratic Republic of Congo has subscribed to all the following major regional and international human rights treaties. Besides, many efforts are presently being deployed to adhere to many other instruments.

#### A. Regional Treaties

- The African Charter on Human and Peoples' Rights of 27<sup>th</sup> June 1981. The Democratic Republic of Congo ratified this Charter on 20<sup>th</sup> July 1987 (decree no. 87-027 of 20<sup>th</sup> July 1987).
  
- The OAU covenant of 10<sup>th</sup> September 1969 governing specific issues relating to refugees in Africa.
  
- The African Charter on the Rights and Welfare of the Child of 11<sup>th</sup> July 1990, ratified by Government decree no. 007/01 of 28<sup>th</sup> March 2001.

- The Ouagadougou Protocol of June 1998 relating to the creation of the African Human and Peoples' Rights Court, ratified by Government's decree no. 008/01 of 28<sup>th</sup> March 2001. The Democratic Republic of Congo had already signed the protocol on 9<sup>th</sup> September 1999.

#### B. International Conventions

- International pact on civil and political rights of 16<sup>th</sup> December 1966.
- The Democratic Republic of Congo ratified it on 1<sup>st</sup> November 1976. This pact instituted the "Human Rights Committee" as a supervisory body.
- The Democratic Republic of Congo submitted its initial report on 20<sup>th</sup> February 1989 to the Human Rights Committee for its consideration. The second periodic report was also submitted on the same date. Only the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> periodic reports are yet to be submitted (due on 31<sup>st</sup> July 1991, 30<sup>th</sup> January 1993 and 30<sup>th</sup> January 1997)

The Democratic Republic of Congo also ratified on 1<sup>st</sup> November 1976 the optional protocol relating to the International Pact on civil and political rights.

- International pact on economic, social and cultural rights of 16<sup>th</sup> December 1966. The Democratic Republic of Congo ratified it on 1<sup>st</sup> November 1976.

This pact instituted the "economic, social and cultural Committee" as a supervisory body. The initial report of the Democratic Republic of Congo was submitted and received by this Committee on 3<sup>rd</sup> February 1987. It was considered in February 1988 during the

deliberations of the 2<sup>nd</sup> session. The 2<sup>nd</sup> and 3<sup>rd</sup> periodic reports were scheduled for submission since 30<sup>th</sup> June 1992 and 29<sup>th</sup> June 1997.

- The international Convention on the elimination of all forms of racial discrimination of 21<sup>st</sup> December 1965. The Democratic Republic of Congo ratified it on 21<sup>st</sup> April 1976 and submitted it to the Committee for the elimination of all forms of racial discrimination (which is the supervisory body for the convention) its 10<sup>th</sup> periodic report on 10<sup>th</sup> March 1996. The 11<sup>th</sup>, 12<sup>th</sup> and the 13<sup>th</sup> periodic report are scheduled for submission on the 21<sup>st</sup> March 1997 and 2001 respectively.
  
- The Convention on the elimination of all forms of discrimination against women of 18<sup>th</sup> December 1979. The decree no. 85-040 of 6<sup>th</sup> October 1985 authorized its ratification. This was issued on 16<sup>th</sup> October 1986. The Democratic Republic of Congo submitted its last periodic report to the Committee for the elimination of all forms of discriminations against women on 18<sup>th</sup> June 1999.
  
- The Convention on the rights of the Child of 20<sup>th</sup> November 1989. The decree no. 90-048 of 21<sup>st</sup> August 1990 authorized its ratification. This was issued on 27<sup>th</sup> September 1990. The Democratic Republic of Congo submitted its initial report to the Committee for the rights of the child (which is the supervisory body for the Convention on the rights of the child) on 16<sup>th</sup> February 1998. This initial report was considered in Geneva on 28<sup>th</sup> May 2001.
  
- The 4 Geneva Conventions of 12<sup>th</sup> August 1949 and their additional protocols of 8<sup>th</sup> June 1977, namely:
  - The Geneva Convention on improving the Status of wounded and sick soldiers during conflict;

- The Geneva Convention on improving the status of wounded, sick and shipwrecked soldiers at sea;
  
- The Geneva Convention relating to the treatment of prisoners of war;
  
- The Geneva Convention relative to the protection of civilians during the time of war;
  
- The additional protocol I to the Geneva Conventions of 12<sup>th</sup> August 1949 relative to the protection of victims of international armed conflict of 8<sup>th</sup> June 1977;
  
- The additional protocol II to the Geneva Conventions of 12<sup>th</sup> August 1949 relative to the protection of victims of non-international armed conflicts of 8<sup>th</sup> June 1977.

The Democratic Republic of Congo ratified all these instruments. In the case of the latter protocol, it was done through the Government decree no. 004/01 of 28<sup>th</sup> March 2001. In the case of the last but one, it was done on 3<sup>rd</sup> June 1981 whilst the ratification of the four conventions dates back to 24<sup>th</sup> February 1961.

- The Convention for the prevention and punishment of the crime of apartheid of 30<sup>th</sup> November 1973. The Democratic Republic of Congo ratified it on 11<sup>th</sup> July 1978.

- The Convention relative to the status of refugees of 28<sup>th</sup> July 1951. The government decree of 7<sup>th</sup> July 1965 authorized its ratification. This was issued on 19<sup>th</sup> July 1965.
  
- The protocol of 16<sup>th</sup> December 1966 regarding the status of refugees. The legal decree no. 68-1 of 2<sup>nd</sup> January 1968 authorized our country's adhesion to it. Democratic Republic of Congo became party to it on 13<sup>th</sup> January 1975.
  
- The Convention against torture and other cruel, inhuman or degrading treatment or punishment. The legal decree no. 89-014 of 17<sup>th</sup> February 1989 authorized the country's adhesion to the Convention. The Democratic Republic of Congo ratified it on 17<sup>th</sup> March 1997. However, since 16<sup>th</sup> April the Democratic Republic of Congo is yet to submit its initial report to the Committee against torture.
  
- The Convention for the prevention and punishment of the crime of genocide of 9<sup>th</sup> December 1948. The Democratic Republic of Congo adhered to it on 31<sup>st</sup> May 1962.
  
- The Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others. The Democratic Republic of Congo adhered to it on 31<sup>st</sup> May 1962.
  
- The supplementary Convention on the Abolition of Slavery, the Slave trade, and Institutions and Practices similar to Slavery of 7<sup>th</sup> September 1956. The Democratic Republic also adhered to it.

- The Convention on the Political Rights of Women of 20<sup>th</sup> December 1952. The Democratic Republic of Congo also became party to it on 12 October 1977.
  
- The 10<sup>th</sup> October 1980 Geneva Convention on the ban or limited use of some conventional arms that could be termed as having excessive traumatic effects or striking without discrimination. The Government decree for the ratification of this Convention was issued on 28<sup>th</sup> March 2001 (govt. decree no. 005/01).
  
- The Ottawa Convention of 4<sup>th</sup> December 1997 on the ban of the use, storage, production and transfer of anti personal mines and their destruction (government decree no. 006/01 of 28<sup>th</sup> March 2001)
  
- The optional protocol relating to the Convention on the rights of the child regarding the involvement of children in armed conflict, adopted by the General Assembly of the UNO on 26<sup>th</sup> June 2000 (government decree of ratification no. 002/01 of 28<sup>th</sup> March 2001) The Democratic Republic of Congo had already signed it in the year 2000. This protocol entered into force on 12<sup>th</sup> February 2002.
  
- The optional protocol relating to the Convention on the rights of the child regarding the traffic, prostitution of children and pornography involving children, adopted by the General Assembly of the UNO on 26<sup>th</sup> June 2000 (government decree of ratification no. 003/01 of 28<sup>th</sup> March 2001).
  
- The Rome Statutes of 17<sup>th</sup> July 1998 on the International Criminal Court of 11<sup>th</sup> April 2002. The Democratic Republic of Congo had previously signed this statute on 8<sup>th</sup> September 2000.

- Other Conventions on the protection of human rights, to which the Democratic Republic of Congo is party, were elaborated under the auspices of the International Labor Organization (ILO).

In this respect, it is worth mentioning the following:

1. The ILO Convention on equal pay between male and female labor force for equal work of 1951 entered into force on 23<sup>rd</sup> May 1953. The Democratic Republic of Congo is party to it since 16<sup>th</sup> June 1969.
2. The ILO Convention on forced or obligatory labor of 28<sup>th</sup> June 1930 (concluded under the auspices of the League of nations, entered into force on 1<sup>st</sup> May 1982).
3. The ILO Convention on the right to form associations and coalition of agricultural workers, entered into force on 11<sup>th</sup> May 1923. The Democratic Republic of Congo adhered to it on 20<sup>th</sup> September 1960.
4. The ILO Convention relative to the application of the principles of the right to collectively organize and bargain entered into force on 18<sup>th</sup> July 1951. The Democratic Republic of Congo has, since 16<sup>th</sup> June 1969 become party to it.
5. The Convention no. 87 relative to the freedom to form a union and the protection of union rights (Government decree of ratification no. 009/01 of 28<sup>th</sup> March 2001).
6. The Convention no. 105 on the abolition of forced labor (government decree no. 011/01 of 28<sup>th</sup> March 2001).

7. The convention no. 111 on the protection of workers representatives in the company and the facilities to be granted to them (government decree of ratification no. 012/01 of 28<sup>th</sup> March 2001).

8. The Convention no. 138 on the minimum age to enter an employment (government decree no. 013/01 of 28<sup>th</sup> March 2001).

9. The Convention no. 144 on tripartite negotiations for promoting the implementation of international labor standards (decree no. 014/01 of 28<sup>th</sup> March 2001).

10. The Convention no. 181 on the prohibition of the worst forms of child labor of 17<sup>th</sup> June 1999 (government decree no. 015/01 of 28<sup>th</sup> March 2001).

After depositing the instruments of ratification of 7 Conventions to which our country is party in June 2001 at the ILO headquarters in Geneva, the later has to date ratified 37 international labor Conventions.

### C. ON-GOING ACTIVITIES

The Democratic Republic of Congo is yet to ratify other international human rights instruments. However, the Government is presently reviewing most of these instruments with a view to ratifying them very soon. This applies to the following:

- The Convention for reduction of the number of stateless cases of 13<sup>th</sup> September 1973.
  
- The 2<sup>nd</sup> protocol relative to the international Pact on civil and political rights aimed at abolishing the death penalty of 15<sup>th</sup> December 1989.



- The Convention on the protection of the child and cooperation in the area of international adoption of 29<sup>th</sup> May 1993.
- The optional protocol to the convention on the elimination of all forms of discrimination against women entered into force on 22<sup>nd</sup> December 2000.
- The International Convention on the protection of the rights of all immigrant workers and members of their families of 18<sup>th</sup> December 1990.

## CHAPTER VI:

### MEASURES TAKEN BY THE DEMOCRATIC REPUBLIC OF CONGO TO GUARANTEE THE EFFECTIVE ENJOYMENT OF THE RIGHTS PROTECTED BY THE CHARTER

Here, it is a matter of analyzing the measures taken within the framework of the civil and political rights (A) and the economic, social and cultural rights (B).

#### A. Civil and Political rights

- 1) The rights to life and physical and moral integrity of the person.  
(Art. 4 of the African Charter).

“Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right”. (Art. 4 of the African Charter on Human and Peoples’ Rights).

In application of this provision, the National Human Rights Conference (C.N.D.H) recommended for the abolition of the death penalty.

Even though the Democratic Republic of Congo is yet to abolish the death penalty, efforts have been made to suppress its enforcement. In fact, the President of the Republic decided to suspend the enforcement of the death penalty, and the decision has effectively entered into force since January 2001. The Universal Human Rights Declaration of 10<sup>th</sup> December 1948 to which the Democratic Republic of Congo has adhered (see official bulletin of 1949) stipulates in article 3: Every one has a right to life, to freedom and the security of his person”.

Besides, the Resolution 1984/50 of the UNO economic and social council of 25<sup>th</sup> May 1984 relative to the safeguards for the protection of the rights of persons liable for the death penalty lays down a certain number of principles that the Democratic Republic of Congo (as member of the UNO) has the obligation to respect. Among these principles, we can cite:

- In countries where capital punishment is yet to be abolished, the death penalty should apply to the most serious of crimes, in accordance with the existing laws at the time the crime was committed and should neither be contrary to the provisions of the international Pact on civil and political rights nor those of the convention on the prevention and suppression of the crime of genocide.
  
- This sanction is only applicable by virtue of a decision rendered by a competent court.
  
- Every person sentenced to death has the right to appeal for clemency or commutation.
  
- An amnesty, pardon or commutation of the death penalty could, in any case, be granted.

- A death sentence cannot be applied to crimes committed by persons under 18 years of age and cannot be enforced against pregnant women.

In the Democratic Republic of Congo fifteen or so cases of capital punishment under ordinary criminal law and sixty or so cases under military criminal law.

A Governor General's order of 9<sup>th</sup> April 1898 provides in its article 1 that the execution of the capital punishment is done through hanging for civilians and by arms for the military. Article 2 adds that an official of the public prosecutor's office will determine the place for execution selected by the administrative authority.

In view of forestalling hasty executions, instructions from the public prosecutor's office will oblige officials of the public prosecutors office to lodge an appeal each time a death sentence is passed, and to grant a stay of execution whilst awaiting a decision on the appeal that they should always apply for. However, in this respect, the best solution in the future is to allow the accused or his counsel to appeal for pardon within a reasonable period, and to instruct the public prosecutor's office to grant a stay of execution whilst a decision on this appeal is still pending.

It should also be recalled that the Sovereign National Conference in 1992 had recommended that the High Council for the magistracy to serve as an advisory body on matters relating to pardon, commutation and reduction of sentences. Article 45 of the Constitutional Act of the Transition had envisaged this hypothesis.

With regards to military justice, the law requires that the Auditor General of the Armed Forces (today a prosecutor at the Military Order Court) advise the public

prosecutor's office of every death sentence passed by an Armed Forces jurisdiction (article 360 para. 1 of the Military Justice Code).

The President of the Republic, Major General Joseph KABILA issued on 17<sup>th</sup> May 2001 decree no. 026/2001 covering a set of measures in favor of persons sentenced by civil as well as military courts, by a judgment that is applicable to all offences.

The conditions applicable to these collective measures of pardon were the following:

- That the beneficiary was sentenced under a judgment passed in respect of a specific offence;
- That the beneficiaries of the reduction in their sentences should neither be fugitives, nor sentenced for neither murder nor an offence against national security.

The 1<sup>st</sup> article of this decree provides that: “commutation of a capital punishment passed by judgment or order which has value of a judgment by 17<sup>th</sup> May 2001 into a life imprisonment is granted to civilian and military convicts that were sentenced by all courts of the Congo Republic of Congo”.

Five other child soldiers who were sentenced to death by the Military order Court's sections in Mbandaka and Matadi also benefited from the presidential pardon. They are: DIYAVANGA NKUYU, MBUMB IRUNG, MWATI KABWE, BOSEY Jean-Louis and BANGA DJUMA.

It is in the same vein and the understandable desire to respect the suspension of the enforcement of the death penalty that individuals who were sentenced to death (for plotting to overthrow the republican institutions) by the Military Order Court during the trial in Likasi of 13<sup>th</sup> September 2001, were to date not executed.

This action reflects the Government's desire to respect the international commitments to which the Democratic Republic of Congo has subscribed, namely:

- Article 4 of the African Charter on Human and Peoples' Rights which protects the right to life;
  
- Article 6, item 5 of the international Pact on civil and political rights which stipulates that no death sentence could be passed for crimes committed by persons below 18 years of age;
  
- The moratorium on the enforcement of the death sentence in the democratic Republic of Congo;
  
- And article 37, item a of the Convention on the rights of the child which stipulates that neither the death penalty nor life imprisonment should be passed against persons below 18 years of age.

It should also be noted that the Congolese Human and Peoples' Rights Charter, adopted at the National Human Rights Conference of the Democratic Republic of Congo in June

2001 stipulates in its article 18 that: “The right to life is inherent to the human being. It is sacred, inalienable. The law should protect it. Every human being has the right to the respect for his life and the physical, mental and moral integrity of his person. The death penalty is forbidden throughout the Republic”.

In spite of the war of aggression in the Democratic Republic of Congo, the Government continues to safeguard the right to life of its citizens and even of nationals of the aggressor countries and this is particularly reflected in:

- The release of prisoners of war. The Government of the Republic has repatriated 4 Ugandan nationals detained at Ndjili Camp (in Kinshasa) and arrested at the front for spying on 16<sup>th</sup> September 2001. In the same vein, the Government just repatriated 3 military personnel of the Rwandan Patriotic Army of Rwanda;
- Regular organization, through ICRC mediation of family reunion operations;
- Providing shelter to numerous individuals of Tutsi origin at the INSS site in Mont-Ngafula (in Kinshasa) whilst awaiting their decision to freely settle in Congo, to return to their countries of origin or to go elsewhere.

Whilst all these is going on, the rebel forces and the aggressor troops continue to flout the right to life of the populations in the occupied territories by systematically slaughtering them and this, in spite of the republican Pact recently signed at the Pre-Inter-Congolese dialogue in Gabarone. These massacres were equally condemned in article 28 of the recent resolutions adopted by the Security Council (Resolutions 1304, 1341 and 1355) relating to this war. Similarly, resolution 1376 (2001) of 9<sup>th</sup> November 2001 lay emphasis on the need for a demilitarization of Kisangani and the neutrality of the city of Kindu as a result (for Kisanganis) of the massacres akin to genocide that were perpetrated by the Rwandan and Ugandan Troops. The last

resolution 1399 did not hesitate to clearly point the finger at the RCD/Goma and even Rwanda for their devastating folly.

2) The right not to be subjected to torture, slavery and other cruel, inhuman or degrading treatments

Article 5 of the African Charter on human and peoples' rights stipulates:

“Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.

The General Assembly of UNO adopted by resolution 3452 (XXX) on 9<sup>th</sup> December 1975, the Declaration on the protection of all persons against torture and other cruel, inhuman or degrading treatments. The provisions of this Declaration have become enforceable standards in international law in a specific convention of 1984 to which the Democratic Republic of Congo is party.

The fight against torture in the Democratic Republic of Congo is being done through the concerted action of the Government, human rights organizations, Churches, the legal profession, the media and all good-will individuals attached to peace and justice. This struggle requires actions at all levels:

- The elaboration at the national level of laws against torture;



- The denunciation and action against the authors;
- Reparation of damages suffered by the victims;
- The psycho-social and political rehabilitation of victims;
- The training of personnel in the police, security services and agents concerned in the detention centers;
- Promotion of human rights education.

For its part, the Congolese State is independently deploying efforts to make torture an offence sanctioned by law. Because at the moment, it is only considered as an aggravating circumstance of the arbitrary arrest and unlawful detention offence stipulated in article 67 of the Congolese criminal Code volume II.

With regards to the Congolese human rights NGOs, especially the Congolese Human Rights Observatory, it launched, in collaboration with other national and international NGOs, a campaign to fight against torture and other cruel, inhuman or degrading treatments in the Democratic Republic of Congo. And the Government is providing support to this campaign, which particularly aims to:

- Sensitize members of the police, security forces, law and order, and more generally the entire population on torture;
- Denunciation of acts of torture;

- Lobbying for the improvement of the legal framework for the suppression of torture. It is important to note that even in the police force, there is to date a Human Rights Department

### 3) The freedom of opinion and expression

(Article 9 of the African Charter: “Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinion within the law”).

Subject to the respect of the law and order, every citizen in the Democratic Republic of Congo has the right to express and disseminate freely by speech, in writing or through image his opinion.

The law on the press was adopted in 1996 and guarantees the freedom of the press. It is bill no. 96-002 of 22<sup>nd</sup> June 1996 defining the modalities for the exercise of press freedom in the Democratic Republic of Congo. This law replaces the legal decree no. 81-001 of 2<sup>nd</sup> April 1981 covering the modification of legal decree no. 70-057 of 28<sup>th</sup> October 1970 relative to the freedom of the press.

Already an impressive amount of newspapers are freely and regularly circulated since close to four years. Even newspapers termed as “opposition” such as L’Alarme, L’Alerte Plus, Le Phare, La Tempete des Tropiques normally disseminate their information and even caricatures of the Republican institutions.

The arrest and detention in Matadi (Lower Congo region) of journalists Washington LUTUMBA and Jules-Cesar MAYIMBI, correspondents of the weeklies Le Potentiel and the Le Forum des As in April 2001, could not in any way be considered as cases of human rights violations.

The concerned individuals were guilty of a “harmful imputation” offence towards the Joseph et Etablissements GPS- Manutention Bakery, an offence prescribed and sanctioned by article 74 of the criminal code volume II. The Peace Tribunal of Matadi rendered a decision on the substance of the case. The concerned are presently free and continue to exercise their profession.

The same situation applies to other journalists who were taken for questioning or detained at one time or another.

At the level of the Publicly owned audio-visual press, there have been efforts to grant space to other actors in the social life, namely opinion groups and opposition political parties. Notoriously known opponents today express themselves on the national television (1or 2), and particularly on private stations such as Sango Malamu, Antenne A, Tropicana...

Furthermore it should be noted that according to the provisions of article 57 of the press law, the mission statement should contain a certain number of references. In addition, every declaration should contain signatures of owners and program directors. Once the declaration is deposited with the Ministry of Communications or the Head of the Regional Communication Office, the latter are required to issue a receipt to every successful applicant.

It is the disregard of this precondition which form the basis for the ministerial order of 14<sup>th</sup> September 2000 covering the prohibition to broadcast during some days of several radio and television stations, especially Kintuadi, Elikya, Armee de l’Eternel, Reveil FM, Antenne A, Canal CVV, RTKM, Canal Kin 1 and 2.

It should, however be noted that the decision to place under State supervision some private radio-television stations (TKM, Canal Kin), that were more politically motivated than legal, have been rescinded, and this is based on the desire to concretize the option for an effective liberalization of the media space.

#### 4) The right to association

Article 10 of the African Charter: *“Every individual shall have the right to free association provided he abides by the law. Subject to the obligation provided for in Article 29 no one may be compelled to join an association”*.

In accordance with this provision, the Democratic Republic of Congo has instituted, together with the 1990 democratization movement, a multiparty system to the extent that later on, before the liberation of 17<sup>th</sup> May 1997 the number of political parties reached the figure of 440. The number of unions and NGOs has equally increased significantly.

Regarding political parties, even though their activities were suspended on 17 May 1997, a government decree was later on issued with a view to regulating their activities this time round.

However, the stringency of the government decree no. 194's provisions on political parties slowed down the democratic momentum because very few parties were able to

fulfill the requirements contained in the text. This led the Head of State to promulgate bill no. 001/2001 of 17<sup>th</sup> May 2001 on the operations of political parties and groups.

This law does not only streamline the conditions for forming political parties but also and in particular recognizes the legal status of past parties and only require them to send a written notification to the Ministry of Interior.

There is also need to mention the framework for the guarantee of freedom of association, the promulgation of bill no. 004/2001 of 20<sup>th</sup> July 2001 covering the general guidelines for not for profit associations and public utility institutions. This law facilitates the establishment and operations of associations and NGOs by reducing the number and duration of formalities to follow.

## B. Economic, social and cultural rights

### 1) The Right to property

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in strict equality of all persons before the law” (Article 14 of the African Charter).

The property and estate system in the Democratic Republic of Congo is organized since the law of 20<sup>th</sup> July was passed. The right to property is guaranteed and respected. When an expropriation order is made, it is in the general interest and is done through the due process of the law, and in any case in return for compensation.

However, we have in the past deplored some infringements on the right to individual and collective property. In fact, the protection of Congolese citizen's assets, the State and even those of foreigners was flouted particularly in the 1973 and 1974 by the so-called "Zairianisation and radicalization" and in 1991 and 1993 following the unfortunate lootings.

In addition, the dignitaries of the MOBUTO regime, with the benediction of the latter, effected numerous confiscations of property during the years.

This explains why the National Human Rights Conference recommended in June 2001:

- The return of properties confiscated to their owners;
- In the case of regular expropriations, that adequate compensations be made;
- That the Congolese State undertakes to settle all domestic debts, in particular those that were certified.

## 2) The right to work

"Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work".

The National Human Rights Conference made a bitter assessment of the situation of the right to work in our country. It singled out in particular:

- The closure of plants and the disappearance of numerous firms;
- Unlawful dismissals;

- Increasing unemployment;
- Rapid development of the informal sector;
- Absence of a real salary;
- A failed social security system

The area of labor is governed in the Democratic Republic of Congo by the Labor act of 1967 and numerous related international conventions ratified by our country.

The Democratic Republic of Congo has, as such ratified on 28<sup>th</sup> March 2001 numerous conventions of the ILO touching on human rights, thereby joining the few countries in the world that have adhered to all the “fundamental” conventions presently in force at the ILO.

The Government participated similarly in June 2001 at the 89<sup>th</sup> session of the International Labor Conference and subscribed to the vision of providing “decent labor” to the population.

## CHAPTER VII

### MEASURES TAKEN BY THE GOVERNMENT TO IMPROVE THE CONDITION OF WOMEN, CHILDREN, OTHER DISADVANTAGED CATEGORIES AND IN VIEW OF PROTECTING THE FAMILY AND ENCOURAGING ITS COHESION

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#### A. Promotion of the Congolese woman and family

The Government of the Democratic Republic of Congo continues to invest in improving the conditions of women and this is done not only at the normative (and institutional) level but also in their daily livelihood.

At the level of standards, it should be noted that the Democratic Republic of Congo has ratified since 1985 the convention on the elimination of all forms of discrimination against women of 18<sup>th</sup> December 1979. In the same vein, since 1954, it ratified the convention of 20<sup>th</sup> December 1952 on the political rights of women. These facts reflect our country's interest in the promotion of women's rights.

At the African level, the Democratic Republic of Congo fully participates in the efforts to finalize the additional protocol to the African Charter on women's rights in Africa. It has



recently taken part from 8<sup>th</sup> to 11 October 2001 in the Brazzaville sub-regional consultations on the matter.

At the institutional level, the National Women's Council has been reactivated in its function of protecting the Congolese women. The Ministry of Social and Family Affairs whose attributions include the promotion of the rights of Women, work in close collaboration with the Ministry of Human Rights on the organization of various adhoc activities.

At the invitation of the Gouvernement, the Democratic Republic of Congo received in August 2001 in Kinshasa Mrs Julienne ONDZIEL GNELENGA, Special Rapporteur on women's rights in Africa and member of the African Commission on human and peoples' rights.

Mrs. ONDZIEL received in audience Congolese women of varying backgrounds (NGO, political class, the authorities) in order to learn about their daily experiences. She was in that respect, approached on the different violations of women's rights in the territories under the control of aggressor countries (particularly in Kisangani and Goma).

During the year 2000-2001, "gender" matters were granted center stage. This dimension was substantially reactivated at all levels of the national life.

Furthermore, a delegation from the African Women's Committee for Peace and Development led by Mrs. Ruth SANFO PERRY, former Liberian Head of State visited from 16<sup>th</sup> to 23<sup>rd</sup> December 2001. This delgation was accompanied during its stay and

visits by a group of Congolese women representing various women's associations including WOPPA (Women as Partners for Peace in Africa), R.A.F (Action network-women), Common Cause, etc.

The Head of State, His Excellency Joseph KABILA received the delegation and it also had fruitful discussions with representatives from associations, the diplomatic community, and politicians (including the government). It also met with women fighting on the side of the rebel RCD and MLC movements.

The Government of the Republic offered this consultative framework and allowed the visit of the African Women's solidarity because it has the desire to see the Congolese women well sensitized on their conditions and benefit from the opportunities provided for their development.

Women acquired the right to vote in the Democratic Republic of Congo since the constitution of 1967. They therefore vote and are eligible in the same manner as men. Even though they are represented at all levels of decision-making (The Speaker of the Parliament, as well as many members of the Government are women), there is still need to make an extra effort to reduce the gap in representation.

Congolese women have also been taking part in the peace process in the Democratic Republic of Congo as a result of the Lusaka agreement particularly in the Inter-Congolese political dialogue process.

On 6<sup>th</sup> February 2002, the Government, through the Human Rights Ministry launched the opening of an “International Workshop on the Harmonization of the terms of reference of Delegates and Female Experts to the Inter-Congoles dialogue”. This workshop was initiated by women organizations WOPPA (Women as Partners For Peace in Africa) and Mama Africa Peace Initiative demonstrating through this action the interest shown by Congolese women in peace returning to the Democratic Republic of Congo.

The Government is the only group that has reserved a 30% quota of places for women taking part in the National Dialogue.

The protection of the family essentially entails the protection of women. Efforts have therefore been made at this level as a matter of priority since the revalorization of women includes that of her role in the family.

A new Family code was introduced on 1<sup>st</sup> August 1987 in the Democratic Republic of Congo.

The Family code recognizes that parents, and not only the father have the right to give a name to a child. The married woman retains her surname. However, during the duration of the marriage, she acquires the use of the husband’s surname that she adds to her surname. The married woman consequently does not loose her maiden name; she has the right to retain it.

The family code governs other different issues (marriage settlement, successions, liberalities) with a view to ensuring the family cohesion. However, reform efforts are

underway for some provisions relating to the woman's capacity (the problem of marital authorization).

## B. The protection of the child

### 1. At the general level

The Democratic Republic of Congo protects the child during periods of peace as well as in times of war. In that respect, it has ratified various international instruments (regional and universal) for the protection of child rights, namely:

- The African Charter on the rights and welfare of the child of 11<sup>th</sup> July 1990 and that of 28<sup>th</sup> March 2001;
- The Convention on the rights of the child of 20<sup>th</sup> November 1989;
- The additional protocol to the convention on the rights of the child regarding the involvement of children in armed conflicts of 26<sup>th</sup> June 2000 (ratified on 28<sup>th</sup> March 2001).

The unjust aggression that the Democratic Republic of Congo is victim of significantly impedes the implementation of the rights of the Congolese child. The difficult economic and social conditions aggravated by this war led to school dropouts, a drop in educational standards, illiteracy, difficult access to health care, the emergence and increase of the phenomenon of street children, premature prostitution of young girls.

In the face of this bleak picture, the State as well as its partners in the United Nations system and the Congolese NGOs did not remain indifferent. Actions were taken to improve as much as possible the promotion and protection of child rights. This is why:

- A big anti-polio vaccination campaign is presently being organized throughout the Congolese territory with the objective of eradicating polio.

Many synchronized vaccination days were held all over the country;

- The Human Rights Ministry in collaboration with those of Social Affairs and Justice as well as the Municipality are jointly trying to rehabilitate street children and to ensure their return to school through counselling in their settlement areas and teaching them skills or sending them back to school;
- The Ministry of National Education on the other hand has reduced the amount of Minerva in order to facilitate the schooling of a larger number of children;
- A Parliament for the Youth and the Child has recently been set up and just held its extraordinary session in early August 2001. This is a forum, which will give children the opportunity to express themselves on problems affecting their lives.

The reform process of the judicial and social protection system of the child is progressing satisfactorily.

It began with the workshop organized in December 2000 on urgent measures and paths to reform of decree no. 06/12/1950 on juvenile delinquency. The organizer's leitmotiv was the strengthening of the legal system for the protection of children with a view to enabling him optimally develop and adapting our laws to the international child rights protection instruments.

Following the reflection done during the deliberations, another workshop was held in July 2001 with the aim of looking for urgent ways and means of reforming child rights law. This is how the legal and regulatory bill likely to improve the condition of children in the Democratic Republic of Congo was elaborated. These proposals for modifying the texts mainly relate to the family, labor, Military Justice codes as well as the criminal code and the decree of 6<sup>th</sup> December 1950.

The Government's priorities for the years to come in the field of child rights protection and promotion basically consist of taking measures likely to strengthen the capacity of institutions that manage children and women, assistance to disadvantaged people, the fight against HIV/AIDS as well as the program of vaccination against polio, measles...

Within the framework of the implementation of these objectives, the Government is presently working on the elaboration of an action plan covering a period of 3 years (2002 to 2005). This plan, which is being discussed between the Government and UNICEF, will be executed with support from the latter.

The program on the protection of women and child rights is mainly aimed at respecting and enforcing the rights of disadvantaged and marginalized children and women.

Actions would be taken to render effective the legal and judicial protection of women and children especially through the publication in the official journal of legal texts governing their rights, the training of judicial personnel that administer issues of women and children, sensitization of communities on the rights of 2 disadvantaged groups of persons.

The social protection is also on the agenda and will be done through the elaboration of social policies geared towards disadvantaged women and children, facilitation of their access to basic social services/ health care, literacy, training of social workers responsible for accompanying their reinsertion in families.

The phase relating to women and child victims of armed conflicts will be geared towards the restoration of the rights of these disadvantaged groups, continuation of the demobilization process of child soldiers as well as psycho-social assistance to women and children, infected and affected by HIV/AIDS.

Studies will be undertaken to know the impact that the war has on children and women regarding in particular rape, child labor in the mines, and street children all with a view to better catering to their needs.

## 2. The Problem of demobilizing child soldiers

The degradation of the political, economic and social conditions that the country underwent for a long period and which has deepened in the 1990s led to the war of liberation that brought an end to the Second Republic.

This war of liberation, which was immediately followed by that of aggression launched against the Democratic Republic of Congo in 1998 by the Rwandan-Ugandan-Burundian coalition led to the recruitment into the forces and armed Groups of thousands of children among which were children of 7 years of age. On the whole, these children come from the most disadvantaged groups among the Congolese youth.

However, contrary to what prevails in the areas of the country under foreign control where new recruitments of children add up to those that were done some four years ago, the Government, conscious on one hand of the international commitments that the Democratic Republic of Congo entered into, and on the other hand the consequences resulting from the exercise of armed combat by children, has on its side taken the initiative towards the protection of all the child soldiers and has embarked upon ensuring their effective implementation.

A. The Protection measures taken by the Democratic Republic of Congo with regards to child soldiers.

It should be noted that during the year 2001, the demobilization process has recorded a new momentum due to the official launching by the President of the Republic, Major General Joseph KABILA on 14<sup>th</sup> June 2001, of the “sensitization campaign on the process of demobilization and reinsertion of disadvantaged groups, including child soldiers”.

The harmonious growth and development of the child have always been one of the priority concerns of the Government of the Democratic Republic of Congo since the liberation of the entire country.



The Government in particular paid much attention since 1997 to the situation of children serving in the army and proceeded to prepare their departure from the Army.

This is why, way back in December 1999, the Pan-African Forum on the Demobilization and reinsertion of child soldiers was held in Kinshasa, with the benediction of the Head of State, the late Mzee Laurent-Desire KABILA.

At the end of this forum, the Head of State signed Government decree no. 066 of 9<sup>th</sup> June 2000 relating to the demobilization and reinsertion of disadvantaged groups within the combatants including child soldiers.

The introduction of this Government decree confirmed without doubt the interest that the Government attaches to the protection of child soldiers on one hand and its commitment to the process of demobilization and reinsertion on the other hand.

Since the demobilization process decided upon was a long-term matter, the Head of State has, in the meanwhile issued an order on protective measures targeting the military hierarchy aimed at shielding child soldiers from the torments of war whilst the preparation and implementation of the demobilization process is underway.

These protective measures put a stop to the recruitment of children below the age of 18 years within the armed combatants, a stop to the sending of children below the age of 18 years to the front line and a stop to the use of children for purely military duties, including the handling of arms.

Furthermore, the Head of State ratified on 28<sup>th</sup> March 2001 the optional protocol adopted by the General Assembly of the UNO on 26<sup>th</sup> June 2000 relating to the Convention on child rights regarding the involvement of children in armed conflict, that entered into force on 12<sup>th</sup> February 2002 always with the aim of providing maximum protection to children.

Finally, the Democratic Republic of Congo ratified the African Charter on the Rights and Welfare of the child in March 2001.

Like the Government decree no. 066 of 9<sup>th</sup> June 2000, the protective measures and the optional protocol relating to the Convention on child rights regarding the involvement of children in armed conflicts, the African Charter on the Rights and Welfare of children consider as a child every individual aged below 18 years, which if compared to the Geneva Conventions of 1949 and the convention on the rights of children which provides for the recruitment of children below the age of 18 years, provide at the legal level full protection to the Congolese children against their participation in any military activity.

These significant advances as well as other measures geared towards the demobilization of children under the age of 18 years taken by the Democratic Republic of Congo fully places it among a group of Nations that have committed their governmental action to improving among others the condition of children.

Beyond all these achievements at the normative level, efforts are being made to enable child soldiers to effectively enjoy all their rights as children, beginning with their separation from the army.

The translation into reality of all the relevant provisions of conventions ratified by the Democratic Republic of Congo as mentioned above, for the benefit of child soldiers has practically prompted the Government, through its Human Rights Ministry to establish on 13<sup>th</sup> January 2001 a technical structure, known as the “National Demobilization and Reinsertion Office”, abbreviated as “BUNADER” charged with the task of preparing, coordinating, executing, monitoring and evaluating all the activities undertaken in the demobilization and reinsertion process of child soldiers and other disadvantaged groups operating among the combatant forces

Taking into consideration the complexity of the demobilization and reinsertion process, the financial implications of its implementation, in particular Government’s desire to see it implemented successfully by a complete family and socio-economic reinsertion, the Democratic Republic of Congo has, in collaboration and with the financial and technical support of its partners, put in place two projects, both placed under the purview of the National Demobilization and Reinsertion Office.

They are the World Bank/ILO project: The Demobilization and Social and Economic Reinsertion project and the Protection of children in armed conflict project (UNICEF).

The BUNADER has organized a sensitization campaign for understanding the process of demobilization and reinsertion by child soldiers as well as other segments of the society since it is considered as the main guideline for the success of the demobilization and reinsertion process. The President of the Republic launched this campaign in Kinshasa on 14th June 2001 and it is being pursued in the provinces.

The level of sensitization attained at the level of the different relevant segments in the society is one of the factors determining what follows under the framework of the two projects mentioned above.

#### B The Level of implementation within the framework of the RDC/UNICEF cooperation project for the demobilization process

Within the framework of the sensitization campaign launched in June 2001, the BUNADER has, with financial and technical support from UNICEF, embarked upon an overall sensitization on the prevention of recruitment of children and the preparation of their reinsertion. This campaign is still underway as its success depends on the process being sustainable in order to accompany each of its stages.

Furthermore, some preliminary studies prior to the demobilization were undertaken during the past year thanks to the resources provided by the project. This particularly applies to the study on the analysis of the situation of child soldiers and their needs.

However, given the insufficient funding provided the partners could not realize the activities forecasted realized at all. They will be pursued during the year 2002.

In between, on 18<sup>th</sup> December 2001, under the oversight of BUNADER, 300 child soldiers of the Kibomango training Center were demobilized as a matter of priority. The Head of State in person, His Excellency Major General Joseph KABILA, chaired the official ceremony during which this separation was done.

In accordance with the general guidelines of the demobilization and reinsertion process of child soldiers, all the children leaving the Army are lodged at the Transit and Orientation Center in Kinwenda where for a three months period psycho-social counseling as well as literacy courses for those whose level of education is almost nil will be provided to them.

Those who attended school before joining the Army were enrolled in educational institutions equivalent to their level and were taken care of by the project.

During the period of psychosocial counseling, the International Committee of the Red Cross (ICRC) proceeded with the search for the families of origin of the child soldiers in view of their reinsertion immediately after their stay at the Center.

In addition to the Transit and orientation Center at Kinwenda, other centers are being established in Katanga and the western Kasai where BUNADER, in collaboration with UNICEF, will very soon proceed with the settlement of other groups of child soldiers whilst awaiting for the replication of the operation in other regions of the country that will also be administered by the World Bank/ILO project.

C) Level of implementation of the demobilization and reinsertion process by the World Bank/ILO project

This project was put in place upon request from the Government of the Republic of Congo based on a post-conflict grant from the World Bank and executed by the International Labor Organization, and was launched in December 2000 to cover the preparatory phase of the demobilization program.

The duration of the project is one year and is exclusively focused on the elaboration of the demobilization and reinsertion program for child soldiers and disadvantaged groups such as defined by Government decree no. 066 of 9<sup>th</sup> June 2000.

In the course of the year 2001, the project undertook studies and surveys prior to the formulation of the demobilization and reinsertion program.

These are:

- Six studies on the socio-economic profile, health, demobilization and child soldiers, social reinsertion, economic reinsertion and social protection;
- Establishment of a data bank with results obtained from the survey on socio-economic profile of disadvantaged groups;
- Information and sensitization of military and civilian authorities, target groups and their host communities

In July 2001, the project organized in Kinshasa a workshop on the preparation of an interim demobilization and reinsertion program.

The studies and surveys mentioned above made it possible to formulate the said program during the workshop.

In principle, this program, which is still a provisional tool should, by the month of September 2001 be submitted to a validation test within the framework of pilot activities in a manner to refine depending on the results that would be obtained after a six months period.

Unfortunately, to date, these activities did not begin due to delays in funding planned and pledged by the World Bank.

Once this stage would have been implemented, the final program of demobilization and reinsertion resulting from it will be placed at the disposal of the Government and bilateral and multilateral partners for funding.

On a more practical note, this program comprises of two phases of which the first one is the actual demobilization and reinsertion. It will commence after the interim program is reviewed and will concern all the categories of disadvantaged persons targeted by Government decree no. 066 of 9<sup>th</sup> June 2000.

The second phase corresponds to the final program phase. It will be devoted to the unification of the armed forces and the restructuring of the unified National Army.

It should be noted that the year 2001 was mainly a year for preparing the demobilization, taking into consideration that nothing much happened in terms of separation from the Army of all the categories defined by Government decree no. 066 of 9<sup>th</sup> June 2000.

Bearing in mind the preconditions already fulfilled, it is only in the course of the year 2002 that the demobilization and reinsertion process of child soldiers should reach its cruising speed.

Nevertheless, in order to attain that level, it would be necessary to obtain firm commitment of the Democratic Republic of Congo's partners through the disbursement of funds needed for these activities. To this factor, we must also add that only the end of the war will enable the process to achieve the reunification of armed forces and groups as well as the restructuring of the unified National Army. Only the end of the war could also end the propensity of the occupation forces to recruit and use Congolese child soldiers in their armies.

### C. Protection of other disadvantaged persons

Within the framework of its mandate resulting from the Geneva convention of 12<sup>th</sup> August 1949 to which our country has adhered, the ICRC is called upon to execute



various humanitarian activities in close collaboration with the Human Rights Ministry that is in charge of managing humanitarian action during the war period. The latter has assisted during the course of the year 2001 particularly in the following activities:

- The organization of several operations of family reunion of non accompanied children leaving Kinshasa for the occupied territories and coming from the occupied territories to Kinshasa (4<sup>th</sup> and 5<sup>th</sup> September 2001; 24<sup>th</sup> October 2001; 21<sup>st</sup> and 22<sup>nd</sup> November 2001, 18<sup>th</sup> and 19<sup>th</sup> December 2001..);
- The repatriation of 4 Ugandan war prisoners from Kinshasa to Entebbe on 16<sup>th</sup> September 2001. The 4 Ugandans were detained at the Ndjili Camp (in Kinshasa) and arrested on the front for spying.

They are:

- a) BYARUHANGA Salim, war prisoner, 16<sup>th</sup> November 1998;
  - b) MUGISHA Charles and ALUME Geoffrey, civilians detained, 5<sup>th</sup> November 1998;
  - c) KIZA Eric, civilian detained, 14<sup>th</sup> June 1999.
- 
- The repatriation of three Rwandan war prisoners to Kigali on 28<sup>th</sup> February 2002. They are:
    - a) RUVUNGWA NDAGIRO Fidele;
    - b) TWESENGE Innocent; and
    - c) BIZIMANA SUNUMA.
- 
- The repatriation of 5 Congolese prisoners of war detained in Kigali to Kinshasa on 30<sup>th</sup> November 2001.

Contrary to what the Government of the Democratic Republic of Congo did in accordance with international humanitarian law and the Lusaka agreement by repatriating war prisoners, the 5 Congolese prisoners of war repatriated on 30<sup>th</sup> November 2001 were first that our country received since the beginning of the war of aggression.

- The perusal of Red Cross messages. This operation is regularly organized. We should note that the reactivating of the draft protocol on access for ICRC to some detention centers in our country is top on the agenda of on-going consultations between that international organization and the Governmental authorities.

Since the beginning of the war of aggression on 2<sup>nd</sup> August 1998, the Ministry for Human Rights has under its protection persons who consider themselves at risk and are kept at the INSS de Mont-Ngafula Site.

The Human Rights Ministry has as such transported a family (a mother and two children) to the site and facilitated the departure of a Tutsi subject to the United States of America.

It has equally facilitated the repatriation of disadvantaged persons to Rwanda, Burundi and the East of the Democratic Republic of Congo. The ways and means for this facilitation were worked out within the framework of the contact group comprising of the following partners: ICRC, HRFOC, HCR, MUNOC and Apostle Nunciature.

Regarding the health care that aspect is taken care of by the International Committee of the Red Cross through the Via Nova group, which is in charge of consultations and primary health care on the ground. The major cases are often transported to the city through the Via Nova doctor. .

The number of patients on the site could be estimated at more or less 290 individuals: Burundians, Ugandan and Rwandan.

## CHAPTER VIII:

### THE GOVERNMENT AND THE HUMAN RIGHTS NGOs IN THE DEMOCRATIC REPUBLIC OF CONGO.

Under MOBUTU's regime, the number of associations was restricted to only cultural and sports associations. Since the liberation of 17<sup>th</sup> May 1997, we have witnessed the emergence of NGOs some of which claim to be for the protection and promotion of Human rights.

During the whole year in 2001, the Human Rights Ministry endeavored to consolidate a positive and constructive partnership with the human rights NGOs.

Consultative frameworks were increased and are progressively becoming institutionalized (in other words regular consultations are held).

For example on 15<sup>th</sup> May 2001, a consultative meeting was held at the Fatima hall of Gombe between the Human Rights Ministry and Human rights NGOs. Close to 204 representatives from different associations took part in these meeting.

In his introductory remarks, the Minister for Human Rights first of all recalled the common task that bind the Human Rights Ministry with human rights NGOs (both national and international) and which is to promote the human rights cause in the Democratic Republic of Congo.

To that end, he expressed the desire for them to have a frank discussion to enable them accomplish their urgent tasks that require the improvement of human rights in the Democratic Republic of Congo, tasks that the Head of State attaches great importance to, such as he indicated in his investiture speech of 26<sup>th</sup> January 2001 and even in his address on the occasion of the swearing-in of the new Government, when the President of the Republic specified that the rights of the Congolese people are not favors granted to them but real rights inherent in their persons.

Even though it behooves the authorities to guarantee the full enjoyment of the rights of the Congolese Citizens and foreigners resident in the democratic Republic of Congo, this mission could be executed and facilitated, the Minister underscored, only if the human rights NGOs provide the Government with the information on the cases of human rights violation and if they work hard to educate the population on human rights, disseminate and consolidate the human rights culture.

Before ending his remarks, the Human Rights Minister discussed the human rights situation in the Democratic Republic of Congo and the National Human Rights Conference with the NGOs and expressed the hope that such kinds of meetings will continue to be held.

In the same vein, after the Human Rights Minister's speech, the representatives of human rights NGOs also had the opportunity to ask questions, make comments and raise issues of concern to the overall human rights situation.

The Ministry of Human Rights expressed its satisfaction with the exchange of views whilst indicating its desire to have further information on the various points raised in order to assist it to better find solutions. Among these solutions, we can particularly cite, the authorization for the resumption of the association "Common cause"s activities, an association of women whose activities were previously prohibited.

Besides the regular consultations, some human rights NGOs that were previously focused on the outside (by laying emphasis on their relations with the outside) have started working in partnership with Government by sending their reports to it, if not as a matter of priority, but at least at the same time as they send them to their outside partners. This is encouraging in that it is assisting in the confidence building.

On the basis of these developments, the Human Rights Ministry regularly invites NGOs to exchange views on the human rights situation and organizes in collaboration with them most of its activities.

Finally, it should be noted that with bill no. 004/2001 of 20<sup>th</sup> July 2001 on not for profit associations, the Human Rights Ministry participates in the granting of provisional approval for NGOs operating in its sector. During the year 2001, it had to register some associations, subject to their fulfilling basic and easy preconditions required under the law.

## CHAPTER IX:

### RESPECT OF THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS BY THE DEMOCRATIC REPUBLIC OF CONGO IN THE CONDUCT OF ITS FOREIGN POLICY IN AFRICA AND AT THE INTERNATIONAL LEVEL

The members of the OAU (including the Democratic Republic of Congo) had, in the preamble of the African Charter on Human and Peoples' Rights, "reaffirmed the commitment that they solemnly made at article 2 of the OAU Charter, to eliminate all forms of colonialism in Africa, coordinate and intensify their cooperation and their efforts to offer better living conditions to the people of Africa, promote international

cooperation by duly taking into consideration the United Nations Charter and the Universal Human Rights Declaration”.

Sharing borders with nine African States, the Democratic Republic of Congo has always put into practice a policy of good neighbourliness and mutual cooperation, even with some countries of East Africa that are presently waging a war on it.

In fact, before the commencement of the war, the Democratic Republic of Congo was, together with Rwanda and Burundi members of the CEPGL (Economic Community of the Countries of the Great Lakes). Besides the recourse to legitimate defense in accordance with article 51 of the United Nations Charter, the Democratic Republic of Congo put a lot of effort, at the commencement of the war of aggression, to the option for the peaceful resolution of the conflict by approaching many bodies, including the African Commission on Human and Peoples' Rights. And this was done through its communication-complaint no. 227/99 of 24<sup>th</sup> February 1999.

The democratic Republic of Congo does not only put into practice a policy of openness vis-à-vis African countries but it also does it in relation to other Nations of the planet that have love for peace and justice. This explains its participation in various international organizations both universally and regionally.

## **CONCLUSIONS**

In spite of some difficulties encountered in the implementation of the African Charter on Human and Peoples' Rights, difficulties resulting from the precarious political situation that prevailed in the Democratic Republic of Congo since close to thirty years, the Government of the Democratic Republic of Congo has resolutely committed itself to promoting and protecting the fundamental rights of Congolese women and men as well as foreigners residing in our country, in accordance with the provisions of the African Charter on Human and Peoples' Rights and other international human rights instruments ratified by the Democratic Republic of Congo.

This is the reason why not only the Congolese Government, but also the human rights NGOs participate in the sessions of the African Commission on Human and Peoples' Rights by making contributions, whilst the Government seeks through the mechanisms put in place by the African Charter (including the Commission) to achieve a settlement of its differences with the other States. This is illustrated by the communication-complaint no. 227/99 of 24<sup>th</sup> February 1999 against Rwanda, Uganda and Burundi that the Democratic Republic of Congo addressed to the African Commission.

The Government of the Democratic republic of Congo is committed to honoring its international undertakings with the OAU (A.U). And as promised by the Government during the 30<sup>th</sup> ordinary session of the African Commission on Human and Peoples' Rights on 17<sup>th</sup> October 2001, to deposit its initial report, this report is an indication of its determination to work in collaboration with the African Commission on the promotion and protection of human rights.

This report is no doubt not exhaustive. But it attempted to provide an overview of the overall framework on the promotion and protection of human rights in the Democratic Republic of Congo by pointing out some progress made as well as some concerns raised. These periodic reports, which follow, provide further information on such and such aspect not discussed in the initial report.

The Government remains assured that the African commission on Human and Peoples' Rights will pay particular attention to this report.

Kinshasa, 30<sup>th</sup> April 2002.

For the Government of the Republic,

Pr NTUMBA LUABA LUMU  
Minster for Human Rights







