

**DEMOCRATIC REPUBLIC OF CONGO**

**INTER-CONGOLESE DIALOGUE**

**DRAFT CONSTITUTION OF THE TRANSITION**

## **PREAMBLE**

**WE,**

**THE DELEGATES OF THE COMPONENTS AND ENTITIES TO THE INTER-CONGOLESE DIALOGUE,**

**MEETING** in Plenary Session;

**HAVING KNOWLEDGE** of the cultural and spiritual values deeply rooted in the traditions of solidarity and justice of the Congolese Nation, and aware of the cultural diversity, which is a spiritually enriching factor of the personality of our people;

VERY ANXIOUS to build a single harmoniously integrated Nation and to consolidate national unity in order to give a veritable soul to our State;

**CONVINCED** that only the values of equality, justice, freedom, democratic tolerance and social solidarity can found an integrated, fraternal, prosperous Nation that is master of its destiny in History;

**DETERMINED** to build a long-term lawful State based on political pluralism, the separation of powers between the executive, the legislature and judiciary, the participation of citizens in the exercising of power, the control of governments by those governed, transparency in the management of public matters, the subordination of the military Authority to the civil Authority, the protection of persons and their assets, full development both on a spiritual and moral level of each Congolese citizen, as well as the harmonious development of the national community;

**SOLEMNLY REAFFIRMING** our attachment to principles of democracy and Human Rights such as they are defined by the universal Human Rights Declaration of 10 December 1948, the African Charter on Human and People's Rights adopted on 18 June 1981, as well as all international and regional legal instruments adopted within the framework of the United Nations Organisation and of the African Union duly ratified by the Democratic Republic of Congo;

**DETERMINED** to guarantee the basic freedom and rights of the Congolese citizen and, in particular, to defend those of women and children;

**RENEWING** our attachment to the United Nations Organisation and the African Union;

**ENDEAVOURING** to guarantee a peaceful transition in the Democratic Republic of Congo operating according to the principles of consensus, inclusiveness and non-conflict and based on as just a distribution as possible of different Government responsibilities between the Components and Entities to the inter-Congolese Dialogue, an appropriate representation of the Provinces and the different political sensitivities and, in particular, effective participation of women on all levels of responsibility, taking into account the criteria of competence, credibility and integrity, in a spirit of national reconciliation;

**REITERATING** our commitment to take advantage of the transition period to establish, in peace and harmony, a new political order in the DRC, in particular democratic institutions with a view to good governance of the country, as well as the creation of a restructured and integrated national army,

**LOYAL** to the relevant resolutions of the Inter-Congolese Dialogue at Sun City (Republic of South Africa), from 25 February to 12 April 2002, and to the Overall and Inclusive Agreement on Transition in the Democratic Republic of Congo, signed in Pretoria on 17 December 2002 and adopted in \_\_\_\_\_ on \_\_\_\_\_.

**WE HEREBY SOLEMNLY APPROVE AND ADOPT THE PRESENT CONSTITUTION OF THE TRANSITION**

**TITLE I: GENERAL PROVISIONS**

**Article 1**

The Constitution of the transition of the Democratic Republic of Congo was drawn up based on the Comprehensive and Inclusive Agreement on Transition in the Democratic Republic of the Congo.

The Comprehensive and Inclusive Agreement and the Constitution shall be the sole source of power during the transition in the Democratic Republic of the Congo.

During the Transition period, all the powers shall be established and exercised in a manner determined by the Comprehensive and Inclusive Agreement as well as the present Constitution.

**Article 2**

The Constitution of the transition guarantees the inviolability of the fundamental rights and liberties of the individual.

Any law that does not comply with the present Constitution shall be null and void insofar as this non-compliance has been established by the Supreme Court of Justice.

### **Article 3**

All Congolese shall have the sacred right and duty to defend the nation and their territorial integrity and to put a stop to any individual or group of individuals that takes the power by force or exercises it in violation of the provisions of the present Constitution.

No person may divert the attributes of power and public power for personal needs in the carrying out of partisan interests or to facilitate interference of an institution or public service in the operating of another institution or another public service.

## **TITLE II: THE STATE AND SOVEREIGNTY**

### **CHAPTER I: THE STATE**

#### **Article 4**

The Democratic Republic of Congo shall, within its borders of 30 June 1960, be an independent, sovereign, indivisible, democratic, social and secular State.

Its emblem shall be a sky-blue flag with a large yellow star in the centre and six small yellow stars all of the same size and set longitudinally along the side of the flagpole.

The national anthem shall be “Debout Congolais”.

The motto shall be “Democracy, Justice, Unity”.

Its currency shall be the “Congo Franc”.

Its coat of arms shall consist of a lion’s head framed by two laurel branches with hands crossed in the centre.

The national languages shall be: Kikongo, Lingala, Swahili and Tshiluba.

The official language shall be French.

### **Article 5**

The Democratic Republic of Congo shall be a single decentralised State.

The Democratic Republic of the Congo consists of the city of Kinshasa and ten Provinces with legal status. These Provinces are: Bandundu, Lower Congo, Equateur, Western Kasaï, Eastern Kasaï, Katanga, Maniema, North Kivu, Eastern Province and South Kivu.

The city of Kinshasa, with its current boundaries, shall be the capital of the Democratic Republic of the Congo.

The organisation and functioning of the city of Kinshasa and the Provinces as well as the division of authority between the State and the Provinces shall be determined in an organic law to be passed during the first sitting of the National Assembly and the Senate.

### **Article 6**

No person may interfere with the integrity of the territory, national unity and the sovereignty of the Congolese State.

All the central, provincial and local authorities shall have the duty to safeguard the integrity of the Republic, sovereignty and national unity, subject to treason or high treason, depending on the circumstances.

### **Article 7**

The State shall see to the harmonious development of all decentralised entities on the basis of national solidarity by the effective implementation of mechanisms instituting administrative and financial autonomy as provided in the law.

### **Article 8**

The Provinces and the authorities answerable to them are bound to respect the Constitution of the transition, as well as the laws and regulations enacted by the Central Government in terms of this Constitution.

### **Article 9**

The soil and sub soil shall belong to the State. The conditions of their concession shall be set by law, which must protect the interests of local populations.

## **CHAPTER II: SOVEREIGNTY**

### **Article 10**

National sovereignty shall belong to the Nation. All power shall arise from the people, who shall exercise it directly by means of a referendum or elections and indirectly by their representatives.

No part of the nation or any individual may take upon itself to exercise sovereignty.

The law shall set the conditions for the organisation of elections and the referendum.

Suffrage shall be universal, equal and secret. It shall be direct or indirect.

According to conditions determined by the law, the voters shall all be Congolese of both sexes, over the age of eighteen, who enjoy their civil and political rights.

### **Article 11**

Political pluralism shall be recognised in the Democratic Republic of Congo.

All Congolese shall have the right to create a political party or to become a member of a party of their choice.

The political parties shall contribute to the expression of suffrage, the formation of national conscience and citizenship training. They shall form and freely exercise their activities whilst respecting the law, public order and morality.

Political parties shall be obliged to respect the principles of multi-party democracy, national unity and sovereignty.

No person may establish, in any form whatsoever, a single party on all or part of national territory.

The establishment of a single party shall constitute a crime of high treason punishable by law.

### **Article 12**

Political parties may receive public funds from the State destined to finance their electoral campaigns or their activities, according to conditions defined by law.

## **Article 13**

The political opposition shall be recognised in the Democratic Republic of Congo. The rights linked to its existence, its activities and its fight for democratic conquest of power shall be sacred.

An organic law shall thus set the status, the rights as well as the duties of the political opposition.

## **Article 14**

All ethnic groups and nationalities of persons and territories constituting that which has become the Congo (currently the Democratic Republic of the Congo) at independence shall enjoy equal rights and protection in terms of the law as citizens.

Congolese nationality shall be unique and exclusive. It may not be held concurrently with another nationality.

An organic law shall set the conditions of recognition, acquisition, loss and recovery of Congolese nationality.

## **TITLE III: PUBLIC FREEDOM, BASIC RIGHTS AND DUTIES OF THE CITIZEN**

### **Article 15**

The individual shall be sacred.

The State shall be obliged to respect and protect him/her.

All persons shall have the right to life and to physical wholeness.

No person may be subject to torture or to inhumane, cruel or degrading treatment.

No person may be deprived of life or freedom if it is not within the cases fixed by law and according to the forms stipulated by such law.

### **Article 16**

The Democratic Republic of Congo shall guarantee the exercising of rights and individual and collective freedom, in particular the freedom of movement, enterprise, information, association, and the freedom to meet, of procession and demonstration, subject to the respecting of the law, public order and morality.

## **Article 17**

All Congolese shall be equal before the law and shall have the right to equal protection of laws.

A Congolese person may not, with regard to education and access to public functions or any other matter, be the subject of a discriminatory measure, irrespective of whether it results from the law or an act of the executive, for reasons of religion, sex, family origin, social condition, residence, opinions or political convictions, allegiance to a race, ethnic group, tribe, cultural or linguistic minority.

## **Article 18**

All persons shall have the right to the free development of his/her personality, without prejudice to the rights of others, public order and morality.

No person may be subject to slavery, servitude or similar conditions.

No person may be compelled to undertake forced or compulsory labour, except in cases stipulated by law.

## **Article 19**

Individual freedom shall be inviolable and guaranteed by law.

A person may only be sued, arrested or detained in virtue of the law and according to methods stipulated by law.

No person may be sued in court for an action or an omission that does not constitute a violation of the law at the time that it was committed and at the time of the prosecution.

Ay person accused of a violation shall be presumed innocent until his/her guilt has been proven by a final sentence.

## **Article 20**

Any person arrested must be immediately informed or at the latest within twenty-four hours of the reasons for his/her arrest and any accusation made against him/her, and this being in a lang uage that he/she understands.

Such person must be immediately informed of his/her rights.

The person kept in custody shall have the right to immediately contact his/her family and his/her counsel.

The custody period may not exceed forty-eight hours. On expiry of this period, the person in custody must be released or placed in the hands of the competent judicial authority.

Any detainee must benefit from treatment that preserves his/her life, physical and mental health as well as his/her dignity.

## **Article 21**

Any person deprived of his/her freedom by arrest or detainment shall have the right to recourse before a court, which shall as soon as possible give judgement on the legality of his/her detainment and order his/her freedom if the detainment is illegal.

A person who is a victim of arrest or of illegal detainment shall have the right to just and equitable compensation for the prejudice endured by him/her.

All persons shall have the right to defend themselves or to be assisted by a lawyer or legal counsel of his/her choice.

Any person prosecuted shall have the right to demand to be heard in the presence of a lawyer or a legal counsel of his/her choice, and this being on all levels of criminal procedure, including police investigations and pre-jurisdictional enquiries.

## **Article 22**

No person may be removed against their will from the judge who has been assigned to hear his/her case. All persons shall have the right to have their case heard equitably and within the legal period by a competent and legally established jurisdiction.

## **Article 23**

The hearings of civil and military courts and tribunals shall be public unless this publicity is deemed to be dangerous for public order and morality. In this instance, the court shall demand that the case be heard in camera.

## **Article 24**

All judgements shall be pronounced in public hearings. They shall be in writing and substantiated.

The right to appeal against a judgement shall be guaranteed for all, in accordance with the law.

No punishment may be pronounced or applied if it is not in virtue of the law.

A stronger sentence than that applicable at the time when the violation was committed, shall not be permitted.

If the new law punishes a violation with a lesser sentence than that which was prescribed by the law in force at the time when the violation was committed, the judge shall apply the lesser sentence.

The sentence shall be individual. It may only be executed against the sentenced person.

The law shall determine the grounds for substantiation, pardon and non-liability.

## **Article 25**

No person shall be obliged to execute an order that is clearly illegal, in particular if such order deprives the individual of his freedom and basic rights.

The proof of such manifest illegality shall be incumbent upon the person who refuses to execute it.

## **Article 26**

In the Democratic Republic of Congo, there shall be no State religion.

All persons shall have the right to freedom of thought, conscience and religion. All persons shall have the right to express their religion or convictions alone or jointly, both in public and in private, by worship, teaching, practises, carrying out of rites and the state of religious life, subject to the respecting of the law, public order and morality.

The law shall set the conditions of the constitution of religious organisations.

### **Article 27**

All persons shall have the right to the freedom of expression.

This right shall imply the freedom to express their opinions and feelings, in particular by speech, in print and by pictorial images, subject to the respecting of public order, the rights of others and morality.

### **Article 28**

The freedom of the press shall be guaranteed.

The law shall set the terms and conditions for the exercising thereof.

Nevertheless, it can only subject the exercising of the freedom of the press to restrictions in order to safeguard public order, morality, as well as the respecting of the rights of others.

### **Article 29**

All persons shall have the right to information.

The freedom of information and broadcasting by radio, television, written press or any other means of communication shall be guaranteed.

State audiovisual and written media shall be public services whose access shall be guaranteed in a just manner to all political and social movements.

The status of State media shall be established by law, which shall guarantee the objectivity, impartiality and plurality of opinions in information processing and distribution.

### **Article 30**

The freedom of peaceful meetings and demonstrations shall be guaranteed subject to the respecting of public order. All persons shall have the right to meet or demonstrate and no one can be compelled thereto.

The law shall set the terms and conditions of application of the present provision.

### **Article 31**

All Congolese persons shall have the right, individually or collectively, to submit a peaceful petition to the public authority.

No person may be the subject of discrimination for having taken part in such petition.

### **Article 32**

The domicile shall be inviolable. Visits or searches may only be carried out according to the methods and conditions stipulated by law.

### **Article 33**

No Congolese person may be deported from the territory of the Republic.

No Congolese person may, for political, ethnic or other reasons, be compelled to go into exile or to reside outside of the normal place of his/her residence.

All Congolese shall have the right to freely move about on the Republic's territory, to establish their residence there, to leave it and to come back to it.

The exercising of this right can only be limited in virtue of the law.

All Congolese shall enjoy the same rights irrespective of the place where they reside on national territory.

### **Article 34**

All persons shall have the right to the respect of their private life, to the confidentiality of their correspondence, telecommunications and any other form of communication. These rights may only be interfered with in cases stipulated by the law.

### **Article 35**

The right of asylum shall be recognised.

Subject to national security the Republic shall grant asylum on its territory to foreign nationals pursued or persecuted due in particular to their opinions, beliefs, their allegiance to a racial, tribal, ethnic, linguistic group or their action in favour of democracy and the defence of Human Rights, in accordance with laws and regulations in force.

It shall be forbidden for any person legally enjoying the right of asylum to undertake a subversive activity against his/her country of origin or against any other country from the territory of the Democratic Republic of Congo.

The law shall set the terms and conditions for exercising this right.

## **Article 36**

Private property shall be sacred.

The State shall guarantee the right to personal or collective ownership in accordance with the law or customs.

The State shall encourage and ensure the safety of private national and foreign investments.

## **Article 37**

Expropriation for reasons of general interest or public utility may only take place in virtue of a law stipulating the prior payment of equitable compensation.

A person's assets may only be seized in virtue of a decision taken by a competent legal authority.

## **Article 38**

The exercising of art, commerce and industry, as well as the free movement of assets shall be guaranteed throughout the territory of the Republic, according to conditions stipulated by law.

## **Article 39**

Work shall be a sacred duty and right for each Congolese.

The State shall guarantee the right to work, protection against unemployment and an equitable and satisfactory remuneration ensuring the worker as well as his family of a humanely dignified existence, together with other means of social protection.

The working rights of an individual may not be harmed due to his/her origins, sex, opinions or beliefs.

All Congolese shall have the right and duty to contribute through their work to national construction and prosperity.

The law shall establish the status of workers and regulate details pertaining to the legal regime of professions and the exercising of professions requiring a scholastic or academic qualification.

The internal structures and carrying out of professions must be democratic.

## **Article 40**

The right to create organisations shall be guaranteed.

Public authorities shall collaborate with private national associations that contribute to the social, economic, intellectual, cultural, moral and spiritual development of populations and education of male and female citizens.

This collaboration may take the form of assistance by means of subsidies.

The law shall stipulate the terms and conditions for the exercising of this right.

## **Article 41**

The right to unionisation shall be recognised in the Democratic Republic of Congo.

All Congolese shall have the right to form trade unions, companies or other organisations or to freely become members thereof to promote their well-being and to ensure the defence of their social, economic and cultural interests, according to conditions stipulated by law.

Nevertheless, members of the armed forces, law and order forces and security services may not form trade unions nor become members thereof.

## **Article 42**

The right to strike shall be recognised and guaranteed.

It shall be exercised according to conditions stipulated by law, which may forbid or limit the exercising thereof in areas of national defence and security or for all public services or activities of vital interest for the community.

## **Article 43**

All individuals shall have the right to marry a person of their choice, of the opposite sex and to create a family.

The family, basic unit of the human community shall be organised such that its unity and stability is ensured.

It shall be placed under the special protection of the public authorities.

For parents the care and education to be given to children shall constitute a natural right and duty that they shall exercise under the supervision and with the assistance of the public authorities.

Children shall have the right to assist their parents.

The law shall stipulate rules on marriage and the organisation of the family.

#### **Article 44**

All children shall have the right to know the names of their father and mother.

All children shall have the right to enjoy the protection of their family, society and the public authorities.

The State shall be obliged to protect the child against prostitution, procuring, homosexuality, incest, paedophilia, sexual harassment and all other forms of sexual perversion.

#### **Article 45**

The public authorities shall be obliged to protect the youth against any attack on their health, education or moral development.

Youth organisations shall play an educational role.

The public authorities shall be obliged to give them their support.

#### **Article 46**

All Congolese shall have the right to education. It shall be provided by national education.

National education shall consist of public establishments and approved private establishments.

An organic law shall stipulate the conditions of creation and operation thereof.

The parents shall, by priority, have the right to choose the type of education to be given to their children.

Education shall be compulsory up to the level of studies and the age stipulated by law.

#### **Article 47**

Education shall be free.

It shall nevertheless be subject to the supervision of public authorities, according to conditions stipulated by law.

Through teaching, education and distribution, the public authorities shall be obliged to promote and to ensure the respect of Human rights, basic freedom and rights of the citizen as stated in the present Constitution.

The State shall be obliged to ensure the spreading and teaching of the Constitution, the universal Declaration of Human Rights, the African Charter on Human and People's Rights, as well as all the duly ratified regional and international instruments relating to Human rights and to international humanitarian law.

The State shall be obliged to integrate the rights of the individual in all training programmes of the armed forces, the police and security services.

The law shall determine the conditions of application of the present article.

#### **Article 48**

The eradication of illiteracy shall be a national duty in the carrying out of which all national potential and resources must be mobilised.

#### **Article 49**

The right to culture, freedom of artistic and intellectual creation, as well as the freedom of scientific and technological research shall be guaranteed to the citizens, subject to the respecting of the law, public order and morality.

In the carrying out of its duties the State shall take into account the cultural diversity of the country.

The Law shall guarantee royalties.

The State shall protect the national cultural heritage.

#### **Article 50**

The State shall be obliged to ensure the sanitary well-being and food security of consumers.

The law shall stipulate the basic principles and rules of organisation for public health and food security.

#### **Article 51**

The State shall have the duty to ensure the elimination of all forms of discrimination with regard to women and to ensure the respect and promotion of their rights.

The State shall be obliged, in all areas, in particular in the economic, social and cultural sectors, to take all appropriate measures to ensure the full participation of women in the development of the nation.

The State shall take measures to fight against all forms of violence against women in public and private life.

Women shall have the right to significant representation in national, provincial and local institutions.

### **Article 52**

Aged, handicapped persons and invalids shall have the right to special measures of protection with regard to their physical, intellectual and moral requirements.

### **Article 53**

All Congolese shall have the right to peace and safety.

No portion of national territory may be used as a point of departure for subversive or terrorist activities directed against any other State.

### **Article 54**

All Congolese shall have the right to a healthy environment that is favourable to their development.

The public authorities and citizens shall have the duty to ensure the protection of the environment according to conditions defined by the law.

### **Article 55**

All Congolese shall have the right to enjoy national wealth. The State shall have the duty to distribute them equitably and to guarantee the right to development.

### **Article 56**

All Congolese shall have the right to enjoy the common heritage of humanity. The State shall have the duty to facilitate enjoyment thereof.

### **Article 57**

The state shall protect the rights and interests of the Congolese abroad.

### **Article 58**

Subject to reciprocity, any foreigner that is legally present on national territory shall benefit from the same rights and freedom as the Congolese, except for political rights.

He/she shall benefit from protection granted to persons and their assets according to conditions determined by treaties and laws.

He/she shall be obliged to comply with the laws and regulations of the Republic.

### **Article 59**

All Congolese shall be obliged to faithfully fulfil their obligations with regard to the nation.

They shall be obliged to pay taxes and to fulfil social obligations.

### **Article 60**

All Congolese shall be obliged to respect and treat their fellow citizens without any discrimination and to maintain relations with them that facilitate the safeguarding, promotion and reinforcement of national unity, mutual respect and tolerance.

Furthermore they shall have the duty to preserve and reinforce national solidarity.

### **Article 61**

The respect of Human rights and basic freedom established in the present Constitution shall be incumbent upon all citizens and public authorities.

### **Article 62**

The exercising of Human rights and basic freedom established in the present Constitution may only be suspended in cases stipulated therein.

### **Article 63**

All persons shall be obliged to respect the present Constitution and to comply with laws of the Republic.

## **TITLE IV: ORGANISING AND EXERCISING POWER**

## **CHAPTER I: THE INSTITUTIONS OF THE REPUBLIC**

### **ARTICLE 64:**

The political institutions of the transition are as follows:

- The President of the Republic,
- The Government
- The Parliament
- The Senate
- Courts and tribunals.

### **SECTION I: EXECUTIVE POWER**

#### **PARAGRAPH 1: THE PRESIDENT OF THE REPUBLIC**

##### **ARTICLE 65**

The President of the Republic who is in office at the time of the promulgation of the Transition Constitution remains in office for the whole duration of the transition period, subject to the application of the provisions of Article 66 of this Constitution.

##### **ARTICLE 66**

Without prejudice to the other provisions of this Constitution, the duties of the President of the Republic end through resignation, death, unavoidable difficulty, high treason, embezzlement or misappropriation of public funds and corruption.

Once the vacancy has been acknowledged by the Supreme Court once the matter was referred to the said Court by the Government, the Vice-President who belongs to the Component, to whom the President of the Republic belongs, stands in as acting President.

The said Component presents the replacement of the President of the Republic to the National Assembly for ratification purposes within seven days. If the National Assembly is not in session, an extraordinary session shall be convened forthwith for this specific purpose in accordance with Article 115 of this Constitution.

##### **Article 67**

The President of the Republic shall take the oath before the Supreme Court of Justice during a public hearing.

The oath is taken as follows:

"I, ..... President of the Democratic Republic of the Congo, appointed in accordance with the Comprehensive and Inclusive Agreement and the Transition Convention, solemnly swear before the Congolese nation:

- to observe and to have scrupulously observed the spirit and the letter of the Comprehensive and Inclusive Agreement, the Transition Constitution and the laws of the Republic;
- to devote all my strength to defend the Constitutional Institutions, the integrity of the Territory and the National independence;
- to safeguard national unity;
- to loyally fulfil, as a faithful servant of the People, the high duties that have been entrusted to me".

## **Article 68**

The President of the Republic is the Head of the State. He represents the Nation. He ensures the respect of the Transition Constitution.

He is the guarantor of the national independence, the integrity of the National Territory and the national sovereignty.

## **Article 69**

The President of the Republic convenes and chairs the Council of Ministers once every 15 days at least.

## **Article 70**

The President of the Republic promulgates the laws according to the conditions defined in articles 129 and 132 of this Constitution.

## **Article 71**

The President of the Republic ensures the execution of the laws and exercises the regulatory power by means of decrees deliberated by the Council of Ministers.

## **Article 72**

The President of the Republic is the Supreme Commander of the Armed Forces. He presides the High Council for Defence.

He appoints the army and police officers, relieves them of their functions and, if need be, after deliberation of the High Council for Defence mentioned in Article 187 of this Constitution.

## **Article 73**

In accordance with the provisions of Article 134 of this Constitution, the President of the Republic proclaims war following a decision of the Council of Ministers, in keeping with the recommendation of the High Council for Defence and authorisation of the National Assembly and the Senate.

## **Article 74**

In accordance with Articles 135 and 136 of this Constitution, the President of the Republic can proclaim a state of siege and a state of emergency following a proposal from the Council of Ministers in keeping with the recommendation of the High Council for Defence as well as the National assembly and the Senate.

### **Article 75**

The President of the Republic appoints Ambassadors and Special Envoys to Foreign States and international organisations.

Ambassadors and Special Envoys from Foreign States and International Organisations are accredited to him.

### **Article 76**

In accordance with the provisions of the Comprehensive and Inclusive Agreement and its annexures, the President of the Republic appoints:

- The State Senior civil servants,
- The Governors and Vice-Governors of Provinces,
- The Governor and the Vice-Governor of the Central Bank,
- The Ambassadors and the Special Envoys,
- The members of the High Council of the Judiciary,
- The State representatives in public institutions and semi-public companies.

The President of the Republic discusses the subjects mentioned in the first and fourth bullets of this Article with the Vice Presidents.

The President of the Republic consults the Government on the implementation of the subjects mentioned in the first and fourth bullets of this Article.

### **Article 77**

On proposal from the High Council for the Judiciary, he appoints and dismisses the judges and the public prosecutors after having informed the Government.

### **Article 78**

The President of the Republic has the right to pardon. He may give somebody remission, commute and reduce sentences after having informed the Government. He exercises such prerogatives according to the conditions defined by the law.

### **Article 79**

The President of the Republic confers grades regarding the national orders and awards decorations in accordance with the law.

## **PARAGRAPH II: PRESIDENCY OF THE REPUBLIC**

### **Article 80**

The Presidency of the Republic is made of the President of the Republic and four Vice-Presidents.

The President of the Republic ensures, with the Vice-Presidents, the necessary and exemplary leadership in the interest of the national unity of the democratic Republic of the Congo.

### **Article 81**

The President of the Republic, with the Vice-Presidents, deals with all the questions regarding the management of the Government.

### **Article 82**

The President of the Republic holds restricted meetings with the Vice-Presidents regarding all the matters concerning the management of the Government.

The meetings between the President and the Vice-Presidents are held regularly once every second week at least and, in all cases, before each meeting of the Council of Ministers.

The meetings between the President and the Vice-presidents are convened by the President of the Republic, on his own initiative or on request from a Vice-President.

In the case of temporary unforeseen difficulties, the meetings are chaired, taking turns, by a Vice-President designated by the President of the Republic.

## **PARAGRAPH III: VICE-PRESIDENTS OF THE REPUBLIC**

### **Article 83**

Four posts of Vice-President are instituted.

The Vice-Presidents come the following Components: Government of the Democratic Republic of the Congo, the Rassemblement Congolais pour la Démocratie (RCD), the Mouvement pour la Libération du Congo (MLC) and the Political Opposition.

### **Article 84**

Without prejudice to the provisions of Article 206 of this Constitution, the duties of a Vice-President come to an end following resignation, death, final unforeseen circumstances or condemnation for high treason, embezzlement of public funds, misappropriation of public funds or corruption.

In the case of suspension of duties, the Component where the Vice-President comes from presents his substitute to the National Assembly for ratification within seven days.

If the National Assembly is not in session, it is convened to that effect forthwith in a special session in accordance with Article 115 of this Constitution.

## **Article 85**

Before taking office, each Vice-President shall take the oath before the Supreme Court of Justice during a public hearing.

The oath is taken as follows:

"I, ..... Vice-President of the Democratic Republic of the Congo, appointed in accordance with the Comprehensive and Inclusive Agreement and the Transition Convention, solemnly swear before the Congolese nation:

- to observe scrupulously the spirit and the letter of the Comprehensive and Inclusive Agreement, the Transition Constitution and the laws of the Republic;
- to devote all my strength to defend the institutions of the Republic, the and to preserve the unity and the indivisibility of the Nation;
- to loyally fulfil, as a faithful servant of the People, the high duties that have been entrusted to me".

## **Article 86**

In accordance with the stipulations of the Global and Inclusive Agreement, each Vice-President is responsible fro one of the four Governmental Commissions hereby established:

1. The Political, Defence and Security Commission chaired by the RCD Component,
2. The Economic and Financial Commission chaired by the MLC Component,
3. The Reconstruction and Development Commission chaired the Governmental Component,
4. The Social and Cultural Commission chaired by the Political Opposition Component.

## **Article 87**

Each Vice-President convenes and chairs the meetings of his/her Commission.

He presents the reports of his Commission to the Council of Ministers.

He coordinates and supervises the implementation of the decisions of the Council of Ministers pertaining to his Commission.

## **Article 88**

The Vice-Presidents propose the grades in the National Orders and Decorations to the President of the Republic in accordance with the law.

## **PARAGRAPH IV: GOVERNMENT**

### **Article 89**

The Government is made of the President of the Republic, the Vice-Presidents, the Ministers and the Deputy Ministers.

The President of the Republic appoints the Ministers and the Deputy Ministers on the recommendation of the Components and Entities of the Inter-Congolese Dialogue.

The ministerial portfolios are shared between the Components and Entities of the Inter-Congolese Dialogue according to the conditions and criteria determined by Annexure I A of the Global and Inclusive Agreement.

A Minister's or Deputy Minister's duties come to an end through resignation, death, final unforeseen difficulties, conviction for high treason, embezzlement of public funds, misappropriation of public funds, corruption or dismissal on proposal for his/her Component or Entity. The vacant post is then filled according to the conditions set out in paragraph 2 of this article.

### **Article 90**

During the discharge of their duties, the Members of the Government may not, either by themselves or through an intermediary, buy or rent anything whatsoever that is owned by the State.

They are bound, when taking up their duties and when they are ending, to declare in writing, on one's honour, all their assets to Parliament.

### **Article 91**

The Ministers are responsible for the ministries that are entrusted to them. They execute, through ministerial orders, the programme fixed and the decisions taken by the Government.

### **Article 92**

In accordance with the provisions of Article 69 of this Convention, the meetings of the Government within the Council of Ministers are chaired by the President of the Republic.

In the case of temporary unforeseen difficulties, the meetings are chaired by a Vice-President designated, taking turns, by the President of the Republic.

### **Article 93**

Government fixes and pursues the policy of the Nation in accordance with the Resolutions of the Inter-Congolese Dialogue.

#### **Article 94**

The Government executes the laws and the decrees of the President of the Republic.

The Government has the public administration, the armed forces, the national police as well as the civil security and civil protection services at its disposal.

A decree deliberated by the Council of Ministers fixes the organising and the functioning of the Government, as well as the practical collaboration ways and means between the President of the Republic, the Vice-Presidents and the Government.

#### **Article 95**

The Government is fully responsible for the management of the State and is accountable for it in front of the Parliament according to the conditions defined in this Constitution.

However, for the whole duration of the transition period, the National Assembly may not topple the Government either by rejecting a vote of confidence or the adoption of a motion of censure.

#### **Article 96**

A General Secretariat of the Government assists the President and the Vice-Presidents in co-ordinating action by the Government.

The General Secretariat of the Government prepares the meetings, the work and all the files that are going the object of consultations between the President of the Republic and the Vice-Presidents as well as at the level Council of Ministers.

### **SECTION II: LEGISLATIVE POWER**

#### **Article 97**

The legislative power is exercised by the National Assembly and the Senate according to the conditions stipulated by this Constitution.

#### **PARAGRAPH I: THE NATIONAL ASSEMBLY**

#### **Article 98**

Without prejudice to its other prerogatives that are acknowledged by this Constitution, the National Assembly:

- votes on and passes acts;
- controls the Government, government-owned firms, public corporations and the public services;
- controls the implementation of the Resolutions of the Inter-Congolese Dialogue;
- adopts the Constitution project to be subjected to a referendum.

### **Article 99**

The National Assembly comprises 500 members designated by the Components and Entities of the Inter-Congolese Dialogue according to the conditions defined in Annexure I B of the Global and Inclusive Agreement.

All the Components and Entities ensure a balanced provincial representation and simultaneously a significant presence of women in Parliament.

Nobody may be a Member of Parliament if he/she is not a Congolese citizen 25 years old at least at the time of his/her designation.

### **Article 100**

Members of the National Assembly are all called Deputies. They have a national mandate.

The Deputies are appointed for the whole duration of the Transition.

Notwithstanding the provisions of subparagraph 2 above of this Article, the term of office of a Deputy may end due to death, resignation, final unforeseen difficulties, incompatibility or criminal conviction. He is then replaced according to the conditions defined in subparagraph 1 of Article 99 of this Constitution.

### **Article 101**

The Chairman of the National Assembly is appointed for the full duration of the transition.

Without prejudice to the provisions of sub-paragraph 1 of this Article, the functions of the Chairman of the National Assembly shall come to an end by resignation, death, permanent inability to fulfil his duties, conviction of high treason, embezzlement or misappropriation of public funds or corruption.

## **Article 102**

The National Assembly is run by a Committee comprising a Speaker, three Deputy-Speakers, a Reporter and three Deputy-Reporters coming from the components and entities of the Inter-Congolese Dialogue in accordance with Annexure I B of the Global and Inclusive Agreement.

The National Assembly Committee is made of the Components and Entities for the whole duration of the Transition. No Component or Entity may be represented by more than one member within the Parliament Committee.

In the case of a vacancy due to death, resignation, final unforeseen difficulties, incompatibility or criminal sentence of a Committee Member of the National Assembly, he/she is replaced according to the conditions set out in subparagraph 1 of this Article.

## **Article 103**

The organising and functioning of the National Assembly are governed by this Constitution and the internal regulations of the National Assembly.

Notwithstanding the other provisions of this Constitution, the Internal Regulations of the National Assembly set out:

- the operating rules of the National Assembly as well as the powers and privileges of the Speaker of Parliament, Members of the National Assembly Committee, the Chairs of the parliamentary groups and committees of the National Assembly;
- the voting system of the Deputies;
- the disciplinary system for the Deputies;
- the ways and means regarding the standing down and the replacement of Deputies;
- the number, manner to designate, composition, role and competency of its standing committees without prejudice to the right of the National Assembly to establish special temporary committees;
- the organising of the administrative services falling under the authority of the Speaker of the National Assembly assisted by a General Administrative Secretary;
- in general, all the rules concerning the functioning of the National Assembly within the scope of its constitutional prerogatives.

The internal rules and regulations of the National Assembly may only come into force if the Speaker of the National Assembly has referred them to the Supreme Court of Justice, which shall be compulsory, and the latter declares them to be in accordance with the Transition Constitution.

The Supreme Court of Justice shall take a decision within a period of strictly fifteen days. After this period the Internal Regulations of the National Assembly shall be deemed to comply with the Constitution.

## **PARAGRAPH II: SENATE**

### **Article 104**

Without prejudice to the other provisions of this Constitution and to the laws of the Republic, the Senate is entrusted with a mediation mission regarding the political conflicts between the institutions.

It is responsible to prepare the blueprint of the Constitution to be submitted to a referendum.

It examines concurrently with the National Assembly, the government bills regarding:

- citizenship;
- decentralisation;
- public finances;
- the electoral process;
- institutions supporting democracy;

The laws relevant to the matters mentioned in the preceding subparagraph are passed in similar terms by the National Assembly and the Senate.

In the case of a disagreement between the National Assembly and the Senate or in a case of emergency declared by the Government, a Joint Consultative Committee is established to propose through consensus a unique law to be concurrently adopted by both parliamentary houses.

If the disagreement persists, the National Assembly gives the final ruling.

### **Article 105**

The Senate comprises 120 members designated by the Components and Entities of the Inter-Congolese Dialogue according to the conditions set out in Annexure I B of the Global and Inclusive Agreement.

All the Components and entities ensure a balanced provincial representation as well as a significant presence of women within the Senate.

Nobody may be a Member of the Senate unless he/she is a Congolese citizen 40 years old at least at the time of his/her nomination.

The Senate is constituted to ensure the representation of all the provinces.

### **Article 106**

The members of the Senate are called Senators. They have a national mandate.

Senators are designated for the whole duration of the Transition.

Notwithstanding the provisions of the preceding subparagraph, the term of office of a Senator may end due to death, resignation, final unforeseen difficulties, incompatibility, or criminal sentence. He/she is then replaced according to the conditions set out in subparagraph 1 of the Article 105 of this Constitution.

### **Article 107**

The President of the Senate is designated for the whole duration of the Transition.

Notwithstanding the provisions of subparagraph 1 of this article, the duties of the President of the Senate come to an end due to resignation, death, final unforeseen difficulties, condemnation for high treason, embezzlement of public funds, misappropriation of public funds or corruption.

### **Article 108**

The Senate is run by a Committee made of a President, three Vice-Presidents, one Reporter and three Deputy reporters, each coming from the Components and Entities of the Inter-Congolese Dialogue in accordance with Annexure I of the Global and Inclusive Agreement.

The Senate Committee comprises the Components and Entities for the whole duration of the Transition. No Component or Entity may be represented by more than one member of the Senate Committee.

In the case of a vacancy caused by death, resignation, final unforeseen difficulties, incompatibility or criminal conviction of a Member of the Senate Committee, he is replaced according to the conditions set out in subparagraph 1 of this article.

### **Article 109**

The organising and the functioning of the Senate are governed by this Constitution and the internal regulations of the Senate.

Notwithstanding the other provisions of this Constitution, the internal regulations of the Senate set out:

- the Senate operating rules as well as the powers and privileges of the President of the Senate, the Members of the Senate Committee, the chairs of the parliamentary groups and senatorial committees;
- the Senators voting system;
- the Senators disciplinary system;
- the ways and means regarding the standing down and the replacement of Senators;
- the number, manner to designate, composition, role and competency of its standing committees without prejudice to the right of the Senate to establish special temporary committees;
- the organising of the administrative services falling under the authority of the President of the Senate assisted by a General Administrative Secretary;
- in general, all the rules concerning the functioning of the Senate within the scope of its constitutional prerogatives.

The Internal Regulations of the Senate may only come into force if the President of the Senate has obligatorily referred them to the Supreme Court of Justice and the latter declares them to be in accordance with the Transition Constitution.

### **SECTION III: RELATIONS BETWEEN THE EXECUTIVE POWER AND THE LEGISLATIVE POWER**

#### **Article 110**

Without prejudice to the other provisions of this Constitution, the President of the Republic liaises with the National Assembly and the Senate through messages read by him or read on his behalf and that are not subject to deliberation.

#### **Article 111**

The Members of the Government have access to the National Assembly and the Senate as well as their commissions.

If required to do so, the Members of the Government are obliged to be present at National Assembly and Senate sessions, to take the floor during them and to supply parliamentarians with all the explanations that are required regarding their own activities.

#### **Article 112**

Without prejudice to the other provisions of this Constitution, the information and control means of the National Assembly or the Senate concerning the matters

listed in Article 104 of this Constitution regarding Government, state-owned firms, public corporations and public services are:

- the verbal or written question with/without debate and without a vote;
- the actuality question;
- the interpellation;
- the investigating committee;
- the hearing by Committees

These means of control are exercised according to the conditions set up by the Internal Regulations of the National Assembly and the Senate and may not, in any case whatsoever, give rise to the censure of the Government.

### **Article 113**

Each year, the National Assembly and the Senate convene two ordinary sessions.

- the first session opens on the first Monday of the month of April;
- the second session opens on first Monday of the month of October.

If the first Monday of the month of April or October is a public holiday, the opening of the session takes place on the first working day that follows.

The duration of each ordinary session may not exceed three months.

### **Article 114**

The date of the opening of the first session of the newly appointed National Assembly and Senate is fixed by the President of the Republic on the recommendation of the Speaker of the National Assembly and the Chairman of the Senate.

### **Article 115**

In addition, the National Assembly and the Senate may be convened in a special session following an agenda fixed by:

- the President of the Republic following a request from the Government deliberated by the Council of Ministers;
- the Speaker of the National Assembly following a decision taken by the Committee or a written request signed by the absolute majority of the Deputies;
- The President of the Senate following a decision of the Senate Committee or a written request signed by the absolute majority of the

Senators with regard to the matters mentioned in Article 102 of this Constitution.

The special sessions are ended as soon as the agenda has been exhausted.

### **Article 116**

When the National Assembly and the Senate are in session, such a session is valid only if the members present represent the absolute majority.

The sessions of the National Assembly and the Senate are public except if, exceptionally and for a limited period, it has been decided to have a session behind closed doors.

The National Assembly and Senate analytical minutes of the debates and documents are published in the records of Parliamentary proceedings.

### **Article 117**

The National Assembly and the Senate may establish their own investigating committees.

The Internal Regulations of each House sets out the organising and operating conditions and the powers of the investigating committees established by such a house.

### **Article 118**

Without prejudice to the other related provisions of this Constitution, the law sets out the rules regarding:

- the civic rights and the fundamental guarantees granted to citizens to exercise the civil liberties;
- the electoral system;
- the public finances;
- the constraints imposed to the citizens by the national defence as far as their person and their assets are concerned;
- the nationality, the state and the capacities of persons, the marriage settlements, the estates and the generosity;
- the determination of offences and penalties that are applicable to them, the criminal procedure, the organising and functioning of the Judiciary, the establishment of new jurisdiction orders, the magistrates' status, the legal system applicable to the High Council for the Judiciary;
- the organising of the Bar, legal assistance and legal representation;
- amnesty and extradition;

- the bases, rates and ways and means of collection of all forms of taxation, the money issuing system;
- the borrowings and financial commitments of the State;
- The establishment of state-owned firms, public corporations and public bodies;
- The status of the civil service;
- the army, the police and the safety and security services;
- the labour law and the social security;
- the overall organising of the defence force and the national police, the ways and means to recruit the members of the armed forces and the national police, the promotion, the rights and duties of the military personnel and the police personnel.

Without prejudice to the other related provisions of this Constitution, the law sets out the fundamental principles regarding:

- the free administration of local administrations, their abilities and their resources;
- the land and mining system;
- savings and the mutual insurance system;
- education and health;
- the prison system;
- the political and trade union pluralism;
- the right to strike;
- the organising of the medias;
- the scientific research;
- cooperatives;
- culture and arts;
- sports and recreation.

### **Article 119**

The Government may, to urgently implement its action programme and after deliberation by the Council of Ministers, requests from the National Assembly the authorisation, through Ministerial Orders, to take measures that are normally falling within the domain of the law.

Such an authorisation is granted within the time and competency limits set out by the empowerment law.

Ministerial Orders shall be issued by the Council of Ministers. They shall come into effect on publication, and shall become outdated if the ratification bill is not lodged with the Committee of the National Assembly at the latest on the date determined by the enabling law.

The National Assembly may adopt, amend or reject Ministerial Orders when reviewing a ratification bill.

### **Article 120**

The matters other than those which fall under the law have a regulatory character.

The texts having a legislative form that intervened in these matters may be modified by decree if the Supreme Court of Justice, on request from the Government, declared that they have a regulatory character pursuant to the preceding subparagraph.

### **Article 121**

The acts called organic laws by this Constitution are voted and modified at the absolute majority of the members making the National Assembly and the Senate.

Organic laws may be promulgated only if the Supreme Court of Justice, after the matter having been compulsorily referred to it by the President of the Republic, declared them to be in keeping with this Constitution.

The provisions of Article 119 of this Constitution are not applicable to organic laws.

### **Article 122**

The finance acts fix the resources and the commitments of the State according to the conditions and subject to the reservations envisaged by an organic law.

The creations and transformations of public employment may only be carried out through the finance acts.

### **Article 123**

The National Assembly passes the finance bills according to the conditions envisaged by the organic law aimed at in subparagraph 1 of Article 122 of this Constitution.

The Finances bill of the year, which particularly includes the budget, is filed by the Government with the National Assembly Committee, at the latest the first Monday of the month of October of every year.

If the Finances bill filed within the constitutional period of time is not passed before the beginning of the new budget year, it is put into force by the President of the Republic on proposal from the Government deliberated by the Council of

Ministers taking into account the amendments adopted by the National Assembly.

If the Finances bill has not been filed in due time to be promulgated before the beginning of the budget year, the National Assembly asks Parliament for the opening of temporary credits.

If the National Assembly did not rule within fifteen days regarding the opening of temporary credits, the provisions of the bill envisaging such credits are put into force by the President of the Republic on proposal from the Government deliberated by the Council of Ministers.

If, taking into account the procedure envisaged above, the Finances act of the year could not come into force on the first day of the month of February of the budget year, the President of the Republic, on proposal from the Government deliberated by the Council of Ministers, implements the Finances bill taking into account the amendments adopted by the National Assembly.

#### **Article 124**

The amendments to the Finances bill are not admissible when their adoption would lead to either a decrease of the receipts or an increase in expenditure unless they are matched by compensatory proposals.

#### **Article 125**

Initiative regarding the laws in concurrently in the hands of the Government, any Deputy as well as any Senator with regard to the matters listed in Article 104 of this Constitution.

The bills passed by the Government within the Council of Ministers are filed with the National Assembly Committee.

Before deliberation and adoption, the bills are notified to the Government for information purposes that sends, within ten days of their transmission, its eventual comments to the National Assembly Committee and to the Senate Committee with regard to the matters listed in Article 104 of this Constitution.

#### **Article 126**

The members of the Government, the Deputies and the Senators have the right to propose amendments to the bills being discussed.

#### **Article 127**

If it appears that, during the legislative procedure, a bill or an amendment does not fall within the domain of the law, the Government may raise an exception or inadmissibility.

In the case of a disagreement, the matter is referred to the Supreme Court of Justice by the President of the Republic, the Speaker of the National Assembly or the President of the Senate regarding the matters listed in Article 104 of this Constitution and the Supreme Court rules within eight days.

### **Article 128**

The entering, as a priority, of a government bill, a bill or a general policy statement on the agenda of the National Assembly or the Senate, can be rightfully done if the Government after deliberation of the Council of Ministers makes such a request.

### **Article 129**

After its adoption, the law is submitted to the President of the Republic without any delay.

The President of the Republic promulgates the acts finally passed within the period of fifteen days that follows the expiry of the recourse periods envisaged in Article 131 of this Constitution.

The promulgation prescribed time is reduced by half in a case of an emergency as declared by the National Assembly.

### **Article 130**

Within the prescribed time set out for the promulgation, the President of the Republic may, through a motivated message, requests the National Assembly and the Senate with regard to matters listed in Article 104 of this Constitution, a new deliberation of the act or some of its articles.

The act submitted in this manner for a second deliberation is adopted, either in its initial form or after modification, at a two-third majority of the members of Parliament and Senate present.

### **Article 131**

A recourse aiming at having a law declared not to be in keeping with the Transition Constitution may be referred to the Supreme Court of Justice by:

- the President of the Republic within the six clear days that follow the transmission of the finally adopted law to him;

- a number of Deputies equal to at least one tenth of the total number of Members of the National Assembly within the six clear days that follow its final adoption;
- a number of Senators equal to at least one tenth of the total number of Senators within the six clear days that follow the final adoption of the law regarding the matters mentioned in Article 104 of this Constitution.

The law may be promulgated only if it has been declared as being in keeping with the Transition Constitution by the Supreme Court of Justice.

The Supreme Court of Justice shall give a decision within fifteen days after submission of the appeal made to it.

### **Article 132**

The promulgation prescribed time is suspended until the issue of the second deliberation or the order of the Supreme Court of Justice declaring that the law is in keeping with this Constitution.

In all cases, at the expiry of the constitutional deadlines, the promulgation takes place by right. This is provided, if need be, by the Speaker of the National Assembly.

### **Article 133**

The laws bear the seal of the State and are published in the Government Gazette.

### **Article 134**

In accordance with the provisions of Article 73 of this Constitution, the President of the Republic declares war on the authorisation of the Council of Ministers, after favourable recommendation of the High Council for Defence and authorisation of the National Assembly and the Senate.

He informs the Nation through a message.

The rights and duties of the citizens, during a war or in the case of an invasion of or attack against the National Territory by outside forces are the object of an organic law.

### **Article 135**

In accordance with the provisions of Article 74 of this Constitution, the state of siege, the state of emergency, is decreed by the President of the Republic on

decision of the Council of Ministers after favourable recommendation from the High council for Defence as well as the National Assembly and the Senate.

Then, the National Assembly and the Senate meet by right. If they are not in session, they are convened in a special session to that effect in accordance with Article 115 of this Constitution.

The state of emergency or the state of siege may be proclaimed over the whole or part of the territory of the Republic for a period of thirty days.

The decree proclaiming the state of emergency or the state of siege ceases by right to produce its effects after the expiry of the period envisaged in subparagraph three of this Article unless after the matter is referred to the National Assembly by the President of the Republic on request from the Council of Ministers, the National Assembly authorised the prorogation for successive periods of fifteen days.

The National Assembly may, through an act, put an end, anytime, to the State of emergency or the state of siege.

### **Article 136**

In the case of a state of emergency or state of siege, the Government takes, during a meeting of the Council of Ministers, urgency measures to deal with the situation.

The urgency measures are, when they are signed, submitted to the Supreme Court of Justice, which forthwith rules to declare if they infringe or not this Constitution.

The ways and means of application of the state of siege or the state of emergency are set out by the law.

## **SECTION IV: INCOMPATIBILITIES AND IMMUNITIES**

### **Article 137**

The office of the President of the Republic is incompatible with the exercise of any other political mandate or public office or private activity of a remunerated or lucrative nature.

The provisions of paragraph 1 of this article do not prevent the exercise by the President of the Republic of functions undertaken within the framework of international organisations and bodies.

### **Article 138**

The office of the Deputy President is incompatible with the exercise of any other political mandate or public office or private activity of a remunerated or lucrative nature.

### **Article 139**

The office of a member of the Government is incompatible with the mandate of a Deputy, Senator or any other public or private remunerated activity.

### **Article 140**

The mandate of a Deputy is incompatible with the mandate of a Senator and vice versa.

The mandate of a Deputy or a Senator is incompatible with the office or mandates of:

- members of Institutions for the promotion of democracy;
- members of the armed forces and law enforcement agencies;
- magistrates;
- career diplomats;
- territorial political-administrative officers, excluding community leaders, chiefs and headmen,
- civil servants;
- departmental staff in the office of the President of the Republic, the Deputy Presidents, the President of the National Assembly, the President of the Senate, Ministers, the Chairmen of Institutions for democracy, and generally staff in any political or administrative office of the state;
- employees in a public company or a public/private sector enterprise.

The mandate of a Deputy or a Senator is incompatible with the performance of duties remunerated by a foreign country or an international body.

### **Article 141**

The President of the Republic is criminally liable for acts committed in the performance of his duties only in the case of high treason, misappropriation of public funds, corruption or deliberate violation of the Constitution.

He may be prosecuted for offences covered in the paragraph 1 of this Article, or for any other criminal offence committed outside the scope of his duties, only if he is indicted by the National Assembly deciding the matter by a two-thirds majority of members.

## **Article 142**

Deputy presidents are criminally liable for acts committed in the performance of their duties only in the case of high treason, misappropriation of public funds, corruption or deliberate violation of the Constitution.

They may be prosecuted for offences covered in the previous paragraph, or for any other criminal offence committed outside the scope of their duties, only if they are indicted by the National Assembly deciding the matter by a two-thirds majority of members.

## **Article 143**

There is high treason when the President of the Republic or the Deputy President undermines national independence or territorial integrity, takes to himself or attempts to take to himself other constitutional powers, or attempts to prevent the exercise of the authority devolving thereto in terms of the present Constitution.

An organic law defines the penalties applicable to high treason and deliberate violation of the Constitution, and sets out the procedure to be followed by the Supreme Court of Justice.

## **Article 144**

The other members of Government are criminally liable for acts committed in the performance of their duties.

They accept personal liability in the case of high treason, as defined in paragraph 1 of the Article 143 of this Constitution, deliberate violation of the Constitution, embezzlement, misappropriation of public funds or corruption.

They can be prosecuted for violations in terms of paragraph 2 of this article, or for any other criminal offence committed outside the scope of their duties, only if they have been indicted before the Supreme Court of Justice by decision of the National Assembly with two-thirds of members voting in favour.

## **Article 145**

A Deputy or a Senator may not be charged, interviewed, arrested, detained or tried as the result of any view held or vote cast by him in the performance of his duties.

No Deputy or Senator may be charged or arrested during a sitting, except for a blatant offence, without the authority of the National Assembly or the Senate as the case may be.

When the National Assembly is not in session, a Deputy or a Senator may only be arrested on the authority of the Office of the National Assembly or the Senate Office, except in the case of a blatant offence, authorised legal proceedings or actual conviction.

The detention or prosecution of a Deputy or a Senator is suspended if the parliamentary chamber of which he is a member so demands.

Suspension may not exceed the duration of the current session.

#### **SECTION IV: THE JUDICIARY**

##### **Article 146**

Justice is dispensed throughout the land in the name of the People of the Democratic Republic of Congo.

Orders and judgements as well as civil and military courts are carried out in the name of the President of the Republic.

##### **Article 147**

Judicial power is independent of legislative power and executive power.

The President of the Republic is the guarantor of the independence of the judiciary. In this respect he is assisted by the High Council of the Judiciary which is established and functions according to an organic law.

The judiciary guarantees the personal freedoms and basic rights of the individual.

In the performance of their duties, judges are subject only to the authority of the law.

An organic law determines the status of magistrates and their remuneration.

##### **Article 148**

Judicial power is exerted by the Supreme Court, the Appeal Courts and the lower Courts and Tribunals, both civil and military, as well as the Public prosecutor's office.

Civil and military Courts and Tribunals, as well as the Public prosecutor's offices within their jurisdictions, may only be established in accordance with the law.

The nature, competence, structure, operation and seats of these Courts and Tribunals and the Public Prosecutor's offices, as well as the procedure to be followed, are dictated by law.

#### **Article 149**

Civil and military Courts and Tribunals apply the law and statutory acts and also customary law, in so far as the latter conforms to public law and order and accepted moral standards.

#### **Article 150**

Without prejudice to any other powers vested in it under the present Constitution or pursuant to the laws of the Republic, the Supreme Court of Justice takes cognisance, through legal action and through exceptional measures, of the constitutionality of the law and acts which have the force of law, as well as appeals for interpretation of the Transitional Constitution.

The Supreme Court of Justice is the judge of any dispute arising from presidential and legislative elections, and referendums.

Moreover, the Supreme Court of Justice takes cognisance of appeals against judgements and sentences handed down by civil and military Courts and Tribunals of last resort, as well as proceedings to set aside acts and decisions of the central government of the Republic. Should a matter be referred on appeal, the civil and military Courts and Tribunals are required to comply with the ruling of the Supreme Court of Justice on the point of law that was heard.

The Supreme Court of Justice delivers opinion on the draft or private bills or statutory laws referred to it.

#### **Article 151**

The Supreme Court is the court of first and last jurisdiction for the President of the Republic, the Deputy Presidents, Deputies, Senators, Ministers and Deputy Ministers, and for the Chairmen and members of institutions for democracy in terms of the present Constitution.

#### **Article 152**

The composition, structure and operation of the Supreme Court of Justice, as well as other key figures in the Republic answerable before it, are determined by an organic law.

### **Article 152**

The first President of the Supreme Court of Justice, the Attorney General of the Republic and the Auditor General of the armed forces shall be appointed and instituted after the signature of the Comprehensive and Inclusive Agreement, in keeping with the national balance of power and according to a mechanism defined by the Components and Entities of the Inter-Congolese Dialogue.

## **CHAPTER II: INSTITUTIONS FOR THE PROMOTION OF DEMOCRACY**

### **Article 154**

Institutions for the promotion of democracy are:

- The Independent Electoral Commission
- The National Human Rights Commission
- The Media Council
- The Truth and Reconciliation Commission
- The Ethics and Corruption Commission

### **Article 155**

The role of these institutions for democracy is:

- to guarantee the neutrality and impartiality of the process for holding free and transparent democratic elections;
- to ensure the neutrality of the media;
- to build national unity through true reconciliation between the Congolese people;
- to promote and protect human rights;
- to further the inculcation of moral and social values.

### **Article 156**

Institutions for democracy enjoy independence of action amongst themselves and with regard to the other institutions of the Republic.

Institutions for democracy enjoy legal status.

## **Article 157**

Institutions for democracy are chaired by representatives from the "Civil Society" ("Forces Vives") constituency, in accordance with the relevant provisions of the comprehensive and inclusive agreement.

The other Constituencies and Groupings of the inter-Congolese Dialogue fall under their respective offices.

## **Article 158**

The Chairmen of these Institutions for democracy have the rank of "Minister" in accordance with the provisions of point V 4 c of the Comprehensive and Inclusive Agreement.

## **Article 159**

The Chairmen and members of institutions for democracy are appointed for the duration of the transitional period.

Notwithstanding the provisions of subparagraph 1 of this Article, the duties of the Chairmen and members of Institutions for the promotion of democracy are terminated by resignation, death, permanent impediment, conviction for high treason, embezzlement, misappropriation of public funds or corruption. In accordance with the comprehensive and inclusive agreement, the "Civil Society" organisation or group from which that individual comes shall present his replacement to the National Assembly for confirmation, within seven days.

## **Article 160**

The structure, scope and duties of the Institutions for democracy are determined by organic laws adopted within thirty days following their installation by the National Assembly and the Senate.

# **CHAPTER III: THE TREASURY**

## **SECTION I: GENERAL PROVISIONS**

### **Article 161**

The Congolese franc is the monetary unit of the Democratic Republic of Congo. It is legal tender throughout the land.

#### **Article 162**

The financial year of the Republic begins on the first of January and ends on the thirty-first of December.

#### **Article 163**

The public accounts of the Republic are submitted annually to the National Assembly by the government Audit Office, together with their comments.

The public accounts of the Republic are established in accordance with the law.

#### **Article 164**

Tax may only be instituted in terms of the law.

The payment of contributions to the Treasury is the duty of each and every citizen and resident of the Democratic Republic of Congo.

Exemptions or tax relief may be granted only as provided by law.

### **SECTION II: THE AUDIT OFFICE**

#### **Article 165**

In terms of the conditions set out in law, the Audit Office oversees the financial management and accounts of all public corporations and bodies.

#### **Article 166**

The government Audit Office reports to the National Assembly.

Members of the Audit Office are appointed, relieved of their duties and, if necessary, dismissed by the President of the Republic on the advice of the National Assembly.

#### **Article 167**

The law determines the composition, structure and operation of the Audit Office.

### **SECTION III: THE CENTRAL BANK OF THE CONGO**

## **Article 168**

The Central Bank of the Congo is the monetary issuing authority of the Democratic Republic of Congo.

The Central Bank of the Congo enjoys management autonomy. It is overseen by the Ministry responsible for finance.

## **Article 169**

The Central Bank of the Congo is entrusted with:

- the care of public funds;
- monetary safety and stability;
- setting and implementing monetary policy;
- controlling all banking activity.

## **Article 170**

The Central Bank of the Congo is the government's economic and financial adviser.

## **Article 171**

The Governor of the Central Bank of the Congo is heard by the National Assembly as and when necessary.

## **Article 172**

The structure and operation of the Central Bank of the Congo is determined by an organic law.

# **CHAPTER IV: THE CONGOLESE NATIONAL POLICE FORCE AND THE CONGOLESE ARMED FORCES**

## **SECTION I: THE CONGOLESE NATIONAL POLICE FORCE**

### **Article 173**

The Congolese National Police Force is responsible for public safety and for restoring and maintaining law and order.

The Congolese National Police Force is at the service of the Congolese people. No one may divert it from its proper duties.

The Congolese National Police Force exercises its duties throughout the country, with due regard to this Constitution and the laws of the Republic.

#### **Article 174**

The Congolese National Police Force is apolitical. It is subject to civil authority and falls under the jurisdiction of the Ministry responsible for public safety.

#### **Article 175**

Recruitment into the Congolese National Police Force takes account of objective criteria associated with physical ability, adequate level of education and good moral character, as well as the need to balance the intake of recruits between all the provinces.

#### **Article 176**

No one may be recruited into the Congolese National Police Force, or take part in wars or hostilities, if they are under eighteen years of age at the time of recruitment.

#### **Article 177**

The law determines the structure and operation as well as the specific conditions of recruitment of Police Force personnel.

### **SECTION II: THE ARMED FORCES**

#### **Article 178**

The role of the Armed Forces of the Democratic Republic of Congo is to defend the territorial integrity of the country against any external aggression and, under conditions set by law, to participate in its economic, social and cultural development and to protect individuals and their assets.

#### **Article 179**

The Armed Forces of the Democratic Republic of Congo are made up of land forces, air forces and naval forces.

## **Article 180**

The Armed Forces of the Democratic Republic of Congo are nationals of the republic and are apolitical.

Manpower at all levels is constituted in such a way that a fair and balanced representation of all the provinces is achieved.

The Armed Forces of the Democratic Republic of Congo are at the service of the entire Congolese nation. No one, under sentence of high treason, may divert them from their proper duties.

## **Article 181**

The Armed Forces of the Democratic Republic of Congo are subject to civil authority and placed under the jurisdiction of the Ministry responsible for National Defence.

## **Article 182**

No one, under sentence of high treason, may organise military or paramilitary training or form private militia armies, or maintain an armed or subversive youth movement.

## **Article 183**

Recruitment into the Congolese Armed Forces of the Democratic Republic of Congo shall take account of the objective criteria associated with physical ability, an adequate level of education and good moral character, as well as achieving a balanced intake across all the provinces.

## **Article 184**

No one may be recruited into the Congolese Armed Forces, or participate in wars or hostilities, if they are under the age of eighteen at the time of recruitment.

## **Article 185**

Promotion within the Congolese Armed Forces is based on ability, knowledge, discipline and relevant military training.

## **Article 186**

The law sets out the conditions for recruitment and promotion, organisation, disciplinary rules and conditions of service, as well as the rights and obligations of military personnel.

### **SECTION III: THE NATIONAL DEFENCE COUNCIL**

#### **Article 187**

The Democratic Republic of Congo will have a National Defence Council.

The National Defence Council is chaired by the President of the Republic, or when he is absent by the Deputy President responsible for National Defence.

#### **Article 188**

The organic law pertaining to the army and defence determines the structure, authority, operation and organisation of the National Defence Council.

#### **Article 189**

Without prejudice to the provisions of the preceding Article, automatic members of the National Defence Council are:

- the President of the Republic;
- the four Deputy Presidents;
- the Minister of Defence
- the Minister of Home Affairs, Decentralisation and Security;
- the Foreign Minister;
- the Chief of Staff of the Armed Forces;
- the Chief of Staff of the Army;
- the Chief of Staff of the Air Force;
- the Chief of Staff of the Navy.
- 

#### **Article 190**

The National Defence Council gives an opinion on the proclamation of a state of emergency and a declaration of war.

Without prejudice to the laws in force, the National Defence Council gives an opinion on all matters relating to:

- the formation of a re-structured and integrated national army;
- the disarming of armed groups;
- supervising the withdrawal of foreign troops;
- any other issue regarding national defence.

## **CHAPTER VI: INTERNATIONAL TREATIES AND AGREEMENTS**

### **Article 191**

The President of the Republic ratifies or approves international treaties and agreements.

The Government concludes international agreements not subject to ratification, once a decision has been taken by the Cabinet. The National Assembly is advised of such agreements.

### **Article 192**

Peace treaties, trade agreements, treaties and accords relating to international organisations and the settlement of international disputes, those which involve public finance, those which amend legislative provisions, those which relate to the status of individuals, or those which entail the exchange and addition of territory, can only be ratified or approved according to the law.

No transfer, exchange or addition of territory can be authorised without the agreement of the people affected, with consultation being conducted by means of a referendum.

### **Article 193**

Regularly concluded international treaties and agreements have, when published, greater authority than the law, provided that each treaty or agreement is implemented by the other party.

### **Article 194**

If the Supreme Court, having been consulted by the Government, the National Assembly or the Senate, declares that an international treaty or agreement includes a clause which is contrary to the present Constitution, ratification or approval may only occur once the Constitution has been revised.

### **Article 195**

The Democratic Republic of Congo may conclude joint treaties or partnership agreements which entail a partial relinquishment of sovereignty in order to achieve the

goals of the African Union.

## **CHAPTER VII: TRANSITIONAL AND FINAL PROVISIONS**

### **Article 196**

The transition period is twenty-four months. It takes effect from the time the transitional Government is formed and ends with the investiture of the President of the Republic, duly elected following the elections which mark the end of the transitional period in the Democratic Republic of Congo.

However, because of problems specifically linked to the organisation of elections, the transitional period may be extended for a further six months, renewable one more time should circumstances demand, on the advice of the Independent Electoral Commission and by a joint and properly justified decision of the National Assembly and the Senate.

### **Article 197**

The President of the Republic, the Deputy presidents of the Republic, the President of the National Assembly and the President of the Senate remain in office throughout the entire transitional period, without prejudice to the provisions of articles 66 para. 1, 84 para. 1, 101 para. 2 and 107para. 2 of the present Constitution.

### **Article 198**

The Governors and Deputy Governors in office shall remain in office until new Governors and Deputy Governors have been appointed by the Government of National Unity.

The Transitional Government shall nominate Ambassadors during the first six months taking into account the question of proportionality of political streams within the Government. In the appointments, career diplomats shall be appointed as Ambassadors.

The Government of National Unity shall proceed with appointing managers for public corporations and public/private enterprises keeping in mind the criteria of good moral antecedents, competence and experience. In the meantime, the managers currently in the posts shall remain in office.

### **Article 199**

At its first session the transitional National Assembly, in accordance with universal principles and international law, will adopt an Act granting amnesty for acts of war,

political offences and views, with the exception of war crimes, crimes of genocide and crimes against humanity.

Pending adoption and promulgation of the above mentioned Act, the President of the Republic shall enact an ordinance, granting amnesty to all those falling within the ambit of paragraph 1 of this article.

#### **Article 200**

With the exception of the President of the Republic currently in office, the political institutions stemming from statutory order No. 003 of May 27<sup>th</sup> 1997, cease to function once corresponding institutions envisaged in the present Constitution are actually installed.

#### **Article 201**

The initiative for the revision of the Constitution belongs concurrently to the President of the Republic on the recommendation of the Government and to half of the Deputies or Senators.

The draft or proposed revision of the Transitional Constitution shall be adopted by consensus, in the same terms by the National Assembly and the Senate.

The President of the Republic shall promulgate the adopted text, in accordance with article 129 of this Constitution.

#### **Article 202**

All previous constitutional provisions, in particular Statutory Order No. 03 of May 27<sup>th</sup> 1997 pertaining to the exercise of power as modified to date, are repealed and replaced by this Transitional Constitution of the Democratic Republic of Congo.

#### **Article 203**

Legislation currently in force, where it is not contrary to the Transitional Constitution, remains applicable for as long as it is not amended or repealed.

#### **Article 204**

The Transitional Constitution is adopted by the Plenary Session of the Inter-Congolese Dialogue.

It shall come into effect on the date it is promulgated by the President of the Republic, three full days after it has been adopted.

#### **Article 205**

The Transitional Constitution ceases to have effect when a Constitution is adopted at the end of the transitional period.

**SIGNATORIES**

**For the Government of the Democratic Republic of the Congo:**

[Signature illegible]

**For the Rassemblement Congolais pour la Démocratie (RCD):**

[Signature illegible]

**For the Mouvement de Libération du Congo (MLC):**

[Signature illegible]

## **SIGNATORIES**

### **For the Rassemblement Congolais pour la Démocratie / Mouvement de Libération du Congo (RCD-ML):**

[Signature illegible]

[Signature illegible]

[Signature illegible]

### **For the Rassemblement Congolais pour la Démocratie/National (RCD-N):**

[Signature illegible]

### **For the Maï-Maï:**

Subject to reservations: - Problem of nationality, idea of an “integrated nation”, the Head of State has to be the Head of Government at the same time.

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## **SIGNATORIES**

For the Political Opposition:

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## **SIGNATORIES**

For the Political Opposition:

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## **SIGNATORIES**

For Civil Society:

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## **SIGNATORIES**

For Civil Society:

- 23.
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## **WITNESSES**

His Excellency Mr Thabo Mbeki,  
President of the Republic of  
South Africa and Chairman in  
office of the African Union,  
represented by His Excellency  
Mr Sydney Mufamadi, Minister  
of Provincial and Local  
Government

[Signature illegible]

His Excellency Mr Moustapha Niasse,  
Special Envoy of the Secretary General  
of the United Nations for Inter-  
Congolese Dialogue, representing  
His Excellency Mr Kofi Annan,  
Secretary General of the OAU

[Signature illegible]