



# **Report**

## **Legal and Judicial Cooperation Programme**

### **Republic of Congo**

#### **Deceptions and recurring violations of human rights**

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**The Congolese Observatory of Human Rights (OCDH)** was created on 3 March 2003 in Brazzaville following the initiative of young journalists, jurists, lawyers, teachers and students, in reaction to massive serious human rights violations linked to the civil war during 1993 and 1994.

The Congolese Observatory of Human Rights is a member of the International Federation for Human Rights (FIDH), Organisation Mondiale Contre la Torture (OMCT- a world organisation against torture), and Union Inter africaine des Droits de l'Homme (UIDH). It has the Statute of Observer for the African Human Right Commission (Commission africaine des droits de l'Homme) and People of African Union (Peuples de l'Union Africaine).

**OCDH aims to:**

- Promote and defend human rights and fundamental freedoms, peace, constitutional state and good governance
- Protect the environment and populations of the forests
- Contribute towards the development of laws respecting with international standards relating to human rights
- Fight against impunity

**To achieve its programs COHR uses several means of action including:**

- Monitoring human rights violations via investigations carried out over long term periods;
- Publication of thematic reports, circumstantial and annual reports, press releases, urgent requests to warn and mobilise public opinion in favour of victims of the arbitrary and injustice;
- Lobbying in favour of victims of human rights violations before national public authorities, multilateral cooperation organisations, United Nations Human rights organs and African Union.
- Legal and judiciary assistance to victims of arbitrariness
- Organisation of seminars, symposiums, conferences, workshops, information, reflection and public awareness sessions on human rights and so on.

# fidh

International Federation for Human Rights

**The International Federation for Human Rights (FIDH)** is an international non-governmental organization for the defence of human rights as enshrined in the Universal Declaration of Human Rights of 1948. Created in 1922, the FIDH brings together 141 human rights organisations from 100 countries. FIDH has undertaken over a thousand missions of investigation, trial observations, and training in more than one hundred countries. It provides them with an unparalleled network of expertise and solidarity, as well as guidance to the procedures of international organisations. The FIDH works to:

- a) Mobilise the international community
- b) Prevent violations, and support civil society.
- c) Observe and alert.
- d) Inform, denounce, and protect.

The FIDH is historically the first international human rights organisation with a universal mandate to defend all human rights. FIDH enjoys observer status with the United Nations Economic and Social Council, (UNESCO), the Council of Europe's Permanent Committee, the International Labour Organization (ILO), and consultative status with the Africa Commission for Human and Peoples' Rights. FIDH is represented at the United Nations and the European Union through its permanent delegations in Geneva and Brussels.

FIDH facilitates each year the access and use of existing international mechanisms to more than 200 representatives of its member organisations and supports their activities on a daily basis. FIDH also aims to protect human rights defenders.

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The opinions expressed in this document do not reflect their official point of view but those of the FIDH.

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## **I. The legal and judicial cooperation programme in Congo**

### **1. Description of the programme**

The programme for legal and judicial cooperation organized by FIDH is entitled "Program for training educators in the standards and procedures for the protection of human rights in some African countries". The program is supported by the European Commission (European Initiative for democracy and human rights) and by the French Ministry for Foreign Affairs. The aim is to organize activities in ten African countries to strengthen the respect of law through education on and awareness of human rights, the administration of justice and conflict prevention.

In each country, the programme is organized in three different phases. At the start, there is a preparatory mission to assess the specific needs of each country. In the second phase, a training seminar is organized. Finally, each seminar will be evaluated, at least six months after, by a follow up mission.

### **2. Presentation of the Congo Human Rights Observatory.**

The Congo Human Rights Observatory (OCDH) was set up on March 3rd 1994 in Brazzaville by young journalists, legal scholars, lawyers, teachers and students who were reacting to the serious and massive violations of human rights connected with the civil war in 1993-1994.

The aims of OCDH are:

- to promote and defend human rights and fundamental freedoms, peace, a law-abiding state and good governance,
- to protect the environment and the forest populations,
- to help draft laws in keeping with international standards of human rights,
- to fight impunity.

To achieve these aims, OCDH has organized the following programs since 1994:

- A program for education in human rights and in a culture of peace and democracy
- A program for the defence and protection of human rights
- A program for legal and judicial assistance
- A program of assistance to victims of torture
- A program for the follow-up of and support to the election process
- A program for the prevention and management of conflict
- A program to fight impunity.

OCDH has several means of implementing these programs, such as:

- Monitoring human rights violations through permanent inquiries, followed up by reports.
- The publication of thematic, specific and yearly reports as well as press releases, urgent appeals to inform and mobilize public opinion in the support of victims of arbitrary acts and injustice.
- Lobbying the national authorities, organizations for multilateral cooperation and United Nations and African Union bodies for the protection of human rights, to support victims of human rights violations.
- Legal and judicial assistance to the victims of arbitrary acts.
- The publication of LUMIERE, its information bulletin for the promotion and defence of fundamental rights and freedoms.

The Congo Human Rights Observatory is a member of the International Federation of Human Rights Leagues (FIDH), of the Global Observatory against torture (OMCT) and of the Inter-African Union for Human Rights (UIDH). It has observer status with the African Commission for Human Rights and for the Peoples of the African Union.

### **3. The context in the Congo**

On August 15th 1960, the Moyen-Congo became an independent republic, with Fulbert Youlou as its President. His regime was violently anti-communist and fraught with extreme ethnic tension. In 1963, a general uprising known as the "three glorious" days made Fulbert Youlou hand power over to the military. A provisional government was set up with Massamba-Debat as President and Pascal Lissouba as Prime Minister. A single party system was set up, inspired by Marxism and called the "National Revolutionary Movement". In 1968, a military coup under Commander N'Gouabi removed Massamba-Debat from the presidency. N'Gouabi headed the National Council of the revolution that was then created. It was replaced by the Congolese Workers Party on December 31st 1969. Imitating the Chinese model, the country was then called the People's Republic of Congo. Ethnic and ideological struggle continued, and in 1977, Marien N'Gouabi was murdered during a plot organized by Massamba-Debat, who was murdered in turn and Colonel Joachim Yhombi-Opango became president.

In 1979, Yhombi-Opango was removed because of corruption and for not abiding by the party line. A few months later, Colonel Denis Sassou-Nguesso became president. Despite words that leaned towards Marxism and acts that were dictatorial, his regime developed towards a market economy. In 1990, the people of Congo rose up massively and made the PCT renounce Marxist-Leninist policies and President Sassou-Nguesso had to announce that there would soon be a multiparty system. He also accepted that a national conference be held from February to June 1991 whose main mission would be to redefine the fundamental values of the nation and to create the necessary conditions for a national consensus conducive to the existence of a State of Law. The conference set up three bodies: the Presidency of the Republic under Denis Sassou-Nguesso but some of whose prerogatives were curtailed, the transitional government with André Milongo as Prime Minister and the High Council of the Republic (CSR) made up of members of the different groups that attended the national conference. The tasks of the CSR are to ascertain that the decisions taken at the conference are implemented, to make up for the lack of a parliament and to adopt laws. On March 15th 1992, the constitution of the fourth Republic was adopted by referendum by 93.3% of votes. Free presidential elections were organized in August 1992. Pascal Lissouba, who chaired the Pan-African Union for social democracy (UPADS) won the election with 61.3% of the votes. In June 1993, UPADS won the first ballot in the legislative elections. The opposition contested the results, boycotted the second ballot and launched a civil disobedience campaign.

During the whole month of June, there was violent fighting between militias in Brazzaville. Very quickly, the struggle became ethnic confrontation. In July, President Lissouba declared a state of emergency, which led to strong protest. Despite the organization of a third ballot in October, considered satisfactory by both sides, more fighting broke out in November between different political factions in Brazzaville. Cease-fire was declared on January 30th 1994. This was supposed to include the disarmament of the militias, the signing of a non-aggression pact and the deployment of an interposition force. The opposition was given some ministries.

In June 1997, civil war broke out again between President Lissouba and former President Sassou-Nguesso. Part of the army joined Sassou-Nguesso's Cobra militia. On June 8th, Bernard Kolelas, mayor of Brazzaville who was the leader of the "Ninja" militia and who had remained neutral for some time, accepted to become Prime Minister. The forces in favour of Sassou-Nguesso, with the help of the army of Angola and the President of Gabon who was Sassou-Nguesso's son-in-law, took Brazzaville and President Lissouba had to flee. On October 25th, Sassou-Nguesso proclaimed himself president, abrogated the constitution and announced that a transition period would last for "three flexible years" ending in a decision taken by a national forum in January 1998.

Fighting resumed in August 1998 between governmental forces and Lissouba's supporters in the Pool, and in the South-West. At the beginning of May 1999, thousands of Congolese from the Pool and from Brazzaville, who had sought refuge in the DRC, came home. Many of them disappeared, though the authorities denied this and refused to accept an international inquiry. The return of the refugees had been organized on the basis of a three party agreement that decided on a humanitarian passage under the auspices of the High Commissioner for Refugees (HCR). The association of families of persons arrested by the police and said to have disappeared collected evidence given by many families on the circumstances of these disappearances.

Over a period from March to November 1999, over three hundred and fifty cases of disappearances were ascertained. This is what was called "the Brazzaville Beach affair". In November and December 1999, the government and the representatives of the militia of the opposition signed a peace agreement. This happened in the absence of Pascal Lissouba and Bernard Kolelas who had sought exile to avoid the judicial proceedings brought against them in the Congo. They stated that the agreement was a "farce". In December 2001 Pascal Lissouba was condemned in absentia by the High Court of Brazzaville to 30 years of forced labour for high treason and corruption. In March 2001 a national dialogue was organized to study a preliminary draft Constitution. The draft was adopted by the peace conference on March 26th, agreed by the National Council. In January 2002 a constitutional referendum adopted the constitution by 84% of votes cast; this gave the President of the republic greater powers.

On March 10th 2002, Sassou-Nguesso won the presidential elections by 89.4% of votes cast. The foremost opponents were unable to stand in the elections (see report no. 326 by FIDH, published on March 2002, Elections in Congo Brazzaville: an illusion). The government and the "Ninja" militia engaged in fierce fighting. The militia, loyal to the former Prime Minister Bernard Kolelas, were led by Reverend Ntumi. The first ballot in the legislative elections were in favor of the authorities, but the polling stations were closed earlier than usual because of the fighting between the government forces and the Ninjas in the Pool area. The second ballot, on June 23rd, gave the majority to the governmental party, despite a low turnout. Then local and municipal elections were organized and again the result was in favor of the ruling party. In March 2003, the government signed an agreement with the Ninja rebels so as to put an end to the fighting in the Pool area.

In the mean time, in December 2001, the unchallenged impunity of then perpetrators of the Brazzaville Beach crimes led FIDH and its French (the League of the Rights of Man and the Citizen) and Congolese (OCDH) members to appeal to the French legal authorities on the basis of the principle of "universal jurisdiction" in cases of crimes of torture, forced disappearances and crimes against humanity. In December 2002, the Republic of Congo announced that it would seize the International Court of Justice (ICJ) in the Hague to oppose the competence of French courts in the Beach case.

The ICJ, in its public decision of June 17th 2003, rejected the request of Congo-Brazzaville to stop the inquiry on the "Beach" massacre that had begun in France. A delegation of FIDH members went to Congo-Brazzaville; its members were Benoît Van der Meersch (Belgium) and Abdoul Gadiry Diallo (Guinea). The aim was to select topics for a seminar on legal and judicial cooperation and to get in touch with all the actors who could help with its organization.

The members of the mission met the following persons:

- the Foreign Affairs Minister, Mr. Rodolphe Adada
- the deputy Secretary General of the government, Zacharie-Charles Bowao
- the first President of the Supreme Court, Mr. Placide Lenga
- the Public Prosecutor for the Supreme Court Mr. Gabriel Beauclair Entcha-Edia
- the Secretary General of the Congolese Workers' Party Mr. Ambroise Edouard Noumazalay
- the Delegation of the European Commission
- the French embassy
- the Belgian embassy
- several trade unions
- organizations of victims (Families of Beach victims, "deportees" from Impfondo, victims of Dolisie)
- NGOs, the Congo Observatory for Human Rights (OCDH), The Justice and Peace Commission, Christian action for abolishing torture (ACAT).

## II. A highly concerning situation Preparatory mission [February 15-22 2002]

### 1. Context of the mission

The preparatory mission worked in an atmosphere of political tension. On January 20th 2002, one month before the arrival of the members of the mission, a new Constitution was adopted by a large majority in a referendum; it had been discussed at the national dialogue in the absence of the main leaders of the opposition. The text of the Constitution, "tailor made" for President Sassou-Nguesso, was violently criticized by civil society and denounced in a press release of FIDH on January 25th 2002.

The constitution gives the head of the executive exorbitant powers. As an example, article 132 paragraph 4 allows the President of the Republic to pass laws by decree after hearing the opinion of the Constitutional Court, if these concern the legislative field and have been rejected by parliament. Article 58 paragraph 7 requires that a candidate to the presidency reside for two years in Congo; this would make it possible to reject the candidacy of several members of the opposition.

Furthermore, the mission took place just before several elections, both presidential and legislative, that were crucial to the future of the country. Thus members of the mission were able to see how the elections were organized and to detect violations of international provisions concerning the protection of human rights. The organs of the state were totally involved in the campaign of the outgoing president; this violates the obligation for the administration to remain neutral. The press was closely controlled. The authorities intimidated the opposition parties. To give an example, on the very first day of the mission, a press conference organized jointly by the opposition candidates on February 16th 2002 at the Méridien hotel was prohibited by the Congolese authorities; this is a violation of freedom of expression, of assembly and association. FIDH also denounced the fact that elections were being organized while soldiers from Angola, Chad, the Central African Republic as well as former Zaire soldiers were on Congolese territory. These forces had played an essential part in the military victory of the present president. Constant violence and the impunity of the authors of human rights violation in Congo increased the atmosphere of fear that the members of the mission felt strongly.

### 2. Priority topics

Despite the political tension, the many meetings of the members of the mission showed clearly what the main problems are for human rights defenders and those who are responsible for applying the law. These concerns were mainly:

#### *The protection of human rights*

Generally, the human rights NGOs that the members were able to meet felt that the fundamental freedoms, protected particularly by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights (all ratified by the Congo) were continuously violated. To questions concerning these points, the Deputy Secretary General of the Government, Zacharie-Charles Bowao, answered that constitutional institutions such as the National Commission for Human Rights and the High Council for Communications would soon be installed. A study of the texts defining the operation of these institutions as well as their competence would allow the seminar to better understand the way in which they could reinforce a state of law.

#### *The administration of justice*

The persons whom the members of the mission met informed them of serious malfunctions of the judicial and police systems of Congo; a grave consequence of these malfunctions was the impunity of perpetrators. During the members' stay, many families of victims, particularly of those who disappeared during the Beach incident, were still waiting to hear the judicial result of the cases concerned. They did not, however, bring suit for fear of reprisal and because they felt that justice gave them scant hopes.

The First President of the Supreme Court whom the members of the mission met, stated that "judicial proceedings would immediately rekindle civil war, for each defendant was protected by his clan"; which confirms the general feeling of impunity. If the seminar were to study the malfunctioning of the Congolese judicial system, it could identify regional and international measures against impunity, i.e. quasi-judicial or judicial procedures as an alternative to the present system.

#### *Penitentiary administration*

A number of points were raised concerning the collapse of the penitentiary administration. The absence of prisons, due to destruction during armed conflict or the obsolescence of existing premises, can only be remedied by using other facilities for restricting freedom, such as police or gendarmes stations. A consideration of international standards applicable to places of detention would show that serious efforts must of necessity be made in this field.

#### *The exercise of citizenship*

The FIDH delegation went to Congo just before a long period of presidential, legislative and senatorial elections. Civil

society had already denounced the many violations of article 25 b) of the International Covenant on Civil and Political Rights by the Congolese authorities. This text provides that "periodical, honest elections, by universal and equal suffrage and by secret ballot, ensuring the free expression of the will of voters" must be organized. This is a topic that should be on the agenda of the seminar.

All the people whom the delegation met (governmental, judicial, local authorities, as well as representatives of political parties, journalists, NGOs) voiced their scepticism regarding the organization of a seminar before the end of elections. These elections create an atmosphere of suspicion, which, in a country that still feels the trauma of many internal conflicts, would not be conducive to a serene and constructive dialogue.

### III. Is the state ruled by law?

#### FIDH and OCDH seminar held in Brazzaville [28-31 January 2003]

The FIDH seminar, organized along with OCDH, was held in Brazzaville from January 28th to 31st 2003. There were more than 50 participants (see appendix) among which there were representatives of the government, officials in charge of applying the law (prison directors and police personnel), members of the judiciary (judges and lawyers), representatives of political parties, journalists, representatives of NGOs, members of diplomatic delegations.

The members of the FIDH delegation were Jacqueline Moudeina, a lawyer from Chad, Moustapha Cissé, president of the Mali Association for Human Rights (AMDH), and members of FIDH international secretariat, Antoine Madelin, permanent representative of FIDH with the United Nations, and Marceau Sivié, in charge of programs at the African bureau of FIDH.

The Director of the cabinet of the Minister of Justice and Human Rights opened the seminar after the statements of Parfait Moukoko, president of OCDH and of Moustapha Cissé. In round tables and workshops, the participants strove to define the best ways of strengthening a state of law in Congo, taking into account the present situation of the country, and in the light of international and regional provisions for the protection of human rights. Each topic was discussed after reports were heard and recommendations intended for the national authorities and for civil society were agreed the aim being to assess their implementation a few months later.

#### **Theme one: Exercising basic freedoms**

Antoine Madelin went beyond presenting the basic freedoms that are recognised by international and regional human rights protection instruments, ratified by Congo, by presenting the rights set out in the new Congolese Constitution, namely, freedom of speech, freedom of conscience and religion, freedom to demonstrate and freedom of assembly.

#### **Excerpts (unofficial translation) from the Constitution of January 2002:**

TITLE II  
FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS (...)

ARTICLE 7: The human being is sacred and has the right to life. The State has the absolute obligation to respect and protect him. Every person has the right to full development of his personality, with due respect for the rights of other persons, public order, morality and good mores.

ARTICLE 14: A person's domicile shall be inviolable. All searches must be ordered according to the terms and conditions set out by law.

ARTICLE 16: All citizens shall be entitled to freedom of movement throughout the national territory, and shall be entitled to leave, and return to the national territory at will, if not sought for criminal charges.

ARTICLE 17: The right of ownership and inheritance shall be guaranteed. No one shall be deprived of property, unless for public benefit and against fair compensation paid in advance under conditions set out by law.

ARTICLE 18: Freedom of belief and conscience shall be inviolable. Using religion for political purposes shall be prohibited. All efforts to manipulate or appeal to a person's conscience, and all servitudes, of any kind, imposed through religious, philosophical, political or sectarian fanaticism shall be punished by law.

ARTICLE 19: All citizens shall have the right to freely express and disseminate their opinions either orally, in writing, in the form of image, or through any other media of their choice. Freedom of information and communication shall be guaranteed. Censorship is prohibited. There shall be free access to sources of information. All citizens shall have the right to information and communications. Activities in these domains shall be carried with full respect for the law.

ARTICLE 21: The State, under conditions set out by law, shall recognise and guarantee freedom of movement and assembly, freedom to hold meetings, processions and demonstrations (...)

The participants responded to this presentation by citing precise examples of restrictions to these freedoms in Congo, e.g. restricted access to State radio and television for opposition parties and the civil society, and curtailed activities of human rights defenders. Antoine Madelin said that in a State ruled by law, certain restrictions could be placed on these freedoms but only if written into the law, in compliance with the fundamental principles of legality. Further, these freedoms could be limited, to the degree that the situation requires, to safeguard national security, public order, public health (e.g. prohibiting excision) or public morality (prohibiting lapidation) in compliance with Articles 18 and 19 of the International Covenant on Civil and Political Rights that Congo ratified in 1983. Exercising freedom of speech, furthermore, should not violate the rights or reputation of another person.

The participants asked Antoine Madelin to explain the various means to control restrictions imposed on freedoms in order to study the compliance of restrictions with international law, for instance:

- independent mechanisms for controlling the administration's measures to regulate freedoms. Antoine Madelin especially stressed the need to have a council for audiovisual media, a national human rights commission and an independent national elections committee;

- recourse to an independent, impartial, accessible legal system;

- recourse to regional and international mechanisms for evaluating respect of freedoms, such as the U.N. special rapporteurs on freedom of opinion and expression, freedom of religion, racism, human rights defenders, recourse to procedures involving reports and individual complaints to the U.N. Human Rights Committee, the various ILO mechanisms and the African Commission on Human and Peoples' Rights.

Some participants, who represented the governmental bodies, questioned the neutrality of the U.N. system and the rapporteurs saying that they all too often they seemed to favour the opposition.

**The seminar recommended:**

**To the civil society:**

- to systematically seek precise information on any violations of fundamental rights that they heard about;
- to use regional and international mechanisms for evaluating respect for rights and freedoms;
- to independently monitor the implementation of their recommendations as well as recommendations from treaty mechanisms.

**To the Congolese authorities,**

- to ensure respect for international instruments ratified by Congo, particularly the International Covenant on Civil and Political Rights and their primacy over national law;

- to ratify the additional protocol to the International Covenant on Civil and Political Rights that authorises submission of individual complaints to the Human Rights Committee after all paths of internal recourse have been exhausted;

- to update and ensure compliance of national laws and regulations, especially the Penal Code and the Code of Penal Procedure, including international commitments made by Congo, in particular by recognising the universal competence of Congolese courts for crimes that fall under the Rome Statute and other violations covered by international conventions;

- to cooperate with the conventional bodies of the United Nations and the African Commission for Human and Peoples' Rights, which are responsible for ensuring respect and implementation of international conventions that have been ratified by the States, by providing them with the initial and periodical reports that must be submitted by the Republic of Congo;

- to extend a standing invitation to the special mechanisms of the United Nations Human Rights Commission to come to Congo;

- to set up an independent, transparent national administrative bodies to supervise questions related to audiovisual media, publishing, and the dissemination of information on the Internet;

- to explicitly ban all encouragement for national, racial or religious hate insofar as it incites discrimination, hostility or violence, which are forbidden by law, and to allow for recourse to judicial authorities to fight solicitations of this sort and duly condemn the perpetrators.

**Theme Two: Human rights institutions**

**1. The national human rights commission**

The Constitution, adopted by the Congolese people by referendum in January 2002, provides for the creation of a national human rights commission. It was not until a year later (18 January 2003), in other words, one week before this seminar, that an organic law on the organisation of the commission was set up. The participants have had the opportunity to read this law.

**Excerpts from the Constitution of January 2002**

TITLE XIV on the National Human Rights Commission

ARTICLE 167: A national human rights commission shall be created.

ARTICLE 168: The national human rights commission shall be a body responsible for the promotion and protection of human rights.

ARTICLE 169: The missions, organisation and functioning of the national human rights commission shall be determined by law.

Human rights commissions have been set up at the national level in various parts of the world, especially in Africa. The FIDH representative to the United Nations, Antoine Madelin, emphasised the importance of the role they have to play.

The purpose of the national human rights commissions is to protect and promote these rights by carrying out certain functions: counselling governments using apolitical analyses of the question of preventing human rights violations, solving disputes through judicial decisions or mediation, education in human right, documentation and research.

The value of such commissions is that their legal and constitutional structure equips them to act alongside the governmental sectors, in a manner that is different but complementary to the work of the NGOs. Antoine Madelin reminded the group of the 1991 "Paris Principles" that can be used as guidelines for implementation texts to guarantee the independence and effectiveness of the commissions.

The participants read the organic implementation law of 18 January 2003 and acknowledged its broad concurrence with the Paris Principles, i.e.:

- Article 2 of the law stipulates that the CDH (human rights commission) shall be "*an independent institution with authority to hear matters without higher referral*";
- The missions of the CDH in relation to the promotion and protection of human rights (Articles 4 and 5) meet the criteria of the Paris Principles;
- Title III of the law on the composition of the CDH shows respect for the needs for independence, integrity and pluralism;
- Chapter VI grants CDH quasi-judisdictional powers, so that any person can appeal to it.

After studying this law, the NGOs at the seminar wondered about how to collaborate with this new institution. They decided to wait until the CDH had been established and was actually functioning before expressing their opinion on its importance in Congo Brazzaville.

#### **Excerpts from the "Paris Principles".**

##### **Competence and responsibilities**

(...) 2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

3. A national institution shall, *inter alia*, have the following responsibilities::

- a) to submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights. The national institution may decide to publicise them.
- b) to promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c) to encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d) to contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e) to cooperate with the United Nations and any other agency in the United Nations system, the regional institutions and the national institutions of other countries which are competent in the areas of the protection and promotion of human rights;
- f) to assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- g) to publicise human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

##### **Composition and guarantees of independence and pluralism**

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights,

(...)

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not be subject to financial control which might affect this independence.

3. In order to ensure a stable mandate for the members of the institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

The seminar participants recommended the earliest possible establishment of the national human rights commission, as an emanation of the Constitution of 2002. The commission should abide by the Paris Principles and be run on the following four principles:

- independence: the Commission should be free of any interference concerning its budget, personnel or output. It should not be the spokesman of the government or the NGOs;

- pluralist composition: the Commission should reflect the various components of the civil society, i.e. members of administrations affected by the implementation of human rights, and representatives of independent human rights NGOs, associations, unions, religious movements, minority groups, the so-called "vulnerable" persons, etc.

- transparency in its consultations;

- accessibility for all of the civil society.

The Congolese authorities should, furthermore, guarantee that the human rights NGOs and other organisations representing the civil society that make up these NGOs, shall be independent of the government and exercise their activities objectively.

## **2. Independent national electoral commission**

### **A. Protection of citizenship**

Mr. Moustapha Cissé, President of the Malian human rights association and chairman of the Malian CENI (Malian independent national electoral commission) in 2001-2002, introduced this theme by pointing out that the right to free, transparent elections is guaranteed by the International Covenant on Civil and Political Rights whose Article 25 states that *"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: [...] to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot guaranteeing the free expression of the will of the electors [...]"* and by the Constitution of Congo.

#### **Excerpts from the Constitution of January 2002**

ARTICLE 3: National sovereignty shall belong to the people who shall exercise it through representatives elected by universal suffrage and through referenda. Sovereignty cannot be exercised by a citizen or by a fraction of the population.

ARTICLE 4: Voting shall be universal suffrage, direct or indirect, free, equitable and secret. The method, eligibility, and incompatibilities shall be stipulated in the law.

Certain countries have set up independent national election control commissions (CENI) to ensure respect of this right. Mr. Cissé brought out the role played by these Commissions by referring to the Malian example where the commission was overhauled after the failure of its work in the 1997 legislative and presidential elections. CENI, which was created in 1997, was given responsibility for ensuring the neutrality of all voting operations, but as a young organisation created just a few months earlier, it was not adequately prepared for the elections and therefore was not able to provide the necessary financial and technical management.

After that experience, the government and political parties started considering a joint system in which the administration would maintain its traditional functions, i.e. organise the elections, and CENI would serve as an independent body with a supervisory role and would guarantee the transparency of the technical operations. Congo could learn from this experience when it establishes a CENI. The electoral process should be supported by close cooperation and consultation between the territorial authorities that handle the technical aspects of the elections and the CENI, which is responsible for supervising the whole electoral process. The participants wondered how independent the CENI could be if it relied on public sources for material and financial support and on the representativeness of the Commission to control the elections.

In response to these questions, Mr. Cissé explained several modes of funding for these commissions. In Niger, for instance, the CENI is funded by funding agencies, not by the State. On the other hand, in Mali, in 1997, the CENI was

funded jointly by the State and international organisations whilst in 2002 it received public funding although very often, this ultimately could be traced back to a funding agency. Regardless of the financial model, Mr. Cissé felt that the important point was to ensure healthy, transparent financial management.

One member of the opposition party, the *Rassemblement pour la démocratie et le développement*, brought up the problem of intimidation during electoral campaigns in Congo, highlighting the lack of cooperation with the opposition during the pre-electoral campaign. Observers are only involved during the voting process proper, although problems of corruption, tampering with electoral lists, and changing constitutional provisions occur earlier in the process. He felt that it was essential to have CENI monitor the pre-election phase in Congo.

The representatives of the government countered that when the opposition participates in CENI activities, it systematically disagrees with the results obtained, which irremediably discredits the work of these institutions.

**The participants recommended that the Congolese authorities:**

- systematically set up transparent, independent, pluralistic commissions to monitor the whole electoral process, i.e:
  - campaign preparation,
  - campaign operations,
  - elections *per se*,
  - proclamation of the results,

-ensure the presence of national and international observers empowered to guarantee the credibility and transparency of the elections.

**B. Citizens' rights**

Every citizen should know his rights. This requires training in human rights, a subject that should be taught by representatives of the society, especially teachers in schools and universities, as well as by NGOs. More human rights NGOs should develop human rights awareness-building mechanisms. It goes without saying that the members of these NGOs should give the example and respect the national laws.

But it is up to the State to shoulder the main responsibility for providing training in human rights. Christian Mounzé, OCDH Secretary General, reminded the group that the United Nations Decade for Human Rights Education started in 1995, but that Congo, unlike other African States, had not drawn up any national plan. In other words, human rights is not being taught in the schools, and there is no legal sector devoted to international law on human and humanitarian rights.

As an example of what can be done, Mr. Cissé referred to Mali where training centres in human rights have been created to provide two sorts of instruction:

- elite training for downstream trainers of other human rights activists,
- extension work for the public at large in national languages using entertaining methods, e.g. theatrical sketches, etc.

**The participants recommended that the Congolese authorities:**

-create a section devoted to human and international law on human rights in the Law Faculty,

-make the national human rights commission, that has been provided for in the 2002 Constitution, develop initiatives and awareness campaigns on human rights. The commission is to elaborate, collect and disseminate documentation on human rights and encourage research and training in this field.

**Theme Three: internal administration of Justice**

Moustapha Cissé spoke of the fundamental role of the judiciary and the judges in a democratic state, and the underlying principles on which a State ruled by law is based.

The judiciary is one of the three fundamental branches of a State ruled by law, the others being the legislature and the executive. Human rights can only be ensured in such a regime if these powers are truly separate and can form a system of weights and counterweights. But in many countries, the executive branch interferes in the judicial system, thus impeding democratic rule.

The judiciary should settle conflicts among individuals, the actors in everyday social life. In carrying out his mission, the judge has an educational role to play since his decisions should apprise the parties involved of the reasons for the sanction being meted out.

A good judge can only play this role if he has all the necessary qualities, namely, impartiality, integrity, and honesty. Further, a judge is bound by an obligation of restraint which prohibits him from expressing opinions in public. He is also not allowed to go on strike or run for political office. In exercising his function, he must respect a code of ethics that obliges him to be governed exclusively by the law and his deepest convictions. As the custodian of fundamental rights and freedoms, the judiciary, through its decisions, participates in protecting the overriding principles of democracy, namely, the primacy of law and equal rights of all citizens before the law. Once a law is voted in and enters into force, it

should have overriding authority and should govern relations within the society. All decisions rendered by the judges should be based on the law.

On the other hand, national juridical mechanisms should make it possible to control the compliance of the laws with the international human rights protection instruments.

#### **Excerpts from the Constitution of January 2002**

ARTICLE 8: All citizens shall be equal before the law. Discrimination based on origin, social or material position, racial, ethnic or regional appurtenance, sex, educational level, language, religion, philosophy or place of residence shall be prohibited except under conditions set out in Articles 58 and 96. Women shall have the same rights as men. The advancement and representation of women for all political, elective and administrative functions is guaranteed by law.

#### **1. The fight against arbitrary arrest and detention**

##### **Excerpts from the Constitution of January 2002**

ARTICLE 9: The freedom of the human person shall be inviolable. No person may be arbitrarily accused, arrested or detained.

ARTICLE 138: No person may be arbitrarily detained. The judiciary, as the custodian of fundamental rights and freedoms, shall ensure respect for this principle under conditions set out by law.

##### **Excerpts from the Penal Code**

ARTICLE 341 – Persons who, without orders from the instituted authorities, and excepting cases for which the law orders the accused to be detained, arrest, detain or sequester any person (...) shall be punished.

Arbitrary detentions and arrests impair the basic freedom of movement which is protected, particularly, by Article 9 of the Universal Declaration of Human Rights that states: *No one shall be subjected to arbitrary arrest, detention ....* But Article 29 of this Declaration places certain limits on this right. Thus, for reasons based on “*just requirements of morality, public order and the general welfare in a democratic society*” the competent authorities can restrict the physical freedom of movement.

In application of the above, the Congolese Code of Criminal Procedure only authorises arrests in the event of *flagrante delicto* or by virtue of a mandate from a judge, based on Article 59 of this Code. Similarly, police detention and pre-trial detention are covered by Congolese legislation and must be ordered in a decision taken by a judge.

The participants pointed out that authorities who are empowered to arrest or place suspects in police or pre-trial detention do not always respect the law upon which their authority is based.

#### **Recommendations by the participants after the workshop sessions on tangible cases:**

##### **to the Congolese authorities:**

- to effectively apply the national law, that respects the international standards on human rights guaranteeing the rights of persons subject to the law (*les justiciables*);
- to uphold the principle of individual penal responsibility by condemning and controlling the police’s “hostage-taking” practices which entails arresting relatives, friends or acquaintances instead of the suspect;
- to control persons who make arrests outside of the legal hours;
- to create a mechanism to appoint “judicial police officers” by amending Law no. 10/83 of 27 January 1989 which changes certain articles of the Code of Penal Procedure.

#### **2. The right to a fair trial**

The right to a fair trial is guaranteed in Congo through both national and international juridical instruments.

The participants pointed out that certain national measures, particularly the preamble to Article 9 of the Constitution of 20 January 2002, Articles 97, 108 and 268 of the Code of Penal Procedure (Law 1-63 of 13 January 1963) and the provisions of Law 026-92 of 20 August 1992 on the organisation of the lawyers’ profession, reflect international provisions that guarantee the right to a fair trial, in particular Article 10 of the Universal Declaration of Human Rights, Article 14 of the International Covenant on Civil and Political Rights, and Article 7 of the African Charter on Human and Peoples’ Rights.

### Excerpts from the Constitution of January 2002

ARTICLE 9:(...) Any accused person shall be assumed innocent until proven guilty through a procedure that guarantees respect of the rights of the accused.

ARTICLE 136: The judiciary shall be independent of the legislature.

The participants also pointed out certain gaps in the national texts, e.g. the Code of Penal Procedure does not require a lawyer to be present as of the preliminary investigation. Furthermore, there are certain provisions in the national law that are not well applied, or not applied at all.

### Recommendations by the participants after the workshop sessions on tangible cases

#### To the Congolese authorities:

- effectively apply national legislative and constitutional standards that conform to regional and international provisions on the right to a fair trial, in particular Article 10 of the Universal Declaration of Human Rights, and Articles 10 and 14 of the International Covenant on Civil and Political Rights, and Article 7 of the African Charter on Human and Peoples' Rights;
- revise the various codes, particularly the Penal Code and the Code of Penal Procedure, to make them conform to the international instruments on the protection of human rights and, further along these lines, encourage the work of the revisions commission that was set up by the Ministry of Justice;
- as part of the aforementioned reform, make it mandatory for a lawyer to be present as of the preliminary police investigation, in compliance with Article 1 of Law 026-92 of 20 August 1999 on the organisation of the lawyers' profession;
- ensure that the civil servants responsible for applying the laws know and respect national and international law and, for this purpose, organise obligatory ongoing training on the protection of human rights, especially for judges, lawyers, and other legal personnel, etc.;
- create information offices in the various courts of justice so that persons subject to the law (*les justiciables*) become more familiar with the legal procedures.

#### To the representatives of the civil society:

- encourage citizen information and training on legal matters, in particular by creating "legal clinics" and organising seminars.

### 3. The fight against corruption in the judicial system

Before addressing the problem of corruption in the judicial system and how to deal with it, Mr. Mustapha Cissé sought to define the term. Etymologically, corruption comes from the Latin "*corruptus*", which evokes the destruction of all that is sound and healthy (putrefaction, decomposition, adulteration, deformation, depravation). There exist several definitions, or attempts at definitions, depending on the circumstances. Corruption can be:

- "An invitation by dishonest means to act contrarily to the duties of one's position".
- "Conduct that deviates from the official duties of someone in public office with a view to obtaining personal benefit (private, for family or for friends); this may be in the form of money, status, or of contravening rules laid down to restrict conduct aimed at achieving some personal advantage".
- Put more simply, corruption can be seen as an "abuse of public authority in order to gain private profit".

Under Article 177 of the Congolese Penal Code, corruption is defined by the fact, for a public official or a member of the judiciary, of "*soliciting or accepting offers or promises, of soliciting or receiving gifts or presents (...) for committing or failing to commit an act pertaining to his or her function or office, which, whether it is right or not, is not subject to payment*".

It is clear from this definition that corruption should not be confused with other kindred offences, such as embezzlement or influence peddling. For example, under Congolese law, embezzlement is the fact, for a civil servant, of receiving, demanding or ordering the "*payment of duties, taxes, contributions, monies or wages or emoluments that he or she knew not to be due, or were in excess of what was due*" (Article 174).

According to Mr. Cissé, no State is immune from the scourge of corruption, with its devastating effects on the functioning of all branches of the administration, dangerously undermining their economic and political development.

The specific case of corruption in the judicial system is becoming a major problem for States and Human Rights activists, owing to the important part played by the judiciary in economic, social and cultural development. In Africa the civil society is taking action by denouncing corruption in the judicial system, and its impact on the country's development: flight of

investors, flight of capital, inequalities, resurgence of violence, etc. According to the participants in the seminar, in the Congo politicians and members of the legal community are unanimous in recognising the existence of corruption in the judicial system, even if it is difficult to pinpoint formally the forms it takes. Rigged trials still exist, crooked professionals also, and decisions of justice that do not honour the Rule of Law are handed down by the highest courts.

Despite that, Africa is witnessing an irresistible development of the law, and the power of judges, who, in the name of the proclaimed Rule of Law, have become the main actors in the social and political life of our respective countries. As emphasised by the President of the Mali Bar Association at the solemn opening session of the Courts and Tribunals in 2002/2003, *"Nowadays, the emergence of freedoms, the collapse of traditional, family, spiritual and other regulations, the increasing feeling of having rights and of wanting to have them respected, the awareness of one's rights and the appetite for justice in all areas of private life, has led to a judicial explosion. There are more and more lawsuits. The desire that the law be effectively, and not only virtually applied to all has led to the "judicialisation" of public life (...), but (...) suddenly the law itself, which is the instrument par excellence of pacification of individual and social relations, has appeared to be a possible factor of disorder"*.

In its pronouncements and its acts, the judicial system recognises that all is not well, even going so far as to admit publicly that it is corrupt. Nevertheless *"it still appears to be the only area on which the sword of justice seems reluctant to fall"*. And yet, despite the pernicious nature of acts of corruption in the judicial system, in both domestic and international law there exist legal provisions by which it would be possible to stamp out the corruption phenomenon.

As Mr. Cissé points out, in Mali, in the face of the rise of the phenomenon and its devastating impact on the economy, and spurred on by the international financial institutions and the pressure of the civil society NGOs, the 3<sup>rd</sup> Republic authorities have taken a certain number of measures, including the following: opening a debate on the subject, joining with the actors of the judiciary in making a frank and honest diagnosis of the situation, re-examining legislation on the legal action that can be taken in cases of corruption and economic and financial offences, including the handling of cases and the decisions handed down. The Congo should take similar steps. The Human Rights activists present at the seminar are firmly convinced that the Congo is full of magistrates, lawyers and legal professionals who are both competent and honest. It is with such people that they wish to build a legal system capable of ensuring that all are equal before the law, in a democratic State governed by the rule of law.

#### **4. Training the agents and auxiliaries of justice.**

The term "justice" conjures up a sense of rectitude, equity, impartiality and honesty. This is not only a matter for the magistrates: it also concerns those who assist them, the lawyers and other legal personnel: clerks of the court, sworn-in police officers ("officiers de police judiciaire, OPJ"). The participants in the seminar discussed the appropriateness of the training of the police officers in terms of the law enforcement role they have to fulfil, while complying with the principles of Human Rights and the national legislation.

Before the colonial era, justice was delivered by the king or by the chiefs, who carried out the OPJ functions. They also had employees who carried out investigations in the field to collect evidence. Under the colonial regime, OPJ functions were taken over by the military, army and navy. In the 1940s, the OPJs became civil servants ("administrateurs civils"). Up until 1960 training courses existed, but the curriculum contained no reference whatsoever to Human Rights.

Since independence in 1960, many magistrates are still trained at the École nationale de la magistrature (ENM) in France, and many OPJs have been trained in Cuba, Czechoslovakia, China, the USSR and Romania. There are however considerable differences between these various schools.

Nowadays, according to the seminar participants, the OPJs are trained under relatively satisfactory conditions, under the old penal code. Repressive justice is however becoming international, and it is now essential that specific tuition be provided in international criminal law and international law on Human Rights. The civil society seminars and the training provided by the French co-operation system are not sufficient, and in any case are held in French, whereas many police officers only speak lingala.

#### **Recommendations by seminar participants following workshop sessions on specific cases.**

For the OPJs to be truly professional, they should:

- Possess good professional knowledge;
- Have some degree of autonomy, and be capable of handling a police investigation from start to finish.
- Understand, speak and write the working language.
- Possess a methodology and know-how.
- Be prompt in solving professional problems.
- Receive civic training, know the international instruments for the protection of Human Rights.

#### **Fourth theme: Alternatives to national justice**

When domestic justice is corrupt or lacking in impartiality, or when impunity becomes the norm, there are judicial alternatives by which victims can voice their right to appeal to international or foreign tribunals. The study of this theme during the seminar should enable the civil society to learn about such mechanisms, in order to make use of them in case of need.

## 1. The permanent International Criminal Court

Marceau Sivieude reminded participants that the International Criminal Court (ICC) is the first permanent international criminal Court to have *“the power to exercise its jurisdiction over persons for the most serious crimes of international concern”*, as indicated in its Statute adopted on 17 July 1998. The Congo signed the Statute of Rome on 17 July 1998, but has still not ratified it (at the time of the seminar).

The ICC has jurisdiction for judging war crimes, crimes against humanity and crimes of genocide, committed by a national of, or on the territory of a State having ratified the ICC Statute (State Party), or having specifically accepted the jurisdiction of the Court. The ICC, when a case is referred to it by the United Nations Security Council, can also have jurisdiction for judging the authors of the same crimes regardless of their nationality and of the territory on which they were committed.

The Court can only deal with crimes perpetrated after the entry into force of its Statute, on 1 July 2002. Under the complementarity principle laid down in its Statute, the Court has subsidiary jurisdiction: it cannot replace national courts, it complements them, acting solely when States do not wish or do not have the capacity to act themselves.

The civil society has an extremely important role to play in the emergence and the functioning of the Court.

- The civil society must see to it that the Court applies to all citizens, in order to attain its first aim, universality. It must campaign actively for the ratification by States of the ICC Statute. At the date of the seminar, the Congo had signed the ICC Statute on 17 July 1998, but had still not ratified it.

- The civil society must mobilise itself to encourage States to adopt legislation for adapting domestic law to accommodate the ICC Statute, including not only the definition of the crimes and the general principles of international criminal law, but also the provisions relating to co-operation between States and the organs of the Court. Without such harmonisation of their Penal Code, the principle of complementarity specified in the ICC Statute, which places primary responsibility on the States for judging authors of crimes under the Statute, would not be able to apply. Marceau Sivieude reminded seminar participants that the new Congolese Constitution stipulates in its Article 11 that *“war crimes, crimes against humanity, the crime of genocide are punished under the conditions laid down by law. The statute of limitations does not apply”*. The Penal Code however still contains no definition of these crimes. And at the date of the seminar, no legislation for accommodating the ICC Statute in the Congolese domestic legislation was planned.

Marceau Sivieude informed seminar participants that FIDH and the International Coalition for the International Criminal Court, of which it is a member, could help the Congolese civil society in its campaign for ratification and for the adoption of legislation for accommodating the ICC Statute. The setting up of a Congolese coalition could provide the means of giving effect at national level to more global action taken by the international NGOs.

- Lastly, as the ICC Prosecutor can decide on his own initiative to take up a case brought to his knowledge by the NGOs, the latter can henceforth make use of this mechanism for fighting against impunity, as a possible judicial form of action following Human Rights violations. Investigation reports, witnesses' statements and legal analyses must take this new instrument into consideration.

## 2. Universal jurisdiction

Alongside the setting up the ICC, there is another branch of international criminal law that has developed recently, in particular thanks to action by the NGOs: universal jurisdiction. Universal jurisdiction allows, indeed can oblige States to prosecute suspected authors of the most serious crimes (war crimes, crimes against humanity, genocide, acts of torture, etc.) regardless of where the crime was committed, of regardless of the nationality of the author or of that of the victim. This jurisdiction is exceptional, because in principle national courts can only judge crimes committed on national territory or by one of its own nationals abroad.

Universal jurisdiction springs not only from the provisions of international conventions, in particular war crimes (1949 Geneva Conventions) and the crime of genocide (1948 Convention), but also from precedent, as for the crime against humanity. For instance, the 1984 Convention on Torture obliges all States Parties to establish their jurisdiction in order to deal with crimes of torture in the vent of the presumed author being on its territory. In 1961 the Supreme Court of Israel was the first national court to base itself on universal jurisdiction for sentencing an individual, Adolf Eichmann, for crimes against humanity committed in Europe during the Second World War. At the time it held that *“it is the universal nature of international crimes that gives each State the power to bring to justice and to punish those who took part in them”*.

The mechanism of universal jurisdiction was then for a time somewhat forgotten, but came into prominence again when a Spanish judge issued a warrant of arrest against Augusto Pinochet for crimes committed, mainly in Chile, against Chilean nationals. This criterion of jurisdiction has since then enabled the prosecution and conviction by western courts of numerous criminals, in particular the authors of the Rwanda genocide by Belgian courts. On the same grounds, in February 2000 a Senegalese judge indicted the former Chadian dictator, Hissène Habré, for acts of torture. Despite the case being dropped in Senegal, legal proceedings are still under way, in particular in Belgium.

In practice the application of the universal jurisdiction principle comes up against several obstacles: the lack of adaptation of domestic law to accommodate international provisions with respect to it; restrictions concerning certain criteria for inclusion, such as the presence of the author of the crime on the national territory; opposable immunities;

political or diplomatic interference that often limit its effectiveness.

Despite such resistance, the national and international civil society has a very important role to play in educating the population, and in making use of such a possibility when the national courts cannot or will not respond to the rights of victims calling for redress. The civil society must also wage a major campaign calling on the Congo to introduce the mechanisms of universal jurisdiction in response to international instruments, thereby meeting its international obligations; this is also a way of fighting impunity in cases of exaction, which shock the international community, the Congo in particular.

By way of illustrating the importance of the exercise of universal jurisdiction and its use by the civil society, Mrs. Jacqueline Moudeïna, a lawyer and Chadian activist, who was awarded the 2002 Martin Ennals prize for her action for Human Rights, addressed the meeting on her experience on the subject, and on the Hissène Habré case.

#### **Case n° 1 – The Hissène Habré case**

Hissène Habré was President of the Republic of Chad from 7 June 1982 to 1 December 1990. His single-party regime was characterised by numerous violations of Human Rights, in particular against certain ethnic groups. More specifically, the “Direction de la documentation et de la sécurité” (DDS), which reported directly to the President of the Republic, was the privileged instrument of repression. In his capacity as Head of State and head of the Government, responsible for all the administrative services of the State, Supreme Commander of the FAT (Chadian armed forces), and head of the single party (UNIR), Mr. Hissène Habré was the ultimate authority responsible for law and order and for the application of all legislation on the whole of the territory of Chad. Hissène Habré therefore had both the legal and the political authority required for opposing and preventing the campaigns of repression, torture, arbitrary arrests, forced disappearances and extra-judicial executions that were committed during the eight years he was in power.

The exact number of Habré’s victims is not known. An Commission of Enquiry appointed by the Deby government accused Habré of being guilty of 40,000 political assassinations and of having tortured 200,000 people. Most of these crimes were committed by his secret police, the “Direction de la documentation et de la sécurité (DDS)”, consisting of 8,000 men. For 5 years the Chadian Association of the victims of political oppression under Habré worked discreetly collecting information and making files on all the serious cases of Human Rights violations. In 2000, the Chadian Human Rights NGOs, the Chadian league for Human Rights (LTDH) and the Chadian Association for the protection of Human Rights (ATPDH) contacted FIDH and Human Rights Watch (HRW) with a view to taking legal proceedings against Hissène Habré in Senegal, his country of exile. They based themselves on the 1984 International Convention on Torture. Unfortunately the Dakar Cour de Cassation declared in 2001 that Senegalese courts were not able to judge the case, as the provisions of the Torture Convention had not been incorporated into domestic law.

As soon as the Senegalese decision was announced, the Chadian associations, FIDH and HRW accompanied certain victims who had survived Hissène Habré’s dictatorship in lodging a complaint as “partie civile” in Belgium. A Belgian judge therefore started the examination procedure. An international rogatory commission was set up in 2002. Thanks to the presence of the Belgian judge at N’djamena the victims were able to bear witness massively. The examination phase, which for a time was blocked owing to internal political questions in Belgium regarding the limits to be put on the principle of universal jurisdiction, is under way.

Marceau Sivieude gave a presentation to the seminar on the Brazzaville Beach case, and the judicial developments made possible by the universal jurisdiction principle.

#### **Case n° 2 – The Brazzaville Beach case**

The facts: between 5 and 14 May 1999 large scale disappearances occurred among people who had taken refuge in the pool region – a tropical forest area south of Brazzaville – during the 1998 civil war. These persons had moved over to the Democratic Republic of Congo and had returned to Congo Brazzaville via the river port of Brazzaville, thanks to a tripartite agreement defining a humanitarian corridor under the auspices of the High Commissioner for Refugees (HCR). The association of relatives of the persons arrested by the authorities and declared missing has recorded and collected the testimony of many families on the circumstances of the disappearances. From March to November 1999 over three hundred and fifty disappearances have been recorded.

In view of the inertia of the Congolese government regarding the case, in which the highest authorities of the State are implicated, on 5 December 2001 FIDH, the French League for Human Rights and OCDH lodged a complaint as “partie civile” with the Public Prosecutor of the Paris “Tribunal de grande instance” against Mr. Denis SASSOU NGUESSOU, President of the Republic of Congo, General Pierre OBA, Minister for the interior, public security and the administration of the territory, Mr. Norbert DABIRA, Inspector General of the Armies, residing in France, and General Blaise ADOUA, Commander of the Republican Guard, known as the Presidential Guard, as well as all other persons who might be revealed by the examination procedure. A “réquisitoire contre X” (indictment of person or persons unknown) was issued. The complaint specifies that at the date of the referral General Norbert Dabira’s presence on French territory was established. The complaint was lodged on the grounds of universal jurisdiction for torture, forced disappearances and crimes against humanity (Disappearances constituting crimes of torture (Article 689–1 and 689–2 of the Code of Penal Procedure and the Convention against Torture) and constituting crimes against humanity (Article 212-1 of the Penal Code).

During 2002 FIDH, LDH and OCDH associated themselves as "partie civile" with the complaints filed by the victims. A judicial enquiry was opened and two examining magistrates were appointed by the Meaux "Tribunal de grande instance": Mrs. Odette-Luce BOUVIER and Mr. Jean GERVILLIE.

On 16 March 2002, Mr. Dabira was located on French territory, at his domicile. On 23 May 2002, by rogatory commission, Mr. Dabira was arrested at his domicile, held in police detention until 18H00 and questioned, and then released. Mr. Dabira chose Me Vergès to represent him. On 19 June, summoned as "témoin assisté", General Dabira, claiming to be unable to travel following the recent events in Congo Brazzaville, was not able to be heard by the French judiciary. The hearing was postponed to the 8 July 2002. On 10 September 2002, the Congolese authorities refused to allow General Dabira to be questioned by the judiciary, and stated that they rejected the universal jurisdiction of France, and that they wished to refer the conflict of jurisdiction between France and the Congo to the International Court of Justice of the Hague. On 18 September 2002 the Meaux examining magistrates sent a fax to the French Ministry of Foreign Affairs requesting a written statement by Sassou Nguesso. On 25 September, after an official visit to Paris, the President of the Republic of Congo left France without responding to their request. On 9 December 2002, the Republic of Congo submitted to the International Court of Justice "a dispute with France" concerning the procedure that was under way. In January 2004 an international warrant of arrest was issued against Mr. Dabira. On 1 April 2004 Jean-François Ndengue, Director of the national police, was placed in police detention, indicted for crimes against humanity, and placed in provisional detention by the "Juge des libertés et de la détention". And yet, by a submission to the jurisdiction for urgent matters (recours en Référé liberté) by the Public Prosecutor of the MEAUX Tribunal de grande instance, which was acted on that same night, Mr. NDENGUE was released, and left for Brazzaville a few hours later...

**The seminar participants recommended:**

**To the Congolese authorities:**

- To ratify without delay the international conventions relating to the protection and promotion of Human Rights, especially for furthering the fight against impunity, the Statute of the International Criminal Court and the Protocol of the African Charter on Human and Peoples' Rights setting up an African Court for Human and Peoples' Rights.
- To introduce into domestic law the Statute of the International Criminal Court by passing suitable legislation covering both the obligations concerning co-operation between the ICC and the State, and the definition of the crimes and the general principles of international criminal law.
- To revise the various Codes, in particular the Penal Code and Code of Penal Procedure, to bring them into line with the international instruments ratified by the Congo, and with international custom regarding the legislative definition of international crimes, such as the crime against humanity and war crimes.

**Meetings with the authorities on the occasion of the seminar.**

It is important to record the broad co-operation of the Congolese authorities with the FIDH delegation on the occasion of the seminar. The President of the Republic, Sassou Nguesso, received personally the members of the FIDH mission and the OCDH representatives. During the encounter the various themes of the seminar were discussed, as well as other issues related to the question of Human Rights: the administration of justice, the fight against impunity and the management of oil revenue.

The members of the mission were also able to meet the Minister for Justice, the head of the European Union delegation, the first Counsellor of the French embassy and the manager of the Brazzaville prison, for discussions on the Human Rights situation in the Congo. The FIDH seminar and the conclusions reached obtained broad coverage in the Congolese press. The State and independent media covered the closing ceremony, and interviewed numerous participants.

## IV. Deceptions and recurring violations of human rights Follow up mission [3 to 10 November 2003]

From November 3rd to November 10th, 2003, the International Federation for Human Rights (FIDH) mandated a monitoring mission of the seminar.

This mission, made up of Sidiki Kaba, President of FIDH, Marceau Siviéude, Program officer for the FIDH's Africa Desk, and Benoît Van der Meerschen, FIDH delegate, had for principal objective evaluating the implementation by the Congolese authorities and civil society of the recommendations issued from the seminar.

With the assistance of the Congolese Human Rights Observatory (OCDH), the mission officials of FIDH were able to successively meet:

a) Members of the Congolese Government:

- Mister Isidore Mvouba, State Minister in charge of Governmental Coordination,
- Mister Martin Mbemba, Minister of Justice and Human Rights,
- Mister Alain Akouala, Minister of Communication, spokesperson for the Government, in charge of relations between Parliament and the Government and
- Madame the Minister of Social Affairs;

b) Officials from Congolese Institutions:

- Mister Justin Koumba, President of the National Commission of Human Rights (CNDH),
- Mister Thierry Gombet, First Vice-president of CNDH and
- Mister Maurice Massengo Tiasse, Second Vice-president of CNDH;

c) Various Courts and Administration Officials:

- Mister Placide Lenga, President of the Congolese Supreme Court,
- Mister Mr. Nzouala, Senior Examining Magistrate in charge of the Beach File of Brazzaville,
- Mister Ibela Ibel, Head of the Department of Penal Administration,
- Mister the Commander of the Criminal Investigation Department of Brazzaville and
- Mister the Manager Agent of the Jail of Brazzaville;

d) Political Party Leaders from the Opposition:

- Mister Joseph Kignoumbi Kia Mboungou, Deputy and National Secretary and President of the Parliamentary Group of UPADS (Panafrican Union for Social Democracy),
- Mister Alphonse Gondzia Senator, President of the Law Commission, Administration and Human Rights,
- Mister Jacques Mahouka, President of MCDDI,
- Professor Paul Mdouana, General-Secretary of Foreign Relations of MCDDI (Congolese Movement for Democracy and the Integral Development of Congo-Brazzaville),
- Mister Joseph Ouabari, President of the Congolese League for Culture and Advancement,
- Attorney Malonga Ambroise Hervé, President of the Convention of Republicans,
- the Assistant General-Secretary of the Convention of Republicans, *CDR*,
- Mister André Milongo, President of *UDR* Mwindi, and President of the Parliamentary Group and
- Mister Mackoumbou, Member of the Party for the Republic and Development;

e) Officials or Civil Servants from Several Specialized United Nations Institutions:

- Mister Bénédict Akem Fultang of the Global Alimentary Program (*PAM*) [Global Food Program],
- Mister Janvier de Riedmatten of the High Commissary for Refugees of the United Nations (UNHCR),
- Mister Latifou Salami of Unicef and
- Mister Axel Piers of the United Nations Development Program (UNDP);

f) Congolese NGOs and Humanitarian International Organizations:

- *ADHUC*, the Congolese Association for Human Rights and Prison Life,
- Misters Mondjo-Epenit and Matongo Edmond Nazaire, *HCHPPR* (Congolese Chart on Human and Peoples' Rights),
- *CUDHOC*, Association for Human Rights and Peace Culture, Misters Loussakou Marcel and Mienantima Gaspard,
- *APJ*, Loubelo Emy Freddy,
- *AFJC*, Association of Women Attorneys of Congo, Zissi Biniebe Olga
- *MOUVET*, Pemosso Brice,
- *CONADHO* (Convention nationale des droits de l'homme) [National Committee of Human Rights], Thomas Djolani,
- *LICOSE*, the Congolese League for Electoral Systems and Good Governance, Ivan Kibangou Ngoy and
- *MSF*, Doctors Without Borders - France, Head of Mission, Philippe Guérin.

### 1. Context of follow-up mission

#### A. Explosive situation in the Pool's region

If , generally speaking, one no longer hears the sound of weapons in the Pool region, insecurity still prevails just as much because of Pastor Ntoumi's "Ninjas" as because of actions by the soldiers of the Congo Armed Forces (FAC):

The peace agreements of March 17th, 2003 should have eased the situation in the Pool region. However, these agreements were not willingly signed by all the opposing forces, far from it. Some even argue that, without extremely strong pressure from the European Union, nothing would have been signed. Although at the time of the Mission, those 17 March 2003 agreements were periodically brandished in political speeches, yet the relationship with Pastor Ntoumi remained particularly strained.

### ***In the field, a traumatized population***

At the beginning of November 2003, people were gradually trickling back. It is thought that nearly 50% of the Pool people may have returned - sometimes in separate trips (many of them came back to see what was left of their belongings, and were then followed by their respective families.)

Even though there is no medical emergency as such, nevertheless, the population has been deprived of health care for the past 2 or 3 years, a situation which cannot fail to generate classical pathologies. The point is that these populations have been thoroughly traumatized by what they have lived through for many years.

According to a humanitarian NGO, if you walk through the Pool region, you quickly realize that it has been subjected to a policy of systematic and total destruction. Thus, although the destruction of villages is not of the same order of magnitude everywhere, today the Pool displays many ghost villages - particularly outside of urban centers - with houses totally destroyed, or shown only by some remnants of their foundations. Even objects of no economic value (chairs, kneading troughs...) which can hardly be termed war spoils, have been destroyed. On September 3rd, 2003, the United Nations 's Bureau of Humanitarian Services (OCHA) submitted a report on the Pool situation (see appendix) without, however, provoking any appropriate reaction on the part of the international community at the time of the mission.

### ***Ever present and ever intensifying insecurity***

The most threatened targets are all means of transportation and communication: roads and railways. These are indeed the areas through which all transactions, exchanges and transportation of goods which attract the greed of the "Ninjas" and the Congo Armed Forces (FAC) must pass. The events of October 15th, 2003, at Mindouli, are particularly revealing of the climate prevailing in the Pool. When the firing of weapons was heard, the town emptied in less than an hour, as everyone remembered the terrifying events of the past. The MSF team (Doctors Without Borders) found, to their surprise, that even the hospital was rapidly emptied in the same way, in very little time, and this included under-nourished children or recently operated patients, demonstrating survival reflexes even on the part of seriously ill or wounded patients. The authorities have listed 13 deaths; the figures are probably much higher. (Certain witnesses have talked about seeing blood running down out of passing train-cars.) But since that month of October, such incidents are no longer news, they are just part of life. In the same way, crossing checkpoints has become more hazardous: the refusal of a pass permit has now been succeeded by verbal threats of hostage taking, and, shortly after the follow-up mission, by an attack against a MSF- Holland car.

The Ninjas live in an environment where alcohol and drugs prevail, even in the case of Pastor Ntoumi, theoretically, their leader. This is also shown by the scarce success of a recent attempt to buy back, with dollars, machine guns from the Ninja colonels. Furthermore, it is difficult to understand clearly their political agenda.

### ***Problems of displaced persons' return, and the disarmament of fighters***

International and inter-governmental organizations (PAM -world food program) (PNUD-U.N. Development Program) and non-governmental organizations (CICR - International Red Cross) MSF (Doctors Without Borders) are trying to help with the return of displaced persons, this according to the Minister for Social problems. But according to her, all these efforts will be made in vain if "we do not tackle the ex-fighters' issue rationally. Although she is competent to deal with displaced persons and war-victims, she has no organic connection with the High Commissar responsible for their reinsertion. (HCR: High Commission for Refugees)

### ***The Return of Displaced Persons***

After a new tour of the country, on March 17, 2003, and the signing of an agreement between the Government and Pastor Ntoumi's rebels, the governmental attitude is, one might say, excessively positive (no hostility between the returnees and those who had remained) considering that the Minister for Social Affairs is incapable of accounting for the number of those who have returned.

The predicted massive return of displaced persons in the Pool region is therefore not on the agenda. It depends mainly on humanitarian aid for the region and the timely acceleration of the fighters disarming and re-insertion process with a view to making the Pool secure (see appendix.)

## **B. Tense economic and social climate**

The Minister for Social Affairs recognized that : "A social climate cannot be positive when people are poor and deprived." The economic situation is degrading very rapidly. It has worsened within a year, weakening the arguments about the war's aftermath. Here, it is clearly the responsibility of the new President, Denis Sassou Nguesso that is involved. The Mission was in a good position to assess the serious social tensions prevailing in Brazzaville. It wouldn't take much for these tensions to be transformed into more radical claims and demands. We should note that no clear logical action or

political planning has been implemented by the Government in order to ease the situation.

Today, after a sort of "black-out", respected by almost everyone, surrounding the Presidential election deadline, tongues are loosening. Including those of international organizations (UNDP, IMF, and EU). Recently, it was the IMF who criticized the Congo Government. Thus, the IMF has deplored the extra-budgetary expenses decided by the Government during the 2003 first semester, as well as the lack of transparency prevailing in the Societe Nationale des Petroles's operations (SNPC – National Oil Company). Therefore, after a year's consultations on the spot, in Brazzaville, the IMF gave up the idea of initiating negotiations regarding the cancellation of part of the Congo's debt as part of the PPTE (Heavily Indebted Poor Countries). Mr. Ghura, Head of the Bureau of the African Department of the IMF, emphasized that the initiation of a new program was subject to the need for transparency in the oil sector, to payment of the social debt, and to the support of the financial backers.

## **2. On the Implementation of the Institutions of Transition**

The implementation of support institutions to the Rule of law is one of the major axels of the Congo-Brazzaville reconstruction. Aside from their essential role of legal power, they must timely contribute to reassure the population and reinforce the conditions of a wide national reconciliation in a country ravaged by internal conflicts for years.

*"Their implementation is not easy,"* a diplomat nonetheless acknowledged before the mission officials from FIDH. International institution members themselves, do not hesitate qualify these institutions of *"gifts from those close to power..."*<sup>1</sup>

And, in that respect, the election of the members of those institutions did not constitute a positive signal due to the fact that the perception remains that all pegs of the democratic play have not been involved.

### **A. The National Human Rights Commission**

Provided for by the new Constitution voted on January 2002 (Article 167), organized by the Law of January 8, 2003 (Law No. 5 - 2003), the National Human Rights Commission (CNDH) has for tasks as follows:

- the protection of human rights (which may go through claims on the ground, the preliminary investigation of claims, a power of auto-seisin),
- the promotion of human rights.

It will contribute to the drawing up of thematic reports that the Congolese State, at regular intervals, must forward to the various competent United Nations bodies in matters of human rights. It will be authorized to suggest that Parliament revise certain laws and will be authorized to be consulted by the two assemblies. It is not aimed to replace judicial order but rather, to take in hand the plaintiffs (through mediation, legal aid before courts, etc.).

As with other support institutions to the Rule of law, CNDH still has no offices available... At the time of the mission, it was sitting at the Meridien Hotel! On documents, this institution is independent. Upon election to its office, the institution's capacity was nonetheless questioned...

Indeed, the appointment procedure of its members (45 with deliberative votes, 14 with consultative votes) and is especially widely criticized, by its office. According to some human rights NGOs, wrongful acts have been committed. Hence, the Justice Minister<sup>2</sup> should have guided this appointment process. In fact, he has performed his work until the adoption of the organic application law but this done, without any consultation whatsoever with NGOs.<sup>3</sup>

Subsequently, the Justice Minister was swiftly been dispossessed of this case by the Staff Director of the Head of State. For the nomination of the NGO representatives in defense of human rights, the latter was responsible for a platform (CARESCO) of active NGOs in the area of development!

This platform, which was set up by the President of the National Council Transition (CNT) [Congolese Provisional Parliamentary] during the political transition, drew up a list of the possible candidates and transmitted it to the Head of State for him to choose. When the list retained by the Head of State was published, a day later, the press<sup>4</sup> was already indicating the name of the future president of that Commission.

And yet, according to the laws, this president was to be logically elected by the president's peers, which would be non-appointed by the press or this or that authority.

In the case in point, as far as the remainder of the office of this Commission, we can still speak of real elections. In the end, the predictions from the press will reveal to be exact with respect to the choice of President of the National Human

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<sup>1</sup> A system of compensation for the faithful, which we find again in a manner identical to that of the recent appointment of the new mayors, with direct link to the President of the Republic. An observer of Congolese life confided in the FIDH mission officials that "the PCT is rewarding itself this way for its work provided for the past 40 years..."

<sup>2</sup> The latter specifies that he fought for the creation of this Human Rights Commission with the support of President Denis Sassou Nguesso.

<sup>3</sup> The latter undoubtedly sinned, too, since they proved incapable of structuring themselves as a network, to speak with one voice, and have thus arrived in dispersed order before the Congolese authority.

<sup>4</sup> The newspaper "L'Observateur."

Rights Commission. It is Mister Justin Koumba who was thus promoted to this function, which is equivalent to that of a Minister delegate. Mister Koumba is the former President of the National Transition Council.

*ADDHUC* [Legal and Judicial Cooperation Program in Congo] introduced a kind of recourse before the Supreme Court against said appointments to the Office of the National Human Rights Commission. No reply has been given to it up until now (see Annex). The members of the office of the National Human Rights Commission defend themselves faced with these outside but the Justice Minister himself surely does not mash his words in commentaries on the members of CNDH. He admits being "*unsure that the first steps over there will give the impulsion necessary for they are not people used to human rights.*" Then, he does not hesitate, evoking this composition, to speak of "*drafts that will need to be caught again.*" He specifies, however, that today this Commission exists, it is here, built-up in the Constitution, which is not negligible.

## **B. The Superior Communication Council**

At the Superior Communication Council that was set up in August 2003, the journalists who find themselves are principally those who have worked, as early as 1997, within the "*Freedom*" pirate radio station of President Sassou Nguesso.

As for the office of this new proceeding, one cannot but note that it was set up, at a speed was suspect, at the very least. A single representative of civil society found a place within this institution, but the NGO that delegated said representative is very unrepresentative. A strong and independent Superior Communication Council is yet indispensable to Congo-Brazzaville. The public discourse of Mr. Akouala, Minister of Communication, does not indeed fail to cause concern for the freedom of press in Congo-Brazzaville. He indicates to the mission's officials indeed, that to belong to the 4th authority involves responsibilities, which, he adds, "*does not mean impunity either.*" In fact, he does not hesitate to attribute to the Congolese press, part of the responsibilities for the Congolese problems, whether past or current. He specifies that "*some newspapers before the war of 1997 contributed to the psychological conditioning of citizens. They were responsible for the country's catastrophes.*" He will confide to the mission, that today, "*a political figure is sleeping behind each journalist. I do not accept that each of them monopolizes the media to lead a political struggle.*" Still according to him, "*each newspaper represents such and such party, such and such region.*" The minister even speaks of "*ethnic sheep-likeness of the press.*" Last, he notes that, in the light of the still occurring presence of numerous fanatics in Congo-Brazzaville, faced with outflanking, it is impossible for him to compromise. In short, he favors "*a slight censorship as opposed to a fire in a neighborhood.*"

According to the testimonials gathered by the mission's officials, this "slight censorship" well exists indeed in the facts in Congo Brazzaville. For example, in his words that were broadcasted, a journalist from *RFI* was publicly rebuked by Mr. Dominique Okemba, the Special Council to the President of the Republic, in April 2003. Antoinette Ndembo, a television journalist, was punished for having filmed in September 2003 a conference from the opposing party. Access to air time has since been refused to her. A radio show was cut after its first broadcast because it was letting the opposing party be heard.

Since the mission, FIDH pointed to the existence of new pressures being exercised against some agencies of the press. The NGO "*Rencontre pour la paix et les droits de l'Homme*" ["Meeting for Peace and Human Rights"] was giving an account, by way of a communiqué dated from February 9, 2004, of the judiciary harassment aimed at the newspaper *l'Observateur* and its Director of publication Mister Gislin Simplicie ONGOUYA. On July 2<sup>nd</sup>, 2003, the Director of publication for *l'Observateur* was convicted by the High Court of Brazzaville for defamation. This judgment would have been rendered in the absence of the accused and his counsels, in violation of the laws of procedure.

It is only on January 21st, 2004, that the newspaper *l'Observateur* officially was served notice for the conviction, with the Court of First Instance asking for a payment of four hundred twenty thousand Francs CFA, as damages and legal fees, in addition to a fine of one million. The publication manager could no longer lodge an appeal of this decision, as the legal time-limit to file said appeal under the Code of Penal Procedure is of 10 days following the conviction. Since then, other procedures are on-going for defamation and concealment of documents, notably by SNPC. All these complaints are apparently assembled with payment claims of a sum of three millions per claimant for damages.

Beyond the due right of these judiciary claims, FIDH denounces what appears to be the obvious relentlessness and will of stifling and restricting the freedoms of the press in some ways. FIDH fears that these judiciary procedures may in reality be merely legal means that must be used to settle scores with a body of the private press that has shown proof of its independence.

If we listen to the speech of the Minister of Communication and its practical consequences, freedom of the press is indeed truly in danger in Congo-Brazzaville. The law on the press, prepared with the assistance of Reporters Without Borders, was voted but Mr. Akouala is in charge of the adoption of the decrees providing for the enforcement of the law. And if we listen to him affirm, bringing up the future card of the press, in preemptory fashion that "*it must be expected that certain newspapers will disappear,*" the worst seems to fear...

## **C. The Commission on Economic and Social Rights**

The make-up of the Commission on Economic and Social Rights has, too, come under some criticisms. In fact, the Minister of Social Affairs herself, concerned first-hand by this case, confided in FIDH's mission officials that "*when one is in position of authority, if you are officially recognised the right to appoint, you are going to appoint those from your party.*"

### 3. Concerning the Rendering of Justice

#### A. The Status of Congolese Justice

Beyond the issues of the dilapidation of the buildings, a number of international institutions that were met by the FIDH mission make a scathing attack on the "*astounding*" weakness of the rendering of justice. Whether it be for infrastructures or training, motivation, etc.

##### *The Structure for Rendering Justice*

"*We are a country that has lived through three civil wars.*"

Not surprisingly, this was the first comment by the Minister of Justice while hosting, at length, FIDH's mission officials. The Minister of Justice provides a quick account of his own ministry. The war killed a large number of magistrates. Others have come back in dire shape and, finally, "*the scourge of AIDS also takes in quite a few professionals.*"

In those conditions, he is cognizant of the deficiencies in personnel of his ministry but sees himself blocked by the Bretton Woods institutions from any recruitment prospect. In his view, the problem will be even more acute in 10 to 12 years with retirement leaves. He does not hesitate to criticize those financial institutions that have shown even more lax with other countries (Nigeria, Burkina Faso, Senegal, Madagascar) and asks the assistance of FIDH to apply pressure on these "large international superintendents of finance."

In the meantime, he states, he sees himself forced to have to make do with the personnel that he has. He encouraged for a while the administrative transfers from one branch to another (the civil servants who were jurists and had 10 years of experience could be transferred in the magistracy) but the experience has not been, in his eyes, very conclusive. For infrastructures, the evaluation is identical. It must deal with buildings from the colonial period, which are not in any way adapted to prisons or courts. Renovation work happens with the help of the French Cooperation.

##### *The Efforts Shown-off*

The Minister of Justice prides himself however of having succeeded to quadruple the salary of the magistrates, which, in this country, is no easy thing! Beyond the reappraisal of a profession, this also means for him to fight corruption and thus keep his magistrates from being "*nabbed*" as counselors for such or such minister. However, according to other international observers, this salary increase has not at all modified the wrongful behaviors from most magistrates. It would thus have missed its target, the eradication of the corruption of Congolese Justice which, according to a UNDP representative, "*has not improved an inch.*"

Last, it remains to improve upon the judiciary structure by installing the Superior Council of the Magistrature. The Minister of Justice asserts that the legal text was voted upon and that one only expects at this point its promulgation. In the same frame of mind, the Ministry of Justice was given an additional modifier, i.e. human rights. Both subject matters thus now have the same civil servant.

The failure that the Minister implicitly notices involves the revision of the Penal Code. "*For our Ministry, this cannot be done in one swoop. Financing is needed as well as the installation of an "ad hoc" commission.*"

#### B. The Legality of Arrest and Detention

The Commander of the Judiciary Police of Brazzaville, when met by the mission's officials, acknowledges that the time-limits of police custody in Congo-Brazzaville are "*flexible*." He explains it before everything else by the lack of resources available to the police, this being an endemic evil in Congo-Brazzaville. Hence, the Judiciary Police it seems has available no means of transport to perform its missions ("*not even a small bicycle,*" he added...). Everything is thus done, according to him, by foot, or by taxi, to attempt to recover items of proof...

Likewise, the Congolese judiciary police is not yet properly equipped on the computing level. The minutes and other documents must still and always be typed, yet ribbon and carbon papers are rare in Congo-Brazzaville. The war has also shown its effects. He points that that, "*with what we have lived through, services have taken a blow.*" Many of the trained individuals have taken the road to exile or have died. Today, they must therefore track warriors with ex-warriors who, most often, lack basic training...

Moreover, given that Congo-Brazzaville remains tightly supervised by international economic institutions, compensation of police officers is definitely not adjusted to the cost of living. A similar financial sliding can be difficult for former war lords to live through. The Commander of the Judiciary Police of Brazzaville points out nonetheless that police or military slip-ups are severely punished (by radiation, jail, etc.).

The French Cooperation would be soon assisting the Congolese police, as much on the equipment level (computerization) as on the training level. As for UNDP, it perceives some willingness from the police sector in terms of the training sessions. In the meantime, faced with this situation, the Public Prosecutor "*does not back, but tolerates the flexibility of police interrogations,*" notes the Chief of the FBI for the Congolese capital city.

Meanwhile, it is thus up to the Congolese under the jurisdiction of the court, as we are about to describe it below, to be subjected to, with deficient judiciary assistance,<sup>5</sup> this "*adaptability*" of police custody...

### **C. Impunity**

#### ***Amnesty for those committing crimes within the Pool***

For many observers of the Congolese political and judiciary system, independence is not a strong forte of the national justice system. For a member of the political opposition, it is clear that President Dennis Sassou Nguesso "*wants the justice system to be at his service*". In this context, questions of impunity and amnesty laws remain delicate in Congo-Brazzaville, particularly in a post-conflict situation. The first President of the Superior Court, Mr Ilunga, is on his part, very certain that "*It has to be objectively recognised that the post-conflict contingencies make the administration of justice hazardous. (...) Do not be surprised if there are few adversities and blunders after this war.*"

When interrogated about this subject by the FIDH mission project leaders, the Minister of Justice answered "*Amnesty must be carried out in this country otherwise everyone is liable to be sanctioned*". For example, according to him, "*prosecuting Sassou is equivalent to provoking a new war. There are too many ninjas and they are extremely active.*" Furthermore, he confides, "*All these militias, including our own forces<sup>6</sup>, have abused power.*" In short, he recommended that the best plan of action is to avoid any provocation. The first President of the Superior Court agreed with this view. He confided in FIDH mission project leaders that the "*balance of power should be taken into consideration, otherwise we are acting like ideologists*".

#### ***Impunity for crimes committed by representatives of the national authority - The Brazzaville Beach case***

In June 2002, FIDH-International Federation for Human Rights, OCDH, Collectif des Parents des Disparus du Beach, the Congolese Federation of Diaspora and Survival (la Fédération des Congolais de la Diaspora et Survie) angrily revealed the devices used by the Congolese authority to jeopardise the action of the French justice concerning the complaint made against General Dabira and other high representatives of the Congolese State for crimes of torture, kidnapping and crimes against humanity in Congo Brazzaville before the Meaux tribunal

Our organisations had just been made aware that since all this publicity received as a result of this judiciary proceeding, an investigation had been initiated on the disappearances at the Brazzaville Beach by the most senior examining magistrate of Brazzaville. A judge in Brazzaville summoned OCDH, the plaintiff in France, as a witness in this investigation on 26<sup>th</sup> June 2002.

Our organisations could only be surprised of this hasty implementation of such a course of action and highlighted the danger of seeing this process develop into a masquerade that would hinder the progress of the proceedings in France. This fear was based on the fact that since the events of Beach in 1999 and in spite of the tireless efforts of the victims' parents and OCDH, none of the complaints led to any actions in Congo. The Congolese authorities seemed to, at all cost, want to avoid getting right to the bottom of these serious violations and establishing the persons responsible for them. The fact that the Committee for Investigation, established in August 2001 to get right to the bottom of these events, reached the end of its mandate without ever publicising its report and without having ever heard the victims and their families was also testified.

During the mission, FIDH learnt that the senior examining magistrate had summoned several families of the victims during 2003 to hear their testimonies and had also confronted some suspects the same year in September. However, Mr Nzouala confirmed to the mission that he had been through significant political pressure, stopping him from going any further in this case. Therefore, the families who met the project leaders confirmed that since then, there did not seem to be any further development in the case. The victims were no longer heard. There was no indictment to be reported and on 21 November the chief judge passed away.

Furthermore, the international arrest warrant by the examining magistrate of Meaux against Mr Dabira got no coverage from Congolese authorities who seemed willing to continue using obstructive tactics with regards to this case.

### **D. Prison life**

#### ***The official line***

The director of prison administration, Mr Ibela Ibel had a long discussion with the FIDH mission project leaders. He identified various problems that his administration is faced with:

- Training: essential to ensure that his officers are competent (a clear well-written statement which consequently facilitates the judges work to a great extent) but which remains deficient;
- Staff organisation: the prison administration incorporates several different administrative departments (social workers, wardens, managers and so on) and often needs to rely on officers from other departments).
- External budgetary and financial constraints imposed by the International Monetary Fund or the World Bank: ideally, the prison administration would require 300 wardens, 200 social workers and 28-30 managers. Health resources within the

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<sup>5</sup> According to the Commander of the Judiciary Police of Brazzaville, the lawyer has the right to attend the preliminary inquiry, that is, "to observe, not to lecture..."

<sup>6</sup> The Minister of Justice therefore acknowledges that President Denis Sassou had his own militias.

prisons and probation service should also be implemented. However, the manager points out that this is impossible when considering the constraints of Bretton Woods institution in making such investments;

- Infrastructure: he would like to modernise the prisons but has to conform to the systems inherited from the colonial period. They all need to be renovated.

The Point Noire remand prisons in Doisie are under construction and should open soon. The prisons are currently operational in Brazzaville, Madingou, Owanda and Ouessou. He revealed that all these detention centres, including the policemen and officers, are under his control with the help of the town leader. However, 15 minutes later, he asserted that he *"only wanted to talk about the remand prisons"*...The project leaders of FIDH mission would obtain more information from the chief of the Criminal Investigation Department of Brazzaville on the conditions of detention in police stations. He pointed out that the only persons imprisoned are those under police detention. He insisted on the fact that there is not one person in the police station who has been condemned by Congolese justice. Among those detained, the police distinguishes those who were "imprisoned", that is to say the big criminals<sup>7</sup> need to be separated from the others to meet the security requirements.

The central police station has enough space to keep 150 people. As far as he is concerned, the problem related to space is "relative" but, to his knowledge, there are between 250 to 400 cases every month. However, according to him, the percentage of people who are remanded in custody *"is in reality not as high as this"*. He specified that the detainees are automatically released after the authorised time limit of being remanded on custody is exceeded. This is done under judge's supervision.

The prison administration would furthermore systematically question the public prosecutor's department in cases where the time limit has been exceeded. He pointed out that this was not always the case immediately after the war but that this situation has considerably improved. On the other hand, as he also acknowledged *"this in fact depends on the resources available to the magistrate."*

In view of the works in progress in some remand prisons (Pointe Noire, for example) the transfers of prisoners are sometimes organised to Brazzaville where there are placed "high security" prisons depending on the seriousness of the charges (in reality, there is one indictment per crime). For less serious offences, there is collaboration with the police stations. As the Minister of Justice said *"We put them there for the time being..."* This same Minister, moreover, does not hesitate to describe the places where the remand prisons, with the exception of the remand prison in Brazzaville and the one to be constructed in Point-Noire as *"a wealthy prison"*

When it concerned statistics, the FIDH mission project leaders only got comments like *"It is always fluctuating"*, *"people come and go..."* The director of the prison administration was not able to give any figures and repeated that it is the end of the year and the appraisal is in progress. According to estimations, there were 800 prisoners in Congo-Brazzaville in 2002.

The director of the prison administration states that the principle of separation between minors and adults, women and men, convicts and prisoners is fully respected. However, he states that there has been no running water in the remand centre in Brazzaville for the last 7 months. His budget is 45 million CFA francs, but, he points out, it takes 500 million to run a single remand centre.

### ***The reality of prison life in Congo***

The Congolese prison law is based on a system of *"communal prison"*. Minors are mixed with adults, women with men and convicts with prisoners. The UNDP (United Nations Development Programme) confirms that there is a significant percentage of people remanded in custody in Congolese jails. The conditions of remand centres are appalling. The Congolese prison does not conform to the international standards of human rights protection.

There are still issues of varying severity:

- The infrastructure is still in poor condition or inadequate. Renovations are being carried out but new roads need to be constructed, as there is no space.
- Provision of food
- The right to health care - there is not even water or light in the main prison of Brazzaville
- The situation is even more precarious in the prisons located in the provinces
- The same observations apply to the "semi-official" remand centres such as police stations.

The FIDH mission project leaders have had the opportunity to visit the remand centre in Brazzaville and its main police station to be able to refer to examples.

### ***Brazzaville remand centre***

It was constructed at the beginning of the Second World War and, in theory, can hold 200 people. On 10 November 2003, it had a little more than 300 prisoners - 250 accused in comparison with 70 convicts only - who had to share the prison. The overall numbers would hit "peaks" of up to 400 people! The visit from the FIDH mission project leaders was expected and prepared for.

The first time, the chief warden of the prison denied the visit to the prison. It was a Saturday. He needed to go home

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<sup>7</sup> What about the principle of presumption of innocence?

and was not notified of our visit. When the FIDH mission project leaders went to the prison again, his manager was not at all impressed by his absence. His assistants had the difficult task of leading this visit.

In the meantime, it was clear that the prison had been cleaned quickly but without missing the nooks and crannies of the prison to make a good impression on outside visitors.

The first thing that would strike the observer in Brazzaville prison is some works that had clearly been suspended at the right of the front door when facing it. After asking about it, the FIDH project leaders found out that those pending works related to the repair of the compressor which would supply each cell to be with running water. This defective compressor had not been repaired or replaced since 7 months. One of the officers of the prison revealed to the FIDH project leaders that a sum of 200,000 francs was required to repair this compressor. He added that there was no plan to replace the compressor as "*here, we make new things out of the old things...*" As a consequence, running water is no longer available in this detention centre, which is nevertheless considered to the "best" prison centre in Congo.

After the first administrative buildings and hall entrance, there is a long corridor leading to a kind of roundabout which is about 8 m<sup>2</sup>, used as both a "local market" and a "dispatching" area between the different wings of the prison. There are two wings to the left and two at the right in a symmetrical pattern. Each of these wings was supposed to be assigned to the different categories of prisoners (convicts). These distinctions stopped being applicable a long time ago. A triangular courtyard follows each of these wings – two large wings at a higher level and two small wings on the low level. On one or even two sides (for large wings) there are some collective cells opening up. These cells are of variable sizes (reaching up to 40 m<sup>2</sup>). Only a few of them have small beds and the majority of the cells have straw mattresses on the floor. There is one toilet and shower in each of these cells that can contain more than 20 persons at one time.

As the only youth centre in the town of Brazzaville had been destroyed during the war, the minors are unscrupulously mixed with the adults. They have no choice but to coexist with the adults in every step of their prison life – eating, taking care of themselves and passing their time. For example, there is no place at all for schooling specifically provided to them. Their prison life is identical to that of the adults in every way. During the visit of the FIDH mission project leaders, 24 children were detained in the Brazzaville remand centre (according to the officials, 10 of them are from the prison). One of the children confided to the FIDH mission project leaders – Chancel Manongo, born on 25 January 1986 has been detained since 13 October for failing to pay a debt of 4,500 CFA francs.

This fully falls under the responsibility of the Congolese authority. Just like the repair of the compressor to provide running water, nothing has been done or planned to bring the youth centre up to standards. Furthermore, the Congolese judiciary system has the one and only judge for children. UNICEF also acknowledges that it has not dealt with the issue of justice for minors ("*there is so much to do...*").

Two other categories of prisoners are subject to a special treatment. Before coming to the main "roundabout" when you leave the administrative building, a corridor to the left leads to an area reserved for women while another corridor to the right leads to the "VIP" area and the health care centre. During the FIDH project leader's visit, the area reserved for women held 7 women and 3 or 4 people were in the vast cells reserved for high status guests (or "VIP"). This makes one wonder why this wing, which is set aside and has a courtyard which could be used to teach classes, is not as a priority assigned to these under age prisoners, in accordance with article 37c relating to the Convention on the Rights of the Child effective from 20 November 1989.

The health centre situated next to the "VIP" area is only open until 14H00. Fortunately, according to the talk with the official's, treatment for prisoners is free. The prisoners are fed with rice and soup once daily. Such food ration would perhaps prevent some from dying of hunger but it is certainly not enough to fully equip them to survive the harsh life prison has to offer. It therefore comes to the families themselves to make up for this deficiency on the government's part by bringing food themselves (and by not losing hope too quickly either).

The surplus of food provided to the prison by families also is also used in "interprison" trade organised within the prison. It is tolerated by the prison authorities and is an "effective" mini market held at the main "roundabout". Unfortunately, only the ones who receive outside help, the richest and the most powerful, can in one way or another, take advantage of this.

Finally, it was only after fervently insisting, that the FIDH project leaders were authorised to enter the corridor where the famous "roundabout" was located (in direct view of the person coming from the administrative buildings). The "*mitard*" or solitary confinement cell is the only place that has not been spontaneously presented to the project leaders. Even though the narrow corridor leading to the punitive cells was quickly cleaned up, it carried a pestilent smell. This corridor leads to another perpendicular corridor opening up to various cells. These half a dozen corridors are about 6 metres long and 1.5 metres wide.

They resemble large boxes with no opening to the outside, no light or any form of toilet facilities. When asked on the time limit that a prisoner might be locked in the "*mitard*", the officials were not even able to give any maximum time limit and sent the FIDH project leaders to the internal regulation department (règlement d'ordre intérieur - ROI) of each prison (but do these merely exist without any purpose?). More worryingly, during the visit to the "*mitard*", the project leaders found out that, in view of the absence of any psychiatric hospital in Congo-Brazzaville, mentally-ill or possibly dangerous people are automatically brought to the remand centre and are locked in the "*mitard*" to avoid disturbances or fights with other prisoners!

### ***The main police station in Brazzaville***

The main police station in Brazzaville opens up to a large room with an office equipped with a double-entrance security screen. It is specifically used for visits or rather for enquiries. On the other side, there is a dark cell for prisoners. There were about twenty people inside. There were no lights and no toilet facilities. There is no doubt that there were some minors mixed with the adults. Inside, there is a corridor that was about 25 meters long and perhaps 2 meters wide and there were 68 people crowded against one another.

On the side of this corridor, 7 cells about 10 metres square plunged in complete obscurity. The walls were dirty and were saturated with humidity. It was the same scenario in the long corridor where there were one or two bare electricity wires! There was only one shower and toilet. There were 7 small quarter circles which allowed some daylight in. There was no place where a prisoner could meet his lawyer (would there be a lawyer in any case?). Minors and adults, women (2 others before our arrival added to the 68 others) and men were clustered together.

Those who are arrested on the streets are locked in here immediately without any form of control (the famous "flexibility" of police custody). What are the reasons behind this? For how long? What kind of assistance is provided? How are the families informed? The prisoners would not be fed if their families do not come to visit them...17 people would be freed after the FIDH project leaders' visit which is enough to indicate that they should not have been there in the first place. The 2 women would finally definitively be separated from the men following the project leaders' insistence.

## **4. Concerning the ratifications of the International Convention on Human Rights**

Public declarations, particularly during the Conference de la Francophonie in Brazzaville in April 2003, have been made at the highest echelon of the country, to ensure that the International Community for the support of Congo-Brazzaville (communauté internationale de la volonté du Congo-Brazzaville) becomes a model in the ratification and application of main international measures in human rights protection.

Similar attitude, at first glance, can only provide a very optimistic outlook. This is the kind of attitude needed to follow the recommendations of the joint seminar of FIDH and OCDH in January 2003. However, in this context, one needs to be careful of the impacts and external demonstrations carried out with good intentions and assess the achievements of the Congolese Government point by point.

### **A. The Convention against torture**

On 30 July 2003, the permanent representative of Congo presented the provisions of the Convention against Torture and other forms of cruel, inhuman or degrading punishment and treatment signed in New York in 1994 to United Nations. There was a 4-year wait between the adoption of the law of ratification on 15 August 1999 and the registration of the provision of ratification to the General Secretary of the United Nations.

### **B. The International Criminal Court**

At the time of the follow-up mission, the ratification of the Statute of the International Criminal Court by Congo was the focus of the discussions at the summit. The Minister of Justice explained the delay in the ratification of the new provision against impunity to the project leaders. A bill authorising ratification of the Statute of the International Criminal Law was presented to the Assembly during the transition period. The Superior Court had even given its support when it came to the constitutionality of provisions. However, the bill remained deadlocked as a draft due to the long electoral period at the beginning of 2002.

Once this electoral period had passed, during a Cabinet meeting, a minister announced that the judgement of the Superior Court was null and void since it was based on the old constitution (the new constitution having been adopted in January 2002) and that therefore the bill needed to be re-examined. The Superior Court therefore gave another favourable judgement. The Minister of Justice himself presented the draft of the ratification of the Rome Statute to the National Assembly Foreign affairs Committee. At this stage, a meeting had taken place between the civil society and the members of the Parliament. The senators participated in a seminar on the International Criminal Court organised jointly by the Association for the Human Rights of the Incarcerated (ADHUC) and International Coalition for the International Criminal Court. The National Assembly finally adopted the bill during the December 2003 session. A "technical commission" was established within Head of State's Cabinet to henceforward evaluate the opportunity to register the provision of ratification. In May 2004, the Status of the International Court was finally officially ratified by Congo.

When the project leaders of the mission tried to find out if the Congolese authorities had been approached by the United States to sign a convention similar to "article 98" which is inclined towards excluding the sphere of the International Criminal Court from all American citizens, the answer was that their position on this was as yet undecided. President Dennis Sassou Nguesso is more inclined towards ratifying the Rome Statute, "*to be in harmony with ourselves*", before perhaps planning the conclusion of some bilateral agreement or other, pointed out the Minister of justice to the project leaders of FIDH. In spite of these declarations, on the 21 April 2004, the Cabinet meeting proceeded to a detailed examination of the bill on the bilateral agreement between the United States and the Democratic Republic of Congo presented by the Minister of Foreign affairs, Cooperation and Francophone affairs. A favourable opinion will be given with the fallacious pretext that this agreement is compatible with the Vienna Convention on diplomatic relations and the Statute of the International Criminal Court. Finally, concerning the Congolese law on the adjustment of the Statute of the

International Criminal Court, of the Minister of Justice asserted that his country wants “to be a leader in the domain”, he did not give more precisions<sup>8</sup> or an agenda.

### **C. Cooperation with United Nations conventional organs**

Despite the denial of Congolese government, this cooperation can still be considered as exemplary today. With the exception of the one and only report presented to the Human Rights Commission on the 13 and 14 March 2000, Congo-Brazzaville has never respected the conventional obligations in this domain.

Thus, when examining the statute of **Congo's** the application of economic, social and cultural rights established by the International Pact on economic, social and cultural rights at its 16<sup>th</sup> or 17 sessions on 5 May 2000 (22<sup>nd</sup> session), the Committee on economic, social and cultural rights, had **regretted**, on its 22<sup>nd</sup> meeting held on 10<sup>th</sup> May 2000, the fact that various State members (including Congo-Brazzaville) “*which, in spite of the requests made from them, have not fulfilled their obligation to evaluate which is their responsibility in accordance with articles 16 and 17 of the Pact.*”

Similarly, during its 1313rd session on 5 March 1999, the International Convention on the Elimination of All Forms of Racial Discrimination was forced to examine “*Congo's application for the Convention on the basis of information from UN and other sources. He had noted with regret that the Member State was in no position to respond to his invitation to participate in the meeting and provide relevant information.*”

With the notable exception of a draft report prepared by the State before the United Nations Commission on economic, social and cultural rights the representative of the FIDH follow-up mission did not mention any other report under in progress.

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<sup>8</sup> He only mentioned the recent parliamentary debates in which he defended the Statute de Rome and the Congolese adjustment law for three hours.

## Conclusion and recommendations

The legal and judicial cooperation program led by the FIDH in Congo with the collaboration of OCDH proved to be particularly useful and instructive. The objective to seat the representatives of the national authority and civil society around the same table to discuss the human rights situation in the country has been reached. An effective discussion was possible as opposed to usual freeze of relations, particularly due to inclusion of power of the NGOs in the same category as the opposition. The political context – the end of a long electoral period, agreement on peace and establishment of constitutional institutions – was favourable to such a cooperation.

The project leaders of the FIDH mission and the representatives of OCDH were able to meet the high-ranking authorities of the country, including the President of the Republic, several diplomatic representatives, members of the opposition political parties and agencies of United Nations.

For the purpose of their investigation, the project leaders have been able to visit police stations and Brazzaville prison without much difficulty.

The civil society of Congo has, with this program, been able to take advantage of the experience of international experts and other human rights defenders and thus delve deeper in this domain of activity with reference to the international legal corpus. In addition, the works carried out by independent Congolese NGOs gained some regional and international publicity within the organs of United Nations Human Rights Protection, African Union and European Union.

Finally, the fact that FIDH has been able to go to Congo three times in two years has allowed the problem of strengthening the constitutional state in this country to be followed continuously and to support its critics in this process. This program was marked by a press conference, led by the President of the FIDH, Sidiki Kaba, bringing together about 50 journalists at the headquarters of OCDH in Brazzaville (refer to appendices), which allowed FIDH to directly inform the actors of Congolese society aware of the conclusions of this program.

### **Construction of the rule of law: the Congolese government must turn their words into actions**

Having survived three major civil wars, Congolese authorities say that they want to change and show the international community and backers that they are completely determined to work towards the construction of a constitutional state concerned with the good governance and protection of human rights. However, to do this, they have to make a clean sweep of their responsibility in the abuses of power in the past. They have to justify any violations to international and regional instruments linked by heritage of a country ravaged by war that aspires to rise from its ashes. For whoever scratches the surface of public speeches to take interest in the acts, this explanation is will prove to be duplicity. If the authorities try to incur favours from economic international organisations such as IMF, present the provision of ratification of the Convention against torture and ratify the Status of the International Criminal court, the facts would show that this would contravene their conventional obligations in the context of human rights whilst being preoccupied with consolidating their political power with economic spin-offs - the fundamental freedoms will be flouted, civil society will be denigrated and the opposition will feel suppressed. This situated is not appropriate for the construction of truly effective constitutional state and would result in the population plunging deeper in political, economic and social insecurity at the risk of provoking increasingly radical protests. It is time for the Congolese power to turn its words into actions.

### **Humanitarian tragedy in the Pool region**

Despite the agreements on “ending the hostilities” in March 2003, the situation in the Pool region remains particularly disturbing. The frequent and numerous clashes between the armed Congolese forces and the “ninjas” of Pastor Ntoumi are continuing and each time erodes the hopes for peace in the region. The civil population is the first victim of conflict. The terrorised families living in the region move according to where the fight are and put up with raids, attacks on their physical and moral integrity from belligerents.

Several tens of thousands refugees continue to live in precarious conditions in the outskirts of the capital despite some people having been “forced” to return by the government. This is symbolic of a situation which could be improving. Disarmament programs and probation of combatants are ineffective. And, until the publication of this report, humanitarian organisations experienced a lot of difficulties to go to the Pool region and by classifying the region, as “high-risk” Onusian organisations cannot transport their logistic assistance and food aids

Therefore, everything seems to have been programmed by the government to isolate this region which is considered as a bastion for the opposition. The opposition seems to find reassurance in the international community’s apathy.

### **Institutions protecting human rights controlled by the power**

In 2003, the ministers concerned voted for the operating procedures of constitutional human rights organisations, such as the national human rights commission, the higher council for the audiovisual sector, economic and social council and so on.

The founding bills of the Commissions, which are essential for the strengthening of the constitutional state and the protection of fundamental freedoms, asserted their need for independence. This is a pluralistic composition and necessary magnitude of action for the fulfilment of their mandate. However, the effective establishment of these

Commissions contradicts the outer shell reflecting integrity. One by one, the Commissions are taken over by the power, putting them at the risk of diverging entirely from their initial function towards a massive control of civil society and leading to liberticidal action.

The Presidents of these Commissions are legitimately suspected of having pledged their allegiance to power. Their systems do not respect the diversity of players on Congolese society. Their financial resources are very inadequate thus restricting their action.

### **A forgotten justice**

Being under trial in Congo is not a good experience. The agents of the law enforcement authorities, in most cases ex-combatants are poorly trained and deprived of logistic resources. They do not hesitate to use radical methods to stop thieves or other participants in thefts. To do this, they often have their superior's consent. Police custody in police stations, which can go well beyond legal proceedings, takes place in horrendous conditions and absolute inhumane and degrading treatments – mixed cells, overcrowded, appalling sanitary conditions. The person being tried never knows if he/ she is remanded in custody. He/she can finally be transferred to a prison in the same poor conditions. While this situation is unenviable in Brazzaville, the remand centres outside the capital can be in the form of a garage, a basement and so on. Justice is slow whilst being inefficient. The judges have not had any training in human rights. Corruption still exists.

The situation will not improve until the Congolese authorities do not prioritise the justice department. The projected budget for Congo in 2004 is not positive. The repair of the compressor in Brazzaville prison which has deprived the imprisoned people of running water for 9 months has been blown out of proportion by the politicians, who, it seems have other preoccupations.

While the judiciary sanction is severe for mere people being tried, in contrast, white signature has been put in place for the dignitaries of the regime. Amnesty is granted to the combatants of the Pool region. Impunity is a staggering occurrence for the holders of power, which annihilates any hope of effective and independent justice for the numerous victims of human rights violations

The Beach case is the most eloquent example. Without judiciary intervention of FIDH, OCDH and French League of Human Rights in France, on the basis of mechanism of universal competence, no judiciary action can be taken in Congo. Up to today, there have still been no legal proceedings against the authors of these crimes. The investigation is at a standstill and it seems that the wishes and political strategies of the established power are being followed. The only tangible action of Congolese authorities with regards this case is the complaint made to the International Court of Justice for no other reason than to deny the right to victims in France and to quicken the pace of justice system and to get compensation. It is now truly the time for Congolese authorities to turn their words into actions.

## **Thus the FIDH and OCDH recommend:**

### **To the belligerents of the Pool region**

- Establish a real cease-fire, in accordance with the peace agreement made on 17 March 2003.
- Respect the international human rights.

### **To the Congolese government**

#### *Concerning the Pool crisis*

- To exclude war crimes, crimes against humanity and crimes of genocide from (all) amnesty law.
- To investigate and judge in accordance with international measures relating to human rights protection, and all the authors of international crimes.
- To implement probation programs of ex-combatants and the secure repatriation of the displaced person in the Pool effective.

#### *Concerning transition institutions*

- To provide the material and financial means to transition institutions to allow effective and independent action.

#### *Concerning international administration of justice*

- To ratify the le Optional Protocol to the International Covenant on Civil and Political Rights which aims to abolish capital punishment
- To proceed without delay with the necessary reforms to improve the living conditions of people in remand, considering that the conditions of remand in the police station and in the prisons can be described as cruel, inhumane or degrading treatment.
- To immediately free all person who have been arbitrarily arrested or detained and, in accordance with article 9.5 of the Pact, allowing the victims of such and such act to be compensated.
- To reduce by legislative procedure the scope of remand in custody, particularly by simplifying the procedures on settlement of dates on hearing before the jurisdiction.

*Concerning the fight against impunity*

- To adopt an internal law on adaptation of the Statute of the International Criminal Court including the definition of crimes, the general principles of International Criminal Court and the cooperation between the Congolese State and the organs of the court.
- To refuse any bilateral agreement with the United States, similar to “*article 98*” which is inclined towards excluding all American citizens from the competence of the International Criminal Court.
- To ratify the additional protocol of the African Charter of Human Rights and the people leading the creation of the African Court of Human rights by making an express declaration referring to the article 34(6) of its statute.
- To respect in every circumstance the right of the victim to the truth, justice, compensation and their fundamental right to an effective legal settlement with an independent and impartial jury.

*Concerning the defenders of human rights and fundamental freedom*

- To conform to measures on declaration on human rights defenders, adopted by the general Assembly of the United Nations on 9<sup>th</sup> December 1998.
- To allow the real implementation/ exercise of rights to freedom of expression and opinion, putting aside all practice of censorship with the exception of the restrictions planned by the International Covenant on Civil and Political Rights, concerning the protection of national security, public order, health or public morality.

*Concerning cooperation of United Nations organs*

- To cooperate with the conventional provisions of United Nations by submitting its initial and periodic reports.
- To invite all specialised bodies of the United Nations human rights Commission to go to Congo

**To United Nations organisations in Congo**

- To set up their food aid and logistic support program to help the civil population of the Pool region and encourage the return of displaced persons in the region.

## Appendix 1: Statute of ratification of international provisions

### International Covenant on economic, social and cultural rights

Application date: 5 October 1983

### International Covenant on civil and political rights

Application date: 5 October 1983

Optional protocol: Application date: 5 October 1983

### International Convention on the Elimination of All Forms of Racial Discrimination

Application date: 11 July 1988.

### Convention on the Elimination of All Forms of Discrimination against Women

Signature date: 29 July 1980

Date of ratification: 26 July 1982

### Convention relating to Rights of the Child

Signature date: 14 October 1993

### Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Date of ratification: 15 August 1999

Date of presentation of the provision of ratification: 30 July 2003

### Rome statute of the International Criminal Court

Signature date: 17 July 1998

Date of ratification: 3 May 2004

## Appendix 2: Statement from FIDH – Paris 25 January 2002

### Congo Brazzaville- A disturbing constitutional referendum

On Sunday 20<sup>th</sup> January, the Congolese were called to reach a verdict on a draft constitution intended to replace the 1992 constitution adopted through referendum on the proposal of the sovereign national conference<sup>1</sup>.

According to corroborating sources, everything was done to make the Congolese agree to the new bill - military presence in front of polling booth, vote from foreigners and persons with no voting cards, corruption of voters at the ballot, voters who have voted several times and so on. It is for these precise reasons that the Congolese Human Rights Observatory had announced that the results of the referendum were known in advance.

Furthermore, FIDH reiterates its concern about the content of this new Constitution. It will remain applicable in Congo for 24 months after the elections which, to all intents and purposes, excludes the electoral results of political opponents in exile. This condition of eligibility therefore guarantees that the present President wins the next presidential elections.

The new Constitution, furthermore, strengthens the President's powers excessively. For example, there is a mechanism that allows the President of the Republic to legislate via means of an edict in order to carry out his program, after the approval of the Constitutional Court. This is indeed even possible if the Parliament does not authorise it (art 132).

Moreover, the electoral agenda proposed by the Congolese government points to presidential elections followed by elections at the national assembly and senatorial elections. This process would take place in less than six months. However, serious irregularities in the organisation of electoral lists have been announced the local organisations protecting human rights and opposition parties. Consequently, FIDH fears that these ballots will only be a mockery of democracy. The adoption of this new Constitution through of a referendum with dubious stability is all the more disturbing in this context.

FIDH fears that the current electoral process bears the seeds of a new conflict in this country already ravaged by three civil wars since 1992. As a result, it calls for a resumption of an electoral ballot and a consensual organisation of elections. There also needs to be the essential conditions to prevent new conflicts.

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<sup>1</sup> The 1992 Constitution was withdrawn by the winners of the civil war and replaced by a fundamental act of transition, developed and adopted without any popular debate on its content.

### Appendix 3: List of participants in the seminar

N° Names/ First names Institution / Department Position

- 1 TOUNDA – OUAMBA Frank Régis Parquet T.G.I B/ville Deputy public prosecutor
- 2 OBA Christian Brazzaville County Court Vice President
- 3 MBONGO Françoise Barreau from Brazzaville lawyer
- 4 SAMA Eugène RDD Member of the national department
- 5 BANANKAZI Angélique Minister of Justice Parlementary attachée
- 6 KILONDA Thérèse Minister of Justice Head of Human Rights
- 7 MATONGO Edmond Nazaire Comité nationale pour les droits de l'Homme et la paix (CNDHP) President
- 8 SITA Fidèle ISMIN International youth and movement for the United Nations Representative in Central Africa
- 9 LEKIBI Léon A.V.P Brazzaville remand centre Chief of Education department
- 10 MALONGAH Rothèse Association femme évangile et développement AFED Unemployed Graduate
- 11 NKOUKA Hilaire Tribunal Instance Makélékéle Bacongo Chief Clerk
- 12 Christine GOMA-MANIONGUI Brazzaville County Court President of the 2<sup>nd</sup> division of a court of justice
- 13 Achille Privat TCHIKABAKA L'Observateur Journalist
- 14 LOUBAKI Jean PAUL Observer, Law student
- 15 GUELELE Arsène Rigobert Action pour l'environnement et la solidarité internationale AESI national coordinator
- 16 IMBOULA Bernard Emmanuel MJDH/ Brazzaville remand centre Manager
- 17 NDOUDI Henri Directeur générale de l'administration pénitentiaire Director of probation program
- 18 NGANGA gilles Brazzaville County Court Judge
- 19 MOUKOUANGA Joël Minister of Justice and Human Rights Officer in the cooperation Department
- 20 INGAMBA Jean Minister of Justice and Human Rights Officer in the cooperation Department
- 21 MOSSA M. Romaric M.A.E.C.F Legal officer(Cabinet)
- 22 OYANDZI Alain COHR Teacher
- 23 Randhall LOMBET COHR Doctor
- 24 Georges NGUILA COHR Politiste (consultant)
- 25 MAVANGA BAKALA Jean Gabriel COHR Jurist
- 26 Jean Julles KOUKOU COHR Jurist
- 27 MVOUAMA Samuel COHR Teacher
- 28 MIEMANTIMA Gaspard CUDHOC Teacher
- 29 TOMANITOU Elvis Wilson LA CONADHO Informaticien
- 30 MBOUKOU Jean CEP (EEC) Journalist
- 31 IBARA Jean Marie COHR President
- 32 LOUBAKY MOUNDELE Chanel ADHUC Legal assistant
- 33 MOUNZINHA NZILA Eric Student
- 34 DOUKAGA OKOUYA Sophie Notary
- 35 MONDJO EPENIT Pascal NGO CNPDH President
- 36 LENGA SAMON COHR President
- 37 Arsène Séverin Tam-Tam d'Afrique Journalist
- 38 MAFOUMBA Martin COHR Army Officer
- 39 LOUSSOUKOU Philippe General Director of the National Police Force
- 40 BOUEBASSIHOU ZOLA CEMIR
- 41 NKOUAKONA Alphonse Parlement Manager of department
- 42 GANDZIAMI Anne Minister of Justice Counsellor
- 43 TAKALE Annie Clarisse Minister of foreign affairs Officer
- 44 ELENGA Ibata Cyr ACAT Congo 2nd Vice President
- 45 ZISSI BINTEBE Olga Blanche Association des femmes juristes Chief of public relations
- 46 ITOUA André IRIN / OCHA Journalist
- 47 BABAKILABIO Helga F.C Association des femmes juristes du Congo Student
- 48 M'FOUTIGA Chantal Association des femmes juristes du Congo Member, Student
- 49 BABOUTANA Audrey COHR Program Assistant
- 50 N'ZOBO Roch Euloge COHR Legal assistant
- 51 Christian MOUNZEO COHR General secretary
- 52 Roger BOUKA COHR Head of Communications

## Appendix 4: Constitutional provisions regarding transition

### PARAGRAPH XI: OF SOCIAL AND ECONOMIC COUNCIL

**ARTICLE 157:** AN ECONOMIC AND SOCIAL COUNCIL IS INSTITUTED

**ARTICLE 158:** Authorities regard the economic and social council as a consultative assembly. It can take up any issue relating to economic and social domain affecting the Republic of Congo by using its own initiative.

Moreover, it can be referred by the President of the Republic, President of the National Assembly or the President of the Senate.

The economic and social council can also be consulted on proposals for treaties or international agreements, proposals or private bills as well as proposals of decrees due to their economic and social nature.

All proposals of bills, programs and plans related to economic and social aspects, with the exception of the State's budget, are submitted to the economic and social council.

**ARTICLE 159:** The function of the member of the economic and social council is incompatible with that of the member of the parliament, minister, member of the constitutional court, police, mayor, sub-prefect and local councillor.

**ARTICLE 160:** An organic law lays down the organisation, composition, the regulations related to the function and designation of members of the economic and social council.

### PARAGRAPH XXII: OF SENIOR OFFICIALS OF FREEDOM OF COMMUNICATION

**ARTICLE 161:** A superior council of freedom of communication has been created. The superior council of freedom of communication is responsible for ensuring the effective practice of freedom of information and communication. It also gives its technical views and recommendations on issues affecting the field of information and communication.

**ARTICLE 162:** An organic law deciding on the missions, the organisation, composition and function of the superior council of freedom of communication.

### PARAGRAPH XIV: OF THE NATIONAL HUMAN RIGHTS COMMISSION

**ARTICLE 167:** A national human rights commission is instituted.

**Article 168:** The national human rights commission is an organ following-up, monitoring the promotion and protection of human rights.

**Article 169:** The law decides on the missions and lays down the organisation and the function of the national human rights commission.

## **Appendix 5: New transcript of the request issued by ADHUC to the first President of the Superior Court**

**To the first president of the Superior Court**

Subject: Development of the issue/project

Dear Sir,

The Association for the Human Rights of the Incarcerated (ADHUC), a non-governmental organisation as agreed by the Congolese government, hereby informs you on the progress of the case it had presented to the highest court of law presided by you.

On 26 November 2003, ADHUC had submitted the case to the Superior Court to get an opinion on the procedure for establishing the National Human Rights Commission. The said request as well as the statement of reception related to this was registered under no 346.

Sir,

By submitting/ the case to the highest tribunal court of the country in accordance with the provisions of articles 2 and law no 17-99 of 15 August 1999 modifying and completing some /requirements of law no 025-92 of 20 August 1992 and law no 30-94 of 18 October 1994 supporting the organisation and function of the Superior Court, ADHUC wants a constitutional state, that our country aspires to, to be officially established. This would require that that national authorities and public powers respect the laws and regulations decreed, that the independence of the justice is assured.

ADHUC urges you to take quick action so that the members of the Superior Court can confirm if the establishment of the commission is legitimate and in accordance with the bills relating to it. While being fully aware that the proposal submitted to you is very sensitive, ADHUC hopes that there will no delay in spite of all the procedures that might infringe on the independence of our justice system that we, the defenders of human rights are very keen to establish in our country.

Please expect our frank collaboration while we are counting on your legendary clear-sightedness.

Yours sincerely,

**On behalf of ADHUC**  
**LOAMBA-MOKE**  
President.

## **Appendix 6: Agreement on peace and end of hostilities made on 17 March 2003**

### **1) Agreements of the resistance movement**

I, the undersigned Reverend Pasteur Ntoumi, President of the resistance movement (National Resistance Council-CNR), hereby confirm the provisions for the agreement on the cessation of hostilities signed on 16 November at Pointe-Noire and 29 December at Brazzaville.

Therefore, I agree to stop the hostilities, to confiscate the arms in the possession of ex-combatants and to return them to the appropriate commission and not to create any obstacle to the restoration of the country's authority, movement of people and goods, to the redeployment of police forces and the completion of the electoral process in the Pool region.

In addition, I agree to contribute to the consolidation of peace and security in the Pool region, particularly by making useful information for this available to the committee in charge of doing the follow-up.

In return, the government agrees to ensure:

-The provisions of amnesty law no 21/99 of December 1999 supporting amnesty of acts of war during the civil wars between 1993-1994, 1997-1998 and extended to the events of 29 March 2002; the security and professional and socio-economic rehabilitation of ex-combatants, particularly through recruitment in police forces subject to availability and the respect of criteria, professional soldiers being reassigned to their original branches with relevant appointments in defence zone no 8;

-Integration of ex-combatant representatives by the committee in charge of monitoring the Convention for peace and reconstruction of Congo, around which five commissions specialising in the peace in the Pool will be created to ensure the execution of provisions of the above agreements quoted in accordance to the organisation of the said committee.

### **2) Agreements of the government**

I, the undersigned Isidore Mvoubwa, Senior Minister, Minister of Transport and privatisations, in charge of coordinating governmental action, acting on behalf of and for the government and its chief, President Denis Sassou Nguesso, in accordance to the provisions of the cease-fire agreements and cessation of hostilities signed on the 16 November 1999 at Pointe-Noire and on 29 November at Brazzaville, as well as the law of amnesty no 21/1999 of 20 December 1999 supporting the amnesty of acts of war during the civil war between 1993-1994, 1997-1998 and extended to the events of 29 March 2002.

Therefore, I agree, on behalf of the President of the republic, to guarantee security and professional and socio-economic rehabilitation of ex-combatants and accept, from today, to stop the hostilities and return the weapons to the appropriate commission.

I agree, from today, to recruit the ex-combatants in police forces subject to availability and the respect of criteria, professional soldiers being reassigned to their original branches with relevant appointments in defence zone no 8.

I finally agree to integrate ex-combatant representatives in the committee in charge of monitoring the Convention for peace and reconstruction of Congo, around which five commissions specialising in the peace in the Pool region will be created to ensure the execution of provisions of the above agreements quoted in accordance to the organisation of the said committee.

In return, the ex-combatants agree to not create any obstacle to the restoration of the country's authority, movement of people and goods, to the redeployment of police forces and the completion of the electoral process in the Poolregion, in accordance with the spirit of letter of agreement quoted above which he confirms to recognise and respect.

## **Appendix 7: Extract of a report from OCHA (Office for the Coordination of Humanitarian Affairs)**

**2 September 2003**

### **Republic of Congo - Humanitarian crisis in the Pool region OCHA Situation Report No. 1**

Ref: OCHA/GVA - 2003/0126

#### Situation

1. The Republic of Congo has been experiencing several armed conflicts for the past decade. While peace has been restored in the country, the Pool region is still suffering from the ravages of war. Recently the Pool region has been affected by fierce fighting between government forces and the Ninja rebels as well as large-scale looting from March 2002 to March 2003. The area remains under UN Security Phase IV.

2. According to the Ministry of Social Affairs, Solidarity and Humanitarian Action, the number of IDPs is estimated as up to 100,000. This number is expected to increase as the population has fled into the forest and is returning to their villages, only to find that their homes have been destroyed and their crops devastated. Further, reconstruction remains a challenge for the population as due to large scale looting, many are without working tools such as hoes, machetes, axes etc.

3. The health situation is also a major concern. NGOs on the ground report diseases such as measles, skin diseases, tuberculosis, and malaria. The death rate has increased significantly especially in Kindamba and Kimba. In other areas, the population must walk over 60km to reach NGO health centres.

#### Immediate Needs

4. OCHA facilitated several inter-agency humanitarian assessment missions to the Pool region with the cooperation of the government between May and August 2003. These missions revealed that the Pool region may be out of political crisis, but remains in acute humanitarian crisis. Infrastructure has been completely destroyed, sanitation is seriously lacking, the health and nutritional situation is of grave concern and children in particular are dying of acute malnutrition. There are immediate needs for non-food items such as shelter material and blankets, as well as for drinking water and sanitation facilities and food for the affected population. (...)

## **Appendix 8: The problem of displaced persons returning to the pool**

### **Report by Irin, 27 January 2004 – launch of the operation for the return of displaced persons in the pool**

The government of the Republic of Congo has this weekend launched an operation for the voluntary return of people displaced by the civil war in the Pool (south-east of the country). 255 people have thus gone back to the county town of the district, Kinkala which is 75 km south of Brazzaville, the capital. These people have been brought back by train to Matoumbou, 45 km from the Congolese capital. They then went to Kinkala on lorries chartered by the government before going to their areas of origin. According to the management of humanitarian affairs, there were about 500 displaced people who used to live in Brazzaville who were candidates for the voluntary return while in contrast only 255 people travelled that weekend.

On Sunday, 11 km from Kinkala, the repatriated people have furthermore received bare essentials from the Minister of solidarity and humanitarian action, Emilienne Raoul. She also hoped that the return of displaced people would be followed by disarmament of militiamen in the Pool region. "What we are trying to do would be in vain if the disarmament, demobilisation and social rehabilitation operation of ex-combatants does not succeed," declared the minister to the press.

Pastor Ntumi, the leader of the National Resistance Council, had last Friday at the symbolic launch of the grant for rural development (dotation de développement rural- DDR), nevertheless excluded the issue of disarmament of his partisans until an agreement had been made with the government on the number of his militiamen in the police forces and on his on personal status.

The rebellious leader demanded for a government structure with large national union in which his political movement would be able to participate to be established within "reasonable time limit".

The voluntary return of displaced persons will be done with the help of the government, World Food Programme (WFP), United Nations Development Program (UNDP), Doctors without borders (Médecins sans Frontières – MSF) and Congolese Red Cross.

The plan for the voluntary return was elaborated in April 2003. It was intended for people taking shelter in the seven sites (currently 6) near Brazzaville. In mid 2002, 12,300 people had taken refuge near Brazzaville, according to Philippe Chichereau, the humanitarian councillor for the Office for the Coordination of Humanitarian Affairs (OCHA). More than 28,000 others had been taken in by host families in the neighbouring areas. Nearly 6,700 displaced persons were still registered in these sites in 2003. MR Chichereau estimated that there are about 4000 people who were potentially vulnerable. "The exact number of persons still staying with host families is not known at present but it cannot be more than 20% of the initial number," added the humanitarian councillor from OCHA. "On the other hand, the number of people displaced outside the sites inside the Pool region is estimated at 50,000, living with friends and in makeshift shelter or in forests" he added.

More than 100,000 people had fled from the conflict between governmental forces and pastor Frédéric Bitsangou's (also known as Ntumi) militiamen. These people had found refuge in the neighbouring regions of Plateaux, Bouenza, Lékoumou and the southern outskirts of Brazzaville.

## **Appendix 9: OCDH and ADHUC ask for the integration of the Convention against torture in the substantive law**

### **Report by IRIN - 10 / 07 / 2003**

According to a press release from organisations on Friday, two NGOs defending human rights in Republic of Congo have asked the government to take measures aimed at integrating the Convention against torture and other cruel, inhuman or degrading punishments and treatments in the substantive law. The presentation of instruments of ratification of the convention before the United Nations Secretariat on the 1<sup>st</sup> September last year was followed by the request from the Congolese Observatory of Human Rights (OCDH) and Association for the Human Rights of the Incarcerated (ADHUC).

The commitment to this convention proceeded from a recommendation issued from participants in the conference on democracy, constitutional State and fundamental freedoms, organised by OCDH and the International Federation on Human Rights Leagues (FIDH) from 28 to 31 January 2003 in Brazzaville, the capital. The ratification of this convention marked a decisive turning point in the fight against torture, rejoiced the two NGOs. Practices of torture and other inhuman and degrading treatment by the police are nevertheless continually reported by NGOs defending human rights. "The practice of torture exercised by officials of security forces, particularly those from judiciary police is a normal and recommended practice. To their mind, it is a tool to sanction the presumed delinquents or to get confessions from them," pointed out OCDH's last bulletin called 'Lumière'.

The convention against torture and other cruel, inhumane or degrading treatments was adopted by the United Nations General Assembly on the 10 December 1984. It came into force on 26 June 1987 after the proposal of the 20<sup>th</sup> provision of ratification or commitment before the United Nations Secretariat.

## Appendix 10: Adoption of the law authorising the ratification of the ICC

On 24 November 2003, the parliament of the Republic of Congo adopted the bill supporting the Rome Statute, thus establishing the International Criminal Court. The deputies and senators therefore have just placed the country on the path of an international criminal justice based on principles of justice, equity, and fundamental freedoms.

Friday 5 December 2003 by Séverin [www.naros.info](http://www.naros.info)

The Congolese government had already adopted the next bill during the cabinet meeting held on the 24 September 2003.

The government representative, Alain Akoula, at that time explained that “this convention was not an obstacle to sovereignty of States insofar as this jurisdiction does not take away their competence from national repressive jurisdictions.” The Congolese Parliament is fully established thanks to the government.

The adoption of this provision has not come as a surprise as the President of the Republic who is the head of the government had already passed this law.

However, there are harder challenges left to be overcome. The ratification of the CPI by Congo does not symbolise the end of this long battle led by the civil society.

The operational drafts that would allow the integration of the provisions of the Court in the legislation are without any doubt part of a new battle.

## Appendix 11: repercussions of the FIDH and OCDH press conference

On Thursday 6 November 2003, members of the FIDH delegation led by its President, Professor Sidiki Kaba, organised a press conference to give the conclusions of the legal and judiciary cooperation program programme that has been operational in this country for 2 years.

There were about 30 journalists present from Télé Congo, Radio Congo, Radio Liberté, Radio DRTV, Télé DRTV, La semaine africaine, Le défi africain, l'observateur, l'Humanitaire, Droit de cité, la Nouvelle république, Congo internet site, AFP, PANA, Reuter, Les Echos, RFO/TV5, IRIN and so on.

### Example of a report: FIDH reveals human rights violations

**Brazzaville, 7 November (IRIN)** – Sidiki Kaba, persistent of the International Federation of the human rights league, reported human rights violations in this country on Thursday during a press conference in the capital of the Republic of Congo, Brazzaville. “All the persons involved in these acts of treachery should answer to justice,” he continued. Mr Kaba revealed that “selective amnesty” granted by Congolese authorities to former Ninja militiamen responsible for abuses of power during the civil wars in the Pool region (South-east of the country). The Congolese Observatory Human Rights (OCDH), partner of FIDH, had already condemned this amnesty in October in its bulletin “Lumière”. OCDH considered this law impeding the process of national reconciliation because of the exclusion of the scope of application of main leaders of the opposition who are currently in exile.

Mr Kaba had furthermore hoped that the procedure, opened in 2002 by the Meaux Tribunal, in France, against four Congolese authorities suspected of being involved in the disappearance, in 1999, of 350 people in Congo “reaches its conclusion so that all parties are made aware of the act of treachery that they have committed”. “The French justice has its eye on all the persons targeted by the procedure,” insisted Mr Kaba.

Furthermore, the President of the Republic of Congo, Denis Sassou Nguesso, the Minister of security, General Pierre Oba, the former major of the Republican Guard, General Adoua Blaise, the Army Chief Inspector, General Norber Dabira have been targeted due to a complaint by the parents of the people who were reported disappeared between May and June 199 in the Democratic Republic of Congo (DRC) where they had fled the civil war.

The county court in Brazzaville had nevertheless opened a procedure. It heard the army officers, the police and former ministers. No one has however been accused until now. Mr Kaba also reported the absence of democracy, of which the opposition parties were the victims as they denied access to the country's media.

He then criticised the liberty of press placed under high surveillance in Congo. “The minister of communications acknowledged that he was exercising a small censure within the country's media during our discussion” pointed out Mr Kaba.

The President of FIDH again asked the Congolese authorities to not to oppose the return of the former Prime Minister, Bernard Kolélas, in exile since 1997. Mr Kolélas had been condemned, in absentia, of atrocities committed against civilians in private prisons by Congolese justice. “Mr Kolélas must return to Congo and appear before Congolese courts of law” stated Mr Kaba. Mr Kaba finally criticised the unequal distribution of the country's oil and forestry resources.