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Report

Legal and Judicial Cooperation Programme

Democratic Republic of Congo
Justice is overlooked by the transition

"We know that there will be no real peace without justice"
Kofi Annan, September 2003

SUMMARY

This report has been carried out within the context of a programme of legal and judicial cooperation, with support from the European Commission [European Initiative for Democracy and Human Rights] and the French Ministry of Foreign Affairs. The points of view expressed in this document are exclusively those of the International Federation for Human Rights.

Abbreviations

GIA:	Global and all-inclusive agreement
TRC:	Truth and Reconciliation Commission
DSR:	Department of Security and Intelligence
MLC:	Movement for the Liberation of Congo
MONUC:	United Nations Observer Mission in Congo
RCD:	Congolese Rally for Democracy
RCD-Goma:	RCD branch with headquarters in Goma, in North Kivu
RCD-ML:	Congolese Rally for Democracy-Liberation Movement
DRC:	Democratic Republic of Congo
RTNC:	Congo National Radio and Television
UPC:	Union of Congolese Patriots
UPDF:	Uganda People's Defence Forces

PART 1 – PROGRAMME FOR LEGAL AND JUDICIAL COOPERATION IN THE DEMOCRATIC REPUBLIC OF CONGO

I. Description of the Legal and Judicial Cooperation Programme

The Program for Legal and Judicial Cooperation set up by FIDH is entitled "Training programme for instructors concerning norms and protection procedures for human rights in certain African countries". This programme enjoys the support of the European Commission [European Initiative for Democracy and Human Rights] and of the French Ministry of Foreign Affairs. It aims to develop in ten African countries a number of activities targeting conflict prevention, the administration of justice, and the reinforcement of the rule of law through education and human rights awareness.

In each of the countries involved, the programme includes three distinct components: it begins with a preparatory mission that evaluates the specific needs inherent to the characteristics of the country. During the second phase, a training seminar is organized. Finally, each seminar is systematically evaluated by a follow-up mission at least six months after it takes place.

II. Presentation of the *Ligue des Electeurs*, the *ASADHO*, and the *Groupe Lotus*

The FIDH has three member leagues in the Democratic Republic of Congo

- The *Ligue des Electeurs* (LE) is a non-governmental organization established on April 30, 1990. Its goal is to support the development of democracy, notably by defending human rights and promoting the notion of elective government. The League carries out training programmes for members of non-profit and religious organizations as leaders of the democratic movement—activities to create public awareness of human rights, international missions for assessment and for observation of elections…

The LE is at present carrying out several programmes based on its three-year plan [2002-2005] entitled "Peace – Democracy – Elections", dedicated to strengthening the peace process now under way by creating an environment respectful of human rights and by assuring free and open elections in the DRC. The League oversees non-profit task forces working to set up and put into operation institutions in support of democracy.

As a member of the FIDH, the LE has taken part in the last three sessions of the African Commission on Human and Peoples' Rights, where it contributed to the development and presentation of alternative reports to the initial report of the Congolese State.

- The official launch of the democratic process in the Democratic Republic of Congo [then Zaire] in April 1990, and the indicated serious violations of human rights which followed immediately thereafter, inspired the creation, on January 10, 1991, the creation of the Zairian Association for the Defence of Human Rights [AZADHO] by a group of young legal experts, doctors, journalists, political scientists…

As a result of the regime change which took place on May 17, 1997, and because of its consultative status with the African Commission on Human and Peoples' Rights, and in view of its African and international calling, the former AZADHO was renamed the **African Association for the Defence of Human Rights [*ASADHO*]**.

In line with the philosophy of article 3 of its articles of association, ASADHO pursues these goals:
a) Defence, promotion, and safeguarding of individual and collective rights and freedoms.
b) Respect for the primacy of law and the independence of the Judiciary with an eye to consolidating the Rule of law, the base of a democratic society.
c) Contribute to efforts to increase awareness of human rights.

The National Office of ASADHO, which is the headquarters, is located in Kinshasa and is coordinated by President Amigo NGONDE, backed by Vice President Mrs. Marie MOSSI. The organization has local presence established through the national territory. It also has a liaison office in Geneva.

ASADHO, a member of FIDH since its founding:
- publishes for wide distribution informational brochures on rights and freedoms;
- organizes colloquia and conferences to mobilize professional organizations on issues of human rights [magistrates, doctors, union leaders, and journalists…];
- gives open classes on human rights and democracy in villages, churches, and schools;
- does pro bono defence, through our lawyers, for victims of human rights violations as well as the indigent, in regular as well as special courts;
- offers free medical assistance to prisoners under common and codified law, as well as to victims of repression.

- The *Goupe Lotus* is a human rights defence NGO based in the DRC and working primarily in the eastern part of this country. The Lotus Group exposes human rights violations. It alerts public opinion to stand as a counter-weight to authoritarianism. It investigates the practices of the controlling powers in order to constrain those in power to respect the rule of law. It supports all who suffer from the painful reality of discrimination and oppression because of their social, national, religious, or political affiliations and opinions. It sets forth, teaches, and promotes the values of human rights and the democratic principles which will expand their presence in the DRC.

The Groupe Lotus commits to:
- the struggle against the ignorance of the population about its rights and duties;
- the fight against the authoritarian and illegal acts and the abuses and excesses committed by public authorities;
- adherence to the values of justice, peace, and freedom;
- the promotion of internal development initiatives and of solidarity among people.

The goals of the Groupe Lotus include:
- increased awareness among the population of its rights and duties;
- research into pathways to solutions for society's most pressing problems;
- the promotion and defence of human rights, democracy, and development at Kisangani and in the Democratic Republic of Congo;
- the promotion of national and international solidarity.

The Groupe Lotus has various forms of action:
- member training in analysis of social data and mechanisms for protection and promotion of human rights;
- public education: lecture-debates, colloquia, seminars, and workshops;
- publications: investigations and position papers, exposing of abuses of power and violations of human rights, studies and analyses of significant social data;
- mentoring and advising;
- lobbying activities.

III. Historical and Geopolitical Context of the Democratic Republic of Congo previous to programme

Attaining its independence in 1960, the Democratic Republic of Congo (DRC), formerly known as Zaire, inherited from its former Belgian colony an inconsistent, man-made border: a splintered geographical location (composed of 12 countries), an enormous surface area (the largest African country with a surface area equivalent to that of Western Europe), and a unique ethnic heterogeneity (250 ethnicities).

In addition to these natural and structural difficulties, poor management of the country by the various political regimes that have followed each other since independence have compounded problems to the point that the DRC, in spite of its abundance of natural resources, has become one of the poorest States in the world[1]. The violent and complex state of conflict and endemic crisis, along with the internal struggle for power, armed interventions from neighbouring States, the breakdown of ethnic relations, and the depletion of natural resources has contributed to the deaths of 3 million people since 1998.

A. Independent Zaire: From the Myth of Lumumba to the Reign of Mobutu

The January 1961 assassination of Patrice Lumumba, Prime Minister during the 1960 achievement of independence, and one of the more progressive African leaders, quickly puts an end to any hopes for the establishment of a democratic and prosperous independent State. After the failure of a first coup d'Etat in September 1960, General Mobutu Sese Seko claimed power in November 1965. During the three decades of his reign, General Mobutu instituted a regime of terror and pillaged the country, leaving it in decay.

The socio-economic[2] and cultural conditions, as well as the Human Rights situation, steadily decreased until they reached a point when the World Bank, in a 1994 report, estimated that the general decline had delayed the development of Zaire by at least half a century. The misery led to a violent climate as well as defiance by the population towards any official authority.

The destabilization of the Mobutu regime began to accelerate at the end of the summer of 1996, under the influence of Rwanda, Uganda and Burundi, and supported by Asian powers as well as the United States. Under the pretext of dismantling the Hutu armies, who had fled the country of a thousand hills in 1994 after the victory of the Rwandan Patriotic Army and had settled in refugee camps in Eastern Zaire, Rwanda invaded the province of Kivu in August 1996. However, the anti-mobutu rebellion armies had come alive again. Furthermore, the Alliance of Democratic Forces for the Liberation of Congo (ADFLC), with future president Laurent-Désiré Kabila as their spokesperson, emerged in October 1996 and would gradually assume power in the country between January and May 1997. They invaded the capital, Kinshasa, on May 17, the day after Mobutu fled the country.

B. Kabila's Democratic Republic of Congo: From African War to Peace Negotiations

With the capture of Kinshasa, General Mobutu was officially overthrown, and the President of the ADFLC, Laurent-Désiré Kabila, proclaimed himself Head of State of the new Democratic Republic of Congo. Acclaimed by the population and with the support of his allies in the East and the international community in general, the arrival of Kabila to power led to hopes for a resolution to the ongoing conflicts and to a marked improvement to the general situation in the country. However, in reality,

[1] The United Nations Development Program (UNDP) currently ranks the country among the 20 poorest countries in the world.
[2] Drop in education and vaccination rates, rise in malnutrition and famine.

despite several declarations of intent and a few symbolic measures, the economic, social and Human Rights decline continued and dictatorial leadership of the country drifted back into practice with the renewal of Mobutu practices.

Kabila's break from the tutelage of his mentors – Rwanda, Uganda and Burundi – originated with what has been called the "First African War." On August 2, Laurent-Désiré Kabila's power faced a rebel attack from the East led by his former armed compatriots of the ADFLC. A few months later, another front was established in the North-east of the country. Zimbabwe, Angola, Chad and Namibia sent soldiers to the DRC to strengthen the loyalist army, while Rwanda, Uganda and Burundi lent their support to other rebel factions (the Congolese Rally for Democracy and the Movement for the Liberation of the Congo) attempting to overthrow the Kabila regime.

In August 1998, the United Nations Security Council (UNSC) expressed its deep anxiety over the increased tension in the Great Lakes region that was posing a threat to peace and regional security. In resolution 1234, passed on April 9, 1999, the UNSC reaffirmed the need for all States to refrain from any interference in each other's internal affairs, it called for an immediate ceasefire, for a withdrawal of all foreign forces engaged in the DRC, and declared its readiness to contribute to the establishment of a political ruling process acceptable to all parties.

On July 10, 1999, in Lusaka, Zambia, under the stewardship of the Southern African Development Community (SADC), the principal parties involved in the war – the DRC, Angola, Namibia, Rwanda, Uganda and Zimbabwe – signed the Lusaka Ceasefire Agreement to end all hostilities between the belligerents in the DRC.

The Lusaka Ceasefire Agreement – July 10, 1999

The Agreement includes conditions regarding the normalization of the security situation along the DRC border; regarding the control of illicit trafficking of arms and the infiltration of armed groups; regarding the need to address security concerns and the disarmament of militia and other armed groups. It also makes provisions for the creation of a Military Commission composed of two representatives from each party under the authority of a neutral mediator named by the Organization of African Unity (OAU) and proposes that appropriate forces be established, trained and deployed by the United Nations in coordination with the OAU.

The political component of the Agreement stipulates, "*on the coming into force of the Ceasefire Agreement in the DRC, the Parties agree to do their utmost to facilitate the inter-Congolese political negotiations which should lead to a new political dispensation in the Democratic Republic of Congo*." According to the judicial component, the Agreement stipulates that the United Nations forces, deployed within the framework of Chapter VII of the Charter, were responsible for "*screening mass killers, perpetrators of crimes against humanity and other war criminals; handing over 'genocidaires' to the International Crimes Tribunal for Rwanda*."

The Agreement was not respected and the DRC remained essentially divided in four regions under rule of rebel forces or the guardianship of neighbouring States.

Furthermore, while the West and the South were controlled by Kinshasa and his allies (Zimbabwe, Angola, Namibia, Chad and Libya), the North and the East, as far as they were concerned, were in the hands of the rebellion, the DRC-Goma, supported by Rwanda, which controlled North and South Kivu, part of Katanga, part of eastern Kasai as well as the Eastern province. Meanwhile, Uganda controlled the Equator, the Eastern province, and supported J-P Bemba's MLC in its northern posts and the DRC's Kisangani faction in the Eastern province.

However, the year 2000 was characterized by the increase in power by the Mai-Mai Militia, active in the eastern part of the country. Supported by Kabila, who named two of the principal Mai-Mai chiefs Commanders of the Eastern Congolese military region, the Mai-Mai significantly strengthened their links with the Hutu rebels in Rwanda and Burundi. It was in the midst of this convoluted context that President Laurent-Désiré Kabila was assassinated on January 16, 2001.

His son, Joseph Kabila, 29 years old at the time, assumed the role of Head of State and supreme commander of the armed forces. Under pressure from political and social forces as soon as he assumed power, he renewed the establishment of inter-Congolese discussions as laid out in the Lusaka Agreement and facilitated by Sir Ketumile Masire.

The war caused an estimated two and a half million deaths between August 1999 and April 2001, according to the International Rescue Committee, while there were more than two million displaced persons in the region. Put another way, approximately one third of the DRC's total population – some 50 million inhabitants – were directly affected by the war.

C. The Role of the UN in the DRC (MONUC: United Nations Organization Mission in the Democratic Republic of Congo)

The Lusaka Agreement led to the deployment of a United Nations force in 2000 – the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) – to monitor the ceasefire agreement. The Agreements also set out a liberal mandate for United Nations' peace-keeping forces in the DRC, most notably including the right to disarm factions who had refused to sign the Lusaka Agreement, to provide humanitarian assistance directly to the civilian population, to identify those responsible for massacres, crimes against humanity and other war crimes, and to bring those responsible for genocide before the international criminal tribunal for Rwanda.

Nevertheless, the UNSC's November 1999 resolution 1279, which set up the MONUC, limited its mandate to the following tasks: monitoring the observation of the ceasefire and the disarming of foreign forces, facilitating the delivery of humanitarian assistance, and providing assistance to interim institutions in carrying out their tasks, especially the Joint Military Commission.

In practice, the mission's aim and the timeframe for implementation were difficult to achieve. The MONUC, for a long time, did not have more than 500 unarmed military observers. On the other hand, the MONUC couldn't truly monitor the retreat of foreign forces, given that there were no arrangements to post peacekeepers at the borders, including the most important ones with Rwanda and Uganda. In fact, Laurent-Désiré Kabila routinely blocked the peacekeepers' activities, refusing them the right to move across the land.

Despite numerous resolutions passed by the UNSC between 1999 and 2000 which brought about some improvements, most notably a responsive increase in its military strength, the framework of the MONUC mission failed to reflect the realities of the terrain. In light of this, the MONUC garnered some harsh critics, focusing especially on its inability to prevent the massacres committed in 1999, particularly in the Ituri district, given that its mandate did not include the protection of civilian populations.

The MONUC mandate was reactivated within the framework of the renewed inter-Congolese discussion in 2001, and was revised to reflect more realistic proportions. And, despite a lack of means, the UN mission was able to begin an effective deployment. It allowed for the re-opening of the Kinshasa-Mbandaka waterway in the summer of 2001.

Nevertheless, the MONUC remained powerless against the massacres carried out on the civilian population.

PART 2 – Serious and Massive Violations of Human Rights Preparatory Mission [September 25 - October 6 2002]

I. Presentation of the Mission

The preparatory mission of the International Federation for Human Rights (FIDH) was carried out between September 25 and October 6, 2002, and included Roger Bouka Owoko, member of the Congolese Observatory for Human Rights (COHR), an organization based in Brazzaville and affiliated with the FIDH, and Benoît Van Der Meerschen, head of the FIDH mission. The preparatory mission was carried out in the context of the inter-Congolese dialogue for peace and global reconciliation in the DRC, initiated in February 2002.

The objective of the mission was the preparation of a seminar on justice in the DRC. The heads of mission thus travelled to Kinshasa, Kisangani, and Goma, where they met with government and rebel representatives, as well as United Nations and civil society representatives, including the three member leagues of the FIDH in the DRC, and where they were able to gather testimonies on the Human Rights situation in the DRC.

With the aim of addressing the specific themes of the seminar, the FIDH heads of mission met with the following people:

In Kinshasa

- Mr. Léonard She Okitundu, Minister of Foreign Affairs
- Mr. Ntumba Luaba, Minister of Human Rights
- Mr. Jean Mbuyu, Special Advisor to the Head of State for Security Issues
- Mr. Kalonda, Chief of Staff for the Minister of Justice
- Mr. Amos Namanga Ngogi, Special Representative for the Secretary-General of the United Nations, responsible for the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC)
- Mr. Pierre-Michel Fontaine, Director of the United Nations High Commission for Human Rights in the DRC
- Various diplomatic representatives
- Representatives from numerous Congolese Human Rights organizations

In Occupied Territories

- Mr. Emile Ngoy, Head of the Department of Administration of the DRC territory
- Colonel Bivegete, Auditor General of North Kivu
- Mr. Bilusa Baila, Governor of the Eastern Province
- Mr. Boondo Lotika, Director of the Province
- Mr. Innocent Birate, Provincial Director of Security and Intelligence (Eastern Province)
- Mr. Eddy Tshula, Deputy Director (DSR), Responsible for general information (Eastern Province)
- Mr. Jean Bernard Kitoko, Deputy Director (DSR), Responsible for population movements (Eastern Province)
- Mr. Gaspard Bosenge Akoko, Deputy Mayor of Kisangani, Responsible for administration
- Mr. Elingo, General Counsel, Kisangani Court of Appeal
- Mr. Félix Kahungu, President of the High Court of Kisangani
- Mr. Hubert Moliso Nendolo, Prosecuting Attorney of the High Court of Kisangani
- Mr. Lazard Banide, President of the Kabondo commune Peace Tribunal of Kisangani
- Mr. Kabasele, President of the Makiso commune Peace Tribunal of Kisangani
- Mr. Bakajika, member of the Kisangani Law Society
- Mr. Diango, member of the Kisangani Law Society
- Mr. Mukaya, member of the Kisangani Law Society

II. Concerns of the Various Members of the Congolese Society

A. Impunity of perpetrators of serious and massive violations of human rights

1. Massacres, torture, summary executions...

During 2002, numerous cases of exactions, extortions, unwarranted arrests, torture, and summary executions were recorded across the country. For the most part, these crimes were committed by members of the Congolese Armed Forces and the rebel armies in the regions under their respective control.

The situation is particularly disturbing in the regions under rebel control, where the *de facto* authorities chose bloody repression to assert their powers. Crimes including massacres, pillaging, murders, thefts, rapes and other crimes against the flesh were commonplace in 2002, especially in Kisangani, Ituri and the Kivus.

The 12th report of the Secretary-General of the United Nations Organization Mission in the Democratic Republic of the Congo, presented in October 2002, outlined the following facts: (http://www.monuc.org/MandateEn.aspx)

"*During the last three months, the overall security conditions in the northeastern town of Bunia and the entire Ituri region have continued to deteriorate. There have been recurrent ethnic clashes since June, when the Union des patriots congolais (UPC), a primarily Hema militia, was reinforced and resupplied. On 10 July 2002, following intense fighting between UPC and RCD-ML troops in the centre of the city, the governor and RCD-ML authorities fled to Beni, leaving Bunia in the hands of the militia. In mid-August, UPC continued its offensive and succeeded in capturing some of the district's important towns, such as Irumu, 80 km from Bunia on the road to Beni. The violence and the resulting displacement of the population have deepened the mistrust among the communities of Ituri, which is also related to the distribution of resources, as well as manipulation by both internal and external actors*."

The Secretary-General added: "*Humanitarian conditions in the Democratic Republic of the Congo remain deeply disturbing. Civilians continue to bear the brunt of the crisis. Approximately 17 million people — almost a third of the country's population of approximately 53 million — are in need of urgent food aid, while approximately 2.2 million people are displaced within the country. During the reporting period, significant new displacement was reported in Ituri and Maniema Provinces. Women, children and the elderly are the most affected by the conflict*."

2. Plundering of Natural Resources

Throughout the mission, the Congolese media focused their attention on the pillaging of natural resources in the DRC, especially following the publication of a report from a panel of UN experts that stated, "*[The] regional conflict that drew the armies of seven African States into the Democratic Republic of the Congo has diminished in intensity, but the overlapping microconflicts that it provoked continue. These conflicts are fought over minerals, farm produce, land and even tax revenues. Criminal groups linked to the armies of Rwanda, Uganda and Zimbabwe and the Government of the Democratic Republic of the Congo have benefited from the microconflicts. Those groups will not disband voluntarily even as the foreign military forces continue their withdrawals. They have built up a self-financing war economy centred on mineral exploitation*." (http://www.monuc.org/MandateEn.aspx)

Moreover, the decisive lack of transparency in government management, notwithstanding the fact that it presented a budget and interim programmes, accelerated the pauperization of the population and encouraged the corruption of employees and civil servants of the State, who had not been paid for several months, if not years.

3. Impunity

Despite provisions in the Lusaka Ceasefire Agreement and the DRC's 1962 ratifications of the Convention on the Prevention and Punishment of the Crime of Genocide and the 4 Geneva Conventions between 1949 and 1961, neither government nor rebel authorities brought charges against those responsible for the serious Human Rights violations that occurred throughout the DRC, including crimes against humanity, war crimes, and genocide.

This state of impunity came to a decisive end on July 1, 2002, when the Statue of the International Criminal Court was ratified by the DRC and came into effect. As of that day, pursuant to the complementarity principle, the Court can deal with the crimes of genocide, war crimes, and crimes against humanity committed in the DRC, if the Congolese legal authorities are not willing to or cannot judge the accused. (Section 17 of the Statute) The heads of mission reinforced this essential step in favour of the fight against impunity to their interlocutors, members of the government and rebel authorities. However, the issue of trying those crimes committed before July 1, 2002, remained debated.

B. Militarisation of the legal system: from the exception to the rule

As emphasised by a Congolese magistrate in Kisangani, "justice and democracy go hand-in-hand". Yet, during their stay in Kinshasa, the mission reprensatitives noted an increasing militarisation of law in the DRC, with all the abuses it implies. In rebel areas, the situation could be described as worse in many respects.

1. The military court: an instrument of repression serving the official Kinshasa regime.

At the time of the mission, the military court (COM – *cour d'ordre militaire*) was gaining presence in the legal arena of the official Kinshasa regime. 2002 was marked by the trial of the suspected killers of Laurent-Désiré Kabila. The COM used this context to arbitrarily enlarge its scope of intervention to all citizens, military or civilians, and re-establish a regime of terror.

During legal proceedings initiated in March 2002, 130 civilians and military personnel were accused and brought before the COM. Their basic rights, particularly common law rules for a fair trial, were not respected. The observatory for the protection of human rights defenders – a joint FIDH-OMCT programme –has, on several occasions, condemned these liberticidal procedures, which have put representatives of civil society behind bars for weeks, even months at a time, without legal foundation. This is a breach of international and regional human rights protection laws/standards (see Observatory's 2002 annual report www.fidh.org).

2. A return to death penalty

The verdict of this trial was made public in January 2003, and 30 people were sentenced to death. These sentences came at a time when the minister of justice had suspended the moratorium on the application of the death penalty on 23 September 2002. FIDH project leaders tried in vain to meet the minister of justice to discuss this matter.

3. The law of the military junta in the rebel zone

Project leaders noted that the Congolese, living in a rebel-controlled territory, were now only occasionally turning to the relevant legal authorities. Executive and legal power is in the hands of the military, whom the population now calls on to resolve disagreements, or even to contest the decisions made by a magistrate. As explained by a contact in Kisangani: "*there are more people in the army's Bureau 2*[3] *than at the law courts*."

These ad hoc trials do not respect the minimal rules of a fair trial, and the solutions presented often favour the highest bidding party. Project leaders had the opportunity to meet magistrates and lawyers in Kisangani who told them of the countless difficulties they experienced simply trying to carry out their respective duties.

Finally, the mission noted that a number of soldiers benefited from total impunity.

4. Inhumane detention conditions and arbitrary detention

In addition to the deplorable sanitary and prison conditions, prisoners are tortured and otherwise mistreated on a daily basis in both rebel and government zones. The member leagues of the FIDH have particularly condemned the widespread use of clandestine prisons. As an example, prisoners in Kisangani and Goma imprisoned for an indeterminate period often do not know why they are imprisoned.

The absence of control by public prosecutors, who do not have access to files or prisoners, is a major obstacle when trying to estimate the number of people illegally imprisoned. Although project leaders were not able to go to Ituri, reports corroborated that the situation in Bunia was critical.

C. Breaches of civil liberties: security paranoia

1. Freedom of the press flouted

Journalists, especially those working for private media, are victims of harassment, arrests and daily intimidation throughout the area. In the government zone, while several private press journalists were questioned and arrested for libel or "violation of press laws" in 2002, others were refused access to the military court during the trial of the alleged killers of Laurent-Désiré Kabila for "reasons of state".

In the rebel territory, the authorities in fact regularly accuse private journalists of manipulating the public. As an example, the RCD-Goma in Kisangani regularly broadcasts radio messages against Kisangani private radio stations and censors journalists from the public press.

2. Harassment of human rights defenders

Project leaders noted that human rights defenders, who are harassed and intimidated on a regular basis, remain the prime target of the authorities throughout the territory. In Kinshasa-controlled territories, certain human rights defenders, taken in for questioning time and again, were imprisoned for many months. Mr N'sii Luanda, president of the CODHO (committee of human rights observers) was arrested on 19 April 2002 in his home by two COM inspectors, accused of treason for letting Mr Michel Bizimwa stay at his home. He was still in prison when the preparatory mission was carried out, without official notification of charges thus making his defence impossible.

FIDH project leaders witnessed a breach of the right to hold meetings. Indeed, the awareness day for peace, human rights and democratic elections[4], organised by the *Ligue des Electeurs* and in the presence of project leaders, was prohibited. One of the League members, Mrs G. Dilayen, was taken to Ngaba Town Hall by ANR (Agence National de Renseignement – *National Information Agency*) agents.

In the rebel-controlled zone, in addition to engaging in daily acts of harassment and intimidation of human rights activists, the authorities usually censor the activities of these organisations from start to finish. Thus, in Kisangani, the RCD-Goma requires from the organisers of all civil society association meetings to obtain prior authorisation from the local authorities after providing them with the reason for the meeting, programme of activities and a list of participants. As an illustration, the Vice-Mayor of Kisangani demanded the FIDH mission its programme of meetings in the town and on 7 May 2002, suspended the human rights resolutions restitution meeting of the Inter-Congolese Dialogue organised by the human rights section of MONUC.

[3]. "Bureau 2" became sadly notorious in August 2002 by Human Rights Watch's scathing report on massacres carried out in this town in mid-May 2002.
[4]. More precisely on the theme of: "electoral perspectives from the viewpoint of resolution n°5 of the inter-Congolese dialogue".

The authorities regularly broadcast messages on the official radio or television condemning players in Kisangani's civil society, whom they consider to be instigators of public demonstrations against the RCD-Goma, opponents to the peace process in DRC, or even in the pay of foreign powers.

III. Seminar Objectives

Faced with severe human rights violations in DRC both in government and rebel zones, the major concerns of Congolese NGOs are naturally based on the administration of justice and victim compensation. Meanwhile, the country's political and military players are concerned about peace negotiations undertaken by the Inter-Congolese Dialogue and their respective role in the future transition process.

The FIDH and its member leagues consider that notwithstanding the importance of national reconciliation, justice is essential to the peace process. In reality, it should be the linchpin, the essential ingredient for success. Reforms need to be carried out to bring national texts and practice into line with regional and international human rights protection measures, particularly those relating to a fair trial. At the same time, it is necessary to design instruments for fighting impunity that will provide justice to the victims of the most serious crimes committed since 1997. To compensate for the slow legal progress and the failure of the national justice system to recognise international crimes, there are a variety of models to suit different situations: South Africa has set up a truth reconciliation Committee; Rwanda has demanded the setting up of an international criminal tribunal and has put its traditional law back on the agenda; a mixed court and a truth reconciliation commission have been set up in Sierra Leone; since the Arusha agreements in 2000, Burundi has been setting up a truth reconciliation commission and demanding the creation of an international criminal tribunal. The legal cooperation seminar should also assert the importance of the right to justice and compensation for victims of the most serious crimes, regardless of the political agenda, and present the representatives of the national authorities and civil society with the appropriate anti-impunity mechanisms.

PART 3 – STUDY OF APPROPRIATE NATIONAL AND INTERNATIONAL MECHANISMS TO MEET VICTIMS' EXPECTATIONS SEMINAR [25 - 28 FEBRUARY 2003]

I. Context

A. During the signing of the Sun City agreements…

Joseph Kabila reinitiated the peace process in February 2002 by holding the inter-Congolese Dialogue in Sun City in South Africa, as planned by the Lusaka agreement in 1999, between the Kinshasa government, the different rebel movements, the MLC, the RCD, the RCD-ML, the RCD-N, the political opposition, the civil society and the Maï Maï. The participants came to a shaky power-sharing agreement which left important questions concerning national reunification and political transition unanswered.

The agreement ordered the cessation of hostilities and engaged the country in a political transition process that should lead to legislative and presidential elections. A stream of agreements were then signed, mainly bilateral agreements planning the withdrawal of foreign troops from DRC, particularly with Rwanda in July 2002 and Uganda in September 2002.

The so-called "global and all-inclusive" Pretoria Agreement (see Appendix) was adopted on 17 December 2002. It stated that elections would be held at the end of a 24-month transition period. During the transition period, President Joseph Kabila would remain the Head of State, combining this function with that of supreme commander of the armed forces. Four vice-presidents would be in charge of government commissions, each comprising ministers and vice-ministers: a political commission headed by the *Rassemblement congolais pour la démocratie-Goma* (RCD-Goma); an economic and financial commission chaired by the Congo Liberation Movement (MLC); a commission for reconstruction and development, chaired by the Government component; and a social and cultural commission chaired by the political opposition component. The government would be composed of 36 ministers and 25 vice-ministers. A bicameral parliament would also be created, composed of a national assembly (the president of which will be proposed by the MLC) and a senate (the president of which would be proposed by civil society).

Planning consensual management of the transition, representatives of civil society would participate mainly in drafting a Constitution project, creating a national army and ensuring the security of transition institutions and all its leaders in Kinshasa. An agreement follow-up commission and an International Transition Guidance Committee (CIAT) are responsible for respectively implementing and ensuring the agreement is applied[5]. The dialogue was not concluded until 2 April 2003, with the signing of the inter-Congolese political negotiations final act at Sun City. All the participants formally approved all the agreements, constituting a global programme for restoring peace and national sovereignty in DRC during a 2-year transition period, including the global agreement and the Constitution project.

B. Serious violations of human rights persist

As emphasised by the ASADHO in its report of March 2003, "inter-Congolese political negotiations underway since 1999 have not put an end to the crisis situation throughout the country (or state of chaos in some regions), nor curbed the massive human rights violations".

In certain government-controlled zones, a joint research team from the High Commission of Human Rights (HCDH) and the MONUC reported on the violent confrontations that took place in November in Ankoro between the FAC and the Maï Maï, during which 48 civilians were killed and some 4,000 homes burnt down. "*The Government detention centres, where prisoners were subjected to degrading and inhumane treatment, are still open despite a presidential decree ordering their closure. Renowned journalists were detained arbitrarily for expressing their opinion on basic rights issues, the Constitution and the constitutional state. Prisons are extremely overcrowded and living conditions are deplorable. Despite a decree liberalising political party activities, members of certain parties have been arrested and detained arbitrarily, and prevented from meeting each other. My special representative, in close collaboration with the High Commission of Human Rights, has raised these issues with President Kabila and his human rights minister on numerous occasions, particularly regarding the suspension of the moratorium concerning the death penalty, but no measures have been taken.*" (Thirteenth report of the Secretary General on the organisation of United Nations' mission in the Democratic Republic of Congo on 21 February 2003 <http://www.monuc.org/Documents>).

Military activities continued in nearly all the regions controlled by rebel troops, particularly in Ituri and the Kivus. Massacres, rapes and pillaging continue… (http://www.monuc.org/Documents).

In an attempt to handle this situation, specific agreements relating to the peace process in the Ituri province were signed as part of the inter-Congolese Dialogue. Thus, the Luanda agreement of 6 September 2002 and the Dar Es-Salaam agreement of 10 February 2003 provided for the creation of an Ituri pacification commission (CPI) as an interim structure to govern Ituri after the departure of the Ugandan army until a Congolese administration could get up and running. On a socio-economic level, a large proportion of the population is unemployed and the government is still unable to pay the salaries of state agents and employees.

[5]. Appendices III and IV of the agreement.

II. Seminar: What justice system for the Democratic Republic of Congo?

The *Salon Bleu* of the Ministry of Youth, Sport and Leisure was used to host the seminar-workshop co-organised by the FIDH, the Ligue des Electeurs, the ASADHO and the Groupe Lotus, from 25 to 28 February 2003. Mr Ngele Masudi, Minister of Justice, opened the ceremony. He highlighted the specific purpose of the seminar by insisting on the fight against impunity. Mr Ngele Masudi confirmed the commitment of President Kabila and his government to the promotion of human rights and the law. "*The current situation in the country, the aggressive nature of which is known in the international arena, is a constant challenge for the government*." Before declaring the seminar-workshop formerly open, the minister expressed his wish to see the participants discuss the question of justice for the Congolese people, "*the basic rights of whom are continually disrespected*".

Mr Amigo Ngonde, president of the ASADHO presented the programme of work and announced the main themes of the seminar. He considered that the seminar had come just at the right time, due to problems of belligerence that were preventing the administration of fair justice in DRC.

Mr Paul Nsapu, president of the Ligue des Electeurs, recalled that this Seminar-Workshop was supported by the European Commission and the French Ministry of Foreign Affairs, as part of the legal and judicial cooperation of the FIDH in ten African countries, including the Democratic Republic of Congo.

Mr Benoît Van Der Meerschen, project leader for the FIDH, briefly presented the recommendations expressed in the FIDH's preparatory mission report. He furthermore expressed a wish to establish a partnership with the civil society and the political parties in order to institute a constitutional state in DRC. Mr Van Der Meerschen indicated that the credibility of the law would depend on whether it gained the Congolese population's trust and that the much wished for national reconciliation could only be possible by installing restorative justice. He explained that in the absence of trust today, other systems must be considered, such as the mechanisms of international law and other complementary mechanisms, such as truth and reconciliation commissions.

A. Examination of the reform of national justice system

1. Inadequate reform of military justice system

Although, as Benoît Van Der Meerschen, FIDH project leader, recalled, the DRC has ratified international and regional instruments ensuring a fair trial (particularly the international covenant on civil and political rights (article 14), and the African Charter on Human and Peoples' Rights (article 7)), the justice system in DRC as a whole does not function correctly. It is marked by an unprecedented failure: bias, slowness, negligence, lack of material and human resources, and breach of decisions made.

Mrs Nicole Odia, lawyer and member of the ASADHO-KATANGA section, emphasised that not keeping guarantees relating to the right to a fair trial is particularly problematical in military law, particularly in the military court (COM). The participants, in general, have in no way challenged the existence and legitimacy of this double system, the independent military legal system taking into account the specific situation of military personnel. The discussion mainly concerned the necessary reform of the military law (field of competence and functioning) and especially the repeal of the COM.

In DRC, the military law was organised by government decree 1962-060 of 25 September 1962 and amended by the decree of 23 August 1997, which introduced a military law and institutions code and created the military court. According to Article 3 of the government decree, the COM is exclusively competent to have knowledge of infractions committed by soldiers or police officers throughout the Congolese territory.

However, the possibility of continuing "breaches of national security", called mixed breaches led to legal proceedings against civilians. As this concept was not clearly and precisely defined, the COM, in practice, abusively used this mean to judge military personnel and civilians indistinctly. Referring for the second time to the election procedure for members of the COM, Mrs Nicole raised the question of the independence, impartiality and competence of the judges. Indeed, the president of the republic appoints the president and the prosecutor general without the "Magistrates' Council", which is normally consulted, being able to give its opinion. The president and the prosecutor of the COM in turn appoint the magistrates, who are often military personnel but rarely lawyers, bearing in mind that state magistrates and judges are not differentiated. Furthermore, COM magistrates are protected from the common law procedure rendering them incapacitated in the event of suspicion of bias.

The functioning of the COM was also discussed. It does not respect all the guarantees offered by the common law regime, particularly the principle of challenging and the appeal system, the right to defence and legal remand times, the denouncement of legal police officers (OPJ) operating without ever taking an oath.

An overhaul of the military legal system was undertaken with government decrees 23 and 24 of 18 November 2002, bearing the military criminal code and the military legal code. The new code was promulgated on 18 December 2002, but did not come into force until the decree specifying how the law should be enforced was adopted by President Kabila. The major reform of this government decree remains the repeal of the military court and the establishment of new military institutions, notably the military High Court, the scope of intervention of which was considerably restricted. Thus the new code stipulates that children under the age of 18 years will no longer be criminally responsible before military courts.

In addition, the supreme court of justice will be able to control the constitutionality of the military high court and has jurisdiction, with no prior authorisation, in legal proceedings against people benefiting from immunity. Article 2 of government decree 24 of 18 November 2002 explicitly stipulates, for the first time, the legality principle for offences and penalties. Finally, the new code took into account international instrument provisions, thus crimes against humanity, genocide and terrorism were integrated into the code alongside war crimes provided for since 1962. Nevertheless, as the law did not come into force, the COM is continuing its proceedings against civilians, the president and the prosecutor of the COM forming a united front against this repeal.

The new code was criticised and questioned by all the participants. Indeed, the breach of national security still exists and has not been clarified. Civilians therefore remain at risk of being brought before military court for this mixed offence. Furthermore, the possibilities of appealing are subject to additional restrictions. The possibility of extraordinary appeal (revision or cancellation of a judgement) is removed, while ordinary appeals remain prohibited. Even if the military judge now has a certain power of discretion and is not obliged to systematically apply capital punishment, the death penalty has not been abolished, but extended to other offences.

Finally, the issue of remand was not provided for in a specific provision; there is still no legal control relating to remand, and the absence of separation of powers between public prosecutors and other magistrates allows any judge to issue an arrest warrant.

The administration of the law in rebel zones was dealt with in specific discussions. *Mr Dismas Kitenge, president of the Groupe Lotus*, painted a gloomy picture of the administration of the law in territories governed by the *Rassemblement Congolais pour la démocratie* (RCD-Goma). The region is famous for the near absence of organised legal structures and interference in the existing structures by the politico-military authorities and Rwandan security forces. Appointed by the Goma authorities, the magistrates are not paid and are threatened on a daily basis. The RCD-Goma is even planning to create its own supreme court in Goma, beyond any control of the Kinshasa government.

2. Workshop: "Study of obstacles to the administration of civil law"

Under the chairmanship of Mr Feza Kayembe, the workshop attempted to highlight the obstacles to the correct administration of the law in DRC by giving a concrete example: the letter from the Director of the Head of State's Cabinet addressed to the Ministry of the Interior, officially announcing his firm opposition to judgement 15441, made by the Lemba Peace court. This single injunction was enough to paralyse the administrative and legal authorities and hinder the carrying out of this legal decision.

The following obstacles were apparent to the workshop participants:

Obstacles relating to individuals:

- Interference of the authorities regarding instruction, legal decision-making and execution of legal decisions;
- The behaviour of magistrates and representatives of the law;
- The behaviour of people awaiting trial: ignorance and appeal;
- The lack of knowledge of the law of certain magistrates;
- The lack of preparation for functions of magistrates and representatives of the law;
- The weak purchasing power of magistrates, people awaiting trial and representatives of the law.

Obstacles relating to legislation and its implementation:
- Non-application of magistrate statutes;
- Outdated or obsolete bills or procedures;
- Breach of bills.

Obstacles relating to infrastructure:
- Lack of security in working conditions;
- Lack of viable buildings in certain provinces across the country;
- Lack of documentation.

3. Workshop: "Study of the extension of death penalty's scope"

Chaired by Benoît Van der Meerschen, discussions were based on the lifting of the moratorium on the death penalty on 23 September 2002, in the context of the trial of accused killers of Laurent-Désiré Kabila. Questions from participants had little to do with the death penalty per se, but with the possibility of delivering and applying such a penalty in a legal system tainted by problems and bias.

Mr Marcel Wetsh'okonda introduced the legislation regarding the death penalty in DRC. The Criminal Code, in article 6, stipulates that the death penalty can be pronounced relative to 16 offences before the civil court (8 of which are common law and political offences). The new military law code does not abolish the death penalty but extends its scope of application to nearly 60 offences (30 of which are applicable in times of peace). The death penalty, by hanging for civilians and shooting for soldiers, is carried out under the supervision of the military court prosecutor. He decides where the execution will take place and is the only person able to introduce a plea for pardon to the President of the Republic.

The participants emphasised that the DRC had not ratified the first additional agreement to the international covenant on civil and political rights limiting the application of the death penalty. The agreement notably stipulates that the death penalty must be pronounced within a fair trial during which all guarantees have been respected. This penalty must furthermore be limited to the most serious crimes and only applied in exceptional circumstances.

Thus, it is prohibited to pronounce such a sentence against certain categories of people considered vulnerable, such as a pregnant woman or children. The new criminal code repealed article 137 of the military law code authorising the COM to sentence minors to death. But its failure to come into force means that minors can still receive the death penalty. Finally, there are no specific provisions relating to the execution of a pregnant woman in DRC, however, cases of execution have been noted.

The death penalty must be pronounced within a fair trial during which all guarantees have been respected. Such guarantees normally consist in granting the possibility to make an appeal and request a pardon. However, the new code has confirmed that it was not possible to make an appeal against a decision of a military court.

Although the accused killers of President Laurent Désiré Kabila were sentenced to death before the COM, the carrying out of the penalty should be suspended. Furthermore, the penalty can only be carried out after an explicit refusal of the President of the Republic to grant a pardon. However, there is no specific time limit in which to grant or refuse the pardon as part of a trial before a civil or military court (COM). Thus, the death penalty is frequently applied before the pardon has been requested or granted.

4. Alternatives: Quasi-judicial regional and international mechanisms

Mrs Julie-Anne Falloux, assistant director of the FIDH international office, and *Mr Kazadi* presented the semi-legal regional and international appeals, such as the human rights committee in charge of ensuring the provisions of the international covenant on civil and political rights are respected, and emphasised that they constituted an additional mechanism to the national legal system.

They applauded the fact that the DRC had ratified all the international conventions relating to human rights and recalled that political authorities should make an effort today to implement them. Mrs Falloux recalled that since 1997, the DRC has not presented certain reports such as that of the United Nations Committee against torture.

5. Recommendations of the participants to the seminar

Concerning the administration of the law

The participants recommend that:
- the population be made aware of the rules relating to the right to a fair trial;
- the independence of the court be guaranteed in all circumstances, both in launching and carrying out investigations and in decision-making and the carrying out of decisions;
- the competence of magistrates be strengthened through training sessions;
- the status of magistrate be respected;
- the permanent law commission make an inventory of obsolete bills and propose reforms which comply with the rules relating to the right to a fair trial;
- effective appeal channels be ensured to strengthen legal control of legal decisions;
- the courts and the public prosecutor's office be provided with material and documentation and that the process of installing courts be finalised;
- local courts be created;
- the competent authorities present, within the stipulated time limit, periodical reports to the different UN committees;
- that NGOs use the semi-legal international and regional mechanisms to make known human rights violations in the DRC, particularly violations concerning the right to a fair trial.

Concerning military law and the death penalty

The participants recommend that:
- the presidential decree allowing the implementation of two government decrees reforming military law be brought in as soon as possible so that new military courts can be set up to replace the military court (COM);
- the military legal system respects and guarantees in all circumstances the international standards relating to human rights;
- the competence of military courts be clearly defined and strictly conferred for exclusively military offences;
- the moratorium on the death penalty suspended in September 2002 be immediately re-established;
- the government honour its commitment made through a letter of intention addressed to the Secretary General of the UN in 1999 to proceed with the eventual abolition of the death penalty.

B. Study of mechanisms to fight the impunity of the most serious crimes

Participants insisted on the fact that reparative transitional justice is a sine qua non condition for obtaining the population's trust in the current legal system and reforms and their credibility. *Mr Marc Freeman* introduced the different possible transition mechanisms, differentiating between quasi-judicial mechanisms – in other words conciliation mechanisms – and judicial and extra-judicial mechanisms - or reconciliation mechanisms.

As far as extra-judicial mechanisms are concerned, essentially, participants studied the mechanisms envisaged by the Pretoria agreement of December 2002 and the Transition Constitution (see Appendix), i.e. an investigation mechanism, the Truth and Reconciliation Commission, and a system involving amnesty and immunity. Although conciliation mechanisms are necessary, the participants unanimously felt that they did not suffice alone, and that the most serious violations and crimes committed in the DRC must be sanctioned and the victims compensated.

With this in mind, essentially, the participants discussed how to fight impunity before July 1, 2002: the DRC having ratified the ICC statute (subject to the adaptation law), serious crimes committed after July 1, 2002 are, in theory, a matter for the ICC.

1. The fight against impunity for crimes committed before July 1, 2002

a. Tools for national reconciliation

i) Truth and Reconciliation Commission

Chapter V (4) of the Global and Inclusive Agreement (GIA) of December 2002 named *"institutions in support of democracy*" foresees the creation of a "truth and reconciliation commission". An organic law to create the latter must be passed.

Mr Freeman stressed that this temporary extra-judicial investigation mechanism has become very common. Over the last 25 years, almost 25 truth and reconciliation commissions (TRC) have been founded, namely in Chad, Uganda, Sierra Leone, South Africa and Ghana. As its name suggests, the TRC's mission is to conduct an official independent inquiry into human rights violations and crimes committed in the past. This involves collecting evidence in order to identify the wrongs committed in the past and those responsible, and recommending justice administration reforms.

Mr Olivier Kambala recalled that the TRC must be unbiased, independent, with clearly defined objectives, and that judicial mechanisms must exist in parallel and that one must establish clear demarcation between the TRC and existing judicial mechanisms with regards to respective authority.

Workshop: "articulation between truth commission and judicial process"

Chaired by Mr Olivier Kambala, the workshop pondered over how to determine the TRC's mission in the DRC to make it more suitable for the judicial process. The participants admitted that the Women Partners For Peace in Africa (WOPPA) Organisation's Project could make for a sound work base. However, the participants stressed the need for improvements, particularly the possibility for the NTRC to transmit evidence to courts if they are not obtained by other means.

Although all participants agreed unanimously that there was a need for such a conciliation mechanism, the workshop was reminded that NGOs, notwithstanding their collaboration with the TRC, will have to expedite suits before competent courts.

Workshop: "Role of NGOs in the creation and activation of a Truth and Reconciliation Commission"

Under the chairmanship of *Mr Feza Kayembe*, the workshop was reminded that NGOs play a major role in increasing the awareness of the population, particularly by informing it of the reasons for the Commission's existence, its goals and the importance of its mission. It also plays an essential role in lobbying participants of the Inter-Congolese Dialogue to create the Commission by reflecting over how it shall be organised and shall operate. This may be through creating an NGO coalition to create the Commission. Once the TRC becomes effective, the NGOs should help to bring together human rights violations dossiers, present victims to the Commission for depositions, participate in the Commission's work, namely collecting statements and witness accounts.

Once the NTRC's mission is accomplished, the NGOs should assess the Commission's work, monitor the application of the Commission's recommendations and resolutions and make use of the Commission's work to contribute to ensuring justice is obtained and that victims are compensated.

ii) Amnesty and impunity

In accordance with the GIA chapter III (8), and "*in order to achieve national reconciliation*", "*amnesty shall be granted for acts of war, political offences and offences of opinion, except for war crimes, genocide crimes and crimes against humanity*".

Mr Freeman introduced the discussions recalling that amnesty differs from a pardon in that it is not preceded by a trial. Furthermore, he stressed that there may be pre-requisites to obtaining amnesty, such as the obligation to recognise the crime committed and the promise not to re-offend. Although the participants did not reject the actual possibility of granting amnesty, they stressed that such power must be limited *ratione materiae* (the most serious crimes should be excluded), *ratione personae* (non applicable to leaders and generals) and *ratione temporis* (non-retroactivity), to conciliate it with the victims' right to justice and compensation and to ensure that individuals responsible for serious crimes do not go unpunished.

The GIA foresees that amnesty may not be granted for war crimes, genocide crimes and crimes against humanity. The participants commented that, in practice, few amnesties would be granted for acts of war, as war crimes (according to the definition of the ICC statute) cover a large range of crimes committed during the war in the DRC.

iii) Traditional justice

Although Messieurs Freeman and Kambala were invited to present the gacaca court system in Rwanda, this system was rejected for the Congolese situation by all participants, as they felt, for example, that it did not work well and did not respect rights to a defence.

b. Judicial and quasi-judicial mechanisms for national reconciliation

The participants agreed unanimously that atonement plays a crucial role in reconciliation via recourse to justice.

Briefly, *Mr Freeman* introduced the different judicial mechanisms possible, distinguishing between ad hoc international criminal tribunals and mixed national and international law courts and purely national courts.

i) International criminal tribunals

Mr Freeman evoked the practices of the International criminal tribunal for Rwanda and recalled how much it cost and its running problems. The participants stressed that in January 2003, the government decided to create an ad hoc international criminal tribunal in the DRC, with authority over for the most serious crimes committed from 1996 onwards (including financial crimes) and made an official request to the UN's Security Council[6]. *Mr Richard Lukanda, principal private secretary for the Ministry of Human Rights*, then recalled that the Security Council has the power to create an ad hoc tribunal, in theory, without the consent of the State in question.

Although the participants and Congolese government were, overall, in favour of creating a special tribunal in the DRC, the Security Council, in its different resolutions concerning the DRC, was reticent towards creating special tribunal in the DRC, which would be too costly. Some participants then suggested creating a new ICTR chamber, with the authority to rule on the most serious crimes committed in the DRC.

But the participants were reminded that the government in Kinshasa firmly rejected this proposal, in light of Rwanda's involvement in the Congolese conflict. Although the government felt that it was crucial to distinguish between genocide within Rwanda and "genocide" committed by Rwandan people against the Congolese population, it stressed that it intended to fully co-operate with the ICTR in the context of its mission .

ii) Combined courts and national courts

Other participants were in favour of creating a mixed court (based on national and international law) like in Sierra Leone. *Mr Freeman* said that mixed courts have the ability to strengthen national courts, to enable the possibility of a fair trial, to reduce costs, and to adapt to the social-political context, while stressing the difficulty, due to the absence of a police force to transfer suspects, the large volume of cases to deal with, and problems communicating with the population.

Overall, the participants, like the government, rejected the idea of creating a mixed court or allowing national courts alone to rule on the most serious crimes, given their evident lack of independence and efficiency. Firstly, a mixed court would imply an extradition agreement between the countries concerned, in order to bring suspects in other countries before the courts, and the death penalty in the DRC would make their extradition improbable. Secondly, besides the fact that national courts are marred by corruption, the Congolese public prosecutor is unable to conduct inquiries in occupied territory.

Even though the ad hoc international tribunal model was recognised as the only truly unbiased and independent judicial system, the participants were reminded that the aim of this transitory judicial system was to increase the credibility and legitimacy of Congolese justice.

c. Recommendations from the participants to the seminar

Regarding articulation between the Truth and Reconciliation Commission (TRC) and judicial process

[6]. Extract from a statement by Zenon MUKONGO NGAY to the 6th UN general assembly committee on October 20, 2003. "*As we can observe, the process of re-establishing justice in the DRC requires an efficient mechanism to combat impunity, starting with rehabilitating basic judicial infrastructures whose very poor state before the war, now calls for the creation of a justice system complying with the principles of the United Nations Charter and international law. Furthermore, the need for true reconciliation between the Congolese after five years of war indicates the urgent need to gain knowledge of crimes committed, to determine who is responsible, and to bring justice for the victims". Of course, our urge to create an international criminal court for the DRC comes at an ill-chosen time in history for the creation of ad hoc courts for obvious reasons. But one must not forget that in countries like mine, the most serious of crimes have been committed and are still being committed and it is the duty of these countries, once law is restored, to bring the offenders before their own courts, by virtue of the sacrosanct principle of complementarity as introduced by the Court Statute. Failing such a court, we feel that it is necessary to opt for a special criminal court based on the model of Sierra Leone or the one being prepared in Cambodia, the importance being that these terrible crimes never occur again*". In order to deal with both these concerns, and given that it is a matter of ending the cycle of violence and impunity, my country has asked the international community to create an international criminal court for the Democratic Republic of Congo. It also intends to benefit from the prevention and repression mechanism introduced by the international criminal court whose statute came into force July 1, 2002.

The participants supported using "the draft bill concerning the organisation, running and authority of the national truth and reconciliation commission" prepared by the NGO Women as Partners for Peace in Africa (WOPPA) as a work base. At the same time, they recognised the need to analyse the missions and experience of other countries with regards to Truth Commissions.

The participants also stressed the need for an ad hoc international criminal court for serious crimes committed before July 1, 2002.

The participants called:

- on NGOs to expedite suits before competent national and international courts, including the ICC, for international crimes committed after July 1, 2002;
- for demarcation to be established between the TRC and judicial mechanisms with regard to their respective authority.

Concerning the participation of NGOs in the creation and implementation of a Truth and Reconciliation Commission (TRC).

NGOs agree to ensure the creation of an independent and effective TRC and to support its actions.

The role of NGOs before the creation of the TRC:

- create an NGO coalition to create the Commission;
- inform the population as to the reasons for the Commission and its purpose, and gather opinions and comments;
- lobby participants of the Inter-Congolese Dialogue to create this Commission;
- participate in the drafting of texts for the creation, organisation and running of the TRC, and to determine Commissioner profiles;
- constitute and bring together dossiers on human rights violations.

The role of NGOs during the running of the TRC:

- presenting victims to the Commission for their deposition;
- contributing to the Commission's work, particularly by collecting statements and witness accounts in partnership with the Commission;
- monitor the application of the Commission's recommendations and resolutions.

2. Fighting against impunity for crimes committed since July 1, 2002

a. The International Criminal Court

Mr Losange briefly introduced the notion of the International criminal court - its authority, procedure – stressing that the international community had somewhat faltered before setting up a legal system, the Rome Statute of July 17, 1998, curbing crimes running counter to the consciousness of humanity.

Mrs Gaelle Laroque stressed that on the day she spoke, despite the opposition of the United States and the signing of bilateral agreements to exclude all US citizens from the authority of the ICC, 88 States ratified the Rome Statute thanks to the efficient lobbying of NGOs.

Mr Sidiki Kaba added that the ICC constituted a warning to anyone committing a war crime, as the ICC would not spare head of states or the military, particularly those responsible for the actions of their troops.

Professor Luzolo saluted the fact that the DRC signed, on September 8, 2000, and ratified on April 11, 2002, the International criminal court (ICC) Statute, and reviewed the law to adapt the ICC statute. He recalled that a bill to enforce the application of the ICC statute was passed in October 2002 and that the government clearly expressed its desire, in a letter addressed to the ICC on February 17, 2003, to make use of the ICC for all crimes committed after July 1, 2002. The application of the death penalty under national law to punish those committing genocide, crimes against humanity and war crimes has been at the centre of specific discussions, as the Rome Statute does not apply the death penalty.

Workshop: "Criminal liability of those committing war crimes and crimes against humanity in the DRC before the International criminal court (ICC) and the complementarity principle"

- The workshop, under the chairmanship of *Mr Mulenda Franck*, first detailed the basic principles of the ICC Statute making the Court an important instrument for combating impunity for crimes committed in the DRC since July 1, 2002: individual liability, the liability of hierarchical superiors; the non-relevance of official capacity; the non-liability of children under 18 etc.

- Then, the workshop discussed the legal bases concerning the liability of those presumed to have committed international crimes before the Congolese courts - competent courts, processes triggering legal action, legal assistance, means of evidence, sanctions foreseen, compensation for victims and the execution of sanctions.

The legal bases giving national courts the ability to gain knowledge of international crimes are Articles 501 to 505 of the military code of justice, Act 24 of November 18, 2002 pending application and the draft bill regulating the adaptation of the ICC Statute. With regard to competent courts of law, it was recalled that a Court Martial sentenced Pierre Mulele to death for crimes against humanity in 1968. Since then, the military code of justice of 1972, still in force, and tomorrow's military criminal code, give such authority to military courts. Furthermore, contradictorily, the bill for the adaptation of the ICC Statute gives the same authority to civil courts, including the County Court. Workshop participants agreed unanimously that this authority should only be granted to civil courts.
According to Congolese law, legal action is launched by the civil or military public prosecutor's office. Regarding this, the workshop participants made several recommendations: for the upcoming law to allow individuals to make seizures by direct subpoena; also to enable a seizure by Human rights defence NGOs having provided for this action in their statutes; to include in Human rights defence NGO statutes the intentionality of judicial action for international crimes; foresee in the upcoming law independent action for damages and excluding the possibility for the public prosecutor's office to close certain cases.

Legal assistance is required by the military code of justice (art.82). It is given by lawyers, national military defence counsel (art.89) and judicial defence counsel (innovation of the new law). The workshop participants recommended the new law allowing all lawyers, including foreign ones, providing a defence; improving lawyers' training in international criminal law and excluding military and judicial defence counsel.

Sentences applied are the death penalty in the military code of justice and the military criminal code and penal servitude for life in the draft bill for the adaptation of the ICC Statute. The workshop participants demanded that the death penalty be excluded from the upcoming law and for the creation of a sentencing judge and for the government's promise to reform the penitentiary system.

This study is very relevant, as it was recalled that, in accordance with the ICC Statute preamble, *"it is the duty of every nation to bring those committing international crimes before its criminal courts*". Therefore, the ICC only comes into play in a subsidiary way and inquiries and legal action are first and foremost the responsibility of national courts. This is the complementarity principle.

According to this principle, although the ICC has the authority to gain knowledge of a situation, it may deem the latter to be outside its jurisdiction and reject it if it discovers that inquiries and legal action have been taken up in this matter by national courts with the relevant competence. However, if the ICC, after consideration, feels that the DRC does not wish and/or is not able to rule on these international crimes, it must take up the matter.

Studying the actual authority of national courts to gain knowledge of international crimes enables loopholes to be discovered and highlights the need to make use of the criminal code reform, criminal procedure code reform and military code of justice reform to adapt internal Congolese law to the provisions of the international criminal court.

According to the current authority of the national courts to gain knowledge of international crimes, the participants felt that it is improbable and contrary to international human rights protection provisions for such trials to be considered for national Congolese courts.

Furthermore, the ASADHO, a section of the Katanga, stresses that in several cases, suits have been filed with the County Courts (forced civilian dispersion and torture) but that these suits have never been reported to the COM (after more than one year) and that judges have been threatened and forced to drop the case.

In addition, it has been stressed that, given the regional context, it is impossible to judge foreign citizens in Congo, namely for extradition problems. Regarding this, the intervention of an international court would be more appropriate.

b. Recommendations from the participants to the seminar

Concerning the criminal liability of those presumed to have committed genocide, crimes against Humanity and war crimes

The participants recommended:

- redefining the strategy of NGOs regarding the use and implementation of international judicial procedures;
- working on making more widespread use of international human rights instruments, particularly of the ICC Statute, e.g. by using the media (creating television and radio programmes);
- that the documents sent to the ICC public prosecutor should be solid and well-argued;
- that by virtue of the ICC complementarity principle, Congolese authorities work to reform the national legal system in order to prove their ability and desire to combat impunity and ensure that legal action and inquiries are indeed expedited in an independent and unbiased way;
- seizing the opportunity to adapt the Congolese criminal law to the international criminal court Statute to incorporate the universal authority mechanism at least for all crimes covered by the Rome Statute (genocide, war crimes, crimes against humanity);
-- that NGOs get involved in assisting victims (material, financial, psychological, legal assistance etc.) nationally and internationally.

C. Study of mechanism to protect human rights defenders

1. The Observatory for the protection of human rights defenders

Mrs Falloux presented the Paris Declaration regarding the protection of human rights defenders, after insisting on the role played by civil society with regards to the United Nations to see that certain international texts are adopted and urged NGOs to step up their lobbying of the Kinshasa government. The speaker stressed that this Declaration establishes the universal legal recognition of human rights defenders. She recalled that in 1997 the FIDH and the OMCT (World Organisation Against Torture) set up a specific programme based on the Observatory for the protection of human rights defenders. The aim of this Observatory is to denounce all threats against human rights defenders throughout the world.

Through this programme, members of the FIDH were, for example, able to meet certain human rights defenders being detained in the DRC, including N'Sii Luanda and Willy Wenga.

Mr Paul Nsapu, President of the Ligue des Electeurs, briefly retraced the origins and creation of Civil Society NGOs in the DRC whose peak, to become a counterbalance against the vague dictatorial desires of those in power, came between 1990 and 2000. The role of these civil society leaders diminished with the prolongation of the deep crisis caused by the two "freedom" wars and by the political allegiance and vote-catching within the Congolese associative movement. On this note, Mr Nsapu stressed the need to rethink national civil society in the DRC, which seems to be undermined by the disorder deliberately maintained there.

Discussions then essentially turned to the lack of co-ordination and dialogue between the members of civil society in such a large country, namely between NGOs in Kinshasa and elsewhere, and the problem of politicising and making use of certain NGOs.

2. Recommendations from the participants to the seminar

Concerning the protection of human rights defenders

NGOs call upon authorities to adhere to the provisions of the Declaration on human rights defenders adopted by the United Nations general assembly in 1998, to diffuse the declaration and recognise the role and work of human rights defenders.

Concerning the State's adherence to international commitments

NGOs call upon authorities to transmit their reports to conventional committees, for which delays have been observed.

NGOs call upon authorities to adhere to the provisions of the resolutions of the Human Rights Commission, the United Nations and the Security Council.

III. Conclusion of the studies

The Closing Ceremony gave the organisers of the Seminar and the Chief of Staff of the Minister of Justice the opportunity to say a few words.

Speaking first, *Mr Amigo Ngonde, President of the ASADHO* thanked the participants and organisers, in particular the FIDH, for their active involvement in the success of the Seminar-Workshop. He was pleased with the high level of discussions and the quality of speakers who gave the best of themselves in order to attain a major objective for the DRC: suggesting ways to set up a real justice system capable of putting an end to the impunity that reigns in the country. Mr Ngonde called for unwavering efforts so that the major alternatives raised during the seminar would not remain a mere wish list. He ended his comments by inviting the political decision-makers to draw inspiration from the proposals made in order to reform the justice system in the DRC.

Mr Sidiki Kaba, President of the FIDH, speaking on behalf of the FIDH and its members in the DRC, thanked the participants, government authorities and civil society activists who organised this meeting. Urging the participants to continue the work begun for establishing a fair justice system in the DRC, Mr Sidiki Kaba stated that without the effective work of human rights organisations, impunity will continue to reign and the law will always work against the victim. Mr Sidiki Kaba expressed the desire to see the Military Order Court replaced by a real military justice system in which lawyers will be able to carry out their job properly of defending the rights of defendants.

Asked to offer a few words, *the Chief of Staff of the Minister of Human Rights*, on behalf of the Minister (who had a previous engagement), thanked the organisers of the Seminar-Workshop, which he congratulated for the diligence observed by the participants throughout their work. He highlighted the importance of the resolutions aimed at improving the justice system in the DRC. The Chief of Staff of the Minister of Human Rights expressed his wish that this kind of meeting take place regularly.

The reading of recommendations by *Amigo Ngonde* was followed, on the insistence of the local media, by a press conference relating to the themes of the Seminar. During this face-to-face with the media, Mr Sidiki Kaba (President of the FIDH), Amigo Ngonde (President of the *ASADHO*), Paul Nsapu (President of the *Ligue des Electeurs*) and Dismas Kitenge (President of the *Groupe Lotus*), in turn, reviewed the state of the justice system and the human rights situation in the territory that is under governmental control and in the territory controlled at the time by the rebellion. The President of the FIDH, in response to one of the journalists' questions, mentioned the FIDH report "War crimes in the Central African Republic" sent to the offices of the

Prosecutor of the International Criminal Court, which focuses particularly on the individual criminal responsibility of the ex-President of the Central African Republic Mr Patassé and of Jean Pierre Bemba of the MLC for the crimes committed during the attempted coup d'etat by General Bozizé in October 2002.

Mr Sidiki Kaba then spoke in favour of the actions carried out by the FIDH in the context of the fight against impunity, condemning the violations committed and levelling accusations against the perpetrators of war crimes and crimes against humanity. Paying strong tribute to human rights defenders who work tirelessly, the President of the FIDH urged human rights activists to continue developing initiatives to ensure that the rights of every human being are respected. Mr Kaba concluded that as long as the Military Order Court exists in Congo-Kinshasa, "*each of us will forever be on conditional release*".

IV. Seminar follow-up in Kisangani

In follow-up to the seminar (Part 4), a Round Table was held in Kisangani on 18 December 2003. This meeting brought together representatives of civil society and of the authorities responsible for applying the law. The purpose of this initiative was to inform the participants of the themes of the seminar, as the administrative and military authorities in the region were clearly persona non grata in the capital at the time and members of human rights NGOs had only a limited presence there.

The following is a list of the participants at the seminar:

1.Paul Nsapu
1. Guy Malembi
3. René Sileki
4. Justin Pusu
5. François Zoka
6. Micheline Mayingidi
7. Dismas Kitenge
8. Maître Otshumba
9. Salomon Ngendja
10. Koto Bate Raphaël
11. Félix Kahungu
12. Claude Batilonge
13. Modeste Mukawa
14. Antoine Ngute
15. Hortense Ezape
16. Bertin Mwanza
17. Godé Powa
18. Lazare Banide
19. Pierre Esanganya
20. Liévin Mumpuni
21. Sophie Ndeke
22. Roger Ekongo
23. René Amolo
24. Willy Zimbule
25. Barthélemy Mudimbi
26. Gilbert Kalinde
27. Cheikh Hanza Oyoko
28. Kamande Muleba
29. José Mundende
30. Francisca Deko
31. KORONE Kayomba
32. Jean-Claude Kilunga
33. Ferdinand Ntabyo
34. Flory Ngongo
35. Simon Bana
36. Charlotte Lukalu
37. Dody Lobela
38. Adan Baku
39. Marie-Thérèse Manesa
40. Jean-Baptiste Bosongo
41. Dieudonné Prosper Kalokola
42. Marthe Balunda

The whole-day panel discussion opened with moderator Pierre Kibaka Falanga introducing the participants, the guests and the main themes of the debate.

Mr Dismas Kitenge, President of the Groupe Lotus, presented the FIDH, its organisation, how it operates, and its human rights promotion and defence work throughout the world. He then provided the audience with the recommendations issued by the participants of the seminar in Kinshasa in February 2003.

Re-examining the difficulties linked to the administration of justice in the DRC, Dismas Kitenge focused on the situation in Kisangani since the beginning of the war in 1998. He mentioned a number of factors that have significantly hindered legal institutions in efficiently fulfilling their role, including:
- regular interference from the executive power in the judiciary;
- impoverishment of magistrates by the political power;
- favouritism and clientelism in the recruitment and promotion of magistrates;
- corruption of magistrates;
- non-application of legal decisions;
- insufficient grants for running legal institutions;
- the lack of independence of the magistrates' council with regard to the political and executive power.

These shortcomings have given the inhabitants of Kisangani a negative view of the justice system. They see it as unjust and affected by favouritism and insensitivity, with a disregard for the civil or criminal code. This reluctance to adhere to established standards preys so much on people's minds that the army and security services are sometimes consulted to respond to justice-related problems. This is a breach of international and regional provisions relating to the right to a fair trial.

Mr Guy Malembi from the ASADHO/Kinshasa spoke to the participants **about the importance of fighting impunity** in the east of the country: *"this fight will result in justice system reforms, making it possible to foresee a real constitutional state in the DRC and hence a decrease in human rights violations."* The fight against impunity involves making national courts operational and submitting cases to existing international courts or those set up specifically for the DRC.

On the theme of international law, Sébastien Bourgoin, assistant at the FIDH's international justice office, presented the international criminal court, its jurisdiction, methods for submitting cases to it and the right to compensation for victims.

Speaking about universal jurisdiction, Mr Dobian Assingar, vice-president of the FIDH, informed the participants about the different stages of compiling criminal cases by the FIDH's legal action group, using as an example the case of Hissène Habré in Senegal and Belgium. He emphasised the great risks faced by human rights NGOs in the preparation of the case, explaining why the process must remain confidential.

Working together in small groups, discussing certain basic concerns regarding the justice system in the DRC during the transition, the participants came to the following conclusions:

Regarding the Congolese justice system:

- Congolese law must comply with international and regional human rights treaties ratified by the DRC;
- Magistrates' independence must be ensured by putting a stop to interference from the Executive and Legislative; using an objective and impartial system for appointing and dismissing magistrates; and improving living and working conditions for magistrates.
- The population must be made more aware of the risks they face by opting for parallel justice;
- Military courts and their codes of organisation and procedure must be given particular attention and undergo appropriate reforms that will ensure that they are independent and impartial and comply with all the rules of a fair trial;
- Local courts need to be set up (Justice of the Peace) throughout the DRC;
- Permanent collaboration needs to be ensured between the civil society and public representatives, in charge of administration of justice (training seminars, information exchanges and reporting of offences not known to magistrates);
- A law for the adaptation of the ICC statute, including the definition of crimes, the general principles of international criminal law and cooperation obligations between the state and court, must be adopted.

Regarding the international justice system:

- The international criminal court will be used, and will even take priority, in the DRC during the transition. This is because it will take disciplinary action against the perpetrators of serious international crimes committed in the DRC and thus help to consolidate peace and set up a constitutional state. It will also contribute to offering compensation to the victims of these atrocities;
- In light of the fact that the majority of the population are unaware of the existence of ICC national adaptation bills in the DRC, the civil society must work with the people responsible for law application, provide constructive criticism, enhance the laws and carry out lobbying actions to implement them;
- The mechanisms of transitional justice (truth and reconciliation commission) can effectively contribute to the reinforcement of justice and put an end to impunity and, as an indirect result, to serious human rights violations. However, it is better to plan to use several international mechanisms and to research strategies for their implementation.

Concerning the role of the Congolese civil society in the transition period, Mr Paul Nsapu, president of the Ligue des Electeurs, explained how the transition from dictatorial state to constitutional state should take place.

He explained that in Congolese political negotiations, the civil society is unsuccessful in promoting the views of the Congolese population. That is why it is recommended that the members of human rights NGOs do the following:

- Participate in drafting texts to govern the 5 citizen institutions;
- Make these texts more accessible;
- Receive training on electoral techniques and observation;
- Guide the population in the electoral process;
- Organise exchange, information and new strategy meetings on issues of national interest.

PART 4 – JUSTICE, OVERLOOKED IN THE TRANSITION? FOLLOW-UP MISSION [13-23 DECEMBER 2003]

The FIDH's follow-up mission in the DRC took place from 13 to 23 December 2003 in Kinshasa and Kisangani. The mission representatives, Dobian Asingar, vice-president of the FIDH and president of the Chad Human Rights League, and Sébastien Bourgoin, from the FIDH International justice office, were able to meet the following people:

- Christiane Rochon, Canadian Cooperation Programme Support Unit (UAP-DRC),
- Marc Mertillo, Second Counsellor, French Embassy,
- Mahamane Cissé-Gouro, Deputy Director, Human Rights High Commission of the United Nations, DRC office,
- Roberto Ricci, Head of Human Rights Section, MONUC,
- Robert Ilunga Numbi, Friends of Nelson Mandela,
- His Grace Dr Jean-Luc Kuye-Ndondo, President of the Truth and Reconciliation Commission,
- President of the bar Mukendi, President of the Human Rights Institute,
- Mr Renzo Hettinger, Delegation of the European Commission,
- Olivier Kamitatu, President of the National Assembly,
- Frédéric Meurice, Minister Counsellor, Belgian Embassy,
- Colonel Mutanzini, Director of the Cabinet of the general military auditor,
- Father Apolinaire Muholongu Malumalu, President of the Electoral Commission,
- Jean-Pierre Bilusa Baila, Governor of the Eastern Province,
- Major General Padiri Bulenda, Commander of the 9th military region, ground forces,
- Cristina Michels, Human Rights Officer, Human Rights Section, MONUC Kisangani,
- His Grace Laurent Monsengwo, Archbishop of Kisangani, former President of the National Sovereign Conference (CNS),
- Lieutenant-Colonel Wavara Kodoroti, Military Auditor, Kisangani,
- Lazarre Banide, President of the Kabondo Peace Court,
- Gode Powa, first substitute to the state prosecutor at the county court and former garrison military auditor,
- Felix Kahungu, judge at Kisangani county court,
- Prince Funga, judge at Kisangani county court,
- Numerous human rights organisations.

I. A Transition Riddled with Difficulties

A. The too slow setting up of the transition regime

Since the beginning of 2003, the follow-up committee of the global and all-inclusive agreement, assisted by an international transition support committee (CIAT), has ensured the setting up of transition institutions on political, legal and military levels as provided for in the aforementioned agreement.

Thus, the DRC transition constitution, adopted on 1st April 2003, was promulgated by President Kabila on 4 April 2003.

Although Joseph Kabila officially became transition head of state on 7 April 2003, the Senate and the National Assembly were inaugurated on 10 June 2003. The first extraordinary parliamentary session opened on 25 August 2003. The "national unity and transition government" was appointed on 17 July 2003, as were the four vice-presidents: Jean-Pierre Bemba, head of the MLC supported by Uganda; Azarias Ruberwa heading RCD-Goma rebels supported by Rwanda; Z'Ahidi Ngoma, representative of the opposition; and Yerodia Abdoulaye Ndombasi. Finally, on 5 August 2003, in accordance with the Constitution, the follow-up commission finished its work.

The installation of transition institutions has contributed to the progressive stabilisation of the country. However, the slow progress of the process, due in part to the large number of people and the heterogeneous nature of these bodies (a president and four vice-presidents, over 40 ministers, 500 deputies from socio-political components and entities having participated in inter-Congolese political negotiations in South Africa), has increased impatience within the population who are not seeing any improvement in their living conditions. It is also necessary to note that one opposition political party and particularly Etienne Tshisekedi's UDPS, already active under Mobutu and still very popular, is not represented within these non-elected institutions. Parliament began to operate at the beginning of October. It had a laborious start-up as its composition does not create a "natural" majority (18 groups holding 94 or 10 seats). This slow progress continues to characterise parliamentary work, although it has two years to accomplish its task. In view of the elections scheduled for mid-2005[7], it is necessary to adopt the electoral law and laws relating to nationality, decentralisation, organisation of the army, justice system; even a constitution bill and the organic laws relating to the five democracy support institutions (independent electoral commission, the national human rights observatory, the high authority for the media, the truth and reconciliation commission and the ethics and anti-corruption commission). Likewise, the law on the functioning of political parties which is under debate could control and calm political debates, but it may not be adopted for several months.

[7]. Chapter IV of the global agreement: Elections are held within 24 months of the beginning of the transition period.

These elections, which will be the first ever in the DRC, are a twofold challenge. The logistical challenge in a country where the only functional communication channels are air transport, is as much of an issue as the political challenge, with the list of candidates probably including a number of former warlords.

Fundamental decisions remain to be taken, particularly regarding the census. The Congolese authorities must choose between:
- A total scientific census,
- A technically improved administrative census of the population ("RAPTA") which would be favoured by the majority of the civil society,
- A census at the voting office, following the South African example, which poses a problem due to the presence of numerous foreigners in the DRC.

The success of this census and the electoral process itself relies on huge financial, logistical and human investment from the international community. The deployment of national and international observatories in an area of over 2 million km² is an absolute necessity. The MONUC is planning to develop observation activities concerning election liberties (information, expression, etc.) but it will need back-up and support.

The fiery debate on the composition of the independent electoral commission, one of the "democracy support institutions" provided for by the global and all-inclusive agreement, shows that everyone in the DRC is aware of the importance of this step that will end the transition phase. The civil society – the League of Electors in particular – has closely monitored the discussion on the law fixing the status of this entity and will continue to monitor its application.

The DRC is nevertheless on track for relative normalisation. Normalisation as the transition has entered an implementation and institutionalisation phase. Relative because although armed violence has decreased, it has not disappeared: the situation in the DRC is catastrophic in comparison with that in most other countries in the world, but is good compared with what the country has experienced in recent years.

In accordance with peace agreements, the Congolese transition process has led to the inclusion of the main former belligerent parties in *national* institutions, unquestionably contributing to the reunification of the country but also offering a bonus to past acts of war and violence. The installation and operation of new national executive and legislative bodies were the first signs of the country's reunification. But the Unitarian state is still largely absent from the provinces: certain groups still have their own administrations. Kinshasa central government should make a considerable effort to rehabilitate the state by strengthening and reunifying the civil service. Governors and civil security forces are still under the influence of the different groups. The echo of the discussions held in Kinshasa does not always reach the rest of the country, However, elections scheduled for 2005 can only be free and reliable if the army, police, civil security forces and other information departments are neutral.

Kisangani, where FIDH mission representatives held meetings with the Groupe Lotus, appears to be a good example of the changes in progress. Kisangani has long been the scene of bitter fighting, particularly between forces supported or controlled by Rwanda and those supported by Uganda. RCD-Goma regarded the town as its strategic base, due to its national character outside the controlled territories in the far east of the country. The possibility of "losing" Kisangani would have meant an almost immediate loss of status for the RCD-Goma. Since the peace agreements, the ex-rebels have thus made sure that they have kept control of the political and administrative authorities (governor, mayor, burgomasters). The "government party" is also still in place in many respects. Neutrality of administration and the respect of pluralism have not been definitively accepted. However, Kisangani and more generally the Eastern Province are reputed to be at the forefront of the reunification process. The first reunified brigade of Democratic Republic of Congo Armed Forces (FADRC) was created there.

B. Reuniting the Army: a Difficult Task

One of the major achievements of the transition was the creation of an integrated general staff, installed on 5 September 2003. The reunification of the army is taking place gradually: on 15 January 2004, resolution 1522 (2004) of the Security Council validated the creation of the first integrated and unified brigade in Kisangani. Although the armed forces are still split as a result of the conflict, the deployment of military commanders from the various groups has been carried out without any major clashes.

The fragile nature of the process is however evident. Thus, no one would deny that in Kisangani, some of General Padiri's (Commander of the 9th military region, ground troops (maï maï)) orders are not carried out by his troops, who are almost all from the RCD, until they have consulted RCD leaders. Furthermore, it seems that there are still numerous foreign elements, particularly Rwandan, in the region, and that arms caches have not been dismantled, as reported by an FIDH press release on 21 September 2003.

However, the position of Padiri, who recommends the return of soldiers to the barracks, at the head of the 7th military region is generally considered as positive. His action has led to a considerable reduction in "barriers" on roads (improved freedom to travel) and a drop in "harassment".

The international community – and Belgium in particular – is developing training activities for soldiers engaged in the new FADRC. The MONUC could become more involved in this field in the future, and has already organised its first human rights seminar for military officers in Kisangani in December 2003.

However, although military region commanders are from forces that did not hold the aforementioned regions, the absence of relief or rotation of troops raises the issue of short and medium-term cohabitation between individuals who committed abuses in the region and the population that was subject to them.

Although the transition has increased security and eradicated armed conflict in most of the country, the situation in Ituri in the Kivu remains extremely unstable and is hindering the process[8]. Moreover, the situation in towns with a strong and visible international presence does not necessarily reflect the general situation in the country.

The drafting and implementation of the national programme for disarmament, demobilisation and reinsertion (DDR) of former combatants remains an urgent issue to prevent army reunification resulting in the creation of excessive forces and so that elections can be organised in an unbiased manner. There are numerous volunteers to demobilise or join the FADRC (DRC armed forces), but reception structures are largely insufficient and are at risk of being rapidly overcrowded by the massive influx of combatants "coming out of the woods" [9]. Ex-combatants thus have to be housed and fed by the population. The international aspect of the demobilisation process (Disarmament, Demobilisation, Repatriation, Reintegration and Reinsertion (DDRRR)), requires further substantial investment and the contribution of the MONUC. The problem of child soldiers, numbers of which remain very high (in the realm of 30,000 minors), is also extremely worrying. Some of them are "recycled" into civilian information agents, making number calculations more difficult. According to certain allegations, local chiefs are still making calls for recruitment.

C. Continued Human Rights Violations

1. Ending the conflict in Ituri is a priority for everyone

Despite agreements and movements of troops, inter-ethnic clashes are continuing in Ituri, threatening to seriously compromise the peace process undertaken on a national scale. Although more than 5,000 civilians were killed between July 2002 and March 2003 as a result of inter-ethnic clashes, MONUC multidisciplinary study groups confirmed that both Lendu and Hema populations have been the victims of massacres since February 2003[10], particularly in the town of Bunia, the capital of Ituri province, where tens of thousands of people were forced to flee.

Furthermore, a few days after the investiture of the new government and on the same day that World Food Programme (WFP) reported, in a communication of 22 July 2003, on the state of emergency in the great lake region, particularly in the Ituri region in the DRC, the mutilated bodies of 22 elderly people, women and children were discovered in a village on the outskirts of Bunia. The new transition government, which met for the first time on 25 July 2003, decided to make resolving the conflict in Ituri a priority. Thus, on 1 August, 3 ministers of the new government symbolically went to Bunia.

Furthermore, the Security Council decided to strengthen its presence in Ituri. An interim multinational emergency force was deployed in Bunia on 25 June 2003, backed by the European Union and under French command. Its main mission was to protect the civilian population. However, as expressed with regret by the FIDH in its open letter to the members of the Security Council on 26 June 2003, its mandate limited its field of intervention to the town of Bunia. It was not able to deploy in other areas of Ituri where there were also problems relating to security and protection of the civilian population.

2. The overall human rights situation

In addition to the situation in Ituri, human rights violations are certainly less numerous in the DRC today than a year ago. Freedom of expression has gained ground and freedom of assembly, although subject to declaration, is respected. The mission representatives observed that in Kisangani, the RCD is no longer the only authorised party. A certain level of fear still remains, however, as most authorities have not yet changed: the Governor of the Eastern Province is also the provincial president of the RCD. In Kisangani, the RCD has de facto privileges (broadcasts in the official media, censorship of some national broadcasts, self-censorship).

Human rights breaches are still frequent in the DRC. The High Commission of Human Rights, the human rights section of the MONUC and national and international NGOs continue to investigate and collect data, and are constantly discovering new facts.

Sexual violence is a particular source of concern, reaching an unprecedented level of horror. Rape has become an "everyday" weapon of war in certain conflict zones. More generally, numerous rapes are still being committed by uncontrolled soldiers, particularly in the countryside. One of the reasons raised is the perversion of certain ethnic or cultural groups' "traditions" which link sexual relations directly with the use of force. This is accentuated by the conflict. Authorities and soldiers need to be educated, as it seems these practices are tolerated in many sectors. Often, the victims are rejected by their families and stigmatised by society. Shame and fear of rejection form a cultural barrier, which prevents legal progress. Obtaining proof is difficult and the law is not adapted to these cases: no case has ever been taken to the public prosecutor's office in the Kisangani region. The HIV epidemic has spread dramatically in the DRC. The aftermath of the conflict, regarding this and the child soldier issue, will be painful and difficult to deal with for Congolese society.

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[8]. See Groupe Lotus and FIDH report: "Perseverance of ethnic hate and massive and systematic human rights violations in Bunia", October 2003.
[9]. See article "The Maï Maï and ex-combatants waiting to be demobilised" on www.monuc.org.
[10]. According to the 2nd report of the secretary general of 27 May 2003 on the MONUC.

D. Strengthening International Presence

The Security Council, in resolution 1493 of 28 July 2003, considerably strengthened the MONUC's mandate in the DRC. It has changed its status from *observation* to *imposition* of peace. Its annual budget is now higher than $600 million, its civilian component includes more than 1,600 people, and its military component over 10,000, reflecting the belated but substantial strengthening of the international will to end the war. The MONUC thus finally has the structure and resources appropriate to the challenges, which has convinced much of the population of its usefulness.

In Kisangani in May 2002, the MONUC remained passive despite the presence of dozens of MONUC observers and several thousand soldiers in charge of protecting UN presence while the town was being torn apart by war. The population had long held the conviction that the MONUC was incapable of protecting them[11]. The positive effect of the MONUC's presence is today recognised by most national players. It works in collaboration with civilian and military authorities to help to stabilise the situation. The size of the country is, however, a considerable obstacle and security is less well maintained outside towns.

The strengthening is particularly visible in Ituri, where the Security Council authorised the MONUC, ensuring that French interim power would be withdrawn in September 2003, "*to use the means necessary*" to carry out its mandate in Ituri. It also authorised the deployment of a brigade in Ituri and imposed an embargo on arms and military assistance against all armed Congolese or foreign troops in Ituri. On 1 September 2003, the MONUC's brigade of more than 2,500 soldiers was deployed succeeding the multinational interim force. It has since launched reconnaissance missions in the region. The situation continues to remain extremely critical in the district of Ituri, where the MONUC has been the subject of repeated attacks.

II. Evaluation of the Implementation of Seminar Recommendations

A. Congolese justice, overlooked in the transition?

The promulgated transition Constitution in April 2003 set the basic rules of the justice system as a whole; they are therefore applicable to civil and military courts[12]. The mission representatives noted that the effectiveness of these provisions remains very limited. The justice system "*is stagnating due to failures and shortcomings*" the mission representatives were told by one of their first contacts. They did not subsequently observe anything to contradict this observation. The absence of a constitutional state and the separation of power in a country where justice has never been independent makes the "third power" very weak and overlooked in the transition.

The mission took place while the magistrates were involved in a two-month national strike[13]. The main demands concerned salary and working conditions. Indeed, some of the magistrates had not been paid for six years, mainly due to the occupation of certain areas of the country. Magistrates remaining under the authority of the government during the conflict were paid between US$20 and US$30 per month, compared with around US$1,000 in Congo Brazzaville or Gabon.

The main consequence of the government's failure is that the magistrates made money off the people subject to trial, thus increasing the population's lack of regard for the justice system and further reducing independence. Is this the reason why the Congolese justice system is unable to meet the expectations of the population, most of whom seem to have given up turning to it? In certain cases, the population prefers to call on soldiers to settle disagreements. This expansion of the army's action, which is becoming a substitute for the civilian administration, is worrying, particularly when the population is complaining to the soldiers about the civil justice system.

The rehabilitation of the justice system is apparently not a priority for the transition government, which is delaying taking the necessary measures. A determined action is however essential to re-establish the credibility and independence of the Congolese justice system. The international community is beginning to feel concerned about this aspect of the transition. A multi-backer justice system auditing mission is currently working to establish a complete inventory including common law. Its final report is scheduled to be released in May-June 2004. In Bunia, the MONUC, the European Union and France have launched a magistrate return programme. One magistrate died in mysterious circumstances shortly after his arrival.

1. The laborious setting up of a new military justice system

One of the main recommendations of the seminar of February 2003 concerned the abolition of the military court (COM). Following the strong message addressed at the seminar-workshop and the denunciation of local organisations, the COM was abolished on 25 March 2003. President Kabila had signed the presidential decree fixing the date of introduction of the law at 18 November 2002 regarding the Military Judicial Code[14]. The setting up of the new military justice system is, however, a laborious process. Material constraints and the lack of personnel are evident. But they do not, for example, justify the delay in distributing

[11]. See Human Rights Watch report: War crimes in Kisangani: The reaction of rebels supported by Rwanda in the mutiny of May 2002 (http://www.hrw.org/french/reports/drc2k2/).
[12]. See articles 19 to 24 relating to fundamental rules of a fair trial; article 23 refers expressly to military courts, "civil and military court hearings are public"; article 150 stipulates that the Supreme Court, as a last resort, lodges appeals against arrests and judgements passed by civil and military courts.
[13]. The strike, started at the end of October, was suspended on 5 January.
[14]. Decree 032/2003 of 18 March 2003, setting the date for introduction of law 023/2002 at 18 November 2002 regarding the Military Judicial Code.

the new laws to the magistrates themselves. The military auditor of Kisangani told the mission representatives that he had only had the new military law code for a few weeks and had thus been applying the old law up to that point. The shortage of staff sometimes causes the same magistrate to be in session at the court of first instance and on appeal in the same case: there is only one military auditor for the eastern province (503,239km², 6,192,000 inhabitants). He is assisted by seven inspectors, most of whom have no specific training, and by a trainee magistrate. There are numerous allegations of ill treatment, arbitrary detention and breach of legal remand times. The material conditions for detention are difficult, particularly in the numerous prisons held by local commanders. Many soldiers still operate according to a culture of impunity. The fragile balance of the transition prevents some of them being implicated: political considerations often take precedence over the necessity of serving justice.

2. The moratorium on the death penalty is still suspended

The mission representatives observed that the debate on the abolition of the death penalty has not progressed much since the seminar. The moratorium on the death penalty suspended in September 2002, has not been re-established and magistrates are still sentencing people to death.

The need for education is evident. It seems that the majority of the population, including magistrates and civil society organisations, remain in favour of the death penalty both in principle – many believe in its preventative effect – and regarding the specific situation in the country – the weakness of the penitentiary system makes escaping relatively easy and criminality has greatly increased. The lobbying work of the international community and human rights associations remains ineffective. The action of the High Commissioner for Human Rights, Vieira de Mello, who came to the DRC to avoid the execution of the "killers" of L-D Kabila has not had wider consequences.

3. The need to reform the prison system

More and more detention sites have been set up in the country as a result of conflict, particularly within the different groups that have split the country up amongst themselves (dungeons, 'amigos,' etc.)[15]. The project leaders weren't able to verify for themselves, but were told by many people that the state of prisons is appalling from a humanitarian point of view (little or no food, to the point to which some prisoners have to eat rats) as well as from a legal point of view: prolonged temporary detentions without case files are not the exception to the rule, even for minor or even forgotten crimes. In some regions, prisoners are held in dungeons because their families don't have the resources to pay the officers in the criminal investigation department, who do not receive wages.

MONUC and other international partners are taking initiatives to make the situation more acceptable. Some prisoners have been freed, and some transferred to the public prosecutor's office, but there's still a lot of work to be done. The Bunia prison was renovated, with France's support among others, in order to deal with the numerous arrests made by the Artemis team and then by MONUC. However, more involvement on the part of sponsors in this field is to be desired.

4. A too extensive amnesty

As planned by Chapter III 8 of the comprehensive and inclusive agreement and by article 199 of the constitution, a government decree of amnesty was declared on April 15, 2003 by the provisional President of the Republic.

Uncertainty still remains concerning the exact implications of the future law that the parliament has to debate in accordance with article 199 of the Constitution.[16] In particular, the idea of "war crimes" still needs to be defined by the Parliament. Some of those that the project leaders talked to suggested that amnesty might not cover "offences against national security" and other crimes of the same nature.

Furthermore, section IV of that same provisional Constitution partially questions the government decree concerning criminal responsibility for war crimes, genocide, and crimes against humanity committed by the president and the vice-presidents. The Constitution gives less criminal responsibility to these mandates. Thus, articles 141 and 142 of Section IV entitled "*incompatibility and immunity*" state that the President of the Republic and the vice-presidents are only criminally responsible for actions carried out during their terms in the case of *high treason, embezzlement, misappropriation of public funds, corruption, or intentional violation of the Constitution*. They can only be tried for these crimes, *and for any other crimes committed outside of their terms, if they have been indicted by the National Assembly voting a three-quarter majority of its members*.[17] These clauses are troubling in the climate of impunity that the DRC is steeped in.

[15] In her report (E/CN.4/2004/34) submitted on March 26, 2004 at the 60th session of the United Nations Commission on Human Rights, the special reporter on the situation of human rights in the DRC, Iulia Motok, explains that "the dungeons are usually holes of fusiliers used as arms caches. The dimensions of these dungeons vary between 80 cm and 150 cm deep by 200 cm long and 50 to 150 cm wide. These dungeons are meant for soldiers, but civilians are held there as well. The conditions in these dungeons are inhuman and acts of torture are practiced there."

[16] Article 199 states: "During its first session, the National Assembly of the transition will adopt, in accordance with universal principles and with international legislation, a law creating amnesty for acts of war, political offences and offences of opinion, with the exception of war crimes, crimes of genocide, and crimes against humanity."

[17] Article 143 defines high treason as the act of threatening national independence or the integrity of national territory, of taking the place or trying to take the place of other constitutional powers or keeping them from exercising the functions that the present Constitution attributes them. An organic law determines the penalties applicable to crimes of high treason and of intentional violation of the constitution, as well as the procedure to follow before the Supreme court of justice.

On this subject, one could wonder about the legitimacy of the nomination of some leaders of the presidential entourage and members of the government. Indeed, the Security Counsel's resolution 1468 of March 20, 2003, looked at by the FIDH in its May 2003 press release, recommends to "*take into account, when choosing candidates to high positions in the transition government, […] of their past actions concerning respect for international humanitarian law and human rights."* Nevertheless, Jean-Pierre Bemba was appointed vice-president of the transition government, whereas the FIDH states in its report *"War Crimes in the Central African Republic*" that Jean-Pierre Bemba's men from the "*Mouvement de Libération du Congo*" are presumed responsible for sexual violence and systematic looting of civilians during general Bozizé's attempted coup d'Etat in the Central African Republic in October 2002. The members of the MLC are also suspected of massacres and acts of cannibalism committed against the Ituri pygmy population. In this respect, they will likely be brought before the International Criminal Court.

B. Little progress in the fight against impunity for international crimes committed before July 1, 2002

1. No International criminal tribunal on the agenda

Almost all of the people the mission leaders met with recognized the need to fight impunity, but there are still some misunderstandings. Many people say that violence must stop before elections can be organized. Those who want action to be taken against authors of serious crimes against human rights and humanitarian law often just speak of the International Criminal Court (ICC), and thus of crimes committed since July 1, 2002 (see page 35).

The implementation of the transition period signals a general desire to keep the status quo as far as this is concerned. All national as well as international players, with the exception of civil society, seem to think that the country isn't ready for an open management of the past that would require those responsible for atrocities to answer for their actions. The near 100% absence of proceedings at the national level and the little enthusiasm that the Truth and Reconciliation Commission has stirred up suggest that light will never be shed on the massive crimes that have struck the DRC.

The government and the President of the Republic have however submitted several appeals to the international community to create an international criminal tribunal for the DRC or a mixed tribunal like the one in Sierra Leone. The special reporter on the situation of human rights in the DRC supported this request. But the Security Counsel and more generally the "international community "are not in a hurry to make concrete proposals.[18] It seems clear that Congolese authorities prefer to stick with statements of intention and requests that they know have little chance of seeing the day.

The reason for this is clear. Any kind of international justice would target the key players of the transition, in power in Kinshasa. There are many people who use the argument that it is "wiser" to wait until the elections are over to engage proceedings against criminals against humanity. This analysis seems surreal considering that serious crimes against human rights and humanitarian law are still being committed in some parts of the country and that many victims are living in fear because their torturers have been left in complete freedom, and sometimes even rewarded with official functions.

On this matter, the Security Counsel emphasized in its resolution 1493 "*the need to bring to justice all leaders, particularly at the level of high command, and it requests that all parties involved, including the government of the Democratic Republic of the Congo, immediately take all necessary measures to prevent new violations of human rights and international humanitarian law, especially those committed against civilians*." The resolution of the Human Rights Commission, 2003/15, on the situation of human rights in the Democratic Republic of Congo, expressed the same obligation.

2. Delay in the establishment of democracy-supporting institutions: What happened to the Truth and Reconciliation Commission?

The "comprehensive and all-inclusive" agreement and the constitution stipulated the creation of five "democracy-supporting institutions" or "citizens' institutions":

-The Independent electoral commission
-The National Institute for Human Rights
-The Truth and Reconciliation Commission
-The High authority for the media
-The Commission for ethics and the fight against corruption

These institutions were created to accompany the transition period as complements to the "sovereign" executive and legislative institutions. They also serve to allow civil society to actively contribute to the transition.

The comprehensive and all-inclusive agreement stipulates that the law determines the organization, the functioning, and the power of these institutions. The transition constitution states that "*the organization, nature, and functioning of these democracy-supporting institutions are determined by organic laws adopted during the thirty days that follow their creation, by the National Assembly and the Senate*."[19] Unfortunately, a huge delay has occurred, and nobody knows exactly when these bodies will become

[18] In her report (E/CN, 4/2004/34), the special reporter for the DRC, Iulia Motok, "remains convinced that an effective justice mechanism should be set up to look at crimes committed during the period before July 2002," but she doesn't give further details.
[19] Article 160 of the Constitution

operational. The electoral process may be weakened by this delay, and some scepticism has arisen concerning the credibility of these institutions, whose lifespan is supposed to be limited to the transition period.

The comprehensive and all-inclusive agreement and the constitution grant the presidency of these institutions to representatives of civil society.[20] Furthermore, the Constitution states that "*The other components and entities of the inter-Congolese dialogue are on their respective boards*." [21]

The scope of power of the boards of these five bodies is the major topic of current discussions on organic laws. If, through these boards, the "entities and components" end up running these institutions, the institutions won't likely be able to get past the rifts that have resulted from the conflict. What would be even worse would be if the makeup of plenary sessions were also subject to the "entities and components." In this case, there would be little hope that these institutions would ever be effective. A debate exists: did the inter-Congolese dialogue provide for this arrangement? The comprehensive agreement entrusted institutions of sovereignty to the "entities and components" and supporting institutions to civil society. The Constitution states that equal representation is valid for board meetings, but it doesn't mention the makeup of the plenary sessions. It is vital that the creation of citizens' institutions be more than just a way to get rid of pressure coming from civil society by giving it tailor-made but ineffective institutions.

Taking into account the recommendations of the seminar/workshop, the mission leaders became more specifically interested in the Truth and Reconciliation Commission. The NGO Women as Partners for Peace in Africa (WOPPA) had drawn up a bill that received wide support from civil society, and the seminar/workshop had recommended that this text serve as a working basis for the creation of the law that would set the TRC statutes. On the whole, this text seems to have been ignored by the commission itself when it prepared its own draft. The mission leaders had the feeling that the organic bill did not undergo a widespread and transparent analysis by human rights NGOs and the international community.[22]

Even more so than for other "democracy-supporting institutions," the issue of the makeup of this commission is problematic. Indeed, if its board is equally composed of representatives of entities and components as most of the key players expect it to be, it's hard to imagine that the Commission would be capable of impartially investigating incidents involving these same entities and components.

The possible addition of an ad hoc committee or a "committee of wise men," made exclusively of national and international experts, could noticeably improve the institution's credibility, as long as the board is limited to a secondary or administrative role. Whereas the organic law establishing the structure of the Truth and Reconciliation Commission still has not been adopted, the members of the board have already been appointed. The president himself seems significantly overwhelmed by the scope of his responsibilities.

Beyond these organic issues, there seems to be a kind of general uncertainty: is the primary goal of the Truth and Reconciliation Commission truth or reconciliation? It's in the interest of many key players to favour the latter. The uncertainty can be seen in several fields:

-*The process of appointing commissioners*: The members of the TRC board were appointed by the participants of the Inter-Congolese Dialogue, without any selection procedure that would ensure that they would be competent, independent, and impartial.
-*Not taking past experience sufficiently into account*: The President of the TRC told the mission leaders that the commissions installed in South Africa, Peru, Sierra Leone and East Timor were not really studied.
-*Too much to do*: The TRC is supposed to have jurisdiction for a period going from independence to April 2003, and accomplish its task in less than 20 months! While the TRC will be able to draw from the work of the 1992 national conference that covered the period preceding that date, the TRC still doesn't seem to have the means to study such a long period.
-*The appropriateness of the TRC in the transition*: In light of the turn of events, many international players now believe it would be wiser to wait until the end of the transition before the TRC begins its work. The constraints that it would likely face during the electoral period could bring it to a standstill. There's a real risk that the TRC would be rejected by a large part of Congolese civil society, so it might be a good idea to take advantage of the pre-electoral period to organize a widespread referendum that would include an international section. The main objection to this strategy is that it would allow authors of particularly serious crimes to run in the elections and, if elected, to organize their impunity.

C. The International Criminal Court, final hope in the fight against impunity for international crimes committed since July 1, 2002

The ICC prosecutor announced that he had "identified the situation in Ituri, Democratic Republic of Congo, as the most urgent case to pursue."[23] This announcement aroused many hopes and expectations. On April 19, 2004, the prosecutor made official a request by the DRC government signed by President Kabila dating March 3 that referred to the Court the situation of crimes

[20] Article 157 of the Constitution
[21] Idem.
[22] In her report, the special reporter of the Human Rights Commission in the DRC, Iulia Motok states that "the bill was not submitted to civil society for consultation and does not satisfy conditions of independence, equity, and transparency."
[23] See among others press release no: pids.009.2003-FR from July 16 2003

committed on the entire DRC territory since July 1, 2002, when the Court's statutes took effect. On June 23, 2004, the ICC Prosecutor announced the opening of a preliminary investigation on this basis.

However, even if this situation comes under ICC jurisdiction in the upcoming months, it's important to remember that this court is only complementary to national courts for crimes committed since July 1, 2002. Thus, it is essential that another body supplement its work for crimes committed previous to this date. This request also emphasizes the need to quickly adopt a law allowing for effective cooperation with the ICC.

In October 2002, a first draft had been drawn up on the initiative of civil society with the help of international experts. In late June 2003, the Permanent Commission for Reform of Congolese law published a rival and less ambitious draft. The law of adaptation is no longer a priority for the parliament. What's even more serious is that, faced with the disappointment produced by the draft of the Permanent Commission, civil society seems to have become apathetic about this subject.

No drafts were submitted to Parliament, even though they had been announced as ready for several months. The text would be in the hands of the Ministry of Justice. We can hope that the announcement of the transfer will revive the debate.

D. Human rights defenders living on borrowed time

A few months ago, human rights defenders were the victims of harassment in the majority of the country, and international human rights NGOs could barely operate at all in the DRC. In most DRC cities, the transition led to notable improvement concerning the freedoms of expression and association. Progress has been most noticeable in Kinshasa, where the press and civil society can work together with relatively few constraints. Member leagues of the FIDH can once again operate, whereas they had experienced many difficulties over the past years. In Kisangani, the situation has noticeably improved over the last few months, particularly in relation to the reports of the preparatory mission in 2002. See section II D 2, above.

However, the need for special protection for human rights defenders is not understood and assimilated by all authorities. The mission leaders have sometimes had the feeling that the recent improvements are largely the result of the stepped-up international presence, and that nothing really guarantees that human rights defenders won't have to go into hiding again.

Many leaders of human rights associations, including those of our member organizations, are the victims of pressure from the government and security services. The result of this is that these human rights defenders are criminalized because of their involvement in a still unstable political context: their associations are infiltrated, smear campaigns are led against their partners and sponsors, and arbitrary pursuits are carried out.

As military intelligence, security forces are rarely restricted by the law, and although harassment has died down, there is no doubt that local leaders are keeping a watchful eye over the actions of human rights defenders.

CONCLUSION: PRIORITY: RESPONDING TO VICTIMS' NEEDS

The programme for legal and judiciary cooperation between September 2002 and December 2003 in the DRC proved to be an important opportunity for the FIDH, its member leagues, and its local partners, to continuously evaluate the establishment of a peace process in its human rights component.

The programme's report tried to bring out the central problematic of this peace process for human rights organizations: to ensure independent and effective justice and redress for victims of the most serious crimes. Kofi Annan shares this concern. On September 24, 2003, addressing the General Assembly of the United Nations on the democratic transition process, he stated that it is "*essential that we put an end to the climate of impunity if we expect to restore public trust and mobilize international support for the enforcement of peace agreements. The transitory institutions established for the administration of justice must not only aim to establish individual responsibilities concerning serious crimes, but also to take into account the need to achieve national reconciliation. Yet we know there will never be any real peace if there is no justice.*"

Whereas the comprehensive and inclusive agreement makes justice a central part of the democratic transition process in the DRC, the reality is more complex. To date, the DRC is not capable of responding to the right of victims to effective recourse for crimes committed before July 1, 2002. We must keep in mind however that between 1997 and 2002, there were an estimated three million war victims in the DRC.

Despite the deficiencies and corruption of Congolese justice related to government exploitation since independence and to periods of war (lacking and dilapidated infrastructure, unpaid magistrates, lack of training for human rights legal staff, corruption, etc.), its rehabilitation is apparently not a priority for the transition government. The funds allocated to the necessary justice reforms are derisory. The priority for the key players of the transition seems to be mainly that of ensuring amnesty and immunity relieving them of all responsibility in the most serious crimes committed against the civilian population. When the question of justice is posed to Congolese authorities, the latter refer to the establishment of an international criminal tribunal, which until now has never really been considered by the international community, hesitant especially because of the financial needs that such a judiciary body would require. Out of the nine resolutions made by the Security Counsel since 2003 on the DRC, none mentions an international criminal tribunal. Julia Motok, special reporter of the Commission of the rights of the United Nations on the situation in the DRC, is the only one to evoke such a possibility in her annual report presented at the 59th session, with the goal of fighting impunity for the most serious crimes committed before July 1, 2002.

Faced with such inertia, victims and their families base their hopes on the creation of the Truth and Reconciliation Commission stipulated by the transition constitution and the comprehensive and inclusive agreement. Although its makeup was already established by the government in power, no law determining its organization and functioning has yet been adopted, and its members seem set in their desire to wait until after the transition period to start operating, so as to not, according to them, upset the preparation of the elections. And while this institution, which is responsible for shedding light on violations of human rights and on their originators, must be understood as an important instrument of national reconciliation, justice will only be reached if it is accompanied by judiciary recourse and the right to redress.

The referral of the situation to the ICC prosecutor by President Kabila on March 3, in accordance with articles 13 paragraph a) and 14 of the Court's Statute, does however provide hope for a new impetus in the fight against impunity for international crimes committed since July 1, 2002 in the DRC. It does not, however, guarantee the right to effective recourse for victims of crimes falling under the jurisdiction of the International Criminal Court.

This hopefulness is relative. Kabila's referral to the ICC on March 3, 2004 may represent a significant symbolic act. It is not however devoid of ambiguity on the part of a head of state who would likely be targeted by the ICC along with his vice-presidents, some of whom were directly involved in the crimes committed. At the very least, in these conditions we can wonder about, on the one hand, the kind of cooperation that will occur between the authorities and the ICC, and on the other hand, the consequences of a national request with a strong political connotation and even motivation on the investigation, whereas the ICC's intervention is supposed to "be and appear" independent. According to the principle of complementarity, Congolese national authorities have the primary responsibility of judging the authors of crimes committed since July 1, 2002. According to the legal policies of the ICC prosecutor, the latter will be responsible for judging the highest officials while national courts will judge other criminals. This dual jurisdiction was evoked by the president of the republic during his appeal to the ICC, when he explained that the ICC's participation was essential for the DRC to be able to lead investigations and pursue the criminals in question.

Despite its statements of intent, the DRC is far from being able to or even, in reality, wanting to, satisfy this requirement: the requisite bill of adaptation of the clauses of the ICC statute into Congolese law that would allow the penal code to include the incrimination of international crimes, the general principles of international criminal law and the principles of cooperation between the state and the Court's branches, is not part of the current legislative agenda, despite the existence of a draft from civil society. This situation is likely to slow down the work of the ICC prosecutor who cannot, in the current state of national law, take advantage of modes of cooperation with the Congolese state.

Moreover, we can seriously wonder about the feasibility of the imminent emergence of an impartial and independent judiciary power likely to give substance to the primary jurisdiction of the national courts established by the ICC system. This is one of the most difficult challenges that President Kabila's referral to the ICC has the merit of putting in the limelight. It will now be up to the Court to evaluate national justice and to draw conclusions from its incompetence or lack of desire to fulfil its responsibilities.

Confronted with its first case, the ICC also needs to act and give its first responses to the extremely complex stakes involved:

- How can it be and appear independent while, appealed to by the head of state, it is dealing with one of the players that will be the object of its investigation?
- What kind of cooperation with national authorities can it count on in these conditions, even more so when other high-level national authorities—the vice-presidency—will be accountable to it? How, under these conditions, can it guarantee the effective participation and the protection of victims and witnesses, who will be at the heart of the construction of the prosecutor's case and who have the right to participate as victims in the proceedings before the ICC? This question is all the more acute in that the ICC's funds in favour of the participation and protection of victims are currently paltry, as are those meant for victim redress for crimes committed.
- How can the prosecutor, called in to intervene in a situation that is still full of conflict and criminality, fully play the preventive role he's supposed to play – he remained silent during the Bukavu events in June 2004
- and fully use his ability to hold back arms?

The urgency of the fight against impunity in the DRC was continuously emphasized by the FIDH and its three member leagues before, during, and after the implementation of its programme of judiciary cooperation. This programme confirmed that an unconditional demand was made by civil society, who after many years of conflict, understands that the argument "peace above all" can not be viable if the authors of the most serious crimes remain free, even sometimes influencing Congolese politics.

This message was hammered in several times by the FIDH and its members, particularly during the 59th session of the Human Rights Commission in Geneva, where it organized a briefing on this theme with Julia Motok, special reporter on the situation of human rights in the DRC. Two reports, alternative to the Congolese state's initial report, were presented during the 33rd and 34th sessions of the African commission for human and people's rights. A report on "War Crimes in the Central African Republic" was published on February 13, 2003, particularly emphasizing Jean Pierre Bemba's responsibility for crimes committed by his men against the civilian population during the attempted coup d'Etat in October 2002. A report on the "persistence of ethnic hatred and massive and systematic violations of human rights in Bunia" was made public on September 21, 2003. The Lotus Group released a report entitled "Repercussions of the fall of Bukavu" in June 2004. To this list can be added papers, urgent appeals, and other interventions on the enlargement of the MONUC mandate, the protection of human rights defenders, the establishment of transition institutions, military reunification, etc.

At the publication of this report, the FIDH is calling the international community to get involved to promote "peace through justice." For the martyred populations of the DRC, the mobilization of the ICC system represents an unprecedented opportunity to put faith in the transition institutions. If this opportunity is not seized and if independent justice is not made effective, the transition is likely to remain nothing more than a political gift to criminals, allowing the main criminals and warlords to share the highest government responsibilities with the sole goal of sacrificing their victims.

RECOMMENDATIONS

The FIDH is asking

Of all parties in conflict in the DRC

- To put an end to all military activity;
- To respect international humanitarian law, and particularly to respect the rights of women and take special measures to protect women and children who are victims of sexual violence;
- To respect the Security Counsel's resolutions, particularly resolution 1355 of June 15, 2003. By doing this, the demilitarisation of the Kisangani region (para. 5) and the effective demobilisation of child soldiers (paras. 14 and 18) should occur unconditionally;
-To respect the clauses of the transition constitution;
-To ensure open access to all areas in order to verify allegations related to massive violations of human rights and of humanitarian law and to cooperate with human rights institutions;
-To guarantee the protection of witnesses and NGOs working with national and international institutions trying to crack down on crime, including the ICC.

Of Congolese transition authorities

Concerning the establishment of transition institutions

- To monitor the effective establishment of transition institutions by respecting the balances that resulted from the comprehensive and inclusive agreement, particularly concerning the role of civil society. As for the Truth and Reconciliation Commission, a real national and international assessment should be made to clarify its objectives and mandate. A "committee of wise men," made of truly independent and irreproachable figures, should be created within the commission. This committee would be responsible for gathering testimonies.
- To speed up the process of reunifying the army.

Concerning internal administration of justice

- To pursue the reform of military justice in accordance with international clauses related to the right to free trial;
- To provide judges with working conditions and pay that would allow them to remain independent;
- To close illicit detention centres;
- To reactivate the moratorium on the application of the death penalty and to ratify Protocol II of the International Covenant on Civil and Political Rights concerning the abolition of the death penalty

Concerning the fight against impunity

- To adopt a law of adaptation of the Statutes of the International Criminal Court including the definition of crimes, the general principles of international criminal law and cooperation between the Congolese state and the Court's bodies;
- To ensure that the law of amnesty excludes genocide, crimes against humanity and war crimes;
- To commit to total cooperation with the ICC and to guaranteeing victims and witnesses appealing to this court protection against retaliation or threats to their security because of their involvement;
- To ratify the protocol creating the African court of human and peoples' rights by referring to article 34(6) that allows individuals and NGOs to complain to this institution.

Concerning the execution of fundamental freedoms

- To respect the international human rights instruments ratified by the DRC, particularly the freedoms of expression and association, as well as international humanitarian law;
- To act in accordance with the clauses of the Declaration on human rights defenders, adopted by the General Assembly of the United Nations on December 9, 1998;
-To submit periodic reports to the conventional bodies of the United Nations, and particularly to submit as soon as possible the initial reports in accordance with the United Nations Convention against Torture (due since 1997), the United Nations Convention against racial discrimination (due since 1999), and the International Covenant on Civil and Political Rights (due since 1993).

Recommendations to the international community

- To the Security Council, to put in place a special court of law, including international judges, to be responsible for judging the perpetrators of crimes against humanity, war crimes and genocide committed between 1997 and 1st July 2002, not only in Ituri but also in the whole territory of the Democratic Republic of Congo;
- To support in specific ways the activity of the International Criminal Court in the Democratic Republic of Congo, and to take up the challenge of victims' rights to effective recourse to an independent and impartial court of law;

- To contribute to the Victims' Fund, which was created by the Statutes of the International Criminal Court in order to promote the effective right of victims to reparations and to promote the adoption of other measures for victims of crimes falling under the jurisdiction of the International Criminal Court;
- To support the transition while rule of law and a real and lasting peace are established;
- To place conditions on its support for institutions supportive of democracy, and in particular to be sure that civil society is able to participate effectively and that political parties are able to function independently;
- To strengthen financial and material support for the UN's mission to Congo in order that this mission may be fully carried out;
- To ask the Security Council to adopt the measures advocated by the group of United Nations experts on the illegal exploitation of natural resources in the Democratic Republic of Congo, notably regarding the establishment of an embargo on certain minerals coming from Burundi, Rwanda or Uganda (para. 221) and the setting up of an international mechanism for investigating and pursuing individuals and organisations who are engaged in criminal economic activity (para. 239) ;
- To appeal to Rwanda and Uganda to cease all support to rebel groups (cf. para. 3 of the Security Council resolution 1355 of 15th June 2001).

Recommendations to the International Criminal Court

To the clerk of the court:

- Effective from this moment, to inform victims of their right to be represented, to be protected, to participate in the proceedings and to seek redress from the International Criminal Court;
- To guarantee victims' effective right to participate in proceedings, the major innovation of the statutes of the International Criminal Court, by organising appropriate and effective legal representation for the proceedings;
- To implement a programme for the protection of victims, witnesses and all other people put at risk by testifying.

To the Prosecutor's Office:

- To lead an independent and impartial inquiry into the perpetrators of the most serious crimes committed since 1st July 2002;
- To implement a regional strategy to combat crime, bringing together responsibility for perpetrators of crimes committed in the Democratic Republic of Congo and in some neighbouring countries, particularly the Central African Republic.

To the clerk of the court and to the Prosecutor's Office:

- To ensure efficient co-ordination of their activities and public information on the situation in the Democratic Republic of Congo, with particular attention to information aimed at victims and witnesses;
- To ensure that the rights of victims are upheld, particularly of the most vulnerable, such as children and victims of sexual violence, in line with the statutes of the International Criminal Court and the regulations surrounding procedure and evidence.

Recommendations to the African Commission on Human and Peoples' Rights

- To be aware of the human rights situation in the Democratic Republic of Congo, and particularly the rights of women and of human rights activists.

APPENDICES

ANNEXE 1 – Statement of ratifications of international treaties by the Democratic Republic of Congo

Date of entry to the UN: 20th September 1960.
Economic, social and cultural rights
Date of joining: 1st November 1976.
Civil and political rights
Date of joining: 1st November 1976.
Optional protocol
Date of joining: 1st November 1976.
Racial discrimination
Date of joining: 21st April 1976.
Discrimination against women
Date of signature: 17th July 1980; date of ratification: 17th October 1986.
Torture
Date of joining: 18th March 1996.
Rights of the child
Date of signature: 20th March 1990; date of ratification: 27th September 1990.
Optional protocol (Sale of children): Date of joining: 11th November 2001.
Optional protocol (Armed conflict): Date of signature: 8th September 2000; date of ratification: 11th November 2001.
Rome Statute of the International Criminal Court
Date of signature: 8th September 2000.
Ratification: 30th March 2002

ANNEXE 2 – Complete text of the Global and all- Inclusive Agreement signed in Pretoria

I. Preamble

We, the various Elements and Entities comprising the Inter-Congolese Dialogue, Parties to the present Agreement, the Government of the Democratic Republic of Congo, the Rally for Congolese Democracy (RCD), the Movement for the Liberation of Congo (MLC), Political opinion, political opposition, the Rally for Congolese Democracy/National (RCD/N) the Maï-Maï, aware of our responsabilities toward the Congolese people, Africa and the International Community ;

Considering the Agreement of a ceasefire in the Democratic Republic of Congo signed in Lusaka on 10th, 30th and 31st July 1999;

Considering the relevant Resolutions of the Security Council of the United Nations relating to the conflict in the Democratic Republic of Congo;

Considering the Resolutions of the inter-Congolese Dialogue held in Sun City (South Africa) from 25th February 2002 to 12th April 2002;

Calling on the following to bear witness: his Excellency Mr Ketumile Masire, Neutral Facilitator of the inter-Congolese Dialogue; His Excellency Mr Kofi Annan, Secretary-General of the United Nations, represented by His Excellency Mr Moustapha Nisse, special envoy of the Secretary-General of the United Nations to the inter-Congolese Dialogue; his Excellency Mr Thabo Mbeki, President of the Republic of South Africa and serving President of the African Union;

Conclude the present global and inclusive Agreement on transition in the Democratic Republic of Congo, by agreeing the following:

1- On the cessation of hostilities
2- 1. Those Parties to the present Agreement who have fighting forces, namely the Government of the DRC, the RCD, the MLC, the RCD/ML, the RCD/N and the Maï-maï, renew their commitment, in accordance with the Lusaka agreement, the Kampala disengagement plan, the Harare sub-plan and the relevant Security Council resolutions, to cease hostilities and to seek a peaceful and equitable solution to the crisis across the country.
2. Those Parties to the present Agreement who have fighting forces agree to commit themselves to the process of forming a national, restructured and integrated army, in conformance with the Resolution adopted on 10th April 2002 by the Plenary session of the Inter-Congolese Dialogue at Sun City.
3. The Elements and Entities of the Inter-Congolese Dialogue, party to the present Agreement (the parties), namely the Government of the DRC, the RCD, the MLC, the RCD/ML, the RCD/N and the Maï-maï, agree to combine their efforts in applying the Resolutions of the Security Council of the United Nations concerning the withdrawal of all foreign troops from DRC territory and the disarmament of armed groups and militias, and in safeguarding the sovereignty and territorial integrity of the DRC.

4. The Parties agree to combine their efforts with a view to achieving national reconciliation. To this end, they resolve to establish a Government of National Unity which will permit the organisation of free and democratic elections at the end of a transition period whose duration is fixed in the present Agreement.
5. The Parties agree to take all necessary measures to ensure the security of the population and of the leaders of the transition process, in Kinshasa and in the country as a whole. To this end, measures will be finalised to guarantee the security of the population, of institutions and their organisers, and of the principal executives of those Parties to the present Agreement who have fighting forces.

II. Of the aims of the transition

The principle objectives of the transition are:
1. The reunification and the reconstruction of the country, the restoration of peace and territorial integrity, and the re-establishment of the authority of the State over the national territory as a whole;
2. National reconciliation;
3.The formation of restructured and integrated national armed forces;
4. The organization of free and transparent elections at all levels, allowing for the establishment of a democratic constitutional regime.
5. The establishment of the structures necessary for a new political order.

III. Of the principles of the transition

1.In order to secure a peaceful transition, the Parties participate in the political administration of the country during the transition. The institutions that they create must ensure an appropriate representation of the eleven provinces, and of the different interests within political and social forces. In particular, women should be represented at all levels of responsibility.
2.In order to ensure the stability of the institutions of the transition, the President, the Vice-Presidents, the President of the National Assembly and the President of the Senate shall remain in office during the full length of the transition, except in the case of resignation, death, inability, conviction for high treason, misuse or misappropriation of public funds, or corruption.
3.The Parties renew their adhesion to the Universal Declaration of Human Rights, to the International Agreement of Economic and Socio-Cultural Rights of 1966, to the African Charter of Human and Rights of Peoples 1981, and to international conventions which have been duly ratified. As such they commit themselves during the transition to support the creation of a system that upholds the values of democracy, human rights and fundamental liberties.
4.The institutions of the transition will be built on the principles of a separation of powers between the executive, the legislative and the judiciary.
5.The institutions of the transition will function according to the principles of consensus, inclusiveness and non-confrontation.
6.The distribution of responsibilities within the institutions of the transition, and at the different levels of the State, are to be made on the basis of the principle of inclusiveness and of equitable sharing between the different Components and Entities of the Inter-Congolese Dialogue, according to a criteria of competence, credibility, honorability and in the spirit of national reconciliation. The conditions for implementation of the principle of inclusiveness are to be included in the annex of the current inclusive Agreement.
7.The distribution of posts between the different Parties within the transition Government and in particular within the governmental committees should be as equitable as possible in terms of their number and of the weight of the ministries and governmental posts. The committees must seek an internal balance in themselves. The distribution of posts within each committee will be decided by the signatory Parties in order of priority in such a way as to guarantee a general balance between the Parties.
8.In order to achieve national reconciliation, amnesty will be accorded for acts of war, infractions based on political or other opinions, with the exception of war crimes, genocide and crimes against humanity. To this effect the National Assembly of the transition government will adopt an amnesty law that conforms to the universal principles of international law. As a provisional measure until the amnesty law is adopted, amnesty will be granted by Presidential decree. The principle of amnesty will be enshrined in the Constitution of the transition.

IV. Of the Duration of the transition

The period of transition takes effect as from the investiture of the transition government. The election of the new President marks the end of the transition period. The presidential election takes place after the legislative elections. The elections are held within 24 months after the beginning of the transition period. This period can be extended by 6 months in the case of difficulties relating specifically to the organization of elections, renewable once for a further 6 months, if circumstances require it. An extension can be proposed by the Independent Electoral Commission and duly agreed by both the National Assembly and the Senate in a joint decision.

V. Of the institutions of the transition

During the transitional period there will be a transitional executive, a transitional parliament, composed of a National Assembly and a Senate, a judicial authority consisting mainly of the existing courts and tribunals, and institutions which support the democratic process, constructed under the conditions determined in the transition Constitution. The institutions of the transition are:
The President of the Republic
The Government

The National Assembly
The Senate
The Courts and the Tribunals
In addition to the above institutions, the following institutions, which support the democratic process, will be created:
The Independent Electoral Commission
The National Human Rights Watchdog
The Media High Authority
The Commission on Ethics and the Fight Against Corruption

1.The President

a. The President of the Republic is the Head of State. He represents the nation. He ensures the Constitution of the transition is respected and adhered to. The President of the Republic is the Commander in chief of the Armed Forces. He presides over the High Counsel of the Defense. He convenes and presides over a Counsel of Ministers once every fortnight. The President of the Republic remains in office for the duration of the transition.

b.The President of the Republic has the following duties and powers:
b/1. He promulgates laws
b/2. He appoints and dismisses Ministers and Vice-Ministers, according to motions brought by the Components and Entities of the Inter-Congolese Dialogue.
b/3. He accredits Ambassadors and Special Envoys to foreign countries and international organisations. Foreign Ambassadors and Special Envoys are accredited to him.
b/4.In accordance with the provisions of the current Agreement and its annex, he appoints:
(i)High ranking civil servants;
(ii)Police and army officers, following deliberations with the High Counsel for Defence;
(iii)Governors and vice-governors of the provinces;
(iv)The Governor and the Vice-Governors of the Central Bank;
(v)Ambassadors and Special Envoys;
(vi)Members of the Magistrates' Council;
(vii)Representatives of the Government in public and semi-public enterprises.
b/5. In accordance with motions of the Magistrates' Council, he appoints and dismisses judges and public prosecutors, having first informed the Government.
b/6. He confers the ranks of national orders and decorations according to the law.
b/7. He has the power to pardon and can reduce, commute or remit a sentence, having first informed the Government.
B/8. He declares war, states siege or emergency following a decision by the Counsel of Ministers with the agreement of both chambers of Parliament.
c. The duties of the President of the Republic are ended in the case of resignation, death, inability, conviction for high treason, misuse or misappropriation of public funds, or corruption. Where the duties come to an end, the Component to which the President of the Republic belongs presents its replacement to the National Assembly to be ratified within seven days. The Vice-President arising from the Component government will stand in during the interim. The conditions for implementation of this provision will be set out in the Constitution of the transition.

B. The Presidency
d.The Presidency is composed of the President and four Vice-Presidents.
e.The President ensures, along with the Vice-Presidents, a necessary and exemplary leadership in the interests of national unity in the DRC.
f.The President of the Republic, along with the Vice-Presidents, deals with all matters relating to the government, as well as matters mentioned in points A/b/b4(i)and (v).
g. Meetings between the President and the Vice-Presidents are held regularly, at least once a fortnight, and always in advance of a Counsel of Ministers. A meeting between the President and the Vice-Presidents can also be convened by the President at the request of a Vice-President. The President of the Republic nominates a Vice-President to replace him in his absence on a rotational basis.

C. The Vice-Presidents
h. Four vice-president posts will be created. The Vice-Presidents will represent the four Components of Government, RCD, MCL and the political opposition. Each Vice-President will be in charge of one of the following four governmental committees:
-Political Committee (RCD Component)
-Economic and Finance Committee (MCL Component)
-Committee for Reconstruction and Development (Government Component)
-Social and Cultural Committee (political opposition Component)

The Vice-Presidents have the following powers and duties:
I/1. They call for and preside over the meetings of their Committees
I/2.They present their Committees reports to the Counsel of Ministers.
I/3. They coordinate and supervise the implementation of decisions of the Counsel of Ministers in relation to their respective Committees.
I/4. They make proposals to the President of the Republic on ranks of the National order and decorations, according to the law.

The duties of the Vice-President of the Republic are ended in the case of resignation, dismissal, death, inability, conviction for high treason, misuse or misappropriation of public funds, or corruption. Where the duties come to an end, the Component to which the Vice-President belongs presents its replacement to the National Assembly for ratification. The interim solution and the conditions for implementation of this provision will be set out in the Constitution of the transition.

D. The Government

K. The Government is composed of the President of the Republic, the Vice-Presidents, the Ministers and the Vice-Ministers. The ministerial portfolios are distributed between the Components and Entities of the ICD under the conditions and according to the criteria set out in Annex 1 of the current Agreement.

l. The Government defines and conducts the policy of the nation according to the Resolutions of the ICD.

m. The Government is wholly responsible for the governing of the State and is accountable to the National Assembly under the conditions defined in the Constitution of the transition. However, during the life of the Constitution, the National Assembly cannot vote a motion of no confidence in the Government as a whole.

n. The meetings of the Government and of the Counsel of Ministers will be presided over by the President of the Republic, and in his absence, or if he decides it, by the Vice-President, and this on a rotational basis.

o. The Government should be consulted by the President of the Republic on matters relating to points A/b/b4 (i) and (v) above.

p. For the duration of their office, members of the government cannot, whether by their own action or through an intermediary, purchase or rent anything that belongs to the State. They are required, from the day of their appointment to office to its expiry, to swear a written declaration of their possessions to the National Assembly.

q. The duties of Ministers and Vice-Ministers are ended by resignation, dismissal, death, inability, conviction for high treason, misuse or misappropriation of public funds, corruption. Should a post become vacant, the Component or the Entity of the ICD to which the Minister or Vice-Minister belongs will present a replacement to the President of the Republic. The conditions for implementation of this provision will be set out in the Constitution of the transition.

r.A general secretariat of the government is to assist the President and Vice-Presidents in the co-ordination of government activity. It prepares meetings, works, and all dossiers which are to be discussed between the President and the Vice-Presidents, and at Counsel of Ministers level.

s.The executive body of the government is to function in a co-operative way, in conformity with the spirit of a government of national unity, and on the basis of a common programme of government, founded on the Resolutions adopted by the ICD.

2. Legislative power

The parliament of transition consists of two chambers - the National Assembly and the Senate.

a. The National assembly is the legislative body during the period of transition. Its powers and functions are set out in the Constitution of transition which is an integral part of the present agreement.

b. The National Assembly has 500 members. The members of the National Assembly are known as deputies. The minimum age a deputy is over 25 years by the day of appointment. The deputies are entitled to an equitable monthly salary which allows them to be independent and to leave honourably at the end of their term in office.

c. The deputies are designated by the components and entities of DIC under the conditions set out in the document enclosed with the present agreement. All the components and entities must guarantee a balanced provincial representation within their group.

d. The bureau of the National assembly consists of a president, two vice-presidents, one rapporteur and an assistant rapporteur. Each will be appointed by a different component and entity.

e. The Senate will play the role of mediator in a case of conflict between the institutions, will draw up the preliminary draft of a post-transition Constitution to, will exercise the legislative function in conjunction with the National assembly in matters relating to nationality, decentralisation, the electoral process and when it comes to institutions supporting democracy.

f. The Senate consists of 120 members. The members of the Senate are known as senators. The minimum age for a becoming a senator is over 40 years by the date of appointment. Senators are entitled to an equitable monthly salary which allows them to be independent and to leave honourably at the end of their term in office.

g. The Senators are appointed by their Components and Entities of Inter-Congolese Dialogue (Dialogue Inter-Congolais –DIC) under conditions set out in the document enclosed with the present agreement. The Senate is structured in such a way so as to guarantee the representation of all the provinces.

h. The office of the Senate will be made up of a president, two vice-presidents, a rappporteur and an assistant rapporteur, as planned in the present agreement. Each will be appointed by a different Element and Entity.

i. The functions of the President of the National Assembly and the President of the Senate is terminated as a result of resignation, death, permanent impediment or condemnation for high treason, misappropriation of public funds, overcharging of taxes or corruption.

3. The judiciary

a. The parties have reiterated their requirement for an independent judiciary. The Higher council of the judiciary is the disciplinary jurisdiction of the judges. It keeps close eye on the careers and safeguards the independence of judges.

b. The organisation of the judiciary will be established in the Constitution of transition and in a law.

c. The first president of the Justice Supreme court, the chief public prosecutor and the auditor general of the armed forces will be appointed and established immediately after the present “Global et Inclusive” Agreement has been signed, with due regard for national equilibrium in accordance with an instrument determined by the parties.

4.Institutions supporting democracy

a. The following institutions supporting democracy have been created:
-The Independent Electoral Institutions.
-The High authority of the media
-The Truth and Reconciliation Commission
-The National Human Rights Watch
-The Committee on ethics and fight against corruption
b. The organisation, functioning and powers of institutions will be established by the law.
c. The duties of the presidents of institutions supporting democracy fall upon the "forces vives" or civil society component. The presidents of institutions in support of democracy have the status of ministers. The institutions supporting democracy function independently of the transitional government The duties of the President supporting democracy the shall be terminated as a result of resignation, death, permanent impediment or condemnation for high treason, misappropriation of public funds, overcharging of taxes or corruption. In the case of resignation, the element to which the President belongs shall present his substitute to the National Assembly for confirmation within seven.

VI. The army

a. As a result of the Inter-Congolese dialogue, there will be a mechanism set up for the training of a restructured and integrated national army to include the armed forces of the government of Democratic Republic of Congo, the armed forces of the Congolese Assembly for democracy and the armed forces of Liberation Movement of Congo (MLC - Mouvement de libération du Congo), in accordance with point 20 of article 3 of the principles of the Lusaka agreement.
b. In the preoccupation with national peace, unity and reconciliation, the mechanisms mentioned hereinbefore will have to include RCD-MI, RCD-N and the Maï-Maï, in accordance with the terms to be defined by political institutions of transition following the Inter-Congolese dialogue.
c. A meeting of staff of ACF (Aid and Cooperation Fund), Rcd, Mlc, Rcd-N,Rcd-MI and Maï-Maï will be called before the establishment of the government of transition. It will be followed by the development of the military mechanism responsible for the training of staff up to the people in the military regions.
d. A Board of governors for defence has been created. It is presided by the President of the Democratic Republic and in case of his absence, by the vice-president will be in charge. The Board of governor of defence is composed of the following:
-The president of the Republic
-The four vice-presidents
-The Minister of defence
-The Minister of the Interior, Decentralisation and Security
-The chief of staff of the army (his deputies can be invited)
- The chiefs of staff of the air, ground and naval forces
f. The chief of staff of defence shall give an opinion, which conforms to the decree of state of siege, decree of state of emergency and the declaration of war.
g. The law on armed forces and national defence determines the responsibilities and functioning of chief of staff of defence
h. The chief of staff of defence gives an opinion on the following subjects in particular:
-The training of a restructured and integrated national army
-The disarmament of armed groups
- Monitoring the retreat of foreign troops
-Development of the defence policy
i. The conditions of application of the provisions relating to the army will be determined by the law.

VII. Final provisions

a. The constitution of transition shall be developed on the basis of the present agreement inclusive with the transition in DRC and is an integral part of it.
b. The parties shall accept the appendices as an integral part of the present agreement.
c. The parties will create a mechanism to implement the present agreement.
d.The present Global and Inclusive agreement shall be effective on the date of its promulgation by the president of the republic.
e. The parties shall commit to execute the present agreement willingly, to respect its provisions and to include all the institutions, structures and commissions which will be created in accordance to its provisions. They agree to execute everything to ensure that the present agreement is being applied and respected.

ANNEXE 3 – Extracts of the transitional Constitution on public freedoms, the fundamental rights and obligations of citizens.

Promulgated on 4April 2003

Article 15:
The human person is sacred. The State has the obligation to respect and protect the person. All persons have the right to life and physical integrity. No one can be subjected to torture or inhuman, degrading treatment. No one can be deprived of life or freedom if this is stipulated by the law and under the provisions it describes

Article 16:
The Democratic Republic of Congo guarantees the exercise of rights and individual and collective freedoms, namely freedoms of movement, enterprise, information, association, procession, and demonstration on condition that law, public order and standards of good behaviour are respected.

Article 17
All Congolese are equal before the law and have the right to an equal protection of laws. No Congolese can be subjected to discrimination, resulting from the law or an act of executive because of his religion, gender, family, origin, social situation, residence, opinion or his political conviction, race, ethnicity, tribe, cultural or linguistic minority, in the areas of education, access to public services or in any other areas.

Article 18:
All persons have the right to free development of their personality, without prejudice to other persons right to public order and standards of good) behaviour. No one can be held as a slave, in servitude or in a similar condition. No one can be subjected to slave labour, except in conditions where it is within the law.

Article 19:
Individual liberty cannot be violated and is guaranteed by the law. No person can be prosecuted, arrested or detained according to the law and under the provisions it describes. No persons can be prosecuted for an action or an omission which is does not breach the law a the time when it had been committed or during prosecution. All persons accused of breaking the law are presumed innocent until proven guilty by final judgement.

Article 20:
Any persons arrested should immediately or at latest within the twenty-four hours be informed of the grounds of his arrest and all charges made him in a language that he understands. He must immediately be informed of his rights. The person under police custody has the right to immediately establish contact with his family and his advisor. The duration of the police custody cannot exceed forty-eight hours. When this duration expires, the person under police custody should be released or handed over to the competent judiciary authority. All detainees should be treated in conditions that preserve his life, physical and mental health and his dignity.

Article 21:
Any person denied of his freedom due to arrest or detention has the right to appeal before a tribunal which quickly gives a ruling on the legality of his detention and orders his release if his detention is illegal. The person who is victim of an illegal arrest or detention has a right to the fair and equal compensation of the prejudice he has been subjected to. Any person being prosecuted has the right the demand being heard in the presence of a lawyer or a legal defendant of his choice at every stage of the penal procedure, including the police and pre-trial investigation.

Article 22:
No one can be excluded against his will to be heard by the judge as described in the law. Every person has the right to have his cause heard fairly within the legal time limit by a legally established, competent jurisdiction.

Article 23:
The audiences of the court and civil and military tribunals are public, except in cases where such publicity is considered dangerous for public order and standards of good behaviour. In these cases, the tribunal orders a case to be heard in camera.

Article 24:
All sentences are pronounced before a public audience. It is written and justified. The right to appeal against a sentence is guaranteed to everyone. No sentence can be pronounced or applied if it is not in accordance with the law. There cannot be a more severe sentence than the one applicable at he time when the offence was committed.
If the new law punishes an offence with a less severe sentence than that prescribed by the law at the time when the offence had been committed, the judge must pronounce the least severe sentence. The sentence is individual. It can only be executed against the person being sentenced. The law decides on the cases for justification, forgiveness and impunity.

Article 25:
No one can execute an order that is clearly illegal, particularly when it breaches freedoms and fundamental rights of the human person. Proving the evident illegality of the order is incumbent upon the person refusing to execute the order.

Article 26:
There is no State religion in the Democratic Republic of Congo. All persons have the right to freedom of thought, conscience and religion. All persons has the right to express his own religion or convictions individually or collectively, in public and privately, through worship, teaching, practices and completion of rituals and religiosity, on condition that they respect the law, public order and standards of good behaviour. The law establishes the conditions for setting up religious organisations.

Article 27:
Everyone has the right to freedom of expression. This right includes the right to express ones opinions and feelings, particularly through speech, writing and images on condition that they respect public order, other peoples' rights and standards of good behaviour.

Article 28:
The liberty of the press is guaranteed. The law establishes its modes of enforcement. Nevertheless, it can only subject the execution of freedom of the press to restrictions to ensure the restoration of public order, standards of good behaviour and the respect of other peoples' rights.

Article 29
Everyone has the right to information. The freedom of information and radio and television broadcast, written press or any other means of communication is guaranteed. Audiovisual and written mediums of the State are public services with guaranteed access in an equitable manner across all political and social movements. The status of the State's media is established by the law which guarantees objectivity, impartiality and a plurality of opinion in the treatment and transmission of information.

Article 30:
The freedom of peaceful assembly and protest is guaranteed on condition that public order is respected. Everyone has the right to participate in an assembly or protest and no one can be forced to participate. The law establishes the modes of enforcement of the present provisions.

Article 31:
Every Congolese has the right to address a peaceful petition to a public authority. No one can be discriminated against for having initiated such a petition.

Article 32:
A place of residence cannot be violated. There can only be visits or searches in the forms and conditions described in the law.

Article 33:
No Congolese can be expelled from the territory of the Republic. No Congolese can be forced into exile or to forced to reside outside the area of his normal residence for political, religious or any other reason. All Congolese have the right to move freely, set up their residence on the territory of the Republic and leave or return to the territory of the Republic. The application of this right can only be restricted in accordance with the law. All Congolese enjoy the same rights regardless of their area of residence on the national territory.

Article 34:
All persons have the right to respect of his private life, to privacy of correspondence, telecommunication and any other form of communication. This right can only be denied in cases where the law requires it.

Article 35:
The right to asylum is recognised. The republic grants asylum on its territory, on condition that national security is not breached, to foreign nationals prosecuted or persecuted mainly because of their opinions, beliefs and belonging to a race, tribe, ethnic and linguistic minority or their activities in favour of democracy, protection of human and people's rights in accordance with the regulations being enforced.
It is prohibited for all persons regularly being granted the right to asylum to undertake a subversive activity against their country of origin or any other country from the Democratic Republic of Congo. The law establishes the modes of enforcement of this law.

Article 36:
Private property is sacred. The State guarantees the right to private or collective ownership acquired in accordance with the law or custom. The State encourages and protects the security of private, national and foreign investments.

Article 37:
Intervention of expropriation in the interest of the general public or state can only be allowed in accordance to the law requiring the prior payment of a fair compensation. No one can have his possessions confiscated except in accordance with a decision made by a competent judiciary authority.

Article 38:
The practice of art, trade and operation of an industry and the free movement of goods are guaranteed all over the territory of the Republic, under conditions established by the law.

Article 39:
Work is a sacred right and duty of each Congolese. The State guarantees the right to work, protection against unemployment and a fair and satisfactory payment ensuring the worker and his family an existence that conforms to human dignity. This is also ensured by any other form of social welfare. No one can be discriminated at his workplace because of his origins, gender, opinions and beliefs. Every Congolese has the right and duty to contribute to national development and prosperity through his work. The law establishes the status of the workers and regulates the particularities specific to the legal system of professional organisations and the practice of professions that require educational or academic qualifications. The internal structures and functioning of professional organisations should be democratic.

Article 40:
The right to set up organisations is guaranteed. The public authorities collaborate with national organisations which contribute to the social, economic, intellectual, cultural, moral and spiritual development of the populations and to the education of citizens. This collaboration can take on the form of assistance through grants. The law establishes the modes of enforcement of this right.

Article 41:
The right to trade union is recognised in the Democratic Republic of Congo. All Congolese have the right to set up trade unions, companies or other organisations or become members of these organisations their own accord to promote their well being and to guarantee the protection of their social, economic and cultural interests, within the conditions established by the law.
However, members of armed forces, forces maintaining order and security services can neither set up trade unions nor become members of trade unions.

Article 42:
The right to take industrial action is recognised and guaranteed. It is practiced under condition established by the law which can prohibit or restrict such action in the sphere of national defence and security or for all pubic services or activities which jeopardises the interest for the public.

Article 43:
All individuals have the right to marry the person of his/her choice of the opposite sex and to create a family. The family, the basic unit of the community, is organised in such a way to assure it unity and stability.
It is placed under the special protection of public authorities. For the parents, the care and education to be provided to the children is part of a natural right and a right that they execute under the guardianship and assistance of public authorities. The children have the duty to help their parents. The law establishes the regulations on marriage and organisation of families.

Article 44:
Every child has the right to know the name of its father and mother. Every child has the right to be protected by its family, society and public authorities. The State has the obligation to protect the child against prostitution, immoral earnings, homosexuality, incest, paedophilia, sexual harassment and all other forms of sexual perversions.

Article 45:
The public authorities have the obligation to protect young person against all factors undermining his health, education and his moral development. Youth organisations have an educational role. Public authorities are expected to support them.

Article 46:
All Congolese have a right to education provided by the national education system. The national education system includes registered public and private establishments. An organic law establishes the conditions to create and operate them. As a priority, parents have the right to choose the type of education for their children. Education is compulsory up to the level and age ascribed in the law.

Article 47:
Education is free. Nevertheless, it is monitored by public authorities, under conditions established by the law. Public authorities have the duty to promote and ensure, through education and diffusion, the respect of human rights, the fundamental freedoms and the duties of the citizens specified in the present Constitution. The State has the duty to ensure the diffusion and the education of the Constitution, the Universal Declaration of the Human Rights, the African charter of Human and People's Rights as well as the regional and international instruments related to human rights and International Humanitarian rights due to be ratified. The State has the obligation to integrate the rights of the human person in all the training programmes for armed forces, police and security services. It is the law that determines the conditions for the enforcement of the present article.

Article 48:
The eradication of illiteracy is a national duty for which all the national potentialities and resources need to be mobilised.

Article 49:
The right to culture, freedom of intellectual and artistic creation and the freedom to scientific and technological research are guaranteed to the citizens, on the conditions hat it conforms to the law, public order and standards of good behaviour. While achieving its responsibilities, the State takes into consideration the cultural diversity of the country. The state protects the national cultural heritage.

Article 50:
The State has the obligation to ensure the health and the food safety of consumers. It is the law that establishes the fundamental principles and the regulations of the organisations related to public health and food safety.

Article 51:
The State has the duty to ensure that all forms or discrimination against women are eliminated and to ensure the respect and promotion of their rights. The State has the obligation to take all appropriate measures in all areas, namely in the economic, social and cultural spheres, to ensure the full participation of women in the development of the nation. The State takes the measures to fight against all forms of violence inflicted on women in public and private life. Women have the right to a significant representation within national, provincial and local institutions.

Article 52:
Senior citizens, handicapped and disabled persons have the right to specific measures of protection in relation to their physical, intellectual and moral needs.

Article 53:
All Congolese have the right to peace and security. A proportion of the national territory cannot be used as a basis for initiating subversive or terrorist activities against any other State.

Article 54:
All Congolese have a right to an environment that is healthy and favourable for their development. Public authorities and citizens have the duty to assure the protection of the environment under conditions defined by the law.

Article 55:
All Congolese have the right to enjoy the national wealth. The State has the duty to redistribute the national wealth equally and to guarantee the right to development.

Article 56:
All Congolese have the right to enjoy humanity's common heritage. It is the State's duty to facilitate this enjoyment.

Article 57:
The State protects the rights and interests of Congolese people abroad.

Article 58:
On condition of reciprocity, all foreigners who are on the national territory legally have the same rights and freedoms as the Congolese, except for political rights. They are entitled to protection granted to persons and to their possessions under conditions established by treaties and laws. It is expected that the foreigners will conform to the laws and regulations of the Republic.

Article 59:
All Congolese are expected to fulfil their obligations loyally towards the national population. They have the duty to pay their taxes and to fulfil their social obligations.

Article 60:
All Congolese have the duty to respect and treat their co-citizens without any discrimination and to maintain relationships with them to enable the protection, promotion and reinforcement of national unity, respect and reciprocal tolerance. Furthermore, they have the duty to preserve and reinforce national solidarity.

Article 61:
All the citizens and public authorities are required to respect human rights and fundamental freedoms sanctioned in this present Constitution.

Article 62:
The application of human rights and fundamental freedoms sanctioned in the present Constitution can only be suspended in the cases where it is stipulated.

Article 63:
All persons are expected to respect the present Constitution and to comply with the laws of the Republic.

ANNEXE 4 - Extract of the transitional Constitution relating to institutions supporting democracy

Promulgated on 4th April 2003

Article 154:
The institutions supporting democracy are:
-The Independent Electoral Commission
-The National Human Rights Watch
-The High authority of the Media
-The Truth and Reconciliation Commission
-The Ethics and Fight against corruption Committee

Article 155:
The institutions supporting democracy aim to:
-guarantee neutrality and impartiality in the organisation of free, democratic and transparent elections;
-ensure neutrality of the media;
-consolidate national unity thanks to the genuine reconciliation amongst the Congolese;
-promote and protect human rights;
-facilitate the practice of moral and republican values.

Article 156:
The institutions supporting democracy are independent in the actions they undertake amongst themselves and in relation with other institutions of the Republic. The institutions supporting democracy have a legal status.

Article 157:
The institutions supporting democracy are presided by the representatives of the "Forces Vives" or civil society component in conformity with the relevant provisions of the Global and all-inclusive Agreement. The other components and entities of Inter-Congolese Dialogue are part of their respective offices.

Article 158:
The Presidents of institutions supporting democracy are appointed "Ministers", in conformity with the stipulation of point V 4 c of the Global and Inclusive agreement.

Article 159:
The presidents and members of institutions supporting democracy are appointed for the whole duration of the transition. Without prejudice of the provision of paragraph 1 of the present article, the functions of the president and members of the institutions supporting democracy are terminated as a result of resignation, death, permanent impediment or condemnation for high treason, misappropriation of public funds,
overcharging of taxes or corruption. In conformity with the Global and Inclusive agreement, the organisation or the creation of the Constituent "Civil society" from which it was born, his substitute to the National Assembly for confirmation within seven.

Article 160:
The organisation, attributions and operation of institutions supporting democracy are determined through organic laws adopted within thirty days following their establishment by the National Assembly and the Senate.

ANNEXE 5 - Extract of the transitional Constitution on incompatibilities and immunities

Promulgated on 4 April 2003

Article 137:
The functions of the president of the Republic are incompatible with the execution of all other political agreement or public function or private activity involving any form of payment or which is of a lucrative nature. The provisions of paragraph 1 of the present article are not an obstacle to the execution of the mission by the President of the republic in the context organisations and international organisations.

Article 141:
The President of the Republic is only criminally responsible of acts completed in the execution of its functions in cases of high treason, misappropriation of public funds, overcharging of taxes, corruption or intentional violation of the Constitution. He can only be prosecuted for offences stipulated in paragraph 1 of the present article or for any other criminal offence committed outside the execution of its function only if he has been accused by the national assembly before the majority of the three quarter of the members of the Constituent.

Article 142:
The Vice-presidents are only criminally responsible of acts completed in the execution of their functions in cases of high treason, misappropriation of public funds, overcharging of taxes, corruption or intentional violation of the Constitution. They can only be

prosecuted for offences stipulated in previous paragraph or for any other criminal offence committed outside the execution of their function only if they have been accused by the national assembly before the majority of the three quarter of the members of the Constituent.

Article 143
High treason is committed when the President of the Republic or the Vice-president damages national independence or the integrity of the national territory, substitutes or attempts to substitute to other constitutional powers or to stop exercising the responsibilities assigned to him by the present Constitution. An organic law determines the sentences applicable to offences of high treason and intentional violation of the constitution, as well as the procedure to be followed before Supreme Court of justice.

Article 144
The other members of the government are criminally responsible for acts completed in the execution of its functions. They are bound by their personal responsibility in cases of high treason as defined in paragraph 1 of article 143 of the present constitution, intentional violation of the Constitution, misappropriation of public funds, overcharging of taxes, corruption.

They can only be prosecuted for offences stipulated in paragraph 2 of the present article or for any other offence in the criminal law committed outside the execution of their function if they have been accused before the Supreme Court of Justice by the National Assembly before the majority of the two thirds of the members of the constituent.

Article 145:
A deputy or a senator cannot be prosecuted, searched, arrested or judged for the opinions or votes issued by him in the execution of his functions. A Deputy or a Senate cannot be prosecuted or arrested during sessions, except when caught in the act with the authorisation of the national assembly or the Senate depending on the case. A deputy or a senator can only be arrested outside-session with the authorisation of the bureau of the national assembly or the bureau of the Senate, except in cases when he is caught in the act, of authorised prosecution or final sentencing. The detention or prosecution of a deputy or a senator is suspended if the parliamentary chamber, of which he is a member, calls for it. The suspension cannot exceed the duration of the session in progress.

Article 208:
On its first session, the National Assembly of transition, in accordance with universal principles and international legislation, will adopt a law supporting amnesty for acts of war, political offences or offences based on opinions, with the exception of economic crimes, war crimes, genocides and crimes against humanity.
While waiting for the adoption and promulgation of the law specified in the previous paragraph, the President of the Republic takes an edict, as powerful as a law, granting amnesty to all persons in the sphere of application of paragraph 1 of the present article.

ANNEXE 6 - Security Council/Press-release

13 February 2003

FOLLOWING THE HUMAN RIGHTS VIOLATIONS PERPETRATED IN THE ITURI REGION, THE COUNCIL REFLECTS ON THE MEANS TO END THE CULTURE OF IMPUNITY IN CONGO-KINSHASA.

The ongoing fights in the Ituri region and the serious violations of human rights which have ensued have this afternoon led the members of the Security Council and Under-Secretary-General for Peacekeeping Operations, Jean-Marie Guéhenno and United Nations High Commissioner for Human Rights (2002-2003), Sergio Viera de Mello, to reflect on the means t put an end to the culture of impunity particularly in this north-east region of the Democratic Republic of Congo (DRC) and in the whole country in general.

In spite of the Global and Inclusive Agreement for a consensual management of the transition in the DRC from 17 December 2002 – Pretoria Agreement - and before that the Gbadolite Agreement in December 2003- the Ituri region has continued, according to two persons, to be shaken by confrontations against Liberation Movement of Congo, the Congolese assembly for national democracy (RCD-N), the union of Congolese Patriots (UPC) at the Congolese assembly for democracy in Kisangani/liberation movement (RCD-K/ML).

Considering the organisation of military alliances, Jean-Marie Guéhenno, is said to fear the eventual involvement of DRC-Goma and the Ugandan and Rwandan armies. He has thus expressed his hope in view of the agreement of 9 February, concluded between the President of DRC and Uganda, on the agenda of the tasks of the Ituri Peace Committee. These tasks, which are supposed to be carried out between 17 February and 20 March, should be followed by complete retreat of all Ugandan troops.

Impunity granted to authors of human rights violations and especially senior officers of the government armies and the majors or various rebel forces is a major obstacle to a lasting peace in DRC, the High commissioner of Human Rights surmised. Quoting the information received from United Nations Organization Mission in the Democratic Republic of Congo (MONUC), he reported how the forces of MLC, DRC-N and UPC resorted to pillages, assassinations, rapes and even mutilations followed by cannibalism.

Sergio Viera de Mello straight away described Mac's actions as "having no legitimacy and not conforming to legal and international humanitarian norms." In the light of information collected, the members of the Council unanimously condemned the reported acts by arguing that the situation can only be improved after the implementation of the Pretoria Agreement. The objective of the Pretoria Agreement is to lead to the establishment of institutions of transition that respect human rights.
In their meeting with the Under-Secretary-General for Peacekeeping Operations and the High Commissioner of Human Rights, the members of the Council, whilst highlighting the importance to put an end to the culture of impunity, asked several questions on the way to strengthen the operational links between MONUC and the High Commissioner of Human Rights and on the methods of operation of the National Human Rights Watch and a commission for the establishment of acts suggested by the latter. Following the example of the representative of the DRC, the delegations speculated on the possibilities of submission of a case of the International Criminal Court.

The need for justice is an integral part of having a lasting peace, emphasised the Congolese representative in asserting that it was essential to break "the disastrous cycle of impunity". He was of the opinion that if the Council has the political will to fully apply its own resolutions, today it would not be deploring all the repeated massacres of the Congolese civil population. It is the Council's duty to take full responsibility, he stated, and to set up an international criminal tribunal for the DRC or a special criminal tribunal based on the Sierra Leone model.

Whilst proposing other practical measures, the representative of the DRC called for the Council to involve all neighbouring countries

- to exert influence upon the armed groups they have created so that they respect human rights
- to demand a total retreat of violent groups
- to support the Pretoria Agreement and the resulting political transition; and to consider applying sanctions on all refractory parties.

Considering the fragility of any kind of transition, he urged for the transformation of MONUC into a truly effective mission for the maintenance of peace.

The representative of Rwanda rejected the accusations against his country and described the information according to which the Rwandan army is still present in the DRC as unjustified.

ANNEXE 7 – Intervention of the public prosecutor of the International Criminal Court, Mr Luis Moreno-Ocampo, before the Assembly of the State Parties

8 September 2003

[..] After assessing all the information communicated to us, I believe that the situation in Ituri in Democratic Republic of Congo warrants being followed very closely and urgently.

Dear Mr President,

Referring to the terms of the President Kirsch, the International Criminal Court is both independent and interdependent at the same time. It cannot operate on its own. It will only be effective if it works in close collaboration with the others actors of the international community. To create the conditions for a close collaboration with you, I would like to give specifications on the crimes committed in Ituri, the way we are going to deal with them and how you can contribute to our efforts. As pointed out by the Rapporteur of United Nations Human Rights Commission last week, crimes committed in Ituri can be considered as genocide, crimes against humanity or war crimes and the Court is competent for these.

The detailed reports sent to my office by a certain number of organisations of civil society, provide an estimation that at least 5000 civilians have died as a result of violent acts committed in Ituri since 1 July 2002. The total number of deaths since the beginning of the conflict is thought to be between 2.5 and 3.3 million. These deaths are not only the direct result of conflicts but also have indirect causes such as famine, antipersonnel land mine, untreated wounds and various diseases (including spread of HIV due to rapes). Such statistics signify that this conflict is the deadliest in terms of civilian deaths since the Second World War.

The information in these reports has been corroborated by other sources. All the sources agree on the fact that such atrocities have continued to be committed in Ituri. Thus, the High Commissioner of Human Rights has reported "117 cases of arbitrary executions, 65 cases of rape, including rape committed on minors, 82 cases of abductions with sexual motives or for slave labour and 27 cases of torture" in Mombassa between November and December 2002. A team from the United Nations, which was concerned about the events in Drodo, reported that on 3 April 2003, about 410 people had been executed. These included who were people burnt alive and more than 80 other persons who were seriously injured or mutilated. At Nkoro, 70 civilians were killed in mid-June. This information has been confirmed by MONUC. On 30 August 2003, MONUC sent a mission to Fataki, 60 KM north west of Bunia, and reported that the town was completely deserted and destroyed following a multitude of attacks by rebel groups, leaving hundreds of deaths and disappearances behind them.

Crimes committed in mass are only one aspect of crimes committed in Ituri. According to UNICEF reports, crimes specifically aimed at women and children are also common in the region. Hundreds of women and young girls have been raped, mutilated or killed in the province. These women are permanently exposed to the risk of being infected with the AIDS virus, which already affects a significant proportion of the population of the Democratic Republic of Congo. Between 8,000 and 10,000 are exploited

as child soldiers in this torn region. In total, it is estimated that at least 30,000 child soldiers are participating in the conflict for the different belligerents all over the territory of the Democratic Republic of Congo. These child soldiers represent between 40 to 60% of the total number of fighters involved in the conflict.

The pygmy populations, which are currently fast disappearing, are another group which are specifically targeted. The violence has also forced several civilians to leave their normal life and move. They are forced into conditions of poverty and are under the permanent threat of famine and diseases. According to United Nations, it was estimated that 500,000 (10% of the population) had been forced to move internally within the region of Ituri before the outbreak of conflict in the month of April 2003.

The situation of savage violence has also had an impact on the economic situation and the possessions of the populations. Pillages of farms, mines and shopping centres have resulted in substantial economic losses. The destruction of the local economy has left the inhabitants without any means of subsistence and has compelled them into slave labour.

Various groups have been able to take advantage of this situation of widespread violence and have started the illegal exploitation of strategic mineral resources such as cobalt, coltan, copper, diamond and gold. According to information provided to us, it would seem that the crimes committed have a direct link with the control of the main areas of extraction of ore. Those who lead the extraction and mine operations, who control the sale of diamonds or gold produced in this way, the dirty money launderer and weapons dealers may also be responsible for these crimes regardless of the country they operate in.

The scale and ramifications of the phenomenon of illegal exploitation of natural resources are so significant that the United Nations has set up a group of experts in charge of analysing it. The reports of this group of experts bring into light the links between the pursuit of conflict and the exploitation of these resources. Insofar as the group of experts has not completed its work, we have not been able get any conclusion from the reports already published.

We will however continue to follow closely the opinions expressed by the different parties concerned and analyse the available information to independently verify the existence of links between acts of violence and exploitation of resources.

Mr President,

The office of the public prosecutor is aware that a peace process is in progress and we are hoping that the efforts of the international community in ending this violence will bear fruit. I am particularly hoping that the national legal system can be re-established and consolidated with the help of the international community to allow the Congolese to autonomously investigate and prosecute those responsible for the crimes committed.

However, if it becomes necessary and in accordance with the terms of the Statute, I will use my own initiate and will be prepared to request for the authorisation of the Pre-Trial Chamber to open an inquiry. In such a case and in view if the current situation on site, the protection of witnesses, the collection of evidence and arrest of suspects will prove to be extremely difficult if I do not get the support of all national and international authorities. If these authorities were not to be available to provide their assistance, the office of the prosecutor should then investigate, as an outsider, and reinitiate international collaboration to proceed to the arrest and the hand-over of those presumed guilty of these crimes.

Our role can be significantly made easier if the Democratic Republic of Congo referred the situation to us or if it decided to actively support us our effort. The Court and the State are in a position to agree on the effective division of work (which would be consensual). If the groups, which are deeply divided by the conflict, refuse to carry out any prosecution, they would on the other hand perhaps be in the position to accept that the prosecution should be carried out by a neutral and impartial Court. On the one hand, the Department could cooperate with the national authorities by prosecuting individuals whose charges for crimes committed are higher. On the other hand, national authorities could establish adequate mechanisms to prosecute other guilty individuals, with the help of the international community.

ANNEXE 8 - Extract of the fourteenth report of the General Secretary on MONUC

17 November 2003

Human Rights

43. Ensure that the respect of human rights remain an extremely difficult task. The massive violations of international human rights, namely massacres, executions, forced disappearances, abductions, arbitrary arrests, rapes and other forms of sexual violence, have always remained high in spite of political progress on a national scale. The atrocities and human rights violations have been particularly shocking in the east, especially in Kivus, Ituri, Katanga, the eastern province and Maniema. All the parties have committed violations during the confrontations with the different armed groups. In Uvira, the Burundian rebel groups attacked the region Rusabaki between 24 and 26 August, killing 16 civilians and burning down several houses. With the warning of massive movements of troops of Front pour la défense de la démocratie (FDD), Forces nationales de libération (FNL) and Interahamwe in the Uvira territory and the local troops of the former DRC-Goma becoming increasingly disruptive, the local population found itself caught in a vicious circle of anarchy and reprisals between the various national and foreign armed factions active in this region. Inhuman and degrading treatments, armed burglary and several acts of harassment and demands for ransoms which are acts carried out by all parties, are regularly reported. According to information, the FDD or FNL troops committed a particularly horrendous massacre of 16 people during an ambush at Ndundu/Rulimbu (Kabunambu region) on 6 October. What

emerges from the preliminary investigations by MONUC is that even though the rebel groups were heavily armed, their victims had been killed with axes, knives and ropes. Similar to the massacres carried out in August in Rusabaki, the massacre in Ndundu seemed to be acts of reprisals against the inhabitants of Sangi and Rusabaki for "co-existing" with DRC-Goma.

44. During the conflicts at Kinkondja and Malemba Nkulu (Katanga province) at the beginning of August, the Maï –Maï killed several people and burnt down several houses. Between May and July, they were accused of committing rapes, destroying hundreds of houses, kidnapping dozens of people and carrying out executions in the region of Kama. At Maniema (Kindu) and in northern Kivu, they also abducted women and minors, more particularly, displaced persons looking for refuge in the forests and subjected them to sexual violence.

45. The department of Human Rights at MONUC, through its office in Kinsasha and 12 external offices, relinquished its general activities to concentrate on the systematic collection and analysis of data. The flagrant human rights violations are the focus of their special investigation emphasising on the monitoring and reports of cases of sexual violence. The Department actively participates in the training of the members of MONUC, namely those in charge of protecting human rights, police officers and the military. The Department also takes part in the efforts aimed at strengthening the capabilities of the civil society and the Congolese leaders. In addition, it offers assistance to the National Human Rights Watch and to the Commission for Truth and Reconciliation. A bill on the powers, organisation and functioning of the National Human Rights Watch has been presented to the parliament for one of the eight commissions of the parliamentary commissions to examine after the consultations between the civil society, MONUC and the Human Rights High Commissioner. The setting up of the Truth and Reconciliation Commission was the subject of at least two different bills. This is an indication of the difficulties arising from its creation. It is hoped that a national consultation will take place to resolve the various pending problems concerning the commission, namely its composition, functioning and agenda.

46. Considering the worrying situation of human rights issue in Ituri described above, MONUC, the European Union, the French Cooperation and the government of transition are putting their effort together to establish a justice system in Bunia. On 20 October, a collective meeting was organised by the Congolese Minister to study the possibility of nominating the personnel to re-establish the police, judiciary and penal institutions in Ituri. Monuc is prepared to provide its support to these institutions, namely by ensuring the security of and transport of personnel. The renovation works in progress in the prison at Bunia should be completed by the end of November. The Palais de Justice operates well but the Minister of Justice must present the applications and officially communicate to MONUC the list of government officials to be appointed in Bunia so that the necessary steps can be taken for this end. A small number of officers from the judiciary police working in collaboration with MONUC and 70 police officers from Bunia completed their training offered by MONUC on 27 October. The police force of the MONUC has the intention of providing technical assistance to the local police station in Bunia. Furthermore, the Mission contacted the donors and asked for their help to cover the expenses resulting from the creation and implementation of the leading police force in Bunia as planned by the government of transition. In the meantime, the MONUC has proceeded to arrests in Ituri in conformity with the binding regulations. These regulations require that all prisoners be handed over to the competent local authorities as soon possible. Considering the absence of competent local authorities to treat the problems relating to the problem of police custody in Ituri, it is essential to re-establish the legal capacity so that the guaranties of a standard procedure are maintained and that the rights are not breached.

V. Human dimension of a long-lasting peace

Humanitarian situation and aid

47. In spite of the progress achieved in the political context and the decrease in the number of conflicts in various regions, humanitarian problems are still significant over the whole country. According to the most recent data - 3.4 million displaced persons- the Democratic Republic of Congo ranks second among the countries with the highest number of displaced persons. This figure represents a spectacular increase in the number of displaced person (22% or 662,000 persons) since December 2002. This increase, mainly occurring in the eastern provinces and in the north and south of Kivu, aggravates the already appalling situation of communities that take in the vulnerable people. These communities are forced to share their limited resources with the displaced persons and are faced with a deterioration of food safety.

48. Humanitarian agents continue to come up against insecurity, difficulties in access and a very severe lack of financial resources, which are neither provided in sufficient amounts nor on time to meet the needs of the most vulnerable people. Pillages, crime, harassment of staff of governmental organisations, United Nations bodies and civilian personnel of MONUC continue. At the end of the month of July, a hydraulics specialist employed by a British non-governmental organisation was assassinated in the southern Kivu along with 10 Congolese civilians who were working with him. During another incident, 12 vaccination agents participating in national vaccination day were kidnapped and kept in captivity for several weeks.

49. In spite of these difficulties, humanitarian organisations continue providing assistance in all areas that they can access and leading appraisal missions in areas that were not long ago inaccessible. MONUC will also endeavour to examine the possibility of extending its humanitarian presence in the country. It has guaranteed logistic support and access from humanitarian organisations and the humanitarian agents in the Democratic Republic of Congo have worked in close collaboration with MONUC. In Ituri, the Mission has provided escorts and logistic aid to humanitarian agents trying to provide aid outside Bunia. The continued presence of the Mission outside Ituri would allow a considerable improvement in the provision of humanitarian aids. In Kivus, the MONUC participated very actively in the efforts to plea and negotiate with the aim to open up access to rural areas which have been isolated for a long time. Finally, MONUC worked very closely with the Office for the coordination of Humanitarian and other humanitarian agents to develop a plan for the return of displaced persons to their areas of origin.

Protection of children

50. The government of transition still needs to deal with the issue of protection of children who are amongst the first victims of the conflicts. Promoting and facilitating the implementation of measures for this purpose, such as public awareness, the

reinforcement of capacities, the reinforcement of the obligation to take responsibility of the abuses committed against children are MONUC's top-priority.

Protection against mines
51. A closer collaboration has been established with the international agents participating in activities of mine clearance in Democratic Republic of Congo so that information on mines are introduced in a unique database. The efforts are continuing to implement new resources in the fight against mines to face humanitarian emergencies in Ituri. During the past months, two accidents have taken place, one of which was fatal, on the road linking Bunia to Beni, but the situation should improve as mine clearing activities are progressing on this road.

Situation of women
52. Even though the Article 51 of the Constitution of transition expects a "true representation" of women at every stage of the decision making, the government of transition can only count 6 women amongst 36 ministers and 2 women amongst 25 vice-ministers. The bureau of the National assembly includes 2 women out of eight members and there is no woman represented at the bureau of the Senate. The Independent Electoral Commission has eight members which includes one woman and the Truth and Reconciliation Commission includes two women as members. A seminar on the situation of women, organised by the MONUC at Gbadolite on 22 July for women working at ministerial level, women in charge of local NGOs and occupying responsible posts in civil society, highlighted the necessity to integrate women in the transition process. The MONUC group dealing with issues relating to women devotes itself to achieving the aim of having a higher number of women participating in the management of political affairs and ending all forms of sexual violence that so many Congolese have been the victims of.
53. The group has actively spoken in favour of an assistance to guarantee the representation of women amongst the political leaders in conferences, and particularly an important meeting at Kisangani which have been assisted by political men, high-ranking military and civilan leaders, non-governmental organisations and religious groups. It was also involved in the training of members of the National Human Rights Watch in Bunia on the ways to combat sexual violence and sexual violence inflicted on women and brought up the issue with interns working in judiciary police during the training sessions organised at Bunia.

HIV –AIDS
54. Acting in collaboration with the National Program against AIDS, MONUC began broadcasting weekly programmes on HIV/AIDS and related issues on Okapi radio in July. In September, MONUC's programme against HIV/AIDS was extended to its national civilian personnel. The training and awareness of the Congolese police continue to be included in the programme of civilian police. MONUC received its first pack of cards on public awareness from UNAIDS (UN Programme on AIDS) / Department of Peace-Keeping Operations and has started distributing them to troops after the launch of the campaign on 29 May, thus sensibly strenghening programmes on public awareness and provision of information intended for military contingents.

ANNEXE 9 – Resolution 1522 (2004) of the Security Council, January 15, 2004

The Security Council,

Recalling its previous resolution and the declarations of its president on the situation in the Democratic Republic of Congo,
Encouraged by the progress in the peace process in the Democratic Republic of Congo since the end of the Global and Inclusive Agreement signed at Pretoria on 17 December 2002, followed by the establishment of the Government of the National Unity and Transition,
Considering that the reform in the sector of security, including the effective disarmament, demobilisation and rehabilitation (DDR) of former combatants, integration and reorganisation of the armed forces or former Congolese belligerents and the establishment of an integrated national police, are the decisive elements for the success of the process of transition in the Democratic Republic of Congo,
Reasserting, in this respect, that the responsibility is essentially incumbent upon the Government of the National Unity and Transition, welcoming the establishment of an integrated high command, and calling for a cooperation effective at all levels of Congolese armed forces,
1. Welcomes the efforts currently made to set up the first integrated and unified squad at Kisangi as a step towards the elaboration and implementation of a global programme for creation of an integrated and restructured national Congolese army;
2. Decide that, insofar as the government of national unity and transition has been established and is functioning, the need for demilitarisation of Kisangani and its neighbourhoods stated in paragraph 3 of its resolution 1304 (2000) will not apply to the integrated and restructured forces of Democratic Republic of Congo and to armed forces included in the global programme for the creation of an restructured and integrated national army;
3.Immediately calls for the Government of the National Unity and Transition
to take the appropriate steps for the reorganisation and integration of armed forces of the Democratic Republic of Congo, in accordance with the Global and Inclusive Agreement, which includes the setting up of a Supreme Defence Council and the development of a national programme for DDR and the necessary legislative framework;
4. Calls for the international community to continue providing its aid for the integration and reorganisation of armed forces in the Democratic Republic of Congo in accordance with the resolution 1493 (2003) of the Security Council;
5. Decide to actively deal with the issue.

ANNEXE 10 – State referral of the situation in Democratic Republic of Congo to the Public prosecutor

ICC Press release – The Hague, 19 April 2004

The Chief Prosecutor of the International Criminal Court, received through a letter signed by the president of Democratic Republic of Congo, a referral of the ongoing situation in the Democratic Republic of Congo since the Rome Statute of the International Criminal Court had been enforced on 1 July 2002. It appears that crimes in the competence of the International Criminal Court have been committed. Through this letter, the DRC referred the situation to the Public prosecutor and appealed for an investigation to be carried out, with a view to determine if one or several people should be accused of these crimes. The authorities agree to corporate with the International Criminal Court.
After having received several press releases from private persons and international organisations, the public prosecutor announced in July 2003 that he would follow the situation in DRC very closely, indicating that this was a priority in his department. Since then he has assessing the situation in DRC, and more specifically in the Ituri region.
In September 2003 the Public Prosecutor informed the assembly of State Members that he would be able to present to the pre-trial chamber a request for the authorisation to open an inquiry in accordance with his power proprio-motu**,** but it would be preferable for the Office of the prosecutor to obtain a referral of the situation from DRC or its active support to facilitate its effective work.
In conformity to the Rome Statute, the prosecutor will now determine if there is a reasonable basis to open an inquiry with regards to the situation which has been submitted to him. The Office of the prosecutor will therefore ensure the existence of a reasonable basis for opening an inquiry in accordance with the Statute and determine the approaches for such an inquiry to take its decision with full knowledge of he facts.
The prosecutor notes and is pleased with the positive response from the DRC and its willingness to cooperate with the Court in every way it can following the referral.

ANNEXE 11 – The Department of the public prosecution of the International Criminal Court opens its first inquiry

ICC Press release – The Hague, 23 April 2004

The Chief Prosecutor of the International Criminal Court (ICC), Mr Luis Moreno Ocampo, announced his decision to open the first inquiry of the ICC. The Office of the Prosecutor will investigate the serious crimes allegedly committed on the territory of the Democratic Republic of Congo (DRC) since July 2002. The decision to open the case was taken after a detailed examination of the requirements of the Rome Statute in terms of competence and admissibility. The prosecutor concluded that an inquiry into the serious crimes committed in DRC would be in the interest of Justice and the victims.
The Office of the prosecutor carefully analysed the situation in the DRC since July 2003. He has firstly concentrated on the crimes committed in the region of Ituri. In September 2003, the Public prosecutor pointed out to the State Members that he was prepared to use his initiative to ask for the authorisation of the pre-trial chamber to open an inquiry whilst nevertheless specifying that a referral and active support from DRC would facilitate the task for him. In a letter sent in November 2003, the government of the DRC was pleased with the participation of the ICC. In March 2004, the government of the DRC referred the prevailing situation in its country to the ICC.
Millions of civilians have lost their lives following the conflicts which have marked the DRC since the 1990s. The court has competence of the crimes committed after 1 July 2002 which is the date when the Rome Statute became effective. The States and international and nongovernmental organisations pointed that thousands of people were killed on a regular basis in DRC since 2002. The reports give an account of the practices of rape, torture, forced displacements, illegal enlistment of child soldiers. Mr Luis Moreno-Ocampo, the Chief prosecutor of the ICC, asserted "the opening of the first inquiry of ICC represents a big step for international justice, the fight against impunity and protection of victims. The decision to open an inquiry has been taken in collaboration with DRC, other international governments and organisations."
The public prosecutor highlighted his intention to target, in the context of the inquiry, the persons who have the highest number of charges for serious crimes, currently being committed in the DRC, falling within the competence of the ICC.
Since the Prosecutor started operating last year, the staff at the Office of the prosecutor rose from 7 to 55 employees. By the end of 2004, it is expected that the Office of the prosecutor will have about 120 employees. The personnel in charge of the inquiries of the Office of the prosecutor under the management of the Deputy Prosecutor, Mr Serge Brammertz, arranges a meeting between the professional investigators and the investigators working for NGOs. These investigators have international experience.

The Rome Statute of the ICC makes the distinction between a preliminary examination and an official inquiry relating to a situation in which crimes falling within the competence of the Court are allegedly committed. Before opening an inquiry, the public prosecutor must analyse the available information and ensure that the criteria described in the Rome Statute are met.

ANNEXE 12 – The first inquiry of the International Criminal Court revolves around the situation in the Democratic Republic of Congo- an immense hope for the victims of a conflict with regional dimensions

Paris 24 June 2004-08-30

The International Federation for Human Rights and organisations that are its members in Democratic Republic of Congo (DRC), the African Association for the Defence of Human Rights (ASADHO), la Ligue des Electeurs et le Groupe Lotus, are pleased with the opening of the fist inquiry, as announced today by the Chief Prosecutor International Criminal Court (ICC), Luis Moreno Ocampo.

The prosecutor announced that the situation in Ituri – east of Congo- would be a priority in his office in September 2003. On 3 march 2004, President Joseph Kabila got hold of Mr Moreno and urged him to investigate on the ongoing situation in DRC since 1 July 2002 (refer to the FIDH press release 23 April 2004).

The opening of the inquiry announced today by the public prosecutor marks a new step towards the effective undermining of authors of the most serious crimes. This is an affirmation of the respect of the rights of all victims with effective recourse. It is also an indication of the capacity of the Court to take action in spite of the reluctance expressed in certain States.

The FIDH reminds us that the Court is competent enough to know the charges of all the authors of war crimes, crimes against humanity or genocide, committed on the Congolese territory, regardless of their nationality.

The FIDH and its partners in the Democratic Republic of Congo call for the public authorities to fully cooperate with the organs of the International Criminal Court. They will need to assist in the inquiries of the Office of the prosecutor and allow victims to have access to the Court through the clerk's office. The DRC must immediately adopt a law for the implementation of the Statute of the ICC and ratify the Agreement on Privileges and Immunity, which came into force yesterday.

There should not be any political obstacle impeding on this cooperation and thus weakening the superior prerequisite of justice.

The FIDH and organisations that are its members give a reminder that the ICC must guarantee the effective protection of victims and witnesses and the right o victims to participate in every stage of the procedure as specified in the Statute of the Court.

The FIDH considers the announcement of the public prosecutor as essential in the context of violence that prevails yet again in east of the DRC. The initiation of the operational phase of the ICC, the first permanent international criminal jurisdiction, must contribute towards the establishment of a long-lasting peace in the country and to inform the commission of any new serious human rights violations.

The FIDH announced that it will organise a training session on ICC for eight representatives of Congolese NGOs in its office based in The Hague from 28 June next year. This session should facilitate the meeting between the representatives of civil society and the Court and guarantee a more efficient utilisation of the Court by the representatives of the Congolese victims.

Moreover, FIDH found out that the government of the United States gave up demanding the renewal of the resolution of the Security Council which exempts American soldiers from the competence of the International Criminal Court (ICC – refer to our press release 21/05/2004). Faced with the disapproval of several States, civil society and the General Secretary of the United States, the American administration, which is incapable of bringing together a majority to the Council, has finally recognised its isolation.

FIDH estimates that this is a major victory of the International Community against the "à la carte justice". FIDH nevertheless remains cautious and insists that the next resolutions of the Security Council do not, case by case, contradict the message given today.

ANNEXE 13 – Declaration of the presidency on behalf of the European Union relative to the Democratic Republic of Congo

18 March 2004

1. The European Union remains committed for the cause of peace and stability on the Democratic Republic of Congo (DRC) and in all the regions of the Great lakes in general. It is pleased with the efforts which have been made until now by the authorities of transition for this purpose. It invites the Congolese authorities to record its action in accordance with and in the spirit of the resolutions adopted by the Inter-Congolese Dialogue of the Global and Inclusive Agreement and the Constitution of Transition. It also invites the Congolese authorities to accelerate the decision making process and the reforms necessary in the context of stabilisation of a country as soon as possible. It invites all those who are not yet registered in this logic to relinquish the mayhem and violence and unite around the same objective of peace and stability for the benefit of all Congolese.

2. This is why the European Union worries about the slowness in the implementation of programmes of Transition and the political tensions and obstacles noted recently. It encourages the Components and Entities in the institutions to reaffirm their firm adherence to principles of the transition. Furthermore, they are calling for the effective implementation of sharing responsibility defined by the Pretoria Agreement and by the Constitution of Transition in a spirit of mutual dialogue. It particularly emphasises on the importance of ensuring a climate of calm and serenity for the population during the pre-electoral period.

3.The European Union believes that concrete measures have to be taken to restore the climate of trust and good relations both within the institutions of Transition and the presidential environment. In consideration of the schedule planned in the Constitution of Transition in the context of elections, the European Union reiterates - the urgency to adopt an organic law on the attributions and functioning of CEI which would allow the CEI to function and to be autonomous in accordance with the agreements made at Sun City; the necessity to establish a Committee of Dialogue on the different aspects of the electoral process; the obligation to satisfy as quickly as possible certain conditions preceding various operations to be carried out in the electoral process such as the law on nationality and the legal framework of the electoral poll.

4. In this context, it requests that necessary measures are taken urgently for the re-establishment of regal functions the State and its authority on the whole of the territory of the DRC. In this respect, the establishment of the territorial administration, the reconstruction, the recovery of the economy of the country and the transparent management of finances of the State, adapted to the needs and objective of transition, must be prioritised.

5. It also calls for the acceleration of the reform of the security sector in the area of reform of the justice and the police as well as the integration of the army in all the steps in parallel to the implementation of the national process of the DRC. To achieve this, the nomination of the national coordinator of the DRC and the budgetary and logistic programming of integrated units deployed are considered indispensable.

6. The European Union is very concerned about the new growth in the tension in the field of security and politics in the east of DRC. It is particularly shocked by continuous violations of human rights and the violent acts inflicted on the civil populations in Ituri, in the provinces of Kuvi, Katanga, namely rape which is systematically practiced with impunity by a growing number of armed groups originating from militias operating in Ituri in the provinces of Kivu and Katanga.

7.It immediately calls for the institutions of transition to implement everything with a view to re-establish the authority of the State on the whole country. It invites all the actors on site to respect the population and to irrevocably adopt the logic of Transition. Whilst referring to the recent incidents at Bakavu and Kinshasa, the EU demands that all parties refrain from making any declaration that is likely to provoke any tension related to the issue of ethnicity.

8. The European Union reiterates its support to the regional Conference on Peace, Security, Democracy and Development held in the region of the Great Lakes and it urges the Congolese authorities' full participation in the event. It also attaches considerable importance to the trust and normalisation of bilateral relations between the State and this region. In this respect, it calls on all the political leaders in DRC and Rwanda to work towards the re-establishment of peace and stability in the Great Lakes region in a constructive way.

9.Finally the European Union wants to express its full support to MONUC 's action as well as the works of Comité international d'Accompagnement de la Transition (International Committee to Accompany the Transition).

ANNEXE 14 – Key dates in the implementation of the Transition

17 December 2002: adoption of the "Global and Inclusive" Pretoria agreement

2 April 2003: Adoption of Final Act of the Inter-Congolese Dialogue (DIC - Dialogue Inter-Congolais). The Inter-Congolese Dialogue is a meeting of protagonists of the political crisis following the war that as been destroying DRC since 1998. It deals with the materialisation of one of the key points of the cease fire agreement concluded at Lusaka, Zambia on 10 and 11 July 1999 between the Governments of the DRC, Uganda and Rwanda and signed in August 1999 by the Congolese rebel groups supported by Uganda and Rwanda.

By adopting the Final Act, the parties of the DIC accept the binding instruments specified below agreed as a result of political negotiations and before the transition was officially adopted by the DRC government.

It concerns:

a) 36 resolutions on the government's programme of action to be adopted by the plenary DIC;
b) The Global and Inclusive Agreement on the Transition on DRC as well as the additional memorandum on the army and security, signed respectively on 17 December 2002 and 6 March 2003 at Pretoria and approved at Sun City 1 April 2003;
c) The Constitution of Transition adopted at Sun City in the Republic of South-Africa on 1 April 2003

4 April 2003: Promulgation of the Constitution of the Transition by President Joseph Kabila.

7 April 2003: Joseph Kabila took the oath as the President of the Democratic Republic of Congo during the transition period

17 July 2003: The "government of National Unity and Transition" was appointed together with four vice presidents - Jean-Pierre Bemba, leader of the Mouvement de Liberation de Congo, supported by Uganda, Azarias Ruberwa the leader of rebel group DRC-Goma, supported by Rwanda, Z'Ahidi Ngoma, representative of the opposition, and Yerodia Abdoulaye Ndombasi.

30 June 2003: Signature of decree no 03/06 supported by the implementation of the government of transition.

29 December 2003: the first Burundian former-combatants were repatriated by MONUC.

January 2004: Creation of the first squad of the national army.

15 March 2004: President Joseph Kabila promulgates a new law supporting the organisation and operation of political parties and guaranteeing political pluralism in DRC. In Accordance with the law, the political parties are prohibited to the engage in or undertake any military, paramilitary and similar activities.