

DEMOCRATIC REPUBLIC OF CONGO

MINISTRY OF HUMAN RIGHTS

**EIGHTH, NINTH AND TENTH PERIODIC REPORTS
TO THE AFRICAN COMMISSION ON
HUMAN AND PEOPLES RIGHTS**

**IMPLEMENTATION OF THE AFRICAN CHARTER
ON HUMAN AND PEOPLES RIGHTS
(Period – From July 2003 to July 2007)**

**KINSHASA
JUNE 2007**

I. INTRODUCTION

1. The Democratic Republic of Congo welcomes the position of the Commission which accepts that the Initial Report of the Democratic Republic of Congo, expected since July 1989 but only submitted in 2002 and examined by the Commission at its 34th Session, held from 6th to 20th November 2003, be combined with the 2nd, 3rd, 4th, 5th, 6th and 7th Periodic Reports, which were due for submission on the 20th July 1991, 20th July 1993, 20th July 1995, 20th July 1997, 20th July 1999, 20th July 2001 and 20th July 2003 respectively.

2. Mindful of the need to respect its international commitment, which had been freely made, to present Reports on the implementation of the international and regional human rights treaties to the monitoring bodies, the Democratic Republic of Congo created a Governmental institution called “Inter-ministerial Committee for the drafting of Initial and Periodic Human Rights Reports”, placed under the aegis of the Ministry of Human Rights, in order to put an end to the delays registered in the submission of its Reports.

3. The DRC is therefore pleased to present its eighth, ninth and tenth Period Reports combined in a single document, in conformity with Article 62 of the African Charter on Human and Peoples’ Rights, and thereby re-affirms its will to maintain constructive dialogue with the Commission on the legislative and other measures taken to give effect to the rights and liberties recognized by the Charter and to the responsibilities imposed by it.

4. On the presentation of these cumulated Periodic Reports, new information on the country has been provided taking into account the political developments registered by the DRC during these past years, in particular the implementation of the Global Accord and related issues of the 17th December 2002, which emanated from the Inter-Congolese Dialogue, and which endowed the country with a transitional Constitution on the 4th April 2003, at the end of the transition and the promulgation of the Constitution of the Democratic Republic of Congo on the 18th February 2006.

5. The preparation of this Report also took into account the Commission's concluding observations contained in its document referenced ACHPR/GOV/AP/DRC/JB of 9th January 2004.

II. GENERAL INFORMATION ON THE COUNTRY

A. Territory and Population

a) Territory

6. The Democratic Republic of Congo, a country in Central Africa, is spread out across the Equator. It is bordered on the North by the Central African Republic and Sudan, in the East by Uganda, Rwanda, Burundi and the United Republic of Tanzania, in the South by Zambia and Angola and in the West by the Atlantic Ocean, the Cabinda enclave and the Republic of Congo.

7. A vast country with continental dimensions (2,345,409 square kilometres), the Democratic Republic of Congo is a largely flat country. In the centre is a basin with an average altitude of 230metres, covered by equatorial forest and spanned by numerous marshy areas. The central basin is bordered by terraced plateaus, with the exception of the Eastern side which is dominated by mountains with volcanic soil and whose average altitude surpasses 1,000 metres.

8. With the Equator cutting right through it, the Democratic Republic of Congo has a hot and humid climate (25°C on average) and abundant and regular rains. The rainfall pattern and temperature gradually drops as one gets closer to the East. The year is divided into two seasons: a dry season of about four months and a long rainy season.

9. The Democratic Republic of Congo has a major hydrographic network. The River Congo, which is 4,700 kms long, with a rate of flow second only to the Amazon in the entire world, cuts across the country from the South East to the North West before flowing into the Atlantic Ocean. The River is fed by several tributaries and is navigable for the most part.

10. The soil and the sub-soil abound in considerable and varied agricultural and mineral resources.

b). Population

1° Demography

11. Estimated at 12,768,705 inhabitants in 1956, the Congolese population increased from 14,106,666 inhabitants in 1960 to 20,700,500 in the 1970 administrative census, and to 30,731,000 inhabitants in the scientific census of the 1st July 1984. On the basis of the projections made by the Institutions specialized in this field, notably the UNFPA, the population had been estimated at 43,000,000 in 1995, at 47,500,000 inhabitants in 1999, at 52,099,000 in 2000, and projected to attain 57,589,779 in 2003. According to the information provided by the Central Bank of Congo, the number of inhabitants had been estimated at 59,700,000 in 2005 and at 61,487,300 in 2006. (Central Bank of Congo; condensed information statistics n° 52/2005 and 2006, p.1).

12. The Democratic Republic of Congo is one of the most populated among the African countries. The pattern by age and by sex shows a pyramid with a broad base, concave slopes and a narrow peak, consequence of a young population. In 1997, 25.9 million of the population was less than 18 years old. The natural growth rate is 3.4% (1990-1998) with a fertility index of 6.4. Life expectancy at birth fell from 45 years in 1970 to 41.4 years in 2002 (2004 UNDP World Human Development Report). The pattern per area shows that the demographic situation is marked by:

- a population made up of 60% rural inhabitants since 1993 against 40% living in the urban centres of at least 5,000 inhabitants and with major inter-provincial differences from the urbanization point of view;
- a low proportion of the urban population in Maniema against a strong proportion in Kinshasa, namely 1/10 of the overall population;
- the rapidity of urban growth (7 to 8%), the concentration of 28% of the urban population in Kinshasa and the accelerated rhythm of the rural exodus;

- the unequal population distribution at the geographical level, the most populated provinces being the City of Kinshasa and the Bas-Congo, North Kivu, South Kivu and Maniema.

2° The Ethnic Groups

13. The population is divided into more than 450 tribes that can be put together in large groups with a well marked territorial arrangement. The Luba or the Baluba, 18% of the Central South, precede the Kongo of the Bas-Congo with 16.6%. The North West is populated by the Mongo, 13.5%, the Zande, 61% and the North East by the Mangbetu, the Hema, the Lendu and the Alur, 3.8%. The East is populated by the Nande, the Hunde, the Bashi, the Bafulero, the Tutsis and several other ethnic groups. Along the border with Angola there are the Chokwe and the Lunda, and the Pygmies who constitute less than 0.5%, can be found in the Equatorial and Eastern provinces.

3° The Languages

14. In the Democratic Republic of Congo the official language is French. Furthermore, about 250 languages and dialects are spoken. Among these, 90% are of Bantu origin and 4 languages are said to be “national languages”. These are:

- Swahili in the East (40%) in North Kivu, in South Kivu, in Katanga, in Maniema and in the Eastern Province;
- Lingala (27.5%) in Kinshasa the capital and its environs, in the Equator and in the Eastern Province;
- Kikongo (17.8%) in the Bas-Congo and in Bandundu
- Tshiluba (15%) in the provinces of Eastern and Western Kasai.

It should be pointed out that in the North of the country numerous languages which are spoken belong to the Negro Congolese families (Oubanguian sub-group) and Nilo Saharan (Central Sudanese Group and Nilotic sub-group).

4° Religion

15. The Democratic Republic of Congo is a secular State. However there are five traditional religious denominations: Catholic, Kimbanguist, Protestant, Orthodox and Muslim. Furthermore, several sects share the Congolese religious arena. Nonetheless, there are still a few animists.

B. The Socio-Economic Indicators

a) At the Social Level

16. The beginning of the break up of the social fabric dates back to the early 1970s. It had been worsened by the succession of unfortunate events, namely: the zairianization of 1973 and the two occasions during which the country was plundered, in September 1991 and February 1993, to which were added the two wars of 1996-1997 and 1998-2002. The social sectors the most affected by this crisis were those of health, education, agriculture and the road networks.

b) At the Economic Level

17. The Congolese economy is characterized by a structural imbalance of production of goods and services, and has undergone a varied evolution. From 1983 to 1989 there was relative stability. From 1990 to 1996 the country entered a period of crisis characterized by the breaking up of the principal economic equilibria, leading to accelerated inflation and monetary depreciation, to a fall in production, generalized unemployment and large scale poverty.

18. This situation, characteristic of the final years of the second Republic, was essentially due to lax financial and budgetary management, linked to unplanned expenditure and fed by the pumping of more money into the economy.

19. From May 1997 to July 1998, with the advent of the Alliance of the Congolese Liberation Forces (AFDL) regime, the main economic indicators had registered a net improvement, more particularly in the domain of prices, currency and public finances. This made the

Government launch a new currency, the Congolese franc (FC), whose parity and exchange rate against the main foreign currencies were encouraging.

20. Unfortunately, from the 2nd August 1998, as a result of the attack against the country by the Rwandan-Burundian-Ugandan coalition, supported by certain multinational groups which were joined by rebel movements, the principal economic equilibria had been once again disrupted. In effect, this war had given rise to a situation of hyperinflation with serious consequences on the population's purchasing power, bringing about the latter's impoverishment and at the same time resulting in a marked reduction of the Gross Domestic Product (GDP 3.15%). The rate of inflation was 656.8% in 1996, 13.7% in 1997 and 2.2% in July 1998 respectively.

21. However in the absence of the revival of production and in view of the war situation, the results registered in 1998 were jeopardized. Inflation therefore rose from 196.3% in September 1999 to 489% in December 1999. This situation prevailed up to February 2001 with the coming to power of President Joseph KABILA, who put in place considerable economic and monetary measures and liberalized political activities by re-launching the political negotiations known as "Inter-Congolese Dialogue", decided since the cease fire of the 10th July 1999 in Lusaka. Among these measures figure the stabilization of the public finances and the liberalization of the rate of exchange, all of which promoted the renewal of relations of cooperation with the Bretton Woods Institutions.

22. The Inter-Congolese Dialogue culminated in the signature of the Global and Inclusive Agreement on the 17th December 2002, in Pretoria, South Africa. On the basis of this political agreement, a Constitution had been adopted and promulgated on the 4th April 2003, thus allowing the establishment of a transitional Government comprising all the warring parties, the political opposition and civil society.

23. On the basis of data obtained from the Central Bank of Congo, the economic situation at the end of 2006 was as follows:

- Investments: thanks to the control of the macro-economic parameters initiated since 2001 and consolidated by the progressive return of peace, the investment sector is experiencing progressive recovery.
- Money supply in thousands of FC: 475,998,307
- Balance of payments: Credit: 5,004.44 Debit: 5,382.15 – Namely a debit balance (deficit) of 377.71
- External debt: Stock of the debt on the 30th December 2004 in millions of US\$: 10,943.3
- Public Finances in thousands of FC : *Revenue 576,828,712
*Expenditure 611,605,798
- GDP * in billions of FC : 4,029,44
* in millions of US dollars : 8,821,01
- GDP growth rate : 6.6%
- Inflation rate : between 1.3% and 1.7%
- Exchange rate : 1 \$US = between 507.24 and 540 FC
- National per capita income : fell from 300\$US in 1991 to 120 \$US in 2005 (Unicef data).

C. The Political Situation

24. In the aftermath of its accession to independence on the 30th June 1960, the Democratic Republic of Congo experienced political instability characterized by secessions and rebellions over a large area of the territory. This prompted the Congolese Army to take over power on the 24th November 1965, under the leadership of President MOBUTU.

25. The latter set up a single party system of Government which lasted up to 24th April 1990, on which date the return of a political multi-party system had been proclaimed. The nation's resources met in a national sovereign conference to discuss the future of the country and to put in place democratic institutions capable of guaranteeing national development and the enjoyment of the fundamental rights of citizens. However, this democratization process lasted, against all expectations, up to the 17th May 1997, date on which the AFDL took power and neutralized the institutions which had emanated from the national sovereign conference.

26. A new transition was announced, to last two years up to the organization of elections. But the war of the 2nd August 1998 disrupted the entire political programme and attention focused on the latter up to the conclusion of the Global and Inclusive Agreement on the transition in Pretoria on the 17th December 2002 and the promulgation of a new transitional Constitution on the 4th April 2003.

27. Articles 64 and 154 of this Constitution provided for a unique system of Government, made up of the political institutions and democracy supporting institutions.

The political institutions comprised:

- a President of the Republic whose executive powers were to be shared by four Vice-Presidents;
- a transitional Government made up of the warring factions, the political opposition and civil society;
- a Parliament with two chambers: the National Assembly and the Senate;
- Courts and Tribunals.

The democracy supporting institutions which had the mandate of guaranteeing neutrality and impartiality in the organization of free, democratic and transparent elections, of guaranteeing the neutrality of the media, of consolidating national unity thanks to genuine reconciliation between the Congolese, of promoting and protecting human rights and of promoting the practice of moral and republican values which comprised of:

- the Independent Electoral Commission;
- the National Human Rights Observatory;
- the High Office of the Media;
- the Truth and Reconciliation Commission;
- the Ethics and Corruption Control Commission.

28. The transitional Constitution had, in its Article 196, prescribed a duration of 24 months for the transition with an extension of six months renewable only once for the purpose of holding elections. The post transition period is governed by the new Constitution promulgated on the 18th February 2006 after having been adopted by

referendum in December 2005, but the institutions set up by the transitional Constitution remained operational up to the effective installation of the corresponding institutions provided for by the latter on the 18th February 2006 and executed their mandate in conformity with the provisions of the transitional Constitution, and led the country to the general elections organized in July and November 2006, January and February 2007 respectively for the presidential, national and provincial legislative elections. The local ones were to be organized later on.

29. The Constitution of the 18th February 2006 had prescribed a highly decentralized State with central, provincial and democracy supporting political institutions.

1. The Central Political Institutions

They comprise:

- the executive powers exercised by the President of the Republic and by the Prime Minister, Head of the Government responsible for the nation's policies before the Parliament;
- the legislative powers exercised by the Parliament with two chambers, namely the National Assembly and the Senate;
- the powers of the Judiciary exercised by the civil and military Courts and Tribunals and by the Office of the Public Prosecutor attached to these Courts. It is independent of the legislative and the executive powers.

2. The Provincial Political Institutions

They comprise:

- the legislative power exercised by the provincial Parliament
- the executive power exercised by the provincial Government.

3. The democracy supporting institutions

They comprise:

The National Independent Electoral Commission, and the Supreme Audiovisual and Communications Council. These have the mandate of guaranteeing and ensuring the regular holding of elections and of referendums, the freedom and protection of the media and all means of mass communication.

III. General legal framework relative to the application of the African Charter on Human and Peoples' Rights

30. The Democratic Republic of Congo is signatory to several international human rights instruments and to some of their optional protocols, notably:

- the International Convention on Economic, Social and Cultural Rights (accession on the 1st November 1976),
- the International Convention on Civil and Political Rights and the 1st Optional Protocol to the International Convention on Civil and Political Rights (accession on the 1st November 1976),
- the International Convention on the elimination of all forms of racial discrimination (accession on the 21st April 1976),
- the Convention on the Elimination of all forms of Discrimination Against Women (ratified on the 17th October 1986),
- the Convention against Torture and other cruel, inhuman or degrading punishment or treatment (ratified on the 18th March 1996),
- the Convention on the Rights of the Child (ratified on the 28th September 1990),
- the Optional Protocol to the Convention on the Rights of the Child relative to the involvement of children in armed conflicts (ratified on the 12th November 2001),
- the Optional Protocol to the Convention on the Rights of the Child relative to child trafficking, child prostitution and pornography featuring children (accession on the 12th November 2001),
- the African Charter on Human and Peoples' Rights (ratified on the 20th July 1987),
- the African Charter on the Rights and Welfare of the Child, (ratified on the 28th March 2001).

Furthermore, the Democratic Republic of Congo ratified:

- the Statutes of Rome of the International Criminal Court (on the 30th March 2002),
- the four Geneva Conventions of 1949 on International Humanitarian Law and the Optional Protocols I and II of 1977 (accession on the 20th February 1961 and 30th March 2001 respectively) etc.

31. The Democratic Republic of Congo has a monistic legal regime. The International Agreements and Treaties to which it has adhered or ratified have greater command than the domestic laws. In effect, Article 215 of the Constitution of the 18th February 2006 stipulates that:

“ All the international agreements and conventions which have been lawfully concluded have, on publication, a higher authority than the laws governing each agreement or convention without prejudice to its application by the other party”.

32. Where the African Charter on Human and Peoples' Rights is concerned, it was ratified by virtue of the Decree-Law n^o 87/027 of 20th July 1987, and had been published in the special edition of the Democratic Republic of Congo's Official Gazette of September 1987.

33. Moreover, the Constitution of the 18th February 2006, in its Article 16 of Chapter II devoted to human rights, fundamental freedoms and the responsibilities of the citizen and the State, stipulates as follows:

“ The human being is sacred. The State has an obligation to respect and protect it. Every individual has the right to life, to physical integrity as well as the free development of his personality subject to respect for the law and public law and order, the right of others and good behaviour. No individual shall be held in slavery or in analogous conditions. No individual shall be subjected to cruel, inhuman or degrading treatment. No individual shall be obliged to engage in forced or compulsory labour”.

34. On the matter of the death penalty, paragraph 2 of Article 6 of the International Convention on Civil and Political Rights stipulates that in the countries where the death penalty has not been abolished, a death sentence can only be pronounced with respect to the most serious crimes, in conformity with the legislation in force at the time that the crime was committed. As the Constitution provides for in its Article 16 mentioned above, Congolese legislation has not yet abolished the death sentence. It is only pronounced against serious offences like murder, assassination, high treason and other military offences punishable by the military Code of Justice.

35. Although the Democratic Republic of Congo has not ratified the second optional Protocol to the International Convention on Civil and Political Rights aimed at abolishing the death penalty and that it lifted the moratorium on the death penalty on the 23rd September 2002, it should be noted that in fact, capital executions have not taken place for more than a decade except under the military courts where the number of capital executions of people sentenced by the former military court between 1997 and 2001 is estimated at 50.

36. Whatever the case, it can be pointed out that in June 2001 during the national conference on Human Rights, the option taken up by the delegates at this conference on the death penalty was for its abolition. Thus, during the seminars organized at various periods (February 2003 by the International Human Rights Federation “FIDH” and March 2003 by the Congolese Human Rights Observatory “OCDH”), several resolutions and recommendations had been formulated in favour of the abolition of the death penalty in order to conform to the requirement of the optional protocol mentioned above and to the Rome Statutes of the International Criminal Court ratified by the Democratic Republic of Congo. This Statute does not take the death penalty into account within the sanctions that the Criminal Court is required to pronounce (Article 77 of the Rome Statute).

37. In consideration for taking up this option in favour of abolition, the Ministry for Human Rights initiated a draft law in favour of abolition. It is expected that the Permanent Commission for the reform of Congolese law, whose activities have just been revived, will take this requirement into account and propose the reform of the Criminal Code.

IV. MEASURES TAKEN TO GUARANTEE THE EFFECTIVE ENJOYMENT OF THE RIGHTS PROTECTED BY THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS

ARTICLE 1: RIGHTS, DUTIES AND LIBERTIES HUMAN AND PEOPLES RIGHTS

38. The 18th February 2006 Constitution stipulates in its preamble, the Democratic Republic of Congo’s support for and attachment to

the Universal Declaration of Human Rights, to the African Charter on Human and Peoples' Rights, to the United Nations Conventions on the Rights of the Child and on the Rights of Women, in particular the objective of the parity of men-women within the country's institutions and in the international instruments relative to the protection and promotion of human rights.

39. Chapter II of the said Constitution, which contains Article 11 to 67, is devoted to human rights, to fundamental liberties and to the responsibilities of the Citizen and the State. The analysis of each provision of the Constitution, and of the other national legal texts which protect human rights, was presented at the time that the DRC was considering the implementation of the specific provisions of the African Charter on Human and Peoples' Rights.

ARTICLE 2: NON DISCRIMINATION

40. In the Democratic Republic of Congo, the enjoyment of the fundamental rights and freedoms stipulated in the Charter is recognized for all Congolese and for all foreigners living in DRC, without any distinction.

41. Articles 11 to 14 of the Constitution stipulate as follows:

“All human beings are born free and equal in dignity and in law. However, the enjoyment of political rights is recognized for Congolese only, allowing for exceptions established by law”.

“All Congolese are equal before the law and have a right to equal protection of the law”.

“No Congolese shall, in the area of education and access to public office or in any other area, be subjected to discriminatory action, whether it is through the law or through an act of the executive, or because of religion, of family origins, of social situation, of residence, of opinion or political conviction, of membership to a race, an ethnic group, a tribe, a cultural or linguistic minority”.

“The State shall ensure the elimination of all forms of discrimination against women and guarantee the protection and promotion of their rights.

It shall take all the appropriate measures, in all areas, particularly in the civil, political, economic, social and cultural areas, to guarantee

the total fulfilment and full participation of women in national development.

It shall take measures to combat all forms of abuse against women in public and private activities.

Women have a right to equal representation within the national, provincial and local institutions.

The State shall guarantee the implementation of the parity men-women in the said institutions.

The law shall establish the modalities of application of these rights”.

42. In further prohibiting discrimination, the Constitution in its Article 36, paragraph 3, stipulates that no individual shall be unfavourably treated in his work because of his origins, gender, opinions, beliefs or his socio-economic condition.

43. Excluding discrimination in electoral matters, Article 4 of the Law n° 06/006 of 9th March 2006 relative to the organization of presidential, legislative, provincial, urban, municipal and local elections allows all Congolese of both sexes, having reached at least 18 years of age, to participate in the elections and Article 9 of the same law authorizes all Congolese of both sexes to submit a candidature without prejudice to the specific provisions relating to each election and to those of ineligibility.

44. In the area of employment, Article 7 of the Law n° 015/2002 of the 16th October 2002 establishing the Labour Code does not make any distinction based on gender, civil status or nationality in the conclusion of an employment contract. Only age is taken into account in the preparation of a contract.

45. Although Articles 448 to 450 of the Family Code still sanction some discrimination based on gender as they attach a condition to the judicial acts to be filled out by the married woman, namely the prior acquisition of authorization from the husband or from the court in case of refusal by the husband, or if he finds it impossible to grant it to her. All of these discriminatory provisions had been examined during a workshop organized with the objective of harmonizing the Family Code with international standards. Efforts are currently being deployed to eliminate all other forms of discrimination which may still

exist in other laws. Sensitization campaigns on “Gender” are being carried out in this regard to ensure the equitable representation of women in the public institutions (30% of women).

46. Pertaining to the enjoyment and exercise of the rights by foreigners as enunciated in the Charter, Article 50, paragraphs 2, 3 and 4 of the Constitution stipulates: “Under the condition of reciprocity, any foreigner who resides legally in the national territory shall benefit from the same rights and freedoms as all Congolese, excluding political rights”.

“He shall enjoy the protection given to persons and to their property under the conditions determined by the existing Conventions and Laws”.

“He is obliged to abide by the Laws and Regulations of the Republic”.

47. Article 66, paragraph 1 specifies: “Every Congolese national has the duty of respecting and treating his co-citizens without any discrimination and of maintaining relations with them to safeguard, promote and strengthen national unity, and reciprocal respect and tolerance”.

48. In the area of Education, Framework-Law n° 86-005 of the 22nd September 1986 on national education, in its Articles 5 and 61, stipulates as follows:

Article 5: “The State is the guarantor of the protection of cultural identity, and as such, it shall guard against discrimination in national education, whatever the person’s ethnic or racial origin, social condition, gender and religious conviction”.

Article 61: “All the national educational institutions shall accept any pupil or student fulfilling the conditions laid down by this law without distinction relating to place, origin, religion, race, or ethnic group”.

49. Decree Law n° 25/131 of 25th March 1960 governing the suppression of racist expressions or religious intolerance, the Decree of 13th June 1960 on discrimination in shops and other public places, as well as the Decree Law n° 66-342 of 7th June 1966 pertaining to

the repression of racism and tribalism provide for criminal sanctions against the perpetrators of this transgressive behaviour.

**ARTICLE 3: EQUALITY BEFORE THE LAW AND
 EQUAL PROTECTION OF THE LAW**

50. Articles 11 and 12 of the Constitution stipulate respectively:

“All human beings are born free and equal in dignity and in law. Nonetheless the enjoyment of political rights is recognized for Congolese only, allowing for exceptions established by law”.

“All Congolese are equal before the law and have the right to the equal protection of the law”.

51. In response to the recommendation n° 3 from the African Commission, following its examination of the DRC’s last Report, there is need to point out that Article 10 of the Constitution stipulates: “Is of Congolese origin any individual belonging to an ethnic group whose peoples and territories constituted what became the Congo, currently (the DRC).

52. Furthermore, the Government took practical measures to better guarantee the protection of the Pygmies/Batwa, through the restoration of State authority in Ituri, concretized through the setting up of a new territorial administration, the forces of law and order and a judicial administration system.

53. With regard to the compulsory expulsions of the pygmies/Batwa from their land and their total deprivation of the means of survival, there is need to indicate that this situation, which moreover affected all the populations in the country’s North-East districts who fled from the atrocities provoked by armed unrest, is being brought under control with the gradual restoration of peace, which favours the return of the displaced populations to their places of residence. Besides, material assistance provided by the Government had been brought to these populations in 2003, specifically in Beni, in the North Kivu province, through the intermediary of the Ministry of Human Rights.

ARTICLE 4: THE RIGHT TO LIFE AND PHYSICAL AND MORAL INTEGRITY

54. Article 16 of the Constitution stipulates:

“The human being is inviolable. The State has the obligation to respect and protect it. Every individual has the right to life, to physical integrity and to the free development of his person subject to respect for the law, public law and order, the rights of others and good behaviour. No individual shall be held in slavery or in an analogous condition. No individual shall be subjected to cruel, inhuman or degrading treatment. No individual shall be obliged to engage in forced or compulsory labour”.

55. Besides what is said in paragraphs 47 to 51 in this Report on the death penalty, efforts are also currently being deployed to make torture a criminal offence. The efforts deployed to make sexual aggression against women and children aged less than 18 resulted in the amendment of the Criminal Code by the Law n° 06/018 of 20th July 2006 and of the Criminal Procedure Code by the Law n° 06/019 of 20th July 2006.

56. Articles 43 to 50 of the Penal Code punish assassination, murder, simple voluntary grievous bodily harm or aggravated grievous bodily harm, pre-meditated homicide, poisoning or the administration of substances harmful to one's health.

57. Article 67, paragraph 2 of the same law punishes torture committed against individuals who have been victims of arbitrary arrest or illegal detention.

58. Furthermore, the Government takes specific enhanced measures for the security of the population who at times settle in the country's major cities where they become specific victims of criminal acts threatening their lives and physical integrity.

59. With particular regard to the issue of the massive violations of the rights of pygmies/Batwa already committed in Ituri, including the denial of the right to life, the Government had, through the intermediary of the President of the Republic, requested the Prosecutor of the International Criminal Court to initiate investigations

to establish the responsibility, pursue and punish those responsible. In order to make the task of the ICC simpler, the Government signed the Judicial Cooperation Agreement on the 7th October 2004.

60. Concerning the death penalty, it is also provided for in several provisions of the ordinary Penal Code and the military Penal Code and is applicable to serious crimes such as assassination, murder, poisoning or violations of the internal and external security of the State. However, the execution of the death penalty is covered by all the procedural precautions possible.

61. In effect, where the death penalty is pronounced, the Public Ministry Official, by virtue of Article 175 of the Judicial Organization Decree n^o 299/75 of 20th August 1979 establishing the Rules of Procedure for the Courts, Tribunals and Public Prosecutor's Departments, is bound to exercise appeal just in case. The death sentence which is pronounced without appeal must be submitted to a petition for clemency.

62. Furthermore, Article 3 of the royal decree of the 9th April 1898 relative to capital executions stipulates that where it is confirmed that a woman who is condemned to death is pregnant, the sentence will only be executed after her delivery.

63. In the absence of national statistics on persons condemned to death, there is need to note that from 1999 to date, the categories of persons awaiting execution in the Kinshasa Prison and Rehabilitation Centre (CPRK) are as follows:

1. Military: 81
2. Police Officers: 04
3. Civilians: 21

(Source: Registers of the CPRK), June 2004)

ARTICLE 5: THE RIGHT TO RESPECT FOR HUMAN DIGNITY, RECOGNITION OF THE PERSON'S LEGAL STATUS AND THE RIGHT NOT TO BE SUBJECTED TO TORTURE, SLAVERY AND TRAFFICKING

64. The right to respect for human dignity is provided for in paragraph 68 of this Law.

65. However, with regard to torture, there is need to point out that it has not yet been established as an independent offence, but is considered as mitigating circumstances of certain offences in the ordinary Penal Code and the military Penal Code, such as kidnapping, arbitrary arrest and illegal detention as provided for by Article 67 of the ordinary Penal Code.

66. The same is valid for Article 191 of the military Penal Code which stipulates: "Whosoever in times of war or during exceptional circumstances is guilty of the imposition of collective fines, of excessive or illegal commandeering, of confiscation or pillaging, of importation or exportation outside the territory of the Democratic Republic of Congo, by all and any means, of all kinds of goods, including movable assets and currency, shall be condemned to 10 to 20 years of criminal service.

"If these acts were accompanied by physical cruelty, torture or followed by another offence, the guilty party shall be punished by death".

67. Article 68 of the Penal Code cracks down on slavery by stipulating: "Is punishable by the penalties provided for, by and according to the distinctions of the preceding Article, he who kidnaps, or arranges a kidnapping, arrests or facilitates the arrest, detains or arranges the detention of any individuals to be sold as slaves or who uses individuals placed under his authority for the same purpose".

ARTICLE 6: THE RIGHT TO LIBERTY AND INDIVIDUAL SECURITY

68. Article 17 of the Constitution stipulates: “individual liberty is guaranteed. It is the rule and detention is the exception. Nobody can be pursued, arrested, detained or condemned except under the terms of the law and under the conditions prescribed by it”.

69. The provisions relative to remand are contained in the Decree of 6th August 1959 establishing the Criminal Procedure Code, as amended by the Decree-Law n° 79-014 of 6th July 1979. Article 28 lays down the principle that remand is an exceptional measure. The conditions for placing an individual in remand are outlined in Article 27 which stipulates: “the accused can only be placed in remand if there is genuine evidence of his guilt and moreover that the act constitutes an offence which is punishable by law with a sentence of at least six months in jail. Where the offence is punishable by less than six months of imprisonment, the placing of an individual in remand is only authorized if there is fear that the accused will abscond or if his identity is unknown or doubtful or if remand is absolutely called for in the interest of public security”.

70. The remand in custody granted for the first time by the Judge is only valid for 15 days. At the end of this period, the accused must be brought before the Judge for an extension of the detention by 30 days. Remand in custody can only be extended once if the act only appears to constitute an offence in relation to which the penalty provided for by the law is not more than two months of hard labour or imprisonment. The Judge can grant or extend the detention period of the remand in custody with or without release on bail. Release on bail is only granted on payment of security.

71. Article 6 of the Decree of 6th August 1959 establishing the Criminal Procedure Code stipulates: “In the event of a blatant or reputedly blatant offence liable to a sentence of imprisonment of at least three years, in the absence of the judicial authority responsible for instituting legal proceedings or in the absence of any judicial officer at all, any individual can seize the presumed perpetrator and bring him immediately before the nearest authority”.

72. Article 145 of the Law n° 023/2002 of the 18th November 2002 establishing the military Judicial Code stipulates: “In cases of blatant offences punishable by imprisonment of at least six months and

without prejudice to the disciplinary powers of the higher authorities, any officer of the military criminal investigation officers has the power to arrest military officers who are perpetrators of or accomplices in these offences”.

73. Article 146 underlines that the duration of this custody cannot exceed forty-eight hours.

74. Article 147 stipulates: “On pain of the sanctions provided for within the provisions of Article 189 of the present Code and Article 108 of the military Penal Code, the higher authorities must satisfy the requirement from the common law criminal investigation officers by putting at their disposal a military officer in active service should it be required for a preliminary investigation or for the investigation of a blatant offence, or the execution of letters rogatory”.

75. Under the terms of Article 148 of the military Judicial Code: “The officers of the criminal investigation Department cannot detain for longer than forty-eight hours the military officers placed at their disposal.

“On the expiry of the custody deadline, pursuant to this Code in its Article 149, the military officers arrested red-handed or against whom there is serious and corroborating evidence of guilt should be placed at the disposal of the competent judicial authority”.

76. Article 150 underscores that “the higher authorities must be advised of the transfer”.

77. In conclusion, Article 156 of the military Judicial Code specifies that “the military criminal investigation officers can only detain persons foreign to the army under the procedures and conditions established by the ordinary Criminal Procedure Code.

78. Article 72 of the Decree no 78-289 of 3rd July 1978 on the exercise of the duties of criminal investigation officers in the common law courts stipulates: “The criminal investigation officers can only arrest a person suspected of having committed an offence punishable by at least six months of imprisonment, on condition that there is confirmed evidence of guilt against him.

“Where the offence is punishable by less than six months and more than seven days of imprisonment, they can also seize the individual against whom there is serious evidence of guilt on condition that there exists a danger of the person absconding or where his identity is unknown or doubtful.

“The explanations of the suspect are heard beforehand”.

79. Article 73 stipulates that “the criminal investigation officers are bound to bring the arrested persons immediately to the nearest Public Ministry official in application of Article 72.

“However, where the requirements of the enquiry demand it and where the arrest had not been made following a blatant offence or reputedly blatant offence, the criminal investigation officer can retain the arrested person under his custody for not more than forty-eight hours.

“On the expiry of this deadline the individual placed in custody must be released to go or brought before the officer of the Public Ministry, unless the criminal investigation officer finds it impossible to do so due to having a long distance to cover”.

80. Under the terms of Article 74 of the Decree n° 78-289 of 3rd July 1978 cited above, “the arrest and the placement in custody are noted down in the report. The criminal investigation officer indicates the time of that the operation began and when it ended as well as the circumstances justifying it. The report of the arrest is read and signed by the individual who is arrested and placed in custody and by the criminal investigation officer in the ordinary report forms”.

81. To avoid the JPOs committing excesses during the arrest and placing of the person in remand (48 hours for custody) as recognized by law, the Public Prosecutor can ask for the case file at any time.

82. And so, in the concern to preclude any excesses in carrying out the authorized investigations and the institution of proceedings by the Public Ministry official, the Workshop on the Control of the Justice system organized from the 10th to 12th November 2004 had during its deliberations, separated the duties of carrying out inquiry entrusted to the Judge from those of instituting proceedings entrusted to the Prosecutor’s office.

ARTICLE 7: THE RIGHT TO HAVE ONE’S CAUSE HEARD IN LAW AND THE RIGHT TO A FAIR HEARING

83. Article 17, paragraphs 3 and 9 of the same Law stipulate: Nobody can be brought to justice for an act or an omission which does not constitute an offence at the time it was committed and at the time legal proceedings were instituted. Anybody accused of an offence is presumed innocent until proven guilty by a final Judgement”.

84. According to Article 19 of the Constitution, nobody can be protected from the law nor distracted against his will from the Judge assigned to him by the law. Every individual has the right to have his cause heard within a reasonable period by the competent Judge. The right to defence is arranged and guaranteed. Every individual has the right to defend himself or to obtain the assistance of a Counsel of his choice and this, at all the levels of the criminal procedure, including the police inquiry and the pre-judicial institution. He can also seek assistance from the security services.

85. Taking into account the wording of this constitutional provision whose application needs to be guaranteed (the right to a fair hearing: the principle of two tier proceedings), the Court responsible for national security which did not provide this guarantee had been removed from the current Constitution. This reality calls for the reform of the Code governing the Organization and Competence of the Judiciary whose Article 97 stipulates that “The rulings made by the Court for National Security are liable to challenge and not to appeal (Workshop on the Audit of the Justice System mentioned above).

ARTICLE 8: FREEDOM OF CONSCIENCE AND OF RELIGION

86. The Constitution in its Article 22 stipulates: “Every individual has the right to the freedom of thought, of conscience and of religion. Every individual has the right to express his religion or his convictions, alone or in a group, both in public and in private, through worship, teaching, practice, the fulfilment of rites and the state of

religious life, subject to respect for the law, public law and order, good behaviour and respect for the rights of others”.

87. Article 52 of the Law 004-2001 of 20th July 2001 instituting general provisions applicable to non profit making Associations stipulates that in order to acquire juristic personality, the denominational non profit making Association should, besides the general conditions laid down by the law for all non profit making Associations, satisfy the following specific requirements:

1. Produce a dossier outlining the fundamental principles and the broad outlines of the religious doctrine to be taught, so as to clearly indicate the doctrine of the de-nominational Association making the request;
2. Refrain from decreeing regulations or teaching doctrine which would run counter to the laws, to good behaviour and public law and order;
3. Refrain from practices and regulations that are detrimental to life or to the health of its members.

88. By virtue of these provisions, numerous religious groups have been created and carry out their activities freely.

89. Nonetheless, following mistakes which were observed, certain de-nominational Associations had their activities suspended and their leaders brought to justice. Such is the case of Pastor KUTHINO FERNANDO of the Victory Army Church which, in 2001, carried out a campaign of religious fundamentalism, burning the Koran live in the television of his Church and which in 2003 incited the population to civil disobedience. This earned him a lawsuit against him and the temporary suspension of his Church’s activities.

ARTICLE 9: THE RIGHT TO INFORMATION AND THE FREEDOM OF OPINION

90. The freedom of expression and freedom of the media are guaranteed by the Constitution of the Democratic Republic of Congo and by the Law n^o 96-002 of 22nd June 1996 establishing the modalities governing the exercise of the freedom of the press.

91. According to Article 23 of the Constitution, “Every individual has the right to the freedom of expression. This right includes the freedom to express one’s opinions and convictions, notably through speech, in writing, and in pictures, subject to respect for public law and order, for the rights of others and good behaviour”.

92. Article 24 for its part stipulates: “Every individual has the right to information. The freedom of the press, the freedom of information and broadcasting by radio and television, newspapers or any other means of communication is guaranteed subject to respect for public law and order, good behaviour and the rights of others. The law establishes the modalities relating to the exercise of these liberties. The audio-visual and written State media are public services whose access is guaranteed equally to all social and political leanings. The status of the State media is established by law which guarantees the objectivity, the impartiality and the pluralism of opinion in the processing and broadcasting of information”.

93. The provisions of the Constitution relative to the freedom of expression, of opinion and of the media are strengthened by the Law n° 96-002 of 22nd June 1996 mentioned above, which moreover is anterior to the Constitution, and indeed the journalists themselves contributed considerably to its drafting.

94. This Law:

- liberalizes the media space and authorizes every natural person or legal entity to set up a media company or a radio station or a Television station;
- proclaims the independence and neutrality of the public media.

95. Article 8 of the said Law n° 96-002 stipulates: “Every individual has the right to the freedom of opinion and of expression. By freedom of opinion and of expression is meant the right to inform and be informed, to have one’s opinions, one’s sentiments and to communicate them without let or hindrance, regardless of the means used, subject to respect for the law, for public law and order, for the rights of others and good behaviour.

“In the area of audio-visual communication, freedom is the principle and prohibition is the exception, subject to respect for

the law, for public law and order, for the rights of others and for good behaviour”.

96. Every individual has the right to set up a media company, subject to respect for the conditions outlined in Article 22 of the Law on the media.

97. Article 51 of this Law specifies: “Audio-visual communication is free. Every natural person or legal entity has the right to produce, transmit and receive all the products of audio-visual communication...”.

98. Article 53, devoted to public audio-visual communications adds: “Public audio-visual communication is pluralist. It cannot, under any circumstances, be monopolized for the benefit of a single opinion or a single group of individuals”.

99. To set up an audio-visual company, the interested party should submit a declaration beforehand to the Member of the Government or the regional executive body responsible for information and the media. This declaration should be in conformity with the provisions of Article 57 of the Law mentioned above.

100. Consequently, a boom of media institutions saw the light of day and the state of the private audio-visual media, everywhere on the territory, is as follows, (Source: Ministry of Press and Information, Activity Report of the Commission responsible for checking the conformity of press activities, Kinshasa, January 2004, pp.2 and 3):

1. 94 Radio Stations distributed thus:

a. Kinshasa	: 25
b. Bandundu	: 06
c. Bas-Congo	: 09
d. Western Kasai	: 13
e. Eastern Kasai	: 17
f. Katanga	: 16
g. Equator	: 04
h. Eastern Province	: 01
i. Grand Kivu	: 03
(North Kivu, South Kivu and Maniema)	

2. 45 Television Stations:

a. Kinshasa	: 21
b. Bandundu	: 01
c. Bas-Congo	: 03
d. Western Kasai	: 04
e. Eastern Kasai	: 04
f. Katanga	: 04
g. Equator	: 02
h. Eastern Province	: 02
i. Grand Kivu	: 04
(North Kivu, South Kivu and Maniema)	

3. 201 Newspaper Institutions of which:

- 109 are registered
- 92 have no file in the Ministry of Press and Information

101. These figures which were updated on the 30th May 2004 do not take the foreign Television Stations into account, which transmit by cable or in plain language, and the foreign Radio Stations which are received in the Capital Kinshasa and in some of the country's provinces.

102. The freedom of the press has been consolidated over the years, so much so that on the occasion of the international day of the media in May 2004, the Non-Governmental Organization for the Defence of the Rights of Journalists "Journalists in Danger", abbreviated as JED, declared that there is currently no Journalist in prison arrested for a media related offence.

103. Furthermore, the two private audio-visual media companies which had been nationalized in 2000, Canal Kin TV and Radio Television Kin Malebo, had been restored to their owners in 2002.

104. The opening of the public media to all the political leanings has been realized. The schedule of programmes adopted in April 2004 provides for the equal distribution of air time to all groups.

105. The information sector had moreover been enriched by a regulatory institution, created by Article 154 of the Constitution and

called “High Media Authority”, one of the democracy supporting institutions which, under the terms of Article 155, has the mandate of guaranteeing the neutrality of the media.

106. In order to accomplish its mandate, the High Media Authority organized a round table in May 2004 with the theme: Access of the political parties to the public media, with the participation of the heads of all the public media, the representatives of the public institutions, the political parties and the NGOs.

107. During the same month of May 2004, the Independent Electoral Commission, in collaboration with the High Media Authority, organized a sensitization seminar for the newspaper Journalists on the role that they should play during the elections.

ARTICLE 10: THE FREEDOM OF ASSOCIATION

108. In the Democratic Republic of Congo, the political parties, the non profit-making Associations and the professional organizations can be freely established subject to respect for public law and order and good behaviour.

109. Where the Political Parties are concerned, Article 6 of the transitional Constitution stipulates: “Political pluralism is recognized in the Democratic Republic of Congo.

“Every Congolese has the right to create a political party or to affiliate with the party of his choice (...).”

110. The same Article stipulates in its paragraph 5 that the political parties are entitled to receive public funds from the State for the financing of their electoral campaigns or their activities, under the conditions laid down by the law.

111. Article 8 of the Constitution stipulates: “Political Opposition is recognized in the Democratic Republic of Congo. The rights linked to its existence, its activities and its struggle for the democratic conquest of power are sacred”.

112. Law n° 04/002 of the 15th March 2004 relative to the organization and operations of political parties falls within the scope

of the process of democratization of political activities, initiated on the 24th April 1990 by the Government of President Mobutu after more than 30 years of an institutional monolithic regime, characterized by a one party system.

113. Article 10 of this law stipulates: “The right to create a political party is guaranteed in the Democratic Republic of Congo”.

114. According to Article 11, every founder member of a political party should satisfy the following conditions at the time of the creation of the said party:

1. must be of Congolese nationality;
2. must be 25 years or less;
3. should enjoy his civil and political rights
4. must be in good physical and mental health and be leading a decent life and morals;
5. must provide justification of training up to technical diploma level or at least the equivalent, or with proven professional or political experience;
6. must have a residence or a dwelling in the Democratic Republic of Congo;
7. must never have been convicted criminally for a deliberate offence, having acquired the authority of the *res judicata*, except in case of amnesty and of judicial rehabilitation.

115. Article 15 of the said Law specifies that the registration Order, the receipt issued by the Ministry of the Interior, the Supreme Court Order and proof of deposit to the Clerk’s Office bear, as of right, official recognition and the granting of legal status.

116. Since the promulgation of this law, 229 political parties were registered in the Ministry of the Interior (Source: Ministry of the Interior, General Secretariat responsible for relations with the political parties, Kinshasa, May 2004).

117. With regard to the non-profit making Associations, the Constitution in its Article 37 stipulates: “The State guarantees the

freedom of association. The public authorities collaborate with the Associations which contribute to the social, economic, intellectual, cultural, moral and spiritual development of the populations and the education of the citizens, both men and women. This collaboration can be in the form of a subvention”.

118. Law n° 004-2001 which outlines the general provisions applicable to the non-profit making Associations and to the public utility institutions, determines the procedure and the requirements for the acquisition of civil status which, compared with the previous legislation, facilitates the formalities.

119. According to Article 3 of this law, the legal status is granted by the Minister of Justice after obtaining the approval of the Minister who has the relevant activity sector within his competence, whereas the 1965 and 1999 legislations gave this prerogative to the President of the Republic.

120. Article 5 of the same Law stipulates: “While waiting to acquire legal status, the approval of the Minister who has the relevant activity sector within his competence is good for provisional functioning.

121. With regard to the non-profit making Associations registered in the provinces, the provisional authorization is granted by the Governor of the Province and it is valid for six months; after that period, the legal status is supposed to be granted. In this case, the Minister of Justice is compelled to issue the Order relative to the granting of legal status in the months which follow. This latter provision constitutes a major innovation, as it facilitates the freedom of association by compelling the Minister of Justice to expeditiously examine the dossiers with requests for legal status.

122. The table below gives the statistics relative to the registered denominational and non-denominational Associations:

N°	Type of Association	Number
1.	Non-profit making denominational Associations of Congolese Law	604
2.	Non-profit making non-denominational Associations of Congolese Law	384
3.	Non-profit making denominational and non-denominational Associations of foreign law	43
	TOTAL	1,031

(Source: Ministry of Justice, Department of Religious Affairs and Associations, June 2004)

123. Pertaining to freedom of association, the Labour Code, in its Article 230, stipulates as follows: “The workers and the employers as defined in Article 7 of the present Code have the right to form an organization with the sole objective of studying, defending and developing their professional interests and the social, economic and moral progress of their members”.

124. Article 41, paragraphs 1 and 2 of the Labour Code stipulate: “The right of association is recognized in the Democratic Republic of Congo.

“All Congolese have the right to form trade unions, societies or other Associations and to affiliate thereto in all freedom for the promotion of their well being and to guarantee the defence of their social, economic and cultural interests, within the conditions established by the law”.

125. In Article 42 of the same Code is stipulated: “The right to engage in strike action is recognized and guaranteed.

“It can be done within the conditions laid down by the law which can prohibit or limit its exercise on grounds of national defence and security or for all public services or activities which hold vital interest for the community”.

126. Article 231 of the said Code specifies: “No prior authorization is required for the setting up of a professional organization on condition that the formalities indicated in the present chapter are satisfied”.

127. The formalities referred to above are provided for in Article 239 of the Labour Code which stipulates: “All requests for registration issuing from a trade union are addressed to the Minister of Labour and Social Welfare.

“The request indicates the full identity of the members charged with the administration and management of the trade union. It is signed by each one of them.

“Copies of the status of the requesting organization should be attached, and the relevant number is established by the Minister responsible for Labour and Social Welfare”.

128. The Ministry of Labour has so far registered 212 unionist workers organizations and 6 employers’ organizations.

129. Articles 25 and 26 of the Constitution stipulate: “The freedom of peaceful and unarmed assembly is guaranteed subject to respect for the law, public law and order and good behaviour”.

“The freedom to demonstrate is guaranteed. Any demonstration to be carried out on public roads or in open air requires the organizers to inform the competent public service authority in writing. Nobody can be compelled to take part in a demonstration. The law establishes the measures of application in this regard”.

130. Article 4 of the Decree-Law n° 196 of 29th January 1999 on the regulation of demonstrations and public meetings stipulates: “The demonstrations and public meetings are subjected to a prior declaration to the competent political-public service authorities.

“Nonetheless, the demonstrations and the meetings organized in public thoroughfares can be subjected to prior authorization”.

131. Article 6 of the same Law outlines the procedure to be followed in this regard, in the following terms: “The competent authority or his representative has up to three days to take note of the prior declaration with effect from the date it was deposited.

“Where required, besides the prior declaration indicated in

Article 4, paragraph 2, the aforementioned authority has five days with effect from the date of deposit of the declaration, to react to the request.

“In either case, the expiry of the deadline results in the automatic noting of the request and granting of the authorization”.

ARTICLE 12: THE FREEDOM OF MOVEMENT AND OF RESIDENCE

132. In the Democratic Republic of Congo, the exercise of the freedom of movement is guaranteed to every individual who resides on the national territory. Article 30 of the Constitution stipulates:

“Every individual who resides on the national territory has the right to move around freely, to establish his residence, to leave and to return, under the conditions established by the Law. No Congolese can be expelled from the territory of the Republic, nor be forced into exile, nor forced to live outside his normal residence”.

133. The administrative measures governing banishment are no longer applicable since 1998.

134. As prescribed by Article 30, the freedom of movement and the freedom of freely establishing one’s residence are also recognized for foreigners. Article 32 of the Constitution stipulates in this context that any foreigner who resides legally on the national territory shall enjoy the protection given to individuals and to their property under the conditions laid down by the Conventions and the Laws. He is compelled to conform to the laws and regulations of the Republic.

135. Article 33 of the Constitution prescribes: “The right to asylum is recognized. The Democratic Republic of Congo grants asylum in its territory, subject to consideration for national security, to foreign nationals who may be pursued or persecuted on account of their opinions, their beliefs, their racial, ethnic, linguistic origin or their activities promoting democracy and defence of human and peoples’ rights, in accordance with existing laws and regulations. Any individual lawfully enjoying the right of asylum is prohibited from engaging in any subversive activity against his country of origin or against any other country, from the territory of the Democratic Republic of Congo...”.

136. Article 58 of the transitional Constitution stipulates: “Subject to reciprocity, any foreigner who legally resides in the national territory enjoys the same rights and freedoms as the Congolese, with the exception of political rights.

“He shall enjoy the protection given to individuals and to their property under the conditions laid down by the Conventions and the laws.

“He is obliged to conform to the laws and regulations of the Republic”.

137. The Decree- Law n° 83-033 of the 12th September 1983 relative to the policy on foreigners lays down the procedures for expulsion and deportation. The main Departments and Services which are involved in the two procedures are: the President of the Republic, the National Intelligence Agency (NIA), the Head Office on Migration Issues (HOM) and the Office of Customs and Excise.

138. The expulsion of a foreigner is the prerogative of the President of the Republic.

139. According to Article 3 of Decree-Law n° 002-2003, of the 11th January 2003 relative to the creation and organization of the Head Office on Migration Issues, this Office is responsible in particular for:

- the implementation of Government policy in immigration and emigration matters;
- the execution, on Congolese soil of the laws and regulations relative to immigration and emigration;
- the policy on foreigners;

140. Article 15, paragraph 2 of the aforementioned Decree-Law specifies that the foreigner against whom expulsion proceedings have been initiated and who is likely to evade the execution of this measure may be incarcerated in a prison by the General Administrator of the NIA or his representative, for a period of forty eight hours. In case of absolute need this period may be continuously extended by forty eight hours but without the detention exceeding eight days.

141. Article 16 of the same law stipulates: “The Decree relative to expulsion is only applied against a foreigner, holder of a residential permit or against a refugee after having obtained the opinion of the National Immigration Commission. The decree on expulsion refers to the consultation with the Commission”.

142. Concerning the prohibition of entry at the border of foreigners without regular entry documents, this, according to Article 13 of the above mentioned Decree-Law n° 83-033, falls under the competence of the Immigration Control Officer. This measure cannot be appealed. The foreigner who is thus affected is immediately escorted back to the other side of the border for deportation and all related future costs are charged to the carrier.

143. Paragraphs 2 and 3 of Article 13 of the Decree-Law no 83-033 cited above stipulate:

“The foreigner may, within a deadline of 24 hours effective from the date of notification, institute an appeal before the regional officer of the CNRI (currently the NIA)”.

“The appeal period is straightforward. Up to the time that the officer takes a decision, the foreigner is placed under house arrest in the location indicated by the territorial administrative authority. The decision of the officer shall be conveyed in the shortest possible time to the Immigration Officer who will notify the interested party. The interested party, whose undesirability is definitively concluded shall be escorted to the border post of his choice”.

144. Article 2 of the Decree n° 67-483 bis of the 30th November 1967 on the consultation procedure to be carried out with the Foreigners’ Consultative Commission, enunciates that:

“When a procedure is initiated with respect to a foreigner holder of the residential permit category B or with respect to a refugee, the Minister of the Interior or his representative, on the proposal of the Chief Security Officer or his representative, shall immediately notify the Foreigners’ Consultative Commission”.

**ARTICLE 13: THE RIGHT TO PARTICIPATE IN
THE PUBLIC AFFAIRS OF ONE’S
COUNTRY**

145. In concretizing the wish expressed by the participants at the Inter-Congolese Dialogue whose express political will required the putting in place of a new political order founded on a new democratic Constitution, on the basis of which the Congolese people can choose its leaders entirely, at the end of free, pluralist, democratic, transparent and credible elections; the Constitution of the Democratic Republic of Congo submitted to a peoples' referendum on the 18th and 19th December 2005 is the framework, per excellence, for the exercise of this right. The Congolese people thus consulted, expressed their opinion on the major ideas of this Constitution which relate to: the form and sovereignty of the State; human rights, fundamental freedoms, the responsibilities of the citizen and of the State; the organization and exercise of power as well as Constitutional reform.

146. Article 5, paragraphs 1, 3 and 4 of the Constitution stipulates to this effect, that:

“National sovereignty belongs to the people. All power comes from the people who exercise it directly by means of a referendum or through elections and indirectly through its representatives”;

“Voting is universal, equal and secret...”;

“All Congolese of both sexes, fully 18 years old and enjoying their civil and political rights are voters and are eligible to vote under the conditions laid down by the Law”.

147. Apart from the peoples' referendum, the Congolese people also participated in the management of public affairs during the various phases of the elections organized first at the level of the national legislative and the first round of the presidential ones on the 30th July 2006 and then at the level of the provincial legislative elections and the second round of the presidential ones on the 19th October 2006. The phase for the choosing of Senators as well as Governors and Deputy Governors of the Provinces is scheduled for January 2007.

148. Article 39, paragraphs 3, 5 and 6 of the Constitution stipulate:

“No person shall be unfavourably treated for reasons of his origins, his sex, opinions or his beliefs or because of his socio-economic conditions”.

“The Law establishes the status of the workers and regulates the specificities of the professional Associations within the legal system and the exercise of the professions requiring school or academic qualification”.

“The internal structures and operations of the professional Associations should be democratic”.

149. Besides, Law n° 81-003 of the 17th July 1981 establishing the status of the career staff of the national public services provides, in its Article 8, for conditions of equal access.

150. Pertaining to promotions, Article 66 of the same Law lays down the following conditions:

1. one must have spent at least 3 years in the Grade immediately inferior to the Grade to which one is to be promoted;
2. one must have at least obtained the comment “good” in the last three gradings;
3. one must have participated with success and achieved useful grading in an exam to pass from one category to another.

ARTICLE 14: THE RIGHT TO PROPERTY

151. The Constitution, in its Article 34 re-affirms that private property is sacred. The State guarantees the right to individual or collective property acquired in conformity with the law or with custom. It encourages and guarantees the security of private, national or foreign investments. No one shall be deprived of his property for public use and in return for a fair compensation paid beforehand under the conditions established by the law. No one’s property can be attached except by virtue of a decision taken by a competent legal authority.

152. The laws govern the manner of acquiring movable property or real estate. This is true for the Law no 73-021 of the 20th July 1973 creating the general system on property, landownership and real estate and the security system, as amended and completed to this day.

153. With regard to the payment of compensation in case of compulsory purchase of property concessions, for example, the above mentioned law stipulates in its Article 102 that when compulsory purchase relates to an unlimited lease, with a costly title deed, the price at which the landowner had acquired his right, plus expenses, will be taken into account during assessment of the compensation to be paid, when it falls due.

154. This had been the case when the Congolese State, in widening the roads in the Capital in 1972, had paid financial compensation to the individuals living along the segment affected by the public works.

155. More recently still, the Congolese Charter on Human and Peoples' Rights of June 2001 had recommended the restitution of the despoiled property to the owners. This requirement had been repeated by a resolution of the Inter-Congolese Dialogue in 2002, and on this basis Orders from the Ministry of Justice had been signed, restoring the property, especially real estate, to the individual owners.

ARTICLE 15: THE RIGHT TO EMPLOYMENT

156. The Constitution, in its Article 36 stipulates: "Employment is a right and a sacred duty for each Congolese. The State guarantees the right to employment, protection against unemployment and equal and satisfactory payment that can guarantee the worker and his family a living that is in conformity with human dignity, supplemented by all the other means of social protection, in particular, retirement benefits and life insurance".

157. Law n° 015/2002 of the 16th October 2002 establishing the Labour Code in its Article 2 also recognizes the right to employment for each individual.

158. In order to improve the salary conditions of the workers, a Decree passed in 2002 established the SMIG, in the private sector, equivalent to 1 US dollar per day; whilst in the public sector an agreement known as "Innovation Contract" had been concluded in 2004 between the Government and the public servants' unions, which

was to allow, in the long run, an upward review of the salaries of public servants and State officials.

ARTICLE 16: THE RIGHT TO GOOD HEALTH AND TO WELL BEING

159. Article 47 of the Constitution stipulates:

“The right to good health and food security is guaranteed”.

“The law establishes the fundamental principles and the regulations governing public health and food security”.

160. The well being of the population is an area which retains the attention of the Government with the support of the international partners. The social fund of the Republic is now tackling the implementation of activities of community interest in this area.

161. In discharging this obligation, the DRC intends to protect the life of the population through the organization of a health system which is accessible to all. This system developed 306 to 536 health zones for primary health care. The issue here is one of geographical accessibility, as the distance to be covered to reach the health centre is at least 5 kms. Since financial accessibility is a matter of revenue, a seminar had been organized by the Ministry of Human Rights for the health staff with the objective of giving a human face to hospital training in the dealing with cases of non payment of hospital costs by poor patients.

162. Apart from the above mentioned health centres, the Ministry of Health which manages health policy, the health institutions at all administrative levels, without forgetting health institutions in the rural areas (SANRU) and the rehabilitation of hospitals, instituted more than 50 sectoral programmes, namely:

- Expanded Programme of Immunization;
- National Programme of Reproductive Health;
- National Malaria Control Programme;
- National Aids Control Programme;
- National Programme for the Control of Tuberculosis;

- National Leprosy Control Programme;
- National Blood Transfusion Programme;
- National Diabetes Control Programme. etc

163. However, it is important to recognize that considerable effort is still required to realize this objective, and in particular to protect women and children who are vulnerable persons and who still have a high mortality rate.

164. In effect, from the point of view of infant and maternal health, the MICS2 Survey indicates that 126 children out of 1000 do not reach their first year. The infant-juvenile mortality quotient is up to 213 per thousand, almost one new born baby out of five does not reach the age of five. This rate places the Democratic Republic of Congo among the countries with a high infant mortality rate.

165. Pertaining to the maternal mortality rate, it has gone up to 1,289 deaths out of 100,000 live births. This rate, which is by far higher than the African average of 870 per 100,000 is one of the highest in the world. (Source: Ministry of Planning, National Survey on the situation of women and children MICS2/2001, Volume II, Kinshasa, July 2002, pp. 59 and 61).

ARTICLE 17: THE RIGHT TO EDUCATION AND TO THE FREEDOM OF CULTURAL LIFE

166. With regard to Education, Article 43 of the Constitution stipulates: "Every individual has the right to academic education. This is provided by the national education system. The national education system includes the public institutions and the approved private institutions.... Primary education is compulsory and free in the public institutions".

167. Framework Law n° 86-005 of 22nd September 1986 on national education stipulates in Article 2 that national education is intended to respond to the obligation that the State has towards all Congolese to enable them exercise their right to education and to that which the parents have of fulfilling the responsibility of educating their children under the authority and with the help of the State.

168. And so there is a network of primary, secondary and university educational institutions, belonging to both the State and to the private sector.

169. However, it is important to acknowledge the deterioration of the public education sector characterized notably by the saturation of the reception institutions, the dilapidation of the infrastructure, the lack of educational material, the teachers' lack of motivation, the low output confirmed by high rates of loss in education arising from the incapability of the parents to pay school fees (taking care of school materials and the motivation of the teachers) as well as the inadequacy of the training administered in relation to the needs of those learning and that of society.

170. The degradation of the educational system is largely explained by the paucity of the funds allocated to this sector, for instance, from 1991 to 1997, these funds dropped from 0.40% to 0.18% of the national budget. For the year 2002, out of the forecasts of a global amount of close to 500,000 US dollars of capital expenditure, it had not been possible to release any funds. This means that no investment had been made.

171. This state of affairs is explained by the situation of political instability, the deterioration of the economic system and the wars which characterized the country for the past 15 years. However with the return of peace and the stabilization of the macro-economic framework, the rehabilitation of the infrastructure has been re-launched. Activities to provide material support to the schools and the rehabilitation of the infrastructure have been going on since 2003, as well as the struggle promoting girls education which moved to the execution phase in 2004, within the framework of the Accelerated Education Programme for Girls, supported by UNICEF.

172. In the area of higher and university education, the Government, with the help of bilateral and multilateral partners, has put in place the PADEM Programme (Agreement for the Modernization of Education), which is aimed at the restructuring of the entire system.

173. Concerning the freedom of cultural life, Article 46 of the Constitution stipulates: "The right to culture, to the freedom of

intellectual and artistic creation, and that of scientific and technological research are guaranteed subject to respect for the law, for public law and order and good behaviour. Copy rights and intellectual property rights are guaranteed and protected by the law. The State, in fulfilling its responsibilities, takes the cultural diversity of the country into account. It protects the national heritage and guarantees its promotion”.

174. The Government’s cultural policy is directed by the Ministry of Arts and Culture, whose mandate is to promote and support national culture and arts. Institutions like the Academy of Fine Arts, the National Museums or National Ballets Institute are adequate indications of the interest that the Government has for this sector. Moreover, the State supports the development of traditional medicine and had created an entire Department for this sector within the Ministry of Health.

**ARTICLE 18: PROTECTION OF THE FAMILY
THE ELIMINATION OF DISCRIMINATION
AGAINST WOMEN AND THE PROTECTION
OF THE RIGHTS OF THE CHILD**

175. Where the protection of the Family is concerned, the Constitution, in its Article 40, paragraphs 2 and 3 stipulates: “The Family, the basic unit of human community, is organized in order to guarantee its unity, its stability and its protection. It is placed under the protection of the Government. For the parents, the care and education to be given to children constitute a natural right and a duty which they carry out under the watchful eye and support of the Government”.

176. Special provisions have been made under Law n^o 87-010 of the 1st August 1987 establishing the Family Code. These govern marriage and protect family life. A draft law bringing amendment to certain provisions of the Family Code had been submitted to Parliament by the Government. The Ministry of Women’s Affairs and the Family has, for several years, been responsible for Government policy in the area of protection of the Family.

177. With regard to the combat to eliminate discrimination against women, Article 14 of the Constitution stipulates that the Government ensures the elimination of all forms of discrimination against women and guarantees the protection and promotion of their rights. The Government takes all the appropriate measures in all the areas, in particular the civil, economic, social and cultural fields, to guarantee the total development and full participation of women in the nation's development process. It takes measures to combat all forms of abuse against women in public and private activities. Women have a right to equal representation in national, provincial and local institutions. The State guarantees the implementation of man-woman parity in the said institutions.

178. In execution of the provisions contained in the Constitution, women occupy ministerial, parliamentary, judicial and administrative positions and in the private sector. Nonetheless, there are still more efforts to be deployed to ensure the representation of women in all sectors of national activity.

179. Major obstacles which were formerly encountered with regard to the participation of women in the decision making process are due notably to the following facts:

- the negative prejudices against women based on customs and traditions;
- women's low level of education due to the fact that families prefer to educate the boys rather than the girls, who are predestined for early marriages;
- The lack, up to a few years ago, of a database and reliable information on women capable of holding high office;
- The lack of self confidence on the part of the women themselves.

180. In order to reduce these obstacles, the Government initiated a programme of action for the purpose of encouraging the promotion of women, in particular through the educational campaign titled "All Girls to School".

181. Furthermore, the Ministry of Women's Affairs and the Family carried out the publication of the statistics of women senior officers of the DRC, through a biographical guide. The initiators explain their

undertaking as follows: “The preparation of the biographical guide of women senior officers and leaders of the Democratic Republic of Congo in general and of the City of Kinshasa initially, lies within the framework of the commitment made by the Government of the Democratic Republic of Congo to put in place ways and means of promoting the participation of women in the decision making process which is one of the two priority areas of the Beijing Programme of Action.

“This study is also a result of the common will of Government and UNICEF to up-date reliable data on women senior officers and leaders of the DRC in the context of the project “To plead in favour of Women” for the realization of the extensive participation of women in senior and decision making positions”. (Source: Ministry of Social and Women’s Affairs, Biographical Guide of women senior officers and leaders of the city of Kinshasa, February 2002, p.5).

182. The surveys carried out within the context of this study indicate in effect that the under representation of women in the various activity sectors is evident, even in Kinshasa, as illustrated in the Table 1 below:

Situation of the job market relating to women senior officers of Kinshasa in comparison to that of male senior officers per activity sector.

N°	Activity Sector	Number of Women	Number of Men	Total	%
0	Teaching	285	4,603	4,888	6
1	Agriculture	14	406	420	3
0	Trade	3	88	91	3
2	Communications	54	1,183	1,237	4
0	Processing	6	117	123	5
3	Construction	13	506	519	3
0	Energy	40	1,255	1,295	3
4	Finances	86	3,093	3,179	7
0	Industry	10	230	240	4
5	Medical	180	910	1,090	17
0	Mining	2	183	185	1
6	Services	429	5,954	6,383	7

0	Transport	63	3,008	3,071	2
7					
0					
8					
0					
9					
1					
0					
1					
1					
2					
1					
3					
Total		1,185	21,536	22,721	X=5

(Source: Ministry of Social and Women’s Affairs and the Family, Biographical Guide of Women senior officers and leaders, City of Kinshasa, February 2002, p.7).

183. In the area of the national statistics, the proportion of women in the various sectors of public activity in 2004 is illustrated in the Table 2 below:

Table showing the representation of Women in the various national public institutions.

Transitional Institutions in March 2004	Overall Numbers	Women		Men	
		Strength %		Strength %	
Presidential Area	5	0	0	5	100
Government	61	7	11	57	89
Senate	120	3	2.5	117	97.5
National Assembly	500	60	12	440	88
Judiciary	1,800	200	11	1,600	89

Public Enterprises and Mixed Economy	362	23	6	339	94
Diplomacy	311	37	12	274	88
National Army	-	-	-	-	-
Democracy Supporting Institutions	5	0	0	5	100
Public Administration (General Secretariats)	47	6	12	41	88
Local Government:	33	11	33	22	67
- Governors		0	0	11	100
- Deputy Governors		11	33	11	

(Source: Ministry of Women's Affairs and the Family, National Report of the Democratic Republic of Congo on the review and evaluation of the Beijing Plan of Action +10, Kinshasa, February 2004, p. 12).

184. Concerning the rights of the Child, these are protected by both the Constitution and the specific laws. Article 41, paragraph 1 qualifies the minor as any individual, without distinction with respect to sex, who has not yet reached full 18 years. As it is said in paragraph 189 of the present Report, every child has the right to enjoy the protection of his family, of society and of the Government in conformity with the prescriptions of Article 41, paragraph 3 of the Constitution.

185. Specific institutions implement the Government programmes relating to childhood, in the sectors of health, education, re-integration and legal protection.

186. The minors that have no families, and in particular those whose parents died of HIV/AIDS, are taken care of under a programme run by both public and private institutions such as the asbl “Better Future for Congo’s Orphans” (AMO Congo), which arranges the provision of educational, psychological and medical care for children affected by HIV/AIDS and supports the host families for these children. AMO Congo operates in three Cities, namely Kinshasa, Lubumbashi and Bas-Congo.

187. In the effort to provide greater protection for the child, the Constitution in its Article 41, paragraphs 1, 4, 5 and 6 stipulates that the abandonment and ill-treatment of children, in particular paedophilia, sexual abuse and accusations of witchcraft are prohibited and punishable by law. The parents have the responsibility of taking care of their children and guaranteeing their protection against all acts of violence both within and without the household. The Government has the obligation of guaranteeing the protection of children in difficult situations and to bring the perpetrators of acts of violence against children and their accomplices to justice. All other forms of exploitation of child minors are punishable by law.

188. The integration of the rules of international humanitarian law relative to the offences of sexual abuse in the Constitution made the legislator vote in the Law n° 06/018 of the 20th July 2006. The provisions of this law establish as offences, the various forms of sexual abuse which were formerly not criminalized in the Penal Code.

189. With regard to the registration of children in the civil register, Article 116 of the Family Code stipulates: “Any birth which takes place on the territory of the Republic should be declared to the Registrar of Births at the residence of the Father or the Mother within the 30 days following the birth”. The declaration should be made by the Father or the Mother, or failing this, by the ascendants and close relatives of the child or by the persons who were present at the delivery of the child. It can be done by a proxy, bearer of a written power of attorney, even by a private agreement with the Father or the Mother.

190. This obligation which compels people to declare the birth is punishable under Article 114 of the Family Code by 7 days in jail or by a fine.

191. The children's right to nationality is guaranteed by various provisions of the Family Code. This is the case with Article 7 which prescribes that: "Is of Congolese nationality any newly-born child found in the Democratic Republic of Congo".

192. Article 17 of the Code stipulates that: "Can acquire Congolese nationality by means of any of the following options:

1. the child is born in the Democratic Republic of Congo or abroad of parents one of whom is of Congolese nationality;
2. the child is legally adopted by a Congolese;
3. the child whose adoptive parent or one of the adoptive parents has acquired or regained Congolese nationality".

193. Article 18, paragraph 1 of the same law stipulates: "the child minor who is not emancipated and whose Father or Mother, if the Father is dead, unknown or stateless has obtained Congolese nationality by means of one of the above options, acquires Congolese nationality as of right at the same time as his adoptive parent".

194. Pertaining to the Commission's recommendation on the enlistment of children into the Armed Forces, it is important to note that the Government of the Democratic Republic of Congo has taken it into account. In its Article 41, paragraph 1, as indicated in Paragraph 199 below, the Constitution deals with this issue by determining the age below which one is considered a child. The ratification of the African Charter on the Rights and Welfare of the Child prohibit the recruitment of children into the Armed Forces of the Democratic Republic of Congo.

195. Moreover, the Law n° 023/2002 of the 18th November 2002 establishing the Military Code, in its Article 114, declares the military courts incompetent to deal with persons below the age of 18 who are brought before the courts.

196. In keeping with the physical and psychological rehabilitation measures and those of the social re-integration of children linked to the Armed Forces, transit centres (CTO) had been created to provide temporary accommodation for demobilized children, pending their familial, social, economic or professional re-integration. These children are taken care of by national and international NGOs.

197. The process of psycho-social rehabilitation of the children linked to Armed Forces or Groups consists in setting up a mechanism at the community level through:

- the creation of rehabilitation committees and networks;
- the building of the capacities of the local helpers.

198. The coordination and the monitoring of all the activities carried out in favour of children linked to Armed Forces and Groups is the responsibility of the National Disarmament, Demobilization and Re-integration Commission (CONADER), created by the Decree n° 03/042 of the 18th December 2003. In Ituri for instance, the demobilization and re-integration affects 6,000 children.

199. The CONADER, funded by the World Bank to the tune of 200 million US dollars, made possible the demobilization of 800 child soldiers from January to June 2004. (Source: Third Special Report of the Secretary General on the United Nations Organization Mission in the Democratic Republic of Congo, S/2004/650 of the 16th August 2004).

200. The Democratic Republic of Congo also ensures the protection of senior citizens and of invalids. In effect, under the terms of Article 49 of the Constitution, the senior citizen, the physically handicapped person, the invalid have the right to specific protection measures in relation to their physical, intellectual and moral needs.

201. The Ministry for Social Affairs is responsible for the implementation of Government policy in this sector.

ARTICLE 19: EQUALITY OF ALL PEOPLES

202. The Democratic Republic of Congo advocates a policy of equality among all the people who constitute the Congolese nation. In its Articles 11, 12 and 50, paragraph 2, the Constitution stipulates that all human beings are born free and equal in dignity and in law. All Congolese are equal before the law and have the right to the equal protection of the law. Any foreigner who legally resides on national territory enjoys the same rights and liberties as all Congolese, political rights excluded.

203. The materialization of this equality can be noted in the nationality context. Paragraph 3 of Article 10 of the Constitution stipulates: “Is of Congolese origin any individual who belongs to the ethnic groups whose populations and territory constitute what has now become the Congo (currently the Democratic Republic of Congo) up to independence.

204. This provision concretizes the resolutions of the Inter-Congolese Dialogue which were aimed at bestowing equal treatment on all the populations, in particular those who live on the borders spanning the DRC, Burundi and Rwanda.

ARTICLE 20: SELF-DETERMINATION OF PEOPLES

205. The DRC has no ambition to dominate other peoples. Instead, since its accession to independence on the 30th June 1960, the Democratic Republic of Congo has been militating in favour of the self-determination of the Fulani. It is in this context that the DRC has actively supported the liberation movements in the various African countries and its territory has hosted these movements. It has placed material and financial resources at their disposal and guaranteed the training of their fighters, as well as providing them with diplomatic support.

ARTICLE 21: THE RIGHT OF PEOPLES TO DISPOSE OF THEIR RICHES AND NATURAL RESOURCES

206. The DRC applies an international policy which consists in allowing each people to enjoy all its riches. At the local level, it

institutes measures allowing Congolese to enjoy their national riches and natural resources as is stipulated in Article 58 of the Constitution.

207. Law n° 007-2002 of the 11th July 2002 creating the Mining Code allows the indigenes with limited financial resources to access the mining resources of the country, alongside the major foreign developers. In effect, Article 26 stipulates: “Without prejudice to the provisions of Article 27 below, only adult natural persons of Congolese nationality can acquire and hold permits for artisanal development activities and merchant permits”.

ARTICLE 22: THE RIGHT OF PEOPLES TO FULL DEVELOPMENT

208. In the concern to guarantee the development of its people, the Government of the DRC has been implementing, from 2001, an economic reflation policy with the support of the international financial institutions with encouraging results that are having an effect on the income of the populations and improving their living conditions. Indeed the sectors such as the economic infrastructure (roads) or social infrastructure (hospitals and medical supplies) are currently undergoing full rehabilitation.

209. With the same objective, the DRC is a member of the sub-regional economic organizations (CEAC, SADEC) and is working towards the re-stimulation of the Economic Community of the Countries of the Great Lakes region, within the context of the consolidation of peace in the sub-region.

ARTICLE 23: THE RIGHT OF PEOPLES TO PEACE AND SECURITY

210. The DRC is a State which advocates the peaceful co-existence of all peoples and ensures that the Congolese live in peace. This concern had been included in the Constitution which, in its Articles 51 and 52, stipulates:

“The State has the responsibility of guaranteeing and promoting the peaceful and harmonious co-existence of all the country’s ethnic groups”.

“All the Congolese have the right to peace and security, at both the national and international levels. No individual or group of individuals can use a portion of the national territory as a base for carrying out subversive or terrorist activities against the Congolese State or against any other State”.

211. Ever faithful to its policy of good neighbourliness, the DRC, after having been the object of aggression by Rwanda and Uganda, did not hesitate to sign cease fire accords with these States and had called for the holding of an international conference on peace, security and development in the countries of the Great Lakes region, with the preparatory meetings currently being held in all the States concerned.

212. With regard to the Commission’s recommendation inviting the Government to embark on the training of a single army to guarantee control and responsibility over the entire territory of the Republic and to the cessation of the fighting in the Eastern districts, so as to guarantee the security of the populations of these regions, there is need to indicate that the Global and Inclusive Agreement had assigned the following objectives to the Transition: the training of a national, restructured and integrated army, the reunification of the country, the restoration of peace, the restoration of territorial integrity and the re-establishment of State authority throughout the territory.

213. To date, the command of the Armed Forces had been reunified through the integration of the senior officers of the various warring armed groups, and by posting them to different provinces in the Republic. The integration of the combat units which had been attached to them is underway. It is being done by means of the process of intermingling.

214. Concerning the reunification of the territory, it should be pointed out that the movement of goods and persons throughout the territory is quite effective. Likewise, the restoration of State authority is on course, in particular in Ituri where the Government, with the support of the UNMIC, has put in place a civil service, courts and public prosecutors’ Departments, and has set up Police Forces known as “Integrated Police”, to guarantee security and maintain public law and order.

ARTICLE 24: THE RIGHT OF PEOPLES TO AN ENVIRONMENT FAVOURABLE FOR DEVELOPMENT

215. Article 53, paragraph 1 of the Constitution stipulates that every individual has the right to a healthy environment favourable for his development.

216. As a consequence to this Constitutional requirement, the Government got down to the restoration of peace and the reunification of the Country by re-establishing the authority of the State everywhere. It created an environment which was conducive to economic development, in particular through the stabilization of the public finances, the stabilization of the rates of exchange and the prices of goods and services.

ARTICLE 25: PROMOTION OF HUMAN RIGHTS

217. Article 45, paragraphs 5, 6 and 7 of the Constitution stipulate: "The Government has the responsibility, through teaching, education and dissemination, of promoting and guaranteeing respect for human rights, for the fundamental freedoms and the duties of the citizen as articulated in the present Constitution. The Government has the responsibility of guaranteeing the dissemination of the Constitution and teaching people about its contents, about the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, as well as about all the regional and international conventions relating to human rights and the international humanitarian law which it has duly ratified. The State has the obligation of integrating the rights of the human being in all the training programmes destined for the Armed Forces, the Police and the Security Services".

218. Government policy in this area is implemented by the Ministry of Human Rights with the support of the Non-Governmental Organizations. Towards this end, several training seminars on human rights and on international humanitarian law have been organized for all strata of the population and in particular for the Armed Forces, the Police and the Security Forces.

219. Moreover, the issue of human rights is being included more and more in the school curricula and children's committees are being set up in the schools with the role of imparting knowledge of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

**ARTICLE 26: THE INDEPENDENCE OF THE JUDICIARY
AND THE ESTABLISHMENT OF NATIONAL
INSTITUTIONS FOR THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS**

220. The need for the independence of the Judiciary had been re-affirmed during the Inter-Congolese Dialogue. This concern had been reflected in the Constitution which, in its Articles 149, paragraphs 1 and 150 stipulate: "The Judiciary is independent from the Legislature and the Executive".

"The Judiciary is the guarantor of the individual freedoms and fundamental rights of the citizens. In the exercise of their duties the Judges are answerable only to the authority of the law. An organic law establishes the status of the Magistrates..."

221. This option had been taken due to the subservience of the Judiciary to the Executive, a fruit of the institutional monolithism which characterized the political organization of the DRC for more than twenty years, and which continued even after the proclamation of political liberalization in 1990.

222. In application of the constitutional provisions, examination of the above mentioned organic laws had been included as an item in the Agenda of the Parliament's October 2004 session.

223. Furthermore, there is need to point out that the 315 Magistrates who had been illegally dismissed in 1998, had been reinstated, in application of a Resolution of the Inter-Congolese Dialogue.

224. Pertaining to the national institutions for the promotion and protection of human rights, there is need to note that the DRC has established a Ministry of Human Rights and a National Human Rights Observatory.

225. The Ministry of Human Rights, currently governed by Decree n° 03/027 of the 16th September 2003, has the following responsibilities:

- To promote and protect human rights and fundamental freedoms;
- To disseminate and popularize human rights;
- To monitor respect for human rights;
- To examine cases of blatant human rights violations, by means of proper mechanisms such as mediation in human rights issues and the Audit Commission, without however becoming a substitute for the Courts and Tribunals nor replacing the administrative procedures laid down by the law;
- To collaborate with the Office of the High Commissioner for Human Rights, the African Commission on Human and Peoples' Rights and with other national, regional and international institutions competent in human rights issues

226. With respect to the National Human Rights Observatory (ONDH), it has been dealt with in Article 154 of the transitional Constitution among the other democracy supporting institutions. Under the terms of Article 1 of the Law n° 04/019 of the 30th July 2004 governing the organization and functioning of this institution, the ONDH is a Congolese public law institution, which is autonomous, neutral and endowed with legal status, responsible for the promotion and protection of human rights. Among its principal responsibilities articulated in Article 7 of this law, there are three which should be well noted and they are:

- to express opinions and submit proposals to Government pertaining to issues relating to the promotion and protection of human rights;
- to guarantee the enjoyment of both individual and collective rights to all individuals;
- to prepare reports on the state of application of the national standards and the international legal human rights instruments which it forwards to the National Assembly, to the Senate, to the Government and to the Courts and Tribunals.

**ARTICLE 28: THE RESPONSIBILITY OF RESPECTING
ONE’S FELLOW MEN AND TO REGARD
THEM WITHOUT DISCRIMINATION**

227. Article 66 of the Constitution stipulates that every Congolese has the duty to respect and treat his fellow citizens with no discrimination whatsoever and to maintain with them relations which should allow the safeguard, the promotion and the strengthening of national unity, mutual respect and tolerance.

228. This principle responds to the spirit of the Global and Inclusive Agreement which prohibits any exclusion or discrimination.

229. In this context, Decree Law n° 25/131 of the 25th March 1960 establishes as an offence writings on the wall or others, the wearing of emblems, gestures, speech or documents liable to provoke tension between races, ethnic groups or denominations.

230. Similarly for Article 1 of the Decree Law n° 25/491 of the 1st October 1959 which forbids the maintenance, the rehabilitation or facilitating the rehabilitation of all distinct installations such as ticket offices, entrances, counters reserved for a particular race or ethnic group.

231. Besides, the new organic law on nationality passed by Parliament in September 2004 governs the matter of the nationality of the Banyamulenge whose status has for long been the subject of controversy.

ARTICLE 29: THE RESPONSIBILITIES

**Paragraph 1: The responsibility of protecting the
harmonious development of the
Family**

232. According to Article 40 of the Constitution, the Family, the basic unit of human community is organized in a manner that guarantees its unity, stability and protection. It is placed under the protection of the Government. The care and education given to the children constitute a natural right and responsibility for the parents which they

exercise under the watchful eye and with the support of the Government. The children have the duty of helping their parents.

233. Law n° 87/010 of the 1st August 1987 establishing the Family Code stipulates in its Article 714 that the parents and relatives owe each other mutual support, assistance and respect in conformity with custom. Under all circumstances their behaviour should be guided by the concern to uphold and strengthen family life.

Paragraph 2: The responsibility of placing one's physical and mental capabilities at the service of the national community

234. Article 39, paragraph 4 of the Constitution enunciates that every Congolese has the right and responsibility of contributing, through his work, to construction and national prosperity.

Paragraph 3: The responsibility not to endanger the security of the State

235. This responsibility is an obligation for all as every individual is required to respect the Constitution of the Republic according to the prescriptions of its Article 62. Thus, according to Article 63 of the same Constitution, every Congolese has the right and responsibility to defend his country and its territorial integrity in the face of a threat or of external aggression. Compulsory military service can be introduced under the conditions established by the law. Every national, provincial, local and customary authority has the duty of safeguarding the unity of the Republic and the integrity of its territory under the pain of high treason.

236. Towards this end, the Penal Code, in its Articles 182, 183 and the ones that follow establish as a treasonable offence and make punishable by death any individual who through his behaviour is said to have maintained relations with a foreign power liable to give rise to hostilities on Congolese territory. The same is applicable for any one who may have provided to a foreign Government information which should be kept secret in the interest of national security or which is likely to incite soldiers or navy officers to serve a foreign power by giving them financial resources or arms.

237. Articles 195, 196 and 197 of the same law punish all attempts, plots and other offences against the authority of the State and against territorial integrity. These acts should have been intended to destroy or to change the constitutionally elected Government, or to incite the citizens or the populations to armed insurrection against the authority of the State or against each other, or to compromise national territorial integrity.

Paragraph 4: The responsibility of protecting national social solidarity

238. Article 66, paragraph 2 of the Constitution stipulates that every Congolese has the responsibility of protecting and reinforcing national solidarity, especially where it is threatened. In order to concretize this responsibility, a Ministry responsible for Solidarity and Humanitarian Affairs was created following the Global and Inclusive Agreement and under the terms of the Decree n° 03/027 of the 16th September 2003.

239. This Ministry plays a major role in that it provides help and assistance to the numerous victims of the war and natural disasters without any discrimination and throughout the provinces of the Republic.

240. The Congolese populations demonstrated their national solidarity during the problems in Bukavu in June 2004, by organizing spontaneous marches in Kinshasa and in all the provinces everywhere in the country, in solidarity with their Bukavu compatriots.

Paragraph 5: The responsibility to contribute to the defence of one's country.

241. Besides what is said in paragraph 250 of this Report, every Congolese has the responsibility of foiling any attempt by an individual or group of individuals to take over power by force or to exercise force in violation of the provisions of the Constitution.

242. From the practical point of view, the Congolese citizens demonstrated this commitment, notably by organizing a popular and

spontaneous defence movement during the attempt to take over the city of Kinshasa in September 1998.

Paragraph 6: The responsibility to work and to pay one's contributions to the State

243. The Constitution, in its Article 36, paragraphs 1 and 4, stipulates that employment is a sacred right and duty for each Congolese. Every Congolese has the right and responsibility to contribute, through labour, to national construction and prosperity.

244. Law n° 015/2002 of the Labour Code reiterates this Constitutional provision when it articulates in Article 2 that employment is a right and duty for each individual. It is a moral obligation for all those who are not prevented by age or inability to work as certified by a doctor.

245. The said Law has also provided measures enabling each Congolese to obtain the employment of his choice.

246. It should however be acknowledged that the efforts being deployed by Government to promote the creation and access to employment for all Congolese who are able to work are currently only producing rather limited results, considering that the country is just getting out of serious economic difficulties caused by more than a decade of political instability, social unrest and war, which destroyed the bulk of the economic fabric.

247. Pertaining to the responsibility of paying contributions to the State, Article 65 of the Constitution articulates that every Congolese is obliged to faithfully fulfil his obligations towards the State. Furthermore, he is duty bound to pay his income tax and other taxes.

Paragraph 7: The responsibility of protecting African cultural values

248. This responsibility is initially indicated in the legal provisions such as those relating to the Family Code where they refer to custom, for instance the settlement of issues relating to engagement, the celebration of marriages within the family and to dowry. The

Congolese concept of the family is itself typically African and differs from the Western type nuclear family. Moreover, Article 174 of the Family Code imposes on the parents and relatives the responsibility of providing mutual help, assistance and respect, in conformity with custom. The protection of African cultural values is also done through cultural manifestations such as the Negro Art Festivals (Lagos in 1977) or “Ngwomo Africa” (Kinshasa in 1996).

249. One can also mention the sense of hospitality which characterizes the Congolese people and their mutual solidarity during happy or sad events.

Paragraph 8: The responsibility of contributing to the promotion and to the realisation of African Unity

250. This responsibility is carried out notably through cultural manifestations which are organized by the Associations during the anniversary of the Organization of the African Union formerly and currently the African Union. The meetings between the members of Non-Governmental Organizations of the various African countries such as the Central African Bishops’ Conference on peace in the Great Lakes region, held in Kinshasa in August 2004, undoubtedly contributed to the promotion of awareness and African unity.

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	1°. Demography	
	2°. Ethnic Groups	
	3°. Languages	
	4°. Religions	
	B. Socio-Economic Indicators	
	a. At the Social Level	
	b. At the Economic Level	
	C. The Political Situation	
III.	General Legal Framework of the application of the African Charter on Human and Peoples' Rights	
IV.	Measures taken to guarantee the effective enjoyment of the rights protected by the African Charter on Human and Peoples' Rights	
	Article 1: Rights, Responsibilities and Liberties of human and Peoples' Rights	

- Article 2: Non-discrimination
- Article 3: Equality before the Law and equal protection of the Law
- Article 4: The right to life and to physical and moral integrity
- Article 13: The right to participate in the management of the Public Affairs of one's country
- Article 14: The right to property
- Article 15: The right to employment
- Article 16: The right to good health and well being
- Article 17: The right to education and to the freedom of cultural life
- Article 18: Protection of the Family, Elimination of discrimination against women and protection of the rights of the Child
- Article 19: Equality of all Peoples
- Article 20: Self-determination of all Peoples
- Article 21: The right of all Peoples to dispose of their riches and natural resources
- Article 22: The right of Peoples to integral development
- Article 23: The right of Peoples to peace and security
- Article 24: The right of Peoples to an environment favourable to development
- Article 25: Promotion of human rights
- Article 26: Independence of the Judiciary and the establishment of national institutions for the

promotion and protection of human rights

Article 27: The responsibility of respecting one's fellowmen and to regard them without discrimination

Paragraph 1: The responsibility to protect the harmonious development of the Family

Paragraph 2: The responsibility of placing one's physical and mental capabilities at the service of the national community

Paragraph 3: The responsibility of not compromising the security of the State

Paragraph 4: The responsibility of protecting national social solidarity

Paragraph 5: The responsibility to contribute to the defence of one's country.

Paragraph 6: The responsibility to work and to pay one's contributions to the State

Paragraph 7: The responsibility of protecting African cultural values

Paragraph 8: The responsibility of contributing to the promotion and to the realisation of African Unity