



## **Economic and Social Council**

Distr.: General  
21 January 2009  
English  
Original: French

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**Substantive session of 2009**

### **Implementation of the International Covenantal Archives of the Congo Cultural Rights**

**Combined second, third, fourth and fifth periodic reports  
submitted by States parties under articles 16 and 17 of the  
Covenant**

**Democratic Republic of the Congo\***

[14 August 2007]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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## Abbreviations

AFDL	<i>Alliance des forces démocratiques pour la libération du Congo</i>
ARNACO	National Archives of the Congo
ASBL	Not-for-profit association
BCC	Central Bank of the Congo
BCECO	Central Coordination Office
BCG	Tuberculosis vaccine
BNC	National Library of the Congo
CICIBA	International Centre for Bantu Civilization
CNECI	National Housing Savings and Loan Fund
CNR-H	National unit for the rehabilitation of infrastructure and the promotion of housing
CPN	Prenatal consultation
CPON	Postnatal consultation
CPS	Preschool consultation
DRC	Democratic Republic of the Congo
DTP3	Vaccination against diphtheria, tetanus and pertussis
ELS	Health Sector Status Report
ENSEF	National survey on the status of children and women
EPI	Expanded Programme on Immunization
EPSP	Primary, secondary and vocational education
FAO	United Nations Food and Agriculture Organization
FCG	Congolese franc
FEC	Business Federation of the Congo
FONAMES	National fund for medical and health assistance
GDP	Gross domestic product
GNP	Gross national product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HPI	Human poverty indicator or index
ILO	International Labour Office
ILO	International Labour Organization
INPP	National Vocational Preparedness Institute
INS	National Statistics Institute
INSS	National Social Security Institute
MICS2	Multiple Indicator Cluster Survey (2001)
MONUC	United Nations Mission in the Congo
NGO	Nongovernmental organization
ONL	National Housing Office

ORT	Oral rehydration therapy
PMURR	Multisector Emergency, Rehabilitation and Reconstruction Programme
PNLMS	National Multisector Programme against HIV/AIDS
PNLP	National Malaria Programme
P-NLS	National AIDS Programme
PNPFC	National Programme for the Advancement of Congolese Women
PNPMS	National programme to promote mutual insurance associations
PNSR	National Programme for Reproductive Health
PRSP	Poverty Reduction Strategy Paper
PUCER	Emergency programme to create jobs and incomes
PVH	Persons living with handicaps
SENASEM	National Seeds Service
SMIG	Guaranteed minimum inter-occupational wage
SONECA	National Society of Publishers, Composers and Authors
SR	Reproductive health
STI	Sexually transmitted infections
TOPV	Trivalent oral polio vaccine
TV	Television
UNCHS	United Nations Centre for Human Settlements
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
VAR	Measles vaccine
WHO	World health Organization
ZS	Health District

## **Introduction**

1. The Democratic Republic of the Congo (DRC) ratified the International Covenant on Economic, Social and Cultural Rights ("the Covenant") on 1 November 1976 and submitted its initial report, which was examined in February 1988 (E/1984/6/Add.18); the final observations of the Committee are contained in document E./C.12/1988/4, paragraphs 270 to 303.

2. This willingness to honour its international commitments by submitting regular reports to the oversight bodies was frustrated by the political events that shook the country from 1991 to 2002 (looting, wars, etc.).

3. As a result of all these events, and the resulting governmental instability, the former committee established to monitor international covenants, created in 1991 by the then-Department of Public Rights and Freedoms of the Ministry of Justice, ceased to function.

4. This crisis situation prevented the Democratic Republic of the Congo from submitting its regular reports at the respective deadlines of June 1992, June 1997 and June 2002.

5. Aware of the delay in fulfilling its international obligations, the Government established a new inter-ministerial committee, under the coordination of the Ministry of Human Rights, entrusted with preparing initial and periodic reports for all international instruments ratified by the DRC.

6. As the government is eager to renew its ties with the UN Committee on Economic, Social and Cultural Rights ("the Committee") through a constructive dialogue on its concerns, and recognizing the length of time that has elapsed since the submission of the initial report cited above, the present report is in the form of an initial report, and combines those that were expected at the dates mentioned in paragraph 4.

7. With the end of the war, thanks to the Inter-Congolese Dialogue which led to signature of the Global and All-Inclusive Accord on 17 December 2002 at Pretoria and the promulgation of the transition Constitution on 4 April 2003, and with the establishment of the political institutions called for in that Constitution, the situation is now favourable for pursuing the international commitments mentioned above.

## **I. General information on the country**

### **A. Land and population**

#### **1. Land**

8. The Democratic Republic of the Congo, a central African country, straddles the equator. To the north lie the Central African Republic and the Sudan, to the east Uganda, Rwanda, Burundi and the United Republic of Tanzania, to the south Zambia and Angola, and to the west the Indian Ocean, the enclave of Kabinda and the Republic of the Congo.

9. The Democratic Republic of the Congo, a vast country (2,345,409 sq. km) on a continental scale, possesses a largely flat relief. In the centre is a basin, with an

average altitude of 230 metres, covered in equatorial forest and with many extensive marshes. The central basin is bordered by staggered plateaux with the exception of the east, where there are volcanic mountains with an average altitude in excess of 1,000 metres.

10. Crossed by the equator, the DRC experiences a hot, humid climate (average temperature of 25°C) and abundant, regular rainfall. Rainfall and temperature fall towards the east. There are two seasons a year: a dry season of almost four months and a long rainy season.

11. The DRC has an extensive network of rivers. The Congo River, 4,700 kilometres in length, and the second biggest in the world after the Amazon in terms of flow, crosses the country from south-east to north-west before emptying into the Atlantic Ocean. The river is fed by several tributaries and is navigable over most of its length.

12. The soil and subsoil contain significant and varied agricultural and mining resources.

## **2. People**

### **a. Demography**

13. In 1956 the population was estimated at 12,768,705 inhabitants. By 1960 it had increased to 14,106,666; the administrative census of 1970 gave a figure of 20,700,500, and the scientific census conducted on 1 July 1984 established the population at 30,731,000. On the basis of projections by specialized agencies, in particular the United Nations Population Fund (UNFPA), the population was estimated at 43,000,000 in 1995, at 47,500,000 in 1999, and at 52,099,000 in 2000. Yet according to information from the Central Bank of the Congo, the population stood at 59,700,000 in 2005 and 61,487,300 in 2006 (Central Bank of the Congo. *Condensé d'informations statistiques* no. 52/2005 and 2006, p. 1).

14. The Democratic Republic of the Congo is one of the most populous African countries. The age and sex structure shows a broad-based pyramid, with concave flanks and a narrow summit, reflecting a young population. In 1997, 25.9 million inhabitants were under 18. The natural growth rate is 3.4 per cent (1990-1998), with a fertility rate of 6.4. Life expectancy at birth went from 45 years in 1970 to 41.4 years in 2002 (United Nations Development Programme Human Development Report 2004). A breakdown by zone indicates the following:

(a) Since 1993, 60 per cent of the population has been in rural areas and 40 per cent in urban centres with 5,000 or more inhabitants; the degree of concentration in urban centres varies considerably from province to province;

(b) In Maniema the proportion of the population in urban areas is low; in Kinshasa it is high (about one tenth of the entire population);

(c) Rapid growth of the urban population (7 to 8 per cent), the concentration of 28 per cent of the entire urban population in Kinshasa, and the high rate of emigration from rural areas;

(d) The uneven geographical distribution of the population - the highest population densities are in the city of Kinshasa and the provinces of Bas-Congo, Nord Kivu, Sud Kivu and Maniema.

**b. Ethnic groups**

15. The population is divided into over 450 tribes, which can be classified in four major groups, each firmly established in a particular territory. The Luba or Baluba in south central Congo (18 per cent) outnumber the Kongo living in Bas-Congo (16.6 per cent). The north-west region is inhabited by the Mongo (13.5 per cent) and the Zande (6.1 per cent), the north-east by the Mangbetu, the Hema, the Lendu and the Alur (3.8 per cent). The east is inhabited by the Nande, the Hunde, the Bashi, the Bafulero, the Tutsi and many other ethnic groups. The Chokwe and Lunda are found along the frontier with Angola. The pygmies (less than 0.5 per cent) are found in Equateur and Orientale provinces.

**c. Languages**

16. In the Democratic Republic of the Congo the official language is French. In addition, some 250 languages and dialects are in widespread use. Of these, 90 per cent are of Bantu origin. Four of them are referred to as “national languages”, namely:

- Swahili (40 per cent) in the east, in Nord-Kivu, Sud-Kivu, Katanga, Maniema and Orientale province;
- Lingala (27.5 per cent) in Kinshasa, the capital, and the neighbouring region, and in Equateur and in Orientale province;
- Kikongo (17.8 per cent) in Bas-Congo and Bandundu;
- Chiluba (15 per cent) in the provinces of Kasai-Oriental and Kasai-Occidental;

It should also be noted that in the northern part of the country the many spoken languages belong to the Negro-Congolese family (Ubangian subgroup) and the Nilo-Saharan families (central Sudan group and Nilotic subgroup).

**d. Religion**

17. The Democratic Republic of the Congo is a lay State. Nevertheless five traditional religious denominations are present: Catholic, Kimbanguist, Protestant, Orthodox and Muslim. There are also several religious sects within the country, and some animists.

**B. Socio-economic indicators****1. Social**

18. The weakening of the social fabric began at the outset of the 1970s. It was aggravated by a series of unfortunate events, namely the 1973 Zairianization campaign and the two outbreaks of looting in September 1991 and February 1993, in addition to the two wars of 1996-1997 and 1998-2002. The social sectors worst affected by these crises include health, education, agriculture and the road network.

**2. Economic**

19. The economy is characterized by a structural imbalance in the output of goods and services, and economic development has been extremely patchy. From 1983 to 1989 the situation was relatively stable. Between 1990 and 1996 the country went

through a period of economic crisis, marked by inflation and rapid currency depreciation, a fall in output, general unemployment and extreme poverty.

20. This situation, a characteristic feature of the latter years of the Second Republic, was primarily attributable to lax financial and budgetary management, together with unplanned expenditure met by printing money.

21. From May 1997 to July 1998, with the advent of the Alliance des Forces de Libération du Congo (AFDL) regime, there was a marked improvement in the principal economic indicators, particularly in terms of price levels, currency and public finances. This induced the Government to launch a new currency, the Congolese franc, which had an encouraging exchange rate against the major foreign currencies.

22. Unfortunately, since 2 August 1998 the principal economic equilibria have once again been disrupted on account of the attack launched against the country by the Rwanda Burundi Uganda coalition joined by rebel forces. The war gave rise to hyperinflation, with serious repercussions for the purchasing power of the population, which it reduced to poverty. At the same time it caused a significant drop (3.15 per cent) in gross domestic product (GDP). The rate of inflation fell from 656.8 per cent in 1996 to 13.7 per cent in 1997 and to 2.2 per cent in July 1998.

23. In the absence of any revival of production and with the climate of war, the results recorded in 1998 were cast into doubt. Thus, the inflation rate rose from 196.3 per cent in September 1999 to 489 per cent in December 1999. This continued until February 2001, with the accession to power of President Joseph Kabila, who took appropriate economic and monetary measures and liberalized the political situation, by relaunching the political negotiations known as the Inter-Congolese Dialogue agreed subsequent to the ceasefire of 10 July 1999 at Lusaka. Of particular note among these measures were the stabilizing of public finances and the freeing of the exchange rate, which prompted a resumption of cooperation with the Bretton Woods institutions.

24. The Inter-Congolese Dialogue led to the signing of the Global and All-inclusive Agreement on 17 December 2002 in Pretoria, South Africa. A constitution was adopted on the basis of this political agreement and promulgated on 4 April 2003, facilitating the inauguration of a transitional Government including all the belligerent parties, the political opposition and civil society. According to information from the Central Bank of the Congo, the economic situation at the end of 2006 was as follows:

- Investments: with macro-economic fundamentals under control since 2001, and as this trend has been consolidated through the gradual return to peace, the investment sector has been gradually improving;
- Money supply in thousands of Congolese francs: 475,998,307;
- Balance of payments (in millions of US dollars): credits 5,004.44, debits 5,382.15, i.e. a deficit of 377.71;
- External debt: Stock of debt at 30 December 2004, in millions of US dollars: 10,943.3;



- Public finances, in thousands of Congolese francs: revenues 576,828,712, expenditures 611,605,798;
- GDP: in billions of Congolese francs 4,029.44; in millions of US dollars: 8,821.01;
- GDP growth rate: 6.6 per cent;
- Inflation rate: between 1.3 and 1.7 per cent;
- Exchange rate: US\$1 = 507.24 to 540 Congolese francs;
- Per capita income has fallen from US\$300 in 1991 to US\$120 in 2005 (UNICEF data).

### C. The political situation

25. Following the attainment of independence by the country on 30 June 1960, the Democratic Republic of the Congo experienced political instability marked by secession and rebellion over much of its territory. This impelled the Congolese army to take power on 24 November 1965 under President Mobutu.

26. President Mobutu instituted a single-party regime which lasted until 24 April 1990, when a return to a multiparty system was announced. The political forces in the country met in the Sovereign National Conference to debate the future of the country and establish democratic institutions able to guarantee enjoyment of the fundamental rights of citizens and national development. But, against all expectations, this process of democratization took until 17 May 1997, on which date AFDL took power and neutralized the institutions which had emerged from the Sovereign National Conference.

27. A new, two-year transition was announced pending the organization of elections. But the war of 2 August 1998 overturned the entire political agenda and diverted attention until the conclusion in Pretoria, on 17 December 2002 of the Global and All-Inclusive Agreement on the transition, and promulgation of the new transitional Constitution on 4 April 2003.

28. Articles 64 and 154 of this Constitution provided for a sui generis system of Government, made up of political institutions and democracy-supporting institutions.

(a) The political institutions comprised:

- A President of the Republic, whose executive authority is shared with four Vice Presidents;
- A transitional Government comprising the belligerents, the political opposition and civil society;
- A bicameral Parliament: the National Assembly and the Senate;
- The courts.

(b) The democracy-supporting institutions, which had the mandate of guaranteeing neutrality and impartiality in the organization of free, democratic and transparent elections, of guaranteeing the neutrality of the media, of consolidating national unity thanks to genuine reconciliation between the Congolese, of promoting

and protecting human rights and of promoting the practice of moral and republican values, were comprised of:

- The Independent Electoral Commission;
- The National Human Rights Monitoring Centre;
- The Media Authority;
- The Truth and Reconciliation Commission;
- The Ethics and Anti-Corruption Commission.

29. The transitional Constitution had, in Article 196, prescribed a duration of 24 months for the transition with an extension of six months renewable only once for the purpose of holding elections. The post-transition period is governed by the new Constitution promulgated on 18 February 2006 after having been adopted by referendum in December 2005, but the institutions set up by the transitional Constitution remained operational up to the effective installation of the corresponding institutions provided for by the latter on 18 February 2006 and executed their mandate in conformity with the provisions of the transitional Constitution. They led the country to the general elections organized in July and November 2006, January and February 2007 respectively for the presidential, national and provincial legislative elections. The local ones were to be organized later.

30. The Constitution of 18 February 2006 prescribed a highly decentralized State with central and provincial political institutions and democracy-supporting institutions.

(a) The central political institutions are the following:

- The executive branch comprises the President of the Republic, who is not accountable to parliament, and the prime minister, who is head of government.
- The legislative branch consists of parliament, which has two chambers, the National Assembly and the Senate.
- The judicial branch consists of the courts, which are independent of the other two branches.

(b) The provincial political institutions are:

- The legislative branch (the provincial assembly).
- The executive branch (the provincial government).

(c) The democracy-supporting institutions comprise: the National Independent Electoral Commission, and the Audiovisual and Communications Council. These have the mandate of guaranteeing and ensuring the regular holding of elections and of referendums, the freedom and protection of the media and all means of mass communication.

## II. Overall legal framework of protection

31. In addition to the Covenant covered by this report, the Democratic Republic of the Congo has ratified several other international instruments enshrining individual rights. These are:

- The International Covenant on Civil and Political Rights.
- The Convention on the Elimination of All Forms of Discrimination against Women.
- The International Convention on the Elimination of All Forms of Racial Discrimination.
- The Convention on the Rights of the Child.
- ILO C.111, the Discrimination (Employment and Occupation) Convention
- ILO C. 100, the Equal Remuneration Convention
- ILO C.14, the Weekly Rest (Industry) Convention
- ILO C. 81, the Labour Inspection Convention
- ILO C. 87, the Freedom of Association and Protection of the Right to Organize Convention
- ILO C. 98, the Right to Organize and Collective Bargaining Convention
- ILO C. 102, the social security (Minimum Standards) Convention
- ILO C. 121, the Employment Injury Benefits Convention
- ILO C. 138, the Minimum Age Convention

32. The DRC has a monistic legal system which enshrines the superiority of treaties over domestic laws. This flows from article 215 of the Constitution of 18 February 2006, which provides that regularly concluded international treaties and agreements have, as of their publication, higher authority than that of laws, provided each treaty or agreement is applied by the other party. This article of the Constitution allows any person to invoke the provisions of the above-mentioned instruments to guarantee respect of his rights.

33. In addition to international instruments, the Constitution of the Democratic Republic of the Congo, through its provisions devoted to fundamental rights, the legislation containing the Labour Code, Mining Code and Forestry Code, and other regulations also enable the enjoyment and exercise of the economic, social and cultural rights recognized in the covenant.

## III. Application of the covenant in practice

### Article 1

34. In the DRC, this principle has been translated into reality during the political crises that have gripped the country and have led to people, through their delegates, to sit down at the table to decide the country's future. Among the forums that illustrate the practical application of this principle were the Sovereign National

Conference and the National Conference on Human Rights, held respectively in 1991 and 2001, the Inter-Congolese Dialogue which led to signature of the Global and All-Inclusive Accord and promulgation of the transition Constitution.

35. In addition to the information contained in paragraphs 34 to 41 of the third periodic report submitted to the Human Rights Committee (CCPR/C/COD/2005/3), the principle of self-determination is confirmed by article 9 of the Constitution of 18 February 2006, which provides that the State shall exercise permanent sovereignty over the soil, the subsoil, the waters and the forests, over the Congolese air, river, lake and maritime spaces, as well as over the Congolese territorial sea and the continental shelf.

36. This constitutional provision has been put into practice by the holding of free, democratic and transparent elections since 30 July 2006.

37. The Constitution also guarantees the right of the Congolese people to self-determination: article 214 (2) provides that no transfer, exchange or addition of territory is valid without the consent of the Congolese people, consulted through a referendum.

38. This right to self-determination was tested during the war of aggression of which the DRC was victim in 1998, the purpose of which was its Balkanization. The will of the Congolese people to live in a single State was expressed through their representatives to the inter-Congolese dialogue in South Africa (Pretoria and Sun City) in 2002.

39. At that dialogue, no popular faction, no tribe, and no ethnic group showed any desire to question the territorial integrity of the Democratic Republic of the Congo. This was confirmed by the statement of delegations to the inter-Congolese dialogue, contained in paragraph 2 of the preamble to the transitional Constitution, which reads: "Very anxious to build a single harmoniously integrated nation and to consolidate national unity in order to give a veritable soul to our State." This desire to live in unity within the same territory was given concrete expression with establishment of a government of national union on 30 June 2003.

40. With respect to the free disposal of national wealth and natural resources, paragraphs 39, 40 and 41 of the third periodic report to the Human Rights Committee quoted above convey well the realization of this right. Moreover, article 58 of the Constitution of 18 February 2006 provides that "all Congolese have the right to enjoy the nation's wealth. The State has the duty to redistribute the wealth equitably and to guarantee the right to development"

41. This constitutional provision has been put into practice by specific laws (the law governing general property, landownership and real estate, and security interests, the Mining Code, Forestry Code, etc.) and by other regulations such as the decree of 12 July 1932 regulating fishing concessions and the decree of 21 April 1937 on hunting and fishing, article 57 of which provides that fishing is allowed throughout the territory of the DRC.

42. All of these laws and regulations offer the Congolese people the possibility of free disposal and enjoyment of the country's natural wealth and resources, as well as those of its Congolese soil and subsoil.

## Article 2

43. To give effect to the rights set forth in the covenant, the Constitution of the DRC, in particular article 34, 35 and 58, guarantees to all Congolese the enjoyment of these rights.

44. Article 34 provides that private property is sacred, and the State must guarantee the right to individual or collective property acquired by law or by custom. It must encourage and oversee the security of private investments, domestic and foreign. No one may be deprived of his property except for a public purpose and through a fair and pre-established compensation granted in the conditions set by law. No one's property may be seized except by virtue of a decision rendered by a competent judicial authority.

45. Article 35 requires the State to guarantee the right to private initiative for nationals and foreigners. It is to encourage the Congolese to engage in small trade, arts and handicrafts and it is to protect and promote national expertise and skills.

46. With respect to non-discrimination, the Constitution (article 12) enshrines the equality of all Congolese before the law, as noted in paragraphs 42, 43 and 44 of the third periodic report to the Human Rights Committee.

47. With respect to education, the Constitution (article 45.3) provides that every person shall have access to national education institutions without discrimination as to place, origin, race, religion, sex, political or philosophical opinion, or his state of physical, mental or sensory health.

48. Framework law 86-005 of 22 September 1986 on national education provides, in article 5, that the State shall guarantee the preservation of the national cultural identity and, in this regard, it shall ensure non-discrimination in national education, regardless of ethnic or racial group, social conditions, sex or religious choices. Article 61 of that law provides that all national education establishments shall be open to all pupils or students who fulfill the conditions of that law, regardless of place, origin, religion, race, or ethnic group.

49. With respect to work, article 36.3 of the Constitution provides that no one may be prejudiced in his or her work by reason of origins, sex, opinions, beliefs or socioeconomic conditions.

50. The Labour Code (article 1) is applicable to all workers and to all employers, including those of public enterprises exercising their occupation anywhere in the DRC, regardless of race, sex, civil status, religion, political opinion, national origin, social origin and nationality of the parties, the nature of the services, the amount of remuneration or the place where the contract was concluded, provided the contract is executed in the DRC.

51. With respect to trade, in addition to what is described in paragraph 45 of this report, the decree of 2 August 1913 (article 2) recognizes the status of merchant for any person who engages as a vocation in commercial activities classified as such by law.

52. Several other laws define the manner in which economic rights may be exercised in the DRC, particularly in fishing, hunting, river and lake navigation, air-traffic operation, posts and telecommunications, investments, mining, forestry, vehicular transport of persons, air navigation, aircraft, and radio stations.

53. For non-nationals, article 32 of the Constitution provides that any alien in the national territory enjoys the protection accorded to persons and their property, under the conditions determined by treaties and laws. Article 50.3 stipulates that, provided there is reciprocity, any alien legally in the national territory enjoys the same rights and freedoms as Congolese, with the exception of political rights. Such aliens enjoy the protection accorded to persons and their property under the conditions determined by treaties and laws.

54. However, when it comes to engaging in trade, article 4 of Ordinance-Law 90-46 of 8 August 1990 regulating small trade excludes foreigners from this type of activity, which is reserved to nationals. The underlying rationale of that legislation is to allow Congolese to engage in small trade and devote themselves to entrepreneurship in order to promote the creation of domestic capital.

55. On the economic front, the DRC has initiated some important reforms, with the support of international cooperation, and in particular has created the Central Coordination Bureau (BCECO) with the following powers:

(a) the management of emergency assistance funds provided to the DRC by donors in support of its emergency recovery and development programme;

(b) liaison with donors (bilateral and multilateral), United Nations agencies (UNDP), public institutions, services and agencies and the private sector for projects in which it is involved;

(c) the management of funds earmarked for financing small-scale projects initiated by grassroots organizations;

(d) approval, supervision and evaluation of subprojects presented and implemented by beneficiary communities (NGOs, non-profit associations) serving as executing agencies in the context of emergency assistance projects;

(e) arrangements for preparation of the Poverty Reduction Strategy Paper (PRSP);

(f) preparation of the Multisector Investment Programme;

(g) elimination of the diamond trade monopoly, etc. (Ministry of Planning, PRSP, page 8).

### **Article 3**

56. In the Democratic Republic of the Congo, men and women are placed on a footing of equality, as confirmed by article 14 of the Constitution which provides:

"The public authorities shall ensure the elimination of any form of discrimination against women and shall ensure the protection and promotion of these rights. In all fields, especially in civic life and in economic, social and cultural policy, they shall take all measures appropriate to ensure the total and full participation of women in the nation's development [...]. Women have the right to equitable representation in national, provincial and local institutions. The State shall guarantee gender parity in those institutions. The law shall establish procedures for enforcing these rights."

## Article 6

57. The problem of labour and employment in the DRC has been acute since the time of economic crisis and armed conflicts. According to the Poverty Reduction Strategy Paper (Ministry of Planning, PRSP, February 2004, page 38), it is employment that has been the most seriously affected by the difficulties facing the State, made worse by poor management of public enterprises and the lack of a partnership policy to encourage investment.

58. In 2000, 2% of the total population (4% of the workforce and 8% of the male workforce) was employed, compared to 8%, 18% and 35% respectively in 1958. The social and political crisis of the 1990s, combined with armed conflicts, merely precipitated this negative trend, which has had a lasting impact on employment and on vocational training. The crisis is one of the main causes of the extremely difficult social situation, as a result of which urban unemployment has been exacerbated and an informal sector has emerged.

59. The employment situation in the DRC can be appreciated from the occupational status of the working age population (15 to 64 years). Fifty-seven percent of these people are engaged in an economic activity, i.e. they devote the greatest portion of their time to it even if they exercise other activities: employees, self-employed workers, and agricultural workers (MICS2/2001, pp. 41 and 42).

60. Most workers are engaged in the agriculture sector (41%): farming, fishing, livestock, hunting, for agriculture constitutes the primary employment sector in the country. The proportion is 56% in rural areas versus 10% in the cities.

61. Employed workers represent 7%: this low proportion indicates the collapse of modern employment in the DRC. The employee portion of the workforce was 8% in 1958, falling to 2% in 1997, as a result of:

(a) lack of measures to encourage domestic or foreign investors to create jobs;

(b) the constraints imposed by structural adjustment programmes, as a result of which thousands of workers became unemployed or actually left the workforce;

(c) the looting episodes of 1991 and 1993, which led to the elimination of many jobs, and the war, which destroyed the little infrastructure remaining in the affected areas, reducing employment opportunities.

62. Self-employed persons (those not working for wages or salary) account for 9%, reflecting the predominance of the informal sector which has sprung up in urban areas and which now accounts for millions of people, including young school graduates who are unable to find formal employment, those who pursue informal activities to supplement their wages, and those who pursue such activities for enrichment (MICS2/2001, p. 42).

63. With respect to female employment, it must be noted that male employees outnumber female employees by 4 to 1 (12% versus 3%). The gap is lower in the case of self-employed workers, where the male/female ratio is 2 to 1. Women are engaged primarily in agriculture and in the informal sector.

64. In agriculture, women are more numerous (53.8%) than in wage-earning jobs (2.8%), for agriculture constitutes the primary employment sector in the country and

accounts for a high proportion of workers. Women are also numerous in the informal sector (6%).

65. The low proportion of female employees reflects the severe obstacles described in paragraph 51 of the third periodic report to the Human Rights Committee (CCPR/C/COD/2005/3).

66. When it comes to women's work, article 128.2 of the Labour Code provides that maternity may not constitute a source of discrimination in employment. In particular, a female job applicant may not be asked to take a pregnancy test or to submit a certification that she is not pregnant, except for work that is wholly or partially prohibited for pregnant or nursing women, or that would pose a risk to the health of the woman or child. Moreover, pregnancy gives a woman the right to terminate the working contract without advance notice and without paying any compensation for breach of contract. Women enjoy the same right for eight weeks after delivery (article 129).

67. A pregnant woman has the right to suspend her labour contract six weeks before childbirth, and for eight weeks afterward. During this time, she is to receive two-thirds of her pay and all her contractual benefits in kind, and the employer may not terminate the labour contract (article 130).

68. A nursing mother is allowed two half-hour breaks in the working day (article 132).

69. Ministerial decree 68-13 of 17 May 1968 of the Ministry of Labour and social security establishes working conditions for women and children and provides (article 1) that "employers are prohibited from employing women and children in work that exceeds their strength, exposes them to a high occupational risks, or that, by its nature or the conditions in which it is performed, is likely to injure their morality."

70. According to that decree:

(a) The working day for women may not exceed eight hours; if there are contractual exceptions allowing a work day shorter than eight hours for one or more days, the working day may exceed the eight hour limit on the other days of the week, but not by more than one hour per day.

(b) Regardless of their age, women may not be employed at night in manufacturing work.

(c) Women may not be assigned regular manual tasks of moving loads, and they may not carry, pull or push loads that exceed the maximum weight limits.

(d) Women may not be employed in dangerous or unhealthy work such as greasing or repairing machines, in underground work in mines and quarries, in sawmill work, in the manufacture and transport of explosives, or at outdoor counters of stores and shops after 8 PM, etc.

(e) Pregnant women are prohibited from carrying, pushing or pulling any load.

71. Recognizing the causes of the collapse of modern employment described in paragraph 61 of this report, the level and trend of employment in the DRC can be appreciated from the evolution of private sector and public sector employment (in



thousands) shown in this table, taken from the Annual Report of the Central Bank of the Congo 2003-2004, page 64.

	Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
A. Government		423.1	429.0	425.3	425.8	428.5	438.2	415.3	389.4	428.4	391.9	513.9
– Civil servants		126.7	137.2	121.9	117.5	148.0	154.9	172.4	168.0	184.8	170.4	204.8
– Civilian and military pensioners		71.0	71.5	72.2	76.7	72.8	71.5	81.9	84.7	93.2	78.6	117.4
– Teachers		225.4	220.3	231.2	231.6	207.7	211.8	161.0	136.7	150.4	142.9	191.8
B. Private sector workers		821.1	704.2	674.5	588.5	562.8	410.3	259.9	175.1	148.8	153	160.6
<b>TOTAL</b>		<b>1 244.2</b>	<b>1 133.2</b>	<b>1 099.8</b>	<b>1 014.3</b>	<b>991.3</b>	<b>848.5</b>	<b>675.2</b>	<b>564.5</b>	<b>577.2</b>	<b>544.9</b>	<b>674.6</b>

72. As will be seen, the number of workers in the private sector fell from 821,100 in 1993 to 148,800 in 2001, before rising slightly in 2002 (153,000), then to 163,200 in 2003, while employment in the public sector edged up from 423,100 in 1993 to 428,400 in 2001, dropping to 391,900 in 2002 and rising again to 513,900 in 2003.

73. The survey conducted for the International Labour Office (ILO) on the socioeconomic situation in the DRC estimates the economically active population, i.e. persons of working age (15 to 64 years) employed or seeking employment, at 18,250,000, and the inactive population at 5,866,000.

74. The workforce is distributed as follows: primary sector 74.4% (of whom 53.8% are women), secondary sector 7%, and tertiary sector 18%.

75. The potential workforce would represent nearly 40% of the total population, and was estimated by the National Statistics Institute at 59,554,000 in 2004. Of that potentially active population, 41.7% are women.

76. The government is facing enormous difficulties in achieving its objective of offering full employment to all, as it has been unable to promote stronger economic growth or to redistribute the fruits of that growth.

77. To overcome these obstacles, the government has set short and medium-term objectives to create and promote employment and sustainable incomes along with programmes for restoring peace and for stabilizing and reviving the economy that will attract job-creating productive investments.

78. From 2000 to 2004, the unemployment rate (as a percentage of the workforce) varied between 7% and 15%. In December 2006 it stood at 41.2% (Central Bank of the Congo, Statistical Summary no. 52/2006, page 1).

79. Underemployment in the private sector is explained by the emergence of the informal sector as described in paragraph 70 of this report, while for the public sector it reflects overstaffing. In this connection, with the assistance of the South African government various steps have been taken to control the payroll and to reform the public administration and strengthen its capacity so as to make it competitive.

80. With respect to child labour, article 6 of the Labour Code sets the minimum working age at 16 years. It allows for exceptions, however, for persons aged 15, who may work if they have the express authorization of the labour inspector and of their parents or guardian. Children may not be employed or kept in service except

for light and healthy work as determined by an order from the Ministry of Labour and social security pursuant to article 38 of the Labour Code.

81. Article 133 of the Labour Code stipulates that children may not be employed in an enterprise, even as apprentices, before the age of 15, unless the exception mentioned above is applicable. In no case may authorization be given below the age of 15 years.

82. Article 3 of the Labour Code prohibits the worst forms of child labour, in particular all forms of slavery or similar practices (sale, trafficking of children, debt servitude, bondage, forced or compulsory labour, forced or compulsory recruitment of children for use in armed conflicts), the recruitment and exploitation of children for purposes of prostitution, for producing pornographic materials or spectacles, for obscene dances, for the production or trafficking of narcotics, and for subjection to any work that would harm their health, safety, dignity and morals.

83. Decree 68/13 of 17 May 1968, cited above, regulates child labour as follows:

(a) 16 and 17-year-olds may be employed at light and healthy work, provided their workday does not exceed four hours, school days and holidays alike, and provided the regulations regarding school attendance are observed.

(b) Children between the ages of 16 and 18 may not work more than eight hours a day. When the workday exceeds four hours, it must be interrupted by one or more periods of rest totalling at least one hour.

(c) No child under the age of 18 may be employed on Sunday.

(d) Night work is prohibited for any child under the age of 18.

(e) Dangerous and unhealthy work is prohibited for children, as is the manual transport of loads exceeding the specified maximum.

84. The above-cited decree also provides that whenever children of either sex under the age of 18 are hired, the employer must keep a list indicating each worker's name, surname and date of birth, and the job performed. Exceptions are provided, however, for 16 and 17-year-olds for pressing reasons of vocational training, in which case the employer must obtain the consent of the labour inspector.

85. In practice, however, many children are working in violation of the Labour Code, for various reasons: war, AIDS orphans, survival (parents without income), etc. However, it should be noted that, in the process of demobilizing and reintegrating children enlisted in the armed forces and armed groups, the DRC demobilized 16,809 children in 2005, of whom 14,127 were boys and 2,682 girls. At the same time, 8,663 children were reunited with their family, 7,044 returned to school, and 4,609 benefited from economic reintegration.

86. With respect to older workers, those covered by the Labour Code who reach the age of retirement are eligible for the pension system managed by the National social security Institute, but those in the public sector continue to contribute.

87. For persons with disabilities, article 135 of the Labour Code provides that a disability must not constitute an impediment to employment consistent with the person's intellectual, sensory or physical aptitudes, in the public, semi-public or private sectors, as long as the disability is not such as to prejudice or hamper the operation of the enterprise. Such persons are also entitled to the same vocational training as other workers.

88. In the DRC, the majority of people with disabilities are employed in specialized State-run centres and by religious undertakings, such as the National Apprenticeship Centre for the Handicapped, the Kikesa Centre and the Bondeko villages.

89. In light of the foregoing, no group in the DRC is disadvantaged in terms of work.

90. As to disadvantaged regions or sectors, the proportion of employed workers is highest in Kinshasa (16%), followed by Kasai Occidental (13%), Bas-Congo (9%) and Katanga (7%). These figures reflect the country's inequalities in terms of industrialization and the employment potential of the modern sector. Taking into account the causes underlying the collapse of the modern employment described above, several regions are today disadvantaged by their isolation, lacking usable roads, means of communication, and productive units (MICS2, page 43).

91. At the present time there is no policy to provide work to all available persons seeking employment in order to combat unemployment, despite the declaration of article 36.2 of the Constitution to the effect that "the State shall guarantee the right to work, protection against unemployment..." However, in order to deal with the multifaceted crisis that has gripped the DRC, the government has favoured a policy of liberalizing political and economic life, promulgating laws governing various areas of economic life. This liberalization has given rise to some employment generating activities, few though they may be: the following examples may be cited:

(a) the framework law on national education, under which private education institutions have been established and are employing a good many teachers;

(b) the press law which has favoured the creation of audiovisual and written publication houses employing many journalists and other technical and artistic personnel;

(c) liberalization of the diamond industry and trade, with the creation of diamond purchase counters (diggers and other traders of all kinds);

(d) the liberalization of air transport, with the creation of travel agencies;

(e) the liberalization of communication activities, with the establishment of telephone centres and messaging services;

(f) the liberalization of telecommunications activities, with the establishment of cell phone companies, which has promoted the opening of private telephone booths;

(g) installation of the Internet, with the creation of IT companies (office automation and cybercafés);

(h) the creation of childcare centres, especially in Kinshasa, which has also created jobs;

(i) the development of partnerships between the State and private parties in the medical field, which has boosted employment in this sector.

92. With respect to measures to provide jobs for all available persons seeking employment, the government, through the Ministry of Planning and Reconstruction, has adopted a Poverty Reduction Strategy Paper (PRSP), with the assistance of external partners including the World Bank. As well, the Ministry of Labour and social security, with ILO assistance, has prepared an emergency programme to

create jobs and incomes (PUCER). Integrating the PUCER into the PRSP will serve the following objectives:

- ensure full employment throughout the country;
- increase investments in the various sectors of the economy;
- enhance the efficiency of investments in terms of job creation and income distribution;
- define a national policy for promoting employment and vocational training.

93. With respect to measures to make work as productive as possible, we may say that at the present time employment in the DRC is being promoted through strategies adopted by the government in the context of poverty reduction. The creation of decent jobs is seen as the surest way of escaping from misery or poverty. To achieve this, the government intends to pursue the following actions:

- (a) create an environment favourable to private-sector activity, by consulting economic operators on regulations;
- (b) support job-creating private initiatives (FEC, private enterprises);
- (c) define and implement a realistic wage policy (PRSP, page 38, §120).

94. In the DRC, the free choice of work is guaranteed by article 36 of the Labour Code, which provides that labour contracts are freely negotiated. The code also prohibits forced or compulsory labour, including any work or service demanded of an individual under threat of penalty, and to which the individual has not given full consent. Article 3 abolishes all the worst forms of child labour, and article 4 establishes a national committee to combat such forms of labour. The Labour Code prohibits any form of forced recruitment throughout the national territory (article 6(d)).

95. With respect to the programme for technical and vocational training, with the exception of the national programme offered in the technical and vocational schools, the Labour Code (article 8) obliges all public and private employers to offer training, professional development or vocational adaptation to the workers they employ. To this end, they may use the means provided by the National Vocational Preparedness Institute which are available throughout the DRC.

96. Training and professional development are governed by ordinance 71/055 of 26 March 1971, which establishes the rules applicable to vocational training, apprenticeship and professional development, defines the related concepts, and prescribes measures relating to:

- (a) the framework of training (duration, responsibility during training, programmes, methods, organization of training by public and private enterprises);
- (b) apprenticeship (occupations that may offer apprenticeship, conditions required and protection of workers, tests and certificates);
- (c) the criteria applicable to instructors and their training.

97. In practice, vocational training and professional development is offered by the National Vocational Preparedness Institute (INPP). This allows enterprises that have no private centres to fulfill their obligation to offer their workers training or professional development.

98. The Institute collaborates with all the technical and vocational training agencies, the Employment Directorate, the National Employment Office, and the Ministry of National Education, as required by article 13 of the Labour Code.

99. In terms of legislation, there are laws guaranteeing protection of the national workforce against foreign competition. Articles 208 and 209 of the Labour Code established the National Commission on the Employment of Aliens, which has existed since 1974 by virtue of ordinance 74-098 of 6 June 1974 on the protection of the national workforce. That commission has the general task of approving applications for employment and renewing work permits for foreigners, and advising the Minister of Labour and social security on measures to improve legislation protecting the national workforce against foreign competition. The commission's rules of procedure are established by decree of the Minister of Labour and social security.

100. In the DRC, regulations governing vocational guidance, training, employment and the profession of persons apply to all workers without distinction as to race, colour, sex, religion or nationality. Restrictions on employment are determined by departmental decree 86/001 of 31 March 1981, which establishes the kinds of work prohibited to foreigners, consistent with article 2.3 of the Covenant.

101. With respect to multiple job-holding, there are no statistics to indicate the proportion of persons holding more than one full-time job in order to provide an adequate income for themselves and their family. It is true that some civil servants are obliged to supplement their income through "moonlighting." This is particularly the case for teachers in secondary and higher education.

102. Law 015/2002 of 16 October 2002, instituting the new Labour Code, has reinforced the antidiscrimination measures of the old Labour Code with respect to women and the protection of children, such as eliminating the husband's consent for a woman to work, prohibiting the worst forms of child labour, and raising the minimum working age from 14 to 16 years. It has also introduced specific provisions relating to persons with disabilities (see paragraph 87 above).

103. International assistance is playing an increasingly important role in supporting the government. The Bretton Woods institutions (World Bank and International Monetary Fund) and the United Nations institutions (UNDP, ILO, FAO, WFP, WHO, UNFPA, UNESCO and UNICEF), through their support for the government's various economic, social and cultural programmes, are contributing actively to the creation of jobs that will allow everyone to exercise his right to work.

## **Article 7**

104. At the present time, Law 015/2002 of 16 October 2002, the Labour Code, provides (articles 87 and 88) that, in the absence of a collective agreement covering such matters, the Minimum Guaranteed Inter-Occupational Wage (SMIG) and minimum family allowances are to be determined by decree by the President of the Republic, at the recommendation of the Minister of Labour and social security and with the advice of the National Labour Council. Remuneration is fixed in individual contracts freely negotiated between workers and employers, or through collective agreements.

105. The mandatory nature of the SMIG in the DRC is clear from article 3 of decree 079 above, according to which the SMIG is the minimum amount set by the authorities below which no worker may be paid without penalty.

106. Decree 079/2002 of 3 July 2002 establishes procedures for setting and adjusting the SMIG, minimum family allowances, and the housing offset, while decree 080/2002 sets the level of the SMIG, the minimum allowances and the housing offset.

107. It should be noted that the SMIG, which is set at 335 francs per day in the first article of decree 080/2002, is today worth less than a dollar a day, which is the poverty threshold recognized by the World Bank. However, to guarantee the value of this SMIG, article 9 of decree 079/2002 provides mechanisms for adjusting it in order to maintain workers' purchasing power. This mechanism is triggered whenever there is a rise of 50% or more in the consumer price index as determined by successive separate surveys conducted at least one month apart.

108. In 2003, 160,600 private-sector employees benefited from the SMIG, but 513,900 public sector workers were not covered by this provision (Annual Report of the Central Bank of the Congo 2003-2004, page 64). Workers in the informal sector are not protected, because their employer is not registered with the Ministry of Labour and social security.

109. The rules and criteria for setting and adjusting the SMIG are determined by article 4 of the SMIG decree, which applies the following criteria:

(a) social criteria taking into account the worker's essential needs, the cost of living and its fluctuations, the general wage level, social security benefits, and standard of living compared to that of other social groups;

(b) economic criteria taking into account the general economic situation, the employer's capacity to pay, productivity, job classification, price index, and monetary erosion.

110. The following table illustrates the trend in the average wage and the minimum wage in relation to the cost of living between 1990 and 1997:

ITEMS	1990	1991	1992	1993	1994	1995	1996	1997
Average market price indices (IRES)	100	1 916	86 244,3	1 757 917,3	419 491 562,2	1 972 868 817,0	16 826 898 140	16 759 291 747,4
PRIVATE SECTOR								
Nominal wage index	100	235,7	48 653,9	104 940,3	145 836,8	8 480 559,4	8 480 559,4	133,4
Real wage index	100	17,0	56,4	6,0	0,0	0,4	0,1	0,0
PUBLIC ADMINISTRATION								
Nominal wage index	100	4 925,3	33 434,6	435 716,8	83 982 249,4	157 358 790,9	157 350 970,9	25 477 712 102,0
Real wage index	100	257,0	38,8	24,8	20,0	8,0	1,0	5 871,0
LEGAL MINIMUM SALARY								
Nominal wage index	100	2 224,8	18 471,3	2 254 777,1	43 949 44,6	80 254 777	80 254 777,1	0 254 777,1
Real wage index	100	116,1	21,4	14,5	10,4	4,1	0,5	0,5

Source: *Études de la Banque centrale du Congo, 1997 Conjoncture économique*, p. 4.12, point 4.2.2.

111. The level of income per capita per day, which was US\$1.31 in 1973, fell to US\$0.91 in 1974 and to US\$0.30 in 1998. In 2004, it was estimated at less than US\$0.20 per person per day, or \$73 per year (Ministry of Planning, Poverty Reduction Strategy Document, February 2004, p. 11, point 2.2, § 23 and p.5 §3), but UNICEF, in its 2007 programme document for the DRC, estimates annual per capita income at US\$120.

112. Observance of the SMIG is not effectively enforced by the responsible labour inspection offices, because of the shortage of inspectors. Efforts are now underway to strengthen the material and human resources of these offices.

113. The principle of equal pay is governed in the DRC by article 86 of the Labour Code, which provides that where working conditions, vocational qualifications and performance are equal, the salary shall be equal for all workers, regardless of their origin, sex or age.

114. On this point, we may note that in the DRC there is no discrimination between the sexes, for wages are paid according to occupational category and not according to performance. The classification of jobs, which ranges from labourer to supervisor, contains a wage scale of 1 to 10.

115. Breaches of the principle of "equal pay for equal work" are punishable by a fine of 20,000 constant francs for each worker concerned, but the fine may not exceed 50 times the maximum rates set in article 328 of the Labour Code.

116. Minimum health and hygiene standards in the workplace are set by articles 160, 163, 167 and 170 of the Labour Code, Title VII of which is devoted to workplace health and safety. These provisions cover all fields of work and are mandatory. They are supplemented by ministerial decrees. The labour inspection office is responsible for enforcing them.

117. With respect to equal opportunities for promotion, the Constitution (article 36.3) declares that no one may be prejudiced in his or her work by reason of origin, sex, opinions or beliefs, or socioeconomic conditions. Thus there is no group of workers not enjoying equal promotion opportunities, whether they are covered by the Labour Code (article 7.a) or the statute governing the career personnel of the State civil service (article 66).

118. The national collective labour agreement of 20 January 2006 provides (article 36) that women enjoy the same rights at work as men, in accordance with legal, contractual and regulatory provisions.

119. The length of the working day and week in the DRC is regulated by article 119 of the Labour Code, which provides that in all public and private establishments, including educational and welfare establishments, the working week may not exceed 48 hours and the working day 9 hours, for workers of either sex, and regardless of the manner in which the work is performed. Those hours are measured as of the moment the worker enters the workplace until work ceases, in accordance with a schedule set by the employer and contained in the firm's bylaws.

120. With respect to weekly days of rest and holidays, article 121 of the Labour Code provides that all workers must have rest time of at least 48 consecutive hours in each seven-day period. That rest time must be granted at the same time to all personnel, whenever possible, and in principle on Saturday and Sunday. With respect to children and persons with disabilities, article 126 provides that the daily

rest time between two periods of work must be at least 12 consecutive hours. Nursing mothers are in all cases entitled to two half-hour breaks each day to nurse their babies. These breaks are paid as working time.

121. There is no legislation specifically governing leisure. This is left to individual firms, in accordance with collective agreements that call for the organization of recreational opportunities (clubs, music and sports).

122. Paid legal holidays in the DRC are the following:

- First of January, New Year's Day;
- 4 January, Independence Martyrs Day;
- 16 and 17 January, National Heroes Day;
- 17 May, Liberation Day;
- 30 June, Independence Day;
- First of August, Parents Day;
- 25 December, Christmas.

123. The procedures for granting vacation leave and the resulting obligations are determined by articles 140 to 145 of the Labour Code. Leave amounts to one working day per full month of service for workers over 18 years of age, and at least one and a half working days per full month of service for workers under 18. This is supplemented by one working day for every five years of seniority with the same employer or substitute employer.

124. The International Labour Office is helping to implement the various ILO conventions.

## **Article 8**

125. The third periodic report on implementation of the International Covenant on Civil and Political Rights deals with freedom of association and trade union freedom in paragraphs 238 to 243 (CCPR/C./COD/2005/3).

126. The legal provisions governing the formation of unions flow from article 38.2 of the Constitution, which provides that all Congolese have the right to establish trade unions, societies or other associations and to affiliate freely in order to promote their welfare and to defend their social, economic and cultural interests under the conditions set by law.

127. Under Article 30 of the Labour Code, workers and employers, as defined in article 7 of that Code, have the right to form organizations for the exclusive purpose of study, defence and promotion of their professional interests, as well as the social, economic and moral development of their members, while the State civil service statute provides that:

"Civil servants enjoy trade union rights and are automatically affiliated with the National Workers' Union of the Congo. An administrative regulation on the trade union status of civil servants shall determine the nature and manner of intervention of the union in the public services, establish institutions for representing personnel at the national and regional level, and determine the



makeup of these institutions, their powers, and the procedures they must observe."

It must be noted, however, that since the return to democracy in April 1990, trade union pluralism has been restored in the DRC, and civil servants may now join the union of their choice.

128. The basic conditions for forming a union or association are the following:

- (a) to be a worker or employer as defined in article 7 of the Labour Code;
- (b) to have as its exclusive purpose the study, defence and promotion as well as the social, economic and moral development of its members (article 230 of the Labour Code);
- (c) to have union or association bylaws (article 232 and 240);
- (d) to be a Congolese national of at least 21 years of age, for persons who direct and administer the union or association.

129. With respect to its form, the union or association must be registered with the Ministry of Labour in order to enjoy legal status, and it must notify any change to its bylaws, pursuant to article 238 and 246, respectively, of the Labour Code.

130. These conditions apply to private-sector workers covered by the Labour Code and to government employees covered by the State civil service statute.

131. Restrictions on the right to form and join unions apply only to members of the armed forces, the police and the security services, by reason of their functions.

132. Under article 250.2 of the Labour Code, duly registered unions and associations may cooperate freely to promote and defend the interests of workers and employers. They may form confederations or federations which, when registered, will enjoy the same rights and have the same obligations as the unions or associations that comprise them. Their bylaws must determine the rules by which the member associations of the confederation or the federation are represented in its general assemblies.

133. With respect to affiliation with international organizations, there is no legal provision authorizing or prohibiting such affiliation by workers' or employers' organizations. The only requirement is that they be properly registered with the Ministry of Labour. In practice, workers' and employers' organizations are free to affiliate with international workers' and employers' organizations of their choice, provided they have legal status (article 249 of the Labour Code).

134. The right of unions or associations to conduct their activities freely is conditioned or restricted by their obligation to respect the laws, which include the press law, the law on associations and meetings, the commerce law, the State security law, the civil code, and criminal law.

135. Unions may not publish tendentious articles in the press attacking the honour and dignity of a person. If it wishes to issue a regular publication, any union must meet the formalities required by law. No union is authorized to organize rallies or marches without prior authorization under the law on associations and meetings. As a legal person, every union seeking to engage in commercial activities must do so in accordance with the applicable law. No professional organization has the right to

jeopardize State security, under penalty of prosecution. The provisions of civil and criminal law are applicable to unions in cases of violation.

136. The Labour Code (articles 274, 275, 276, 280 and 282) encourages free collective bargaining.

137. There are 212 workers' unions and six employers' associations registered in the DRC. Their structure, pursuant to article 240, is as follows:

- executive committee (administrative and management body);
- audit commission (the body responsible for control and audit of its accounts);
- general assembly (decision-making body).

138. The Constitution (article 39) recognizes the right to strike, in these terms:

"The right to strike is recognized and guaranteed. It may be exercised in the conditions established by law which may prohibit or limit its exercise in the sectors of national defence and security and in all services or public activities of vital interest to the community. These conditions consist in respecting public order and decency."

139. The legal provisions governing exercise of the right to strike are in principle the same for all workers, but some categories of workers, especially those employed in hospitals and in water or electricity supply enterprises, are required to guarantee minimum service in the public interest and to conserve the assets of the enterprise (ministerial decree 12/CAB.MIN./TPS/113/2005 of 26 October 2005).

140. Members of the armed forces and the police are prohibited from striking, and civil servants are required (article 57 of the State civil service statute) to respect the functioning of essential public services. In practice, minimum service has always been preserved during civil-service strikes.

141. The Labour Code (article 315) provides that a collective work stoppage may be called or joined only in the event of a collective labour dispute, and only after exhausting the contractual or legal means of settling the dispute. The same article stipulates that when a collective work stoppage is called in the wake of a contractual or legal settlement procedure, there must be no threats, reprisals or humiliating measures against workers who intend to join the stoppage or who have taken part in it (ministerial decree 12/CAB.MIN./TPS/113/2005 of 26 October 2005 establishing the rights and obligations of parties during the suspension of the labour contract).

## **Article 9**

142. The first article of the organic decree-law of 29 June 1961 on social security organizes the following branches of social security:

- (a) occupational risks branch (occupational accident and illness allowances);
- (b) pensions branch (disability, retirement and death pensions);
- (c) family allowances branch;
- (d) all other social security benefits to be introduced subsequently for employees.

143. The main features of the current system and the nature and level of allowances for each branch of social security in the DRC are defined by articles 20 to 41 of the organic decree-law on social security, as described below.

**(a) Occupational risks branch**

- (i) Pursuant to article 20, the occupational risks branch covers accidents in the workplace and on the way to work as well as occupational illnesses included in a pre-established list and originating from work, procedures and occupations that include the handling and use of harmful agents as well as those that expose workers habitually to the risk of contracting these illnesses, provided they are reported within the established deadlines;
- (ii) The allowances provided by the Institute are determined by article 21 of the decree-law mentioned above, and cover:
  - (a) medical care required by injuries resulting from an occupational accident or illness;
  - (b) a daily indemnity paid to the victim in case of temporary incapacity to work, full or partial;
  - (c) a pension or allowance paid to the victim in case of permanent incapacity to work, full or partial;
  - (d) the survivors' pension and funeral benefit, paid to the widow of the victim, in case of death.
- (iii) The amount of the daily indemnity is paid to the victim by the employer, as an advance that is reimbursable by the Institute upon submission of substantiating documentation.

**(b) Family allowances branch**

Under the terms of article 31 of the organic decree-law on social security:

- (i) Workers covered by the social security regime are entitled to family allowances for each dependent child provided they meet the legal conditions (unmarried children, as defined by the Family Code);
- (ii) The child must be registered in the civil registry or must be in regular attendance at an educational institution;
- (iii) Family allowances are calculated on the basis of daily amounts and the number of eligible children. They are paid by the Institute on the first day of each calendar month, using procedures established by ordinance of the President of the Republic.

**(c) Pensions branch**

This branch includes the retirement pension and disability pension

- (i) Entitlement to the retirement pension:
  - (a) Article 38 of the decree-law sets the age of eligibility at 65 years for men and 60 years for women, provided the insured person has ceased all employment activity and has at least 60 months of insurance or

equivalent periods during which he or she reached the age of eligibility for the pension.

- (b) The insured person who has suffered early loss of his physical or mental faculties, duly confirmed by a physician appointed or approved by the Institute, and who is unable to perform paid work consistent with his aptitudes, may apply for the early retirement pension at the age of 55, the amount of which will be calculated according to the same rules as that for the retirement pension (article 39).
  - (c) The annual amount of the pension is equal to 1/60 of average monthly pay, for each month of insurance.
  - (d) An insured person with fewer than 24 months of insurance is not entitled to the retirement pension, but rather to a single benefit equal to 10 times the annual amount of the retirement pension to which he would have been entitled by the duration of his insurance (article 38.3).
- (ii) Entitlement to the disability pension
- (a) An insured person who becomes disabled before reaching the age of eligibility for the retirement pension is entitled to a disability pension if he has at least 36 months of insurance or equivalent periods during the last 20 calendar quarters immediately preceding that in which he became disabled (article 40.1). Eligibility for this pension applies to a worker who, through illness or accident, suffers a permanent decrease in his physical or mental capacities making him unable to earn one third of the pay that a worker with the same qualifications could earn from his work (article 40.2).
  - (b) The disability pension takes effect either at the date the injury is sustained or the person's condition stabilizes, or upon expiry of a period of six months following the disability, if in the opinion of the physician appointed or approved by the Institute the disability is likely to last for at least another six months (article 40.3).
  - (c) The disability pension is suspended if the beneficiary engages in any substantial paid or money-earning activity. It is eliminated at the date on which the beneficiary is no longer deemed to be disabled within the meaning of article 40.2. It is replaced by a retirement pension of the same amount when the beneficiary reaches the age of eligibility for the retirement pension.
  - (d) The amount of the disability pension is calculated according to the same rules as the retirement pension, subject to the following: average monthly remuneration is calculated by dividing by 36 the total remuneration on which the applicant paid contributions over the last 36 months of insurance. If the insured person has fewer than 36 months of insurance, the average monthly remuneration is calculated by dividing by the number of months of insurance the total remuneration for which the applicant paid contributions since the beginning of his employment (article 45.7).

- (iii) Entitlement to the survivors' pension or allowance
- (a) Upon the death of the holder of a disability or retirement pension or of an insured person who, at the time of his death, would have been entitled to a retirement pension or, if he was incapacitated, to a disability pension, his successors are entitled to a survivors' pension or allowance.
  - (b) The survivors are the monogamous widow and unmarried dependent children. The monogamous widow must not be divorced or separated, and she must have been married to the deceased for at least six months before his death. This provision does not apply in the case of accidental death, where the marriage must simply precede the accident (article 41).

144. The scope of social security coverage in the DRC extends to the general regime established by the organic decree-law on social security described above, to protection supplementary to that regime provided by the Labour Code for healthcare and maternity services, and to the special regimes organized by specific laws applicable to civil servants, magistrates, secondary and higher education personnel, persons engaged in scientific research, parliamentarians, former presidents of the Republic, and the mutual coverage provided by the decree of 15 April 1958. Social coverage is as follows:

- (a) **Supplementary protection under the Labour Code: this requires the employer to provide:**
  - (i) The means of health to the worker and members of his family in case of illness, accident, pregnancy or childbirth, and even if the labour contract is suspended by force majeure (article 145 of the former Labour Code, article 178 of the new Labour Code). Benefits include medical, dental, surgical, pharmaceutical and hospital care, necessary travel costs, eyeglasses, orthopaedic and prosthetic devices, excluding dental prostheses.
  - (ii) Maternity benefits paid to a female employee in case of pregnancy and childbirth entitle the woman to two thirds of her pay in cash as well as maintenance of her contractual benefits in kind.
- (b) **Special regimes**
  - (i) Law 81-03 of 17 July 1981, the State civil service statute, grants:
    - (a) To civilian and military personnel:
      - Family allowances for the wife and their dependent children while they are working (article 39 and 41) and, when they enter pensioned retirement, for their dependent children, provided they were born before or within nine months after the definitive termination of work and that they are not receiving these same benefits by virtue of another social security regime (in the case of employment subject to the Labour Code and covered by the INSS).
      - Medical expenses and the health care stipulated in article 42 are payable in case of occupational illness or accident, pregnancy, childbirth and their consequences. The agent, his wife and his dependent children are eligible for medical expenses, health, surgical, obstetrical, dental and

hospital care as well as medications and orthopaedic and prosthetic devices, except for dental prostheses.

- In case of maternity, a female agent is entitled to 14 consecutive weeks of leave, eight before and six after the birth, and receives full pay and other social benefits granted to working agents (article 25).
  - The disability pension, if the disability results from a work accident or occupational illness, regardless of the amount of time the beneficiary has worked. If the accident was not a work accident or the illness not an occupational illness (the assessment being left to the medical disability commission), the beneficiary must have worked for at least 10 years. In the first case, the disability pension is equal to three quarters of the last year's employment earnings, plus 1/60 for each year worked beyond 10 years. In the second case, it is calculated on the basis of 1/60 of the last year's employment earnings for each year worked.
  - The retirement (old-age) pension for normal end of service (55 years of age or 30 years of service or 20 years if there has been professional inadequacy confirmed in the ratings for the last three years, article 73 and 82). This is calculated as 1/40 of the amount of the last year's pay.
- (b) To the survivors of the agent: the agent's death creates certain rights for the widow and for the unmarried children who were dependents of the agent. This includes primarily the right to family allowances, and the survivors' benefit for the widow and the children:
- A widow who has unmarried children who were dependents of the deceased agent is entitled to family allowances (article 85).
  - The widow or the children of the deceased agent are entitled to the death allowance.
  - The survivors' allowance is awarded to the widow if the death occurred in the course of the agent's career and if the agent was receiving a retirement or disability pension (article 88). The amount of the allowance is 25% of the husband's last yearly earnings, in the first case, and 50% in the second case. She loses these rights upon remarriage.
  - Children of the deceased agent are entitled to the orphans' allowance until the age of 18 (article 89). The annual amount of the allowance is 4% of the agent's last yearly earnings if he died in the course of his career, and 10% if the agent died after becoming eligible for the pension (article 90).
- (ii) Law 010-2002 instituting the special pension for former presidents of the Republic and the survival allowance for the spouses and orphans of former presidents of the Republic and deceased national heroes;
- (iii) Law 88-002 of 29 January 1988 organizing social security for parliamentarians and their survivors. The allowances include medical care and maternity allowances, occupational accident and illness allowances, old-age allowances, and survivors' allowances.
- (iv) Ordinance-Law 88-056 of 29 September 1988 organizes social security for civilian and military judges and for prosecuting magistrates and their

successors. The benefits include family allowances, health care and maternity allowances, occupational accident and illness allowances, old-age allowances, and survivors' allowances.

- (v) Ordinance 81-160 of 7 October 1981 protects higher-education, university and scientific research personnel and their successors. The allowances include family allowances, health care and maternity allowances, occupational accident and illness allowances, old-age allowances, and survivors' allowances.

145. It should be noted that the social security granted under the various special regimes is not the same for all beneficiaries: there are some specific differences (for example, family allowances and retirement pensions to magistrates and to higher-education and scientific research personnel).

146. However, because of economic difficulties and the lack of financing, which is the exclusive responsibility of the public treasury, the various regimes described above are not working properly. Consequently, in parallel to the official regimes, people have developed other mechanisms to protect themselves through mutual insurance associations (*mutuelles*) based on the decree of 15 April 1958 to this effect. Pursuant to the first article of the decree, these associations are to pay allowances to their members in case of illness, accident, disability, maternity, old-age and death. But this system of mutual insurance is not working. For this reason, it is supplemented by family or neighbourhood support arrangements, or by borrowing to finance medical care and cases of death.

147. The other form of protection supplementary to social security involves extended social assistance such as the aid that the public authorities grant to persons with insufficient resources. This assistance expresses society's duty of solidarity towards the least fortunate. In the absence of legislation governing social assistance, this is done through the Ministry of Social Affairs, the mandate of which is to provide all forms of social assistance to the needy. The beneficiaries are orphaned or abandoned children, the elderly, the disabled, the sick, disaster victims, and the unemployed. Any other person who qualifies as indigent is entitled to reduced rates in public health establishments. But they still have problems acquiring pharmaceutical products. In any case, it must be noted that in the case of death, these persons become the responsibility of the Ministry of Social Affairs.

148. Groups not covered by social security are those working in the informal sector, civil servants and military personnel, whose pension system provided by law is not operational because of budgetary constraints.

149. Discrimination between women and men is prohibited, and in observance of the principle of gender equality the social security regime is the same for all.

150. There are no explicit measures to ensure that underprivileged groups enjoy the right to social security. Providing them with protection against the risks described above is rendered difficult by the budgetary constraints facing the Congolese State.

151. In the wake of the generalized economic crisis, the government, with help from the international community, intends first of all to relieve the employment situation through productive, job-creating investments that will above all make it possible to finance the social security system.

## Article 10

152. With respect to the protection of children, the DRC submitted its initial report on implementation of the Convention on the Rights of the Child (CRC/C/3/add. 57) on 28 May 2001, and its second periodic report was published as document CRC/C./COD/2.

153. In the DRC the "family" results from a marriage contracted pursuant to article 40 of the Constitution, which grants every individual the right to marry a person of his or her choice, of the opposite sex, and to found a family. The family is the basic unit of the human community and is organized so as to ensure its unity, stability and protection. It is placed under the protection of the public authorities.

154. Articles 442 to 444 of the Family Code provide that marriage creates the household and that the term "household" designates the spouses, their unmarried dependent children, and all those persons whom the spouses have an obligation to support, on the condition that those persons live regularly in the conjugal home and are registered in the family record. The husband is the head of the household. As can be seen, the household is synonymous with the family in its restricted meaning.

155. Congolese society distinguishes between the immediate or "restricted" family and the "extended" family, which comprises:

(a) Children of the *de cujus* born in the marriage and those born outside wedlock but whom he has recognized, as well as the children he has adopted, who form the first category of heirs to the succession;

(b) The surviving spouse, the fathers and mothers, and whole-blood, consanguine or uterine brothers and sisters, who form the second category of heirs;

(c) Paternal or maternal uncles and aunts, who form the third category of heirs.

156. As a general rule, the age of majority in the DRC is 18 years, as established in article 4.1 of the Constitution and in article 219 of the Family Code, which specifies that a minor is an individual of either sex who has not yet attained the age of 18 years.

157. Article 352 of the Family Code sets the age for contracting marriage at 18 years for men and 15 years for women. However, paragraph 2 of that article provides that a court may grant age exemptions for serious grounds. The court may issue such a decision at the request of any person who has a legitimate interest.

158. With respect to "emancipated" children, article 357 of the Family Code provides as follows: "A child, even if emancipated, who has not attained the age required for marriage may not contract marriage without the consent of its father and mother. If either the father or mother is deceased, absent, or not in a position to declare his or her will, or is deprived of parental authority, the consent of the other spouse shall suffice. In the absence of the father and the mother, the child must obtain the consent of its tutor, who must first obtain the opinion of the family council".

159. Apart from family allowances, which are generally accorded to private-sector workers, there are no other forms of family assistance.



160. As noted in paragraph 153 above, men and women have the same right to contract marriage freely and to found a family. Article 334 of the Family Code makes this clear: both the Constitution and the Family Code guarantee the formation, maintenance, consolidation and protection of the family in the DRC.

161. There are however certain practices that exist outside the law, reflecting the persistence of ancestral customs, in particular those requiring the man to marry the daughter of his paternal aunt, i.e. his first cousin, and others obliging the widow to marry the younger brother of her deceased husband. These customs are disappearing, thanks to evolving mentalities.

162. Congolese legislation facilitates family formation through the institution of marriage, enshrined in article 40.1 of the Constitution and articles 330 to 336 of the Family Code.

163. Congolese law protects the family through these provisions and contributes to its maintenance and its consolidation, pursuant to article 40.3 of the Constitution: "The care and education of children constitutes a natural right of the parents, and a duty that they must exercise under the surveillance and with the assistance of the public authorities."

164. In legal terms, the State protects families without distinction or discrimination, but the country does not yet have a coherent policy of assisting families to raise and support their children: in this, no class of families is privileged, for there is no State assistance at all.

165. To fill the gaps with respect to enjoyment of the rights indicated above, the government, through the Ministry of Planning, adopted a Poverty Reduction Strategy Paper (PRSP), which summarizes multisector programmes including those for combating ignorance in the matter of families' social rights and for strengthening the capacities of the State to intervene.

166. When it comes to the protection of maternity, article 128.2 of the Labour Code defines its scope as follows:

"Maternity may not constitute a source of discrimination in employment. In particular, a female job applicant may not be asked to take a pregnancy test or to submit a certification that she is or is not pregnant, except for work that is wholly or partially prohibited for pregnant or nursing women, or that would pose a risk to the health of the woman or child."

167. Article 129 of the Labour Code provides that "any pregnant woman, upon medical confirmation of her condition, has the right to terminate the working contract without advance notice and without paying any compensation for breach of contract. Women enjoy the same right for eight weeks after childbirth."

168. The total duration of maternity leave and mandatory post-natal leave is governed by article 130 of the Labour Code.

169. Article 132 also deals with this issue in the following terms: "A mother who nurses her child is entitled in all cases to two half-hour breaks in the working day for breast-feeding. These breaks are paid as working time."

170. According to Article 25.2 of the State civil service statute, "a female agent is entitled to maternity leave. The duration of maternity leave is 14 consecutive weeks, eight before and six after the birth. Leave is granted upon presentation of a medical

certificate indicating the probable date of delivery. However, a female agent who has taken maternity leave may not claim reconstitution leave in the same year.”

171. Women are entitled to cash allowances, medical assistance and other social security benefits pursuant to article 130.2 of the Labour Code, which provides: "During this time, whether the child lives or not, the female employee is entitled to two-thirds of her pay and to maintenance of benefits in kind."

172. These benefits have evolved over time in the following manner: the former Labour Code granted pregnant women eight weeks of maternity leave before childbirth and six weeks thereafter. By contrast, the new Labour Code grants six weeks before childbirth and eight weeks afterwards, and benefits are regulated in accordance with article 130.2 cited in the previous paragraph.

173. It must be recognized that there are in the DRC groups of women who do not benefit from any form of maternity protection or who are clearly disadvantaged. These include:

(a) Female victims of divorce or family breakdown caused by various factors including migration of the husband to the mining regions, and forced displacement in conflict zones. According to a pilot study on risks and vulnerability in the DRC (report of 31 October 2003), a third of these women received no medical attention during pregnancy.

(b) Women in "difficult situations", in particular child mothers, widows, victims of war-related divorces, victims of rape and violence, prostitutes etc.

174. The pilot study referred to above notes some governmental and nongovernmental provisions as practical measures of maternity protection. On the government side, there are very few mechanisms that target vulnerable women. Available interventions focus on Congolese women in general and relate to reproductive health, training in income-generating activities, literacy, and the overall advancement of women's role and status in Congolese society, medical assistance and psychological rehabilitation for female victims of rape and violence, legal assistance for women in difficult situations, help to women who are separated because of war in relocating their husbands, etc.

175. When it comes to protection and assistance for the young, the Constitution (article 42) and the Labour Code of 16 October 2002 (articles 125, 126, 133 and 137.2) deal with this question.

176. 15-year-olds in the DRC are allowed to perform only light and healthy work as determined by an exception granted by the Minister of Labour. Under 15 years, the law does not authorize any work.

177. Further to what was said about child labour in paragraph 86 of this report, the number of children performing paid work and their age group, as well as those employed by their family and domestic chores or in farming or family enterprises, is known from the national survey report on the status of women and children MICS 2/2001, which notes the following:

(a) Ten percent work for a person outside the household, and of these 8% are not paid. Half of the children perform housework, and 7% of these spend four hours or more at these tasks each day. Slightly more than one child in 10 works for the family and 4% of children work for their own account.

(b) On average, it is children between 5 and 14 years who perform such work as meal preparation, wood and water retrieval or housecleaning. These tasks generally form part of the framework for socializing children, particularly girls, in light of their future responsibilities as wives and mothers.

(c) Overall, more girls work than boys (25% versus 22%). They are more than twice as likely to spend four hours or more at domestic chores, while boys are slightly more likely to work for their own account or to do paid work for third parties. It is essentially children between 10 and 14 years who work. According to that survey, those working for their own account do so for 13.4 hours a week. Some of them are engaged in farm work (37% of cases), others in small trade (31%), in such activities as working with precious stones (3%), handicrafts (7%) or trades such as shoe repairs, shoe shining or car washing. Moreover, children who perform work of any kind for non-members of the household will devote on average 11.1% of hours to these tasks.

(d) Rural children are more likely to work than those in the cities (26% versus 19.8%), with the exception of unpaid work for third parties (8% in both settings).

(e) The proportion of working children is highest in the provinces of Maniema (34%), Nord-Kivu and Équateur (30%), and lowest in Kinshasa (12%). A greater number of children perform paid work in Nord-Kivu (5%) and Sud-Kivu (4%). Children are more likely to be working for their own account in Maniema and Bandundu (9%), as well as in Équateur (7%). Nord Kivu also stands out for the high proportion of children doing housework for four hours or more a day (20%).

178. Children and young people who have no measure of protection and assistance or who are clearly disadvantaged vis-à-vis the majority in this regard are referred to as "children in difficult situations".

179. According to MICS2/2001, nearly 60% of the Congolese population is 19 years or younger (some 31 million individuals), distributed evenly between boys and girls. Of these young people, 60.1% live in rural areas and 57.7% in the cities. The category of children in difficult situations covers the age bracket from 6 to 15 years and concerns in particular children living away from their biological family and orphans who, according to UNICEF, are the most vulnerable.

180. These children can be classified into three main subcategories:

(a) Abandoned/street children. This subcategory also includes "witch" children, orphans, children who live in the streets and are often exploited in abusive work, children in conflict with the law, and in particular the those in detention, displaced children, etc.

(b) Children with physical, sensory, motor or mental handicaps;

(c) Children involved in armed conflicts (as soldiers and auxiliaries).

181. The specific situation of each of these subcategories is as follows:

(a) The situation of orphans: one of the greatest risks that throw children into the street is the premature loss of one or both parents. In the DRC, orphans represent around 10.7% of the child population. Among them, some 34% or 937,000 are AIDS orphans:

- (i) According to MICS2/2001, fatherless orphans represent 6%, motherless orphans 2%, and those who have lost both parents 1%. According to the same source, orphans are more numerous in provinces affected by war and armed conflicts (for example they represent only 4% in the province of Bas-Congo). It should be noted that in provinces not affected by war and armed conflicts, orphans who are not in the street will be living either with one of their parents or with members of the extended family, or in foster families. According to nongovernmental organizations involved, 80% of these children are accused of witchcraft in their foster families, by the husband and in particular by the wife of a remarried father.
- (ii) Children thus accused are generally beaten, mistreated, sexually abused (especially girls), or interned with religious sects where they suffer physical and mental torture to induce them to confess their so-called witchcraft. In the end they will run away and find themselves in the street or in institutional shelters.
- (iii) Impunity: it is reported that people who mistreat children or abandon them to the street run no risk of any sanction by the community or the government, in the absence of a legal basis for punishing acts such as accusations of witchcraft.

(b) The situation of girls and boys abandoned or deprived of their family setting. According to NGO estimates, some 40,000 children in the DRC are living in the streets, and 15% of them are girls, who are more vulnerable to all risks. The most severe risks facing them are malnutrition, lack of healthcare, missing or dropping out of school, abusive work, substance addiction, rape and sexual abuse, HIV/AIDS infection, violence and mistreatment, and rejection for accusations of witchcraft.

(c) The situation of children with handicaps: according to the MICS2/2001 report, 2% of children 15 years and younger suffer some handicap: 1.6% live in the cities and 2.1% in rural areas. The main risks to which these children are exposed are:

- Social rejection and stigmatization.
- Little or no education or vocational training.
- Illiteracy.
- Lack of employment.
- Disease.
- Indigence and survival through prostitution.

182. All these groups of children are advised of their rights through outreach and awareness campaigns targeted at:

- (a) Children in difficult situations, with the help of:
  - Local child protection committees and community-based rehabilitation as a mechanism for preventing and attenuating children's risks of vulnerability.

- Working with children and not for children, i.e. having the child participate in the entire process of reintegration as the principal player alongside teachers and parents, while avoiding repressive practices.
- Establishment of neighbourhood drop-in centres or "listening posts" staffed by volunteers who stress psychosocial counselling, needs identification, literacy and vocational training.

(b) For persons living with handicaps:

- Organizational and institutional support for activities targeting these persons.
- Taking account of the major problems of educational integration and medical care in interventions to help the handicapped.
- Support for existing local committees that work with the handicapped.
- The weak points of these measures lie in the fact that the State provides very little targeted assistance for vulnerable groups.

183. The case of children in difficult situations has deteriorated in the wake of the war and ethnic conflicts, which have made these children more vulnerable. Moreover, the persistent economic crisis is causing their numbers to increase.

184. To overcome these weaknesses, the government plans to institute a mechanism of social protection, the purpose of which is to develop a strategy of assistance for target groups, through projects sponsored by care organizations or local executing agencies.

185. One of the strong points of these measures is the existence of the National AIDS Programme, which is the only government mechanism for coordinating efforts to combat HIV/AIDS.

186. These measures run up against difficulties of a general kind, in particular:

- (a) the particularly hostile political and economic context in the DRC;
- (b) poor governance and a political transition that has dragged on since the early 1990s;
- (c) an economic fabric that has been torn asunder by looting and destruction in the wake of recurrent wars and ethnic conflicts.

187. As to the role of international assistance in guaranteeing effective exercise of the right set forth in article 10, special tribute should be paid to the international organizations based in the DRC that are working to reduce, attenuate and prevent risks. These include:

(a) UNFPA (United Nations Population Fund) which, in partnership with the World Health Organization, UNICEF, USAID and the International Committee of the Red Cross, is active in reproductive health, family planning and the fight against sexually transmitted infections (STI) and HIV/AIDS through the National Reproductive Health Programme (PNRS) of the Ministry of Health.

(b) UNDP (United Nations Development Programme) which has for the last two years supported the National Programme for the Advancement of Congolese Women (PNPFC) launched by the Ministry for the Status of Women and the Family.

(c) The World Bank, which has provided:

- financial support to the Multisector Emergency Rehabilitation and Reconstruction Programme (PMURR);
- financial support for creating the National Programme to Promote Mutual Health Insurance (PNPMS) within the Ministry of Health.

(d) UNICEF, which is active in the primary school enrolment programme for street children.

(e) Save the Children, an NGO working with the government in the programme to combat the phenomenon of “child witches.”

## Article 11

188. The goal of achieving the right to an adequate standard of living has receded progressively for more than two decades, as a result of the circumstances underlying the economic crisis gripping the Congolese economy and the collapse of modern employment, including in particular the fraying of the economic fabric, the generalized decline in industrial and agricultural output, poor management of public enterprises, lax budgetary policy, poor governance, wars, rebellions and looting.

189. Today, despite its immense human and natural resources, the DRC ranks among the poorest countries in the world. Several indicators place the country among the most destitute of sub-Saharan Africa. Nearly 80% of its population is surviving at the limits of human dignity, on less than US\$0.20 a day. It must be recognized that the resulting institutional instability, looting and interethnic conflicts have plunged the DRC into a multifaceted crisis, one effect of which is to aggravate poverty and drive down living standards for the Congolese people (PRSP 2004, p. 5. §§3 and 4).

190. This impoverishment is reflected in a GDP per capita estimated at around \$74 in 2001, and an income per capita of \$1.31 a day in 1973, \$0.91 in 1974, and only \$0.30 in 1998. In 2002, daily income was still less than a dollar, below the World Bank's poverty threshold.

191. According to human poverty indicators in grassroots communities, the human poverty index is 38.5% in the cities and 43.3% in the countryside. In the provinces, the human poverty index (HPI) reveals great disparities: the Orientale province, for example, is the poorest, with an HPI of 65.1, followed by Maniema with 40.5. The provinces of Sud-Kivu with HPI of 31.6 and Kinshasa with 32.7 are the least poor.

192. Within the provinces, the HPI varies significantly among communities. This is the case in the rural community of Kasenyi/Munigi in Nord-Kivu, with an index of 47.9, where poverty is intense in comparison to the urban community of Keshero in the same province, with an index of 26.4. In Équateur, the rural community of Gbau has an HPI of 36.7, while the urban community of Panoma has an index of 56.6 (Ministry of Planning, Study on Poverty Reduction in Grassroots Communities, PRSP 2004, p. 82).

193. Measured against the US\$30 threshold for average monthly expenditure per person, poverty afflicts more than 80% of urban dwellers, and the general trend in the country has deteriorated further (PRSP, page 11).

194. The per capita GNP of the poorest 40% of the population in 2005 was \$58.8, i.e. GDP of \$87,800,000 multiplied by 40 and divided by the total population, estimated at 59,700,000 (Central Bank of the Congo, *Condensé d'informations statistiques* no 52/2005., page 1).

195. In fact, the DRC has no rule of its own for determining the poverty threshold, and relies on the World Bank yardstick, which is one US dollar per adult per day.

196. The index of the physical quality of life is measured in terms of life expectancy at birth, which was 45.8 years in 1975 and dropped to 41.4 in 2004 before recovering slightly to 41.8 in 2005, still below the 1975 level (UNDP Human Development Report 2004, pp. 142 and 171). It is also measured by the infant mortality rate, which was 129 per 1000 live births in 2002, and by the maternal mortality rate, which was 950 between 1985 and 2002. These are the characteristic of the poverty caused by the low level of per capita income.

197. In terms of nutrition, the Ministry of Planning reports that malnutrition remains a great public health problem: 16 million people, or 33% of the population, were facing serious food shortages following the prolonged displacements caused by the war, as well as by isolation, lack of market outlets, the disruption of supply routes, and inflation. With respect to nutrition, MICS2 cited above (pages 38, 39 and 40) describes the food security situation in terms of these variables: existence of food stocks, i.e. food reserves, a food-growing plot or money to feed the family, and the number of meals consumed per day.

198. With respect to food reserves, 66% of households say they have food reserves, i.e. a stock of foodstuffs, a plot for growing food, or money. The proportion is highest in rural areas (76%), where production is based essentially on farming. In the cities, the situation is less favourable, and more than half of city dwellers (56%) have no food reserves. In Kinshasa, three-quarters of the inhabitants are living hand to mouth: they have neither food stocks nor the money to buy food. Food security is also precarious in the following provinces: Sud-Kivu (66% of households have no food reserves), Maniema (47%), Équateur (37%), Kasai Oriental (36%) and Katanga (35%).

199. In terms of the number of meals per day, one of the food supply indicators, it must be noted that, while it cannot take into account qualitative aspects such as the freshness, cleanliness and nutritional quality of food, it can be used nevertheless to appreciate the primary objective of any person, which is to feed himself. The Congolese people eat once a day, and their meal is not nutritionally balanced. According to MICS2, 27% of households have only one meal per day, and 59% have two. In other words, the majority of the population, or 86%, eats less than three meals a day. In the cities, 91% of households have to forego one meal a day. In Kinshasa, that proportion is 86%. The survey shows that 2% of Congolese eat less than one meal per day, and thus go without eating on some days. The situation is especially alarming in Sud Kivu, in Équateur and in Orientale province, where farming predominates but where 5% of households have less than one meal a day, according to the National Statistics Institute (INS).

200. Nutritional studies. The MICS2 survey reveals an alarming degree of malnutrition in the DRC:

(a) The prevalence of chronic malnutrition (or retarded growth) is 38%, and of these people 20% show severe growth retardation; the prevalence of acute

malnutrition is 13%, of which 3% suffer it in its severe form; taking into account cases of oedema, the acute malnutrition rate is 16%, and 6% in its severe form, and 31% of children are underweight, 9% severely so. Acute malnutrition has worsened, and growth retardation and weight deficiency in children have remained steady.

(b) The nutritional status of mothers also remains a matter of concern: 17% are malnourished, and 2% are obese.

(c) While the practice of breast-feeding is almost universal, and is pursued until 20 to 23 months, only 29% of infants under four months and 24% of infants under six months are fed exclusively at the breast. Infants are introduced very early to foods other than maternal milk. The breast-feeding rate for children 12 to 15 months is 92%, but only 52% for children from 20 to 23 months.

(d) The proportion of families consuming iodized salt is 93%.

(e) The proportion of women taking vitamin A supplements in the weeks after childbirth is 20%. The proportion of children ages 6 to 59 months given supplements in the six months preceding the survey was 12%.

(f) Medical checkups for preschool children are still rare.

201. The same survey shows discrepancies in the nutrition indicators examined, varying by province, area of residence, household wealth, and educational level of the mother. Generally speaking, malnutrition afflicts children in poor households, rural children and children born to uneducated women more than those in other categories. The gender of the child seems to make very little difference.

202. The survey notes that, with respect to nutrition levels for children and women, none of the targets set for the end of this decade has been achieved, except for the elimination of iodine deficiency, where the country has made significant progress through the consumption of iodized salt.

203. With respect to surveillance measures, the government has designed a set of programmes as part of the PRSP, including:

(a) Improving agricultural productivity and food security by increasing storage capacity and moving farm products to local and urban markets, for which the country is calling on its development partners and is combining the following actions:

- Raising public awareness through community radio broadcasts.
- Training extension workers for rehabilitating agricultural infrastructure.
- Motivating agricultural extension workers.
- Implementing projects in partnership with FAO and WFP.
- Special broadcasts to publicize improved farming techniques and methods.
- Seed multiplication by the National Seeds Service (SENASEM) of the Ministry of Agriculture, which is responsible for distributing seeds, fertilizers and inputs to seed multipliers with the help of the World Bank.



(b) Combating malnutrition. The government has assigned this responsibility to the Ministry of Social Affairs, with which UNDP and NGOs will cooperate.

204. Nevertheless, measuring the food situation in terms of the percentage of underweight children, the PRSP 2 study (page 85) mentions that fewer than 25% of grassroots communities are poor in the majority of provinces, except in Bandundu (30%) and in Kasai Oriental (25%). Overall, 18% of communities are food-poor. This document (PRSP 2 pp. 85 and 87) gives unidimensional indicators of food poverty for each province: Kinshasa (14.3%), Bas Congo (13.9%), Bandundu (30%), Équateur (21.4%), Province Orientale (17.8%), Nord Kivu (10%), Sud Kivu (11.1%), Maniema (22.2%), Katanga (16.7%), Kasai Oriental (25%), Kasai Occidental (9.1%) and for the country as a whole the average is 18.2%.

205. Apart from the war that some provinces have experienced, the effects of which have made food less available, the government has never followed a policy that would deny access to food for any portion of the population or any given province.

206. To assist persons displaced by war, the government launched a demobilization and reintegration programme between 2002 and 2006, which was pursued in three phases:

(a) From September 2001 to the end of February 2002, it took care of 3,000 vulnerable persons.

(b) From April 2002 to April 2005 it assisted 30,000 vulnerable persons, of whom 8000 were child soldiers awaiting demobilization and 22,000 were widows and orphans of combatants.

(c) From May 2005 to the end of the programme it worked with 100,000 persons awaiting demobilization and reintegration into civilian life, whether they were vulnerable or not (PRSP 1, page 33).

207. With respect to measures taken by the DRC to improve the situation, several projects have been designed in partnership with the FAO. We may mention agrarian measures now underway, motivation of agricultural extension workers, training of agents for rehabilitating agricultural infrastructure, distribution of land to persons displaced by war, raising public awareness through community radio broadcasts, and monetary measures to stabilize food prices. To this we may add the creation of the National Service for the production of staple foods: manioc, corn, rice, and the training of extension workers, as well as creation of the Strategic Reserves Service, which was unfortunately disrupted by the 1998 wars.

208. Nutritional knowledge and principles are being publicized through the audiovisual media in specialized broadcasts over official, private and community radio stations.

209. The government plans to take the following steps toward agrarian reform, involving farming, livestock and fishing:

(a) Support for the organization of professional associations by farmers, livestock raisers and fishermen to encourage participation, appropriation and permanence in development efforts.

(b) The development of savings banks and local financial services (microcredit) to meet the specific needs of rural activities.

- (c) Support for installation of units producing farm inputs.
- (d) Promotion of extensive family-style fish rearing.
- (e) Strengthening the capacities of farmers, livestock raisers and fishermen by training trainers.
- (f) Promoting women's access to land, credit, agricultural inputs and training.
- (g) Harmonizing land ownership laws with existing uses and customs and the needs of users, particularly poor people, to help them acquire assets and other factors of production.
- (h) Promoting support services for productive activities: building trades, handicrafts etc.
- (i) Enhancing agricultural productivity and food security by increasing storage capacity and moving farm products to local, urban and frontier markets.
- (j) Reviving activities in the agricultural research centres.

210. In contrast to minerals, logs, coffee, tea, cocoa and palm oil, which the DRC produces and exports, corn and manioc are produced only for domestic consumption. The country imports all its rice, wheat flour, fish and canned food.

211. Right to adequate housing. The housing and accommodation problem affects both urban and rural areas (PRSP, page 15 §29). The national housing survey and the household socioeconomic profiles (1999) reveal poor housing conditions (overcrowding, lack of facilities, unhealthy dwellings, etc.) and sanitary conditions (few latrines are hooked up to public sewer systems, there are no public lavatories, informal garbage disposal etc.). In rural areas, dwellings built using traditional technology (straw huts, earth floors, walls made of planks or leaves) are fragile, tiny and unhygienic.

212. According to the national housing action plan prepared by the National Unit for Rehabilitation of Infrastructure and Promotion of Housing (CNR-Habitat, Ministry of Public Works, Regional Planning, Urban Development and Housing, page 15), the housing problem in the DRC is unabated, in rural and urban areas alike.

213. In rural areas, the problem is not so much the lack of housing but rather the need to improve hygienic conditions and living standards for people who have not benefited from modern technological progress. Dwellings rarely have water and electricity service. They are generally built of semi-durable materials, using traditional technologies, which explains why they are so small and fragile.

214. In the cities, existing habitat in all its components (dwellings, facilities, activities) is far from meeting people's needs or providing a minimum standard of comfort and cleanliness. Congolese cities are today overwhelmed by a housing crisis due essentially to the demographic explosion, the lack of a concerted housing policy, the huge discrepancy between construction costs and most people's purchasing power, and the administrative disarray. As a result, the urban fabric is in tatters.

215. The virtual absence of utilities infrastructure, the high cost of building materials, and the shortage of serviced lots have sparked urban sprawl into areas

where basic infrastructure and community facilities and services are totally nonexistent.

216. The MICS2 survey, in its housing section (page 21), provides statistics on the housing situation in the DRC from the point of view of overcrowding, quality of dwellings, and occupancy status.

217. According to the MICS2, overcrowding is measured by the number of bedrooms in the dwelling and the size or number of persons living in it, i.e. the members of the household. In the country as a whole, households have an average of 3.3 habitable rooms in their dwelling. The average number of rooms is slightly greater among wealthier households (4) than for the poorer ones (3). The average is two bedrooms for the country as a whole, while 41% of households have only one bedroom.

218. Overcrowding is slightly worse in the cities (46% of households versus 41% in rural areas), reflecting the difficulties that households face in building spacious houses. Access to housing remains a problem, particularly in the cities, primarily because of low incomes, high building costs, and the cash-strapped government's inability to mount housing programmes. To these factors may be added the disappearance of facilities that were in the past available to households through the National Housing Office (ONL), the National Home Savings and Loan Fund (CBECI) and employer-sponsored construction of staff housing.

219. The quality of housing can have a positive or negative effect on people's health. MICS2 indicates the materials used for the flooring, roofing, and walls of dwellings. For the country as a whole, 8 families in 10 live in dwellings where the floor is made of dirt or straw, and in rural areas nearly all families live in such dwellings.

220. According to MICS2, roofs are made of reinforced concrete, eternit, slate, tile, galvanized or recycled sheet metal, thatch or straw. The materials most frequently used for roofing are straw or thatch (66% of dwellings), especially in the countryside (86%).

221. In the cities, by contrast, galvanized sheet metal covers half the house roofs: this is the case for 63% of households in Kinshasa. The figure for Bas Congo is 36%, Sud Kivu 27%, Kasai Oriental 26%, and Nord Kivu 24%. Straw or thatch is used in the remaining provinces: the figure in Équateur is 91% of households, in Maniema 86%, in Bandundu 85%, in Orientale province 83% and in Kasai Occidental 80%.

222. Rammed earth is the material most frequently used for the walls of dwellings (39%), followed by adobe brick (29%), cement blocks and baked bricks (21%); planks or leaves are less frequently used in the country as a whole (11%). Rammed earth walls predominate in the countryside, while cement blocks and baked bricks are used in the towns. Adobe bricks are used in both urban (30%) and rural (28%) settings.

223. With respect to flooring and roofing, MICS2 reports that the situation has remained the same as in 1995. The proportion of households living in dwellings with dirt floors is still around 80%; 68% of households had straw-covered floors in 1995, and 66% in 2001.

224. As to occupancy status, nearly 9 rural families in 10 are owners of their dwelling, versus 5 in 10 in the cities, where the proportion of tenant households is 35%. But in nearly all provinces, two-thirds of households are owners.

225. People who are vulnerable or disadvantaged in terms of housing are more likely to be found in the cities: these are typically unemployed youth, commonly known as "street children", very poor couples, beggars, handicapped or paralytic persons, persons displaced by war living outdoors in the courtyards of big buildings, in the marketplace, and building corridors, under bridges, in the tombs of cemeteries, in train stations and in the ports. With no statistics available, however, their actual number is not known.

226. MICS2 mentions (page 36) that only 9% of people across the country have sewage evacuation systems (sewers, storm drains, cesspools), and these are generally households in the wealthiest category. In rural areas, sewage is evacuated into a pit or simply dumped on the ground or in the street.

227. That same study also reports that household garbage is disposed of through organized services (public or private), incineration, burial, and composting. 60% of the people surveyed have no hygienic method of disposing of household garbage; 46% of households simply throw it into unimproved garbage pits, 4% into the street, 2% into watercourses, and 6% elsewhere. This practice contributes to contamination of the household living environment. The proportion of households using no sanitary means of garbage disposal is 46% in the cities, and 63% in the countryside. The poorest households are less likely to use hygienic disposal methods (34%) than are the wealthier households (53%).

228. Measured in light of these methods of sewage and garbage disposal, the individuals and families most poorly housed (i.e. lacking the basic comforts: running water, garbage disposal, sanitary facilities, electricity, postal services) are those living in the overcrowded military and police camps, the overpopulated communes surrounding the central market of Kinshasa, workers' camps of public or private establishments, student quarters, etc.

229. Some people are living in squatter settlements and illegal housing, on railway rights-of-way, and around the peripheries of cities or suburbs.

230. There are no statistics on the number of evicted persons, but we may cite the case of persons who built dwellings in the Kinshasa Cemetery, which is still in use as a graveyard. They were summoned by the governor of the City of Kinshasa and ordered to evacuate the premises immediately. The shacks haphazardly erected in the cemetery were demolished on 12 August 2005.

231. Nearly all rental housing units in the DRC are privately owned, and leases are negotiated directly between the owner and the tenant. Each family is housed according to its means or its financial capacities. There is no government subsidization of housing.

232. The DRC does not regulate the housing market in detail. Leases are negotiated freely between the parties, pursuant to article 33 of the Civil Code Book 3, but there are some laws and regulations governing the right to housing, in particular law 81-003 of 17 July 1981 (the State civil service statute, article 43) and law 015/2002 of 16 October 2002 (the Labour Code, articles 138 and 139).

233. Housing construction by the informal sector and other local organizations is not widespread. We may mention the isolated case of "Habitat for Humanity", a Protestant religious undertaking. There are no government subsidies in this area. In the past, the ONL and CNECI built public housing, but these enterprises no longer exist.

234. For the last three decades no money has been earmarked in the national budget for housing (Central Bank of the Congo, Annual Report 2002-2003, page 88).

235. In terms of international aid for housing and human settlements, the UNDP and the Congolese government have launched a project of this kind, starting with rehabilitation of the headquarters of the Ministry of Urban Development and Housing.

236. To make up for this shortage of housing in the DRC the government, with the help of UNDP and the United Nations Centre for Human Settlements (UN-Habitat), has prepared a plan which includes an emergency programme and a medium to long-term programme within a national housing action plan of the Ministry of Urban Development and Housing (Summary Report 2001, page 36).

237. Among the problems encountered in giving effect to the rights set forth in Article 11 is the chronic decline in annual income per capita for the Congolese population as a whole, as described in paragraph 40 of the report. The causes of these low incomes are cited in paragraph 39. With respect to the right to housing, we must highlight the inadequacy of funding appropriations to the Ministry of Urban Development and Housing for the construction of low-rent social housing.

238. To give effect to the rights set forth in Article 11 of the Covenant, international cooperation is supporting government efforts through the Ministry of Urban Development and Housing, which will supervise the construction of 410,000 housing units throughout the country in the next two years. The Ministry recognizes that the country has a shortfall of 4 million social housing units.

## **Article 12**

239. The right to health is enshrined in article 47 of the Constitution, which declares: "The right to health and food security is guaranteed. The law shall establish the fundamental principles of the rules of organization for public health and food security."

240. The surveys conducted by WHO in the ENSEF Zaire (1995), UNICEF in MICS2/2001, and the health sector status report (ELS, Ministry of Health 1999) provide a reliable diagnosis showing that, overall, the coverage and functioning of the health system has deteriorated progressively over time, and more sharply since the early 1990s.

241. The Human Development Report for the DRC (UNDP 2000) indicates that the deteriorating health situation resulted from the institutional and operating weaknesses of a dysfunctional health system, reflecting a failed relationship between government and the poorly organized private sector, and the inappropriate allocation of material, financial and human resources.

242. This situation can be appreciated in the high mortality rate, especially among poor and vulnerable groups such as rural and peri-urban populations, women of

childbearing age, and children under five years, and the deterioration of the main health indicators (life expectancy at birth, all forms of malnutrition, HIV/AIDS seroprevalence rates).

243. This reflects the fact that most of the health districts are no longer functioning. Conservative estimates of the coverage of health facilities show that at least 37% of the population, or some 18.5 million people, have no access to any form of health care.

244. As a result, between 65 and 85% of childbirths are unassisted, and the maternal mortality rate is therefore high. The infant mortality rate in 2001 was 129 per 1000 births, and 138 in rural areas, while the mortality rate among children under five years reached 213 per thousand in 1998. The maternal mortality rate in 1995 was already too high, at 870 per 100,000 births, and it rose sharply in 2001 to 1289 per 100,000 births. Vaccination coverage is very low as well; the lack of financial resources remains a major problem for expanding routine vaccination in the country (Ministry of Planning, PRSP 1 2004, pages 13 and 14).

245. The country's national health policy can be traced over time:

(a) On the eve of independence, it was based on curative medicine, with medical and surgical centres and satellite dispensaries.

(b) Following the social and political upheavals of the 1960s, when access to healthcare was rare, a number of agencies began to experiment with community-based health policies, culminating in a health policy based on primary care.

(c) From 1978 until February 2001, health policy was driven by the basic goal of satisfying the health needs of the entire population, urban and rural. It targeted education about health problems and methods of combating them, the promotion of sound nutrition, maternal and infant protection, including family planning, combating epidemics, vaccinating people against infectious diseases, treating diseases and injuries, providing safe water, and basic sanitation measures and the supply of essential medications.

(d) The new policy of the government seeks to promote people's right to health by reinforcing mechanisms to ensure ethics in health, equity in the distribution of care, health services, community solidarity and a "human face" to health services, in order to guarantee access to a healthy life and allow people to be socially and economically productive (National Health Policy, Ministry of Health 2001, pp 3, 7 and 8).

246. As measures to implement programmes in this field, the government is committed to expanding the rate of access to care from 37 to 45% by the end of 2005, and to enhancing the quality of care. To achieve this objective, it is planning action in several areas:

(a) Generally, it will undertake the following actions:

- Allocate at least 15% of the national budget to the health sector.
- Rehabilitate health districts, especially in rural areas.
- Strengthen national and local capacities to combat diseases, etc.

(b) For combating HIV/AIDS and other sexually transmitted infections, the following actions are planned:

- Provide better information to the population in general, and to the most exposed groups in particular, about the HIV/AIDS epidemic and other STI, for an expanded response.
  - Awareness raising among at-risk groups to encourage responsible sexual behaviour.
  - Involving opinion leaders (traditional chiefs and religious figures) as well as the community in changing behaviour.
  - Strengthening national and international partnerships and coordinating sector strategies for combating HIV/AIDS and poverty.
  - Equipping health centres and referral hospitals with antiretroviral drugs, HIV tests, condoms and other inputs for better care. The use of generic drugs and tritherapy will be particularly encouraged.
- (c) To combat tuberculosis, the government is undertaking to:
- Conduct public awareness campaigns.
  - Provide health centres with tuberculostatic drugs, laboratory reagents and other diagnostic materials.
- (d) To combat malaria, the following actions are planned:
- Supply of antimalarial drugs (Pharmakina quinine).
  - Promotion of insecticide-impregnated mosquito nets.
  - Stepping up the anti-vector campaign.
  - Intensifying malaria awareness campaigns.
- (e) In reproductive health, the action plan calls for the following:
- Creating treatment centres for reproductive problems among youth and adolescents.
  - Improving the quality of healthcare for the poor, etc.
- (f) Vaccinations: the following actions are planned:
- Reinforcing the routine expanded programme on immunization.
  - Expanding and synchronizing national vaccination days.

(g) On the malnutrition front, efforts will focus on guaranteeing food security (PRSP 1, February 2004, pages 41 and 42).

247. The GNP of the Democratic Republic of the Congo, in millions of Congolese francs (FCG)) at current prices was 1,293,103.5 in 2001, and GDP for that same year was 1,407,026.4. In 2002, GDP stood at 1,923,210.3 million FCG, while GNP or GNI (gross national income) was 1,854,708.8 (Central Bank of the Congo, 2001 report, page 25, and 2002, page 29).

248. The national budget allocated to health in 2002 for current expenditures was 182,445,000 FCG (versus a forecast level of 304,752) and 51,213 for capital outlays (versus a forecast level of 568,176) for a total of 233,658,000 FCG (Central Bank of the Congo Report, pages 85, 86, 88 and 91).

249. The lack of details on the distribution of the national health budget makes it impossible to specify the percentage allocated to primary care. We may note, however, that as a result of the crises described above most of the health districts are in a state of abandonment, and the collapse of support activities (planning, training, supervision, evaluation, monitoring) has aggravated the inadequacy of health coverage and the inaccessibility of healthcare (Action Plan of the Ministry of Health 2004, p.12 §4).

250. According to MICS2, the infant mortality rate (the probability that a newborn will die before its first birthday) and the child mortality rate (the probability that a newborn will die before its fifth birthday) are a source of great concern. Survey data show that 126 children of every 1000 will not celebrate their first birthday. The child mortality rate stands at 213 ‰, meaning that nearly one in five newborns will not reach the age of five years. This places the DRC among the countries with the worst child mortality situation.

251. The same source indicates that child mortality is higher in the countryside. It is 243‰ in Sud-Kivu, in Équateur and in Orientale province. Generally speaking, the rate in Kinshasa is not as high as in the other provinces.

252. Mortality is also higher among children born to uneducated mothers and to the poorest families. Children in the wealthiest households have a mortality rate of 119‰, whereas those in the poorest households have a mortality rate of 248‰, or twice as high. The child mortality rate among boys (225‰) is higher than for girls (200‰). MICS2 concludes its survey of child mortality by noting that rates tended to rise slightly over the period from 1995 to 2001, from 190‰ to 213‰ (MICS2, page 61).

253. The terms urban and rural and other subdivisions (city, commune, province, district, territory, sector, *collectivité*, *groupement*, village, locality) as applied in the DRC correspond to territorial divisions. The Republic is subdivided into 11 provinces; the provinces in turn are subdivided into districts and cities; the districts into territories, the territories into chiefdoms (*chefferies*) or sectors; these in turn are divided into groupings (*groupements*) and these into localities or villages, while the city is subdivided into communes, and thence into neighbourhoods (*quartiers*) and finally into streets or avenues.

254. Access to safe drinking water. The MICS2 notes (page 32) that a person may be said to have ready access to safe drinking water if that water is available on-site or can be obtained within 15 minutes, or is at most 100 m from the person's dwelling.

255. About 95% of the rural population lacks ready access to safe drinking water. In every province, 70 to 90% of the population must walk more than 15 minutes or more than 100 m to find clean water. In rural areas, this places a particularly heavy burden on women, who are responsible for finding water.

256. In the cities, the proportion of the population with ready access to safe drinking water is high in Kinshasa (84%). In the other provinces, anywhere from 70 to 98% of the population must walk more than 15 minutes or further than 100 m to find clean drinking water. In rural areas especially, this places a particularly heavy burden on women, who are responsible for drawing water (MICS2, page 33).



257. Sewage evacuation facilities. The MICS2 notes, on page 34, that the immediate environment has a definite impact on people's health, and it stresses the use of hygienic toilet facilities. It considers such toilets to be those connected to the sewage system and flush toilets (1%), improved latrines – improved pit latrines (7%) and ventilated latrines (0.3%) – and covered traditional latrines (37%). In the country as a whole, 46% of people use hygienic toilets: 61% in the cities and 39% in the countryside.

258. Vaccination of children against diphtheria, whooping cough, tetanus, measles, poliomyelitis and tuberculosis. MICS2 mentions, on page 11, that goal 22 of the World Summit for Children deals with vaccination. The objective is to maintain a high level of vaccination coverage. As of the year 2000, at least 90% of children under one year should be vaccinated against these diseases. As vaccination coverage in 1995 was recognized as very low, the DRC had to make tremendous efforts between 1995 and 2000. Thus, before the age of 12 months, a child should receive BCG antigens (protection against tuberculosis), three doses of DTP (protection against diphtheria, tetanus and pertussis or whooping cough), three doses of polio vaccine, and one dose of measles vaccine.

259. Vaccination of children ages 12 to 23 months. MICS2 concludes that vaccination coverage rates for all antigens are fairly low: 53% for BCG, 46% for VAR, 42% for TOPV and 30% for DTP3. Nearly one child in five has received no vaccination. MICS2 also shows disparities between vaccination coverage of children in this age bracket, by place of residence (city, countryside, province), socioeconomic status (poverty level, mother's education level) and the child's sex.

260. MICS2 shows that vaccination coverage is high among children in wealthier families (45%), while in poorer households only one child in 10 is fully vaccinated against all the target diseases. The rate is high among children whose mothers have a high level of education, and also among urban children, but it is low in rural areas, where people are less aware of the benefits of vaccination for their children's health (MICS2/2001, pages 113 and 115).

261. Differences among provinces are significant. The vaccination rate is high in Kinshasa and in Bas-Congo, but is particularly low in the provinces of Miami, Équateur and Sud Kivu.

262. Life expectancy at birth in the DRC has declined steadily as a reflection of the collapse in living standards caused by very low incomes, lack of food security, and poor health conditions. According to the UNDP/DRC 2000 report, life expectancy at birth in 1995 was 52 years, falling to 50 years in 1999, 45 years in 2000, and 41.4 years in 2002. This decline reflects the precarious conditions in which the Congolese are living.

263. Life expectancy varies by place of residence: it is 55.9 years in Kinshasa, while elsewhere it is 51.9 in Bandundu; 47.2 in Maniema; 46.6 in Kasai Oriental; 45.4 in Bas Congo; 44.7 in Katanga; 44.4 in Kasai Occidental; 43.7 in Nord Kivu; 43.3 in Province Orientale; 42.7 in Équateur and 42.5 in Sud Kivu (MICS2/2001, p. 43).

264. With regard to the population who have access to qualified personnel for treatment of diseases and injuries and who can find 20 essential medications within one hour's walk or journey, the DRC has organized 306 health districts since 1985 and 515 in 2003 to ensure geographic and logistic accessibility to health care. These

are supposed to be functioning health centres able to administer primary care to the sick, with a nurse or a midwife on staff: however, only 280 of these centres are attended and, as reported in PRSP 1 (page 13), most of the health districts are in a state of abandonment. Conservative estimates of health coverage show that at least 37% of the population (around 18.5 million people) has no access to any kind of health care. The Ministry of Health has adopted as the coverage indicator the availability of healthcare within 5 km, and it estimates that 37% of the population has access to essential drugs (National Health Policy, February 2001, page 5).

265. The proportion of pregnant women with access to qualified personnel is given in the MICS2/2001 survey, which interviewed 12,407 women between the ages of 15 and 49 years, of whom 2,666 had given birth over the previous 12 months. The data show that slightly over two-thirds of pregnant women (68%) receive prenatal care from qualified personnel. It must be noted that 27% of pregnant women do not seek prenatal care, and 4% consult an unqualified person (traditional midwives, trained or not).

266. Sixty-one percent of births are assisted by qualified personnel (doctor, nurse or midwife): 3% by a doctor, 20% by a nurse, and 3% by a midwife. Assisted childbirth coverage is higher in urban than in rural areas. As well, the education and poverty status of the woman has a strong influence on this factor (MICS2/2001, page 91).

267. The maternal mortality rate before and after delivery was 870 per 100,000 births in 1995, and rose sharply in 2001 to 1,289 per 100,000 births. MICS2 concludes that the maternal mortality rate is a cause of concern, for it is without doubt one of the highest in the Africa and in the world (PRSP page 13 and MICS2 page 61).

268. In light of the causes underlying the deterioration of socioeconomic conditions in the DRC and the collapse of the health systems, with the resulting generalized deterioration of health infrastructure, the distancing of facilities, and the high cost of medications vis-à-vis low income levels for the majority of inhabitants, there are no population groups that are clearly worse off: it is the entire population, or the majority, that is affected in its health situation, versus a privileged minority (MICS2/2001, page 98).

269. Aware of this deterioration, which has reduced the quality of health care and increased the incidence of HIV/AIDS and other endemic diseases, leading to very high mortality rates, the government has adopted the following health policy measures:

- Reform the health sector through reliance on private initiative and grassroots communities.
- Increase public access to quality healthcare from 37 to 45% by allocating at least 15% of the budget, in proportion to the importance of the sector.
- Strengthen national and local capacities to combat diseases.
- Rehabilitate the health districts, particularly in the countryside, and health research institutions (FONAMES).
- Ensure regular supplies of essential drugs, materials and other medical supplies for treating diseases.

- Improve the health card systems for registered beneficiaries and indigents.
- Exert strict control over the import and sale of pharmaceutical products.
- Reinforce the Expanded Programme on Immunization (EPI).
- Mobilize and train local people to maintain health facilities.
- Revive the local development and health committees.

270. There are also plans to increase access rates to health care by the end of 2005, by establishing priority areas for action, with the overall objective of giving poor people access to primary health care.

271. To reduce maternal and infant mortality rates and ensure the proper development of the child, there are plans to make prenatal, postnatal and preschool medical checkups and vaccinations mandatory for pregnant women, nursing mothers, and children to the age of five, as well as to revive maternity clinics for dealing with gynaecological, obstetrical and neonatal emergencies and to bolster mother-child health services (PRSP 1, pp. 41, 42, 49, 92 and 93).

272. To prevent, treat and combat endemic diseases (e.g. HIV/AIDS and other sexually transmitted infections) the government plans the following actions:

(a) Make more information available to the general public and to the most vulnerable groups in particular about the epidemic of HIV/AIDS and other STI.

(b) Raise awareness of the need for responsible sexual behaviour among at-risk groups.

(c) Involve policy makers, opinion leaders, business leaders, and the traditional and religious chiefs, as well as the general community, in mobilizing and managing local resources to change behaviour.

(d) Promote the social marketing of condoms.

(e) Strengthen national and international partnerships and the coordination of specific strategies for combating HIV/AIDS and poverty.

(f) Equip health centres and general hospitals with antiretroviral drugs, HIV tests, condoms and other inputs to improve the level of care.

(g) Rehabilitate the National Medico-Social Fund (FONAMES) to assist the victims and orphans of endemic diseases.

273. In the fight against tuberculosis, the government will focus on raising public awareness (through publicity posters and radio and TV broadcasts) and supplying health centres with tuberculostatic drugs, laboratory reagents and other diagnostic materials.

274. For preventing, treating and combating epidemic diseases, the government has taken steps against:

(a) Diarrhoea (the "dirty hands" disease):

- Through food and bodily hygiene measures.
- Through the use of oral rehydration therapy (ORT), which reduces deaths from diarrhoea. The Ministry of Health is promoting ORT through its programme to combat diarrhoeal diseases. ORT is

recommended for the prevention or treatment of dehydration, which is a major complication of diarrhoea and a cause of mortality among children suffering from acute diarrhoea.

(b) Malaria:

- Awareness campaigns about malaria and the use of impregnated mosquito nets.
- Introduction of a national anti-malaria programme by the Ministry of Health.
- Hygiene and cleanliness campaign in the countryside.
- Use of anti-malaria drugs.
- Strengthening the anti-vector campaign.

(c) Vaccinations: routine EPI coverage will be increased, and there will be more national vaccination days.

275. To prevent, treat and combat occupational illnesses, article 176 of the Labour Code requires employers to report duly confirmed workplace accidents and occupational illnesses to the National Social Security Institute and the responsible Labour Inspector, under the conditions, terms and time limits established by law and the social security regulations.

276. As preventive measures, article 2 of ministerial decree 013 of 4 August 1972 on workplace hygiene requires that "workplaces and other common facilities available to workers must be maintained in a constant state of cleanliness. The cleaning of these premises must follow procedures that will prevent the raising of dust, and must be done if possible outside working hours. Cloakrooms, toilets and other common facilities must be regularly disinfected."

277. To guarantee all health services and to provide the needed medical care in case of illness, the Ministry of Health has:

- Divided the national territory into 306 health districts, in 1985, to bring curative, preventive, promotional and re-adaptive healthcare within reach of the people.
- Created, in 2002, a national programme to promote mutual health insurance (PNPMS), to ensure access to health care, particularly for the most vulnerable population groups.

278. With these measures, the PNPMS has fostered the creation of 10 mutual health insurance associations in the city of Kinshasa, through awareness raising and training and through efforts to mobilize funding from selected donors.

279. When it comes to protecting the elderly (men and women aged 65 and over, retired public servants and retirees covered by the social security system) against rising healthcare costs, article 42 of the State civil service statute provides that retired public servants' medical expenses are payable from the public treasury. Despite this provision, the government is not in fact paying these expenses, because of its financial straits, although beneficiaries may use their health card to qualify for reduced fees in State medical centres. Persons covered by the social security regime are also entitled to medical and pharmaceutical care. Other persons are cared for by

the Ministry of Social Affairs in old-age homes, or by religious groups, NGOs, or the extended family.

280. With respect to measures to involve the community in planning, organizing, managing and overseeing primary health care, the government, having found that mortality rates are the highest in Central Africa as a result of declining living standards and the collapse of health facilities and services, is planning to support initiatives proposed by communities, in particular through:

- The revival of local development and health committees.
- Mobilization and organization of communities to maintain and rehabilitate health establishments and facilities.
- Rehabilitation of traditional medicine and scientific and professional training for traditional practitioners.
- Public awareness campaigns on techniques for preventing HIV/AIDS.

281. The government has taken various measures to educate the public about major health problems and ways of combating them and about the different programmes instituted (PNLMS, national tuberculosis programme), including:

- Radio and TV campaigns, posters and theatrical skits dealing with STI and HIV/AIDS, offering advice for combating them.
- Vaccination campaigns against childhood diseases (polio, measles, diphtheria) in the schools, and courses on sexual responsibility.

282. International assistance is playing a noteworthy role in giving effect to the right to health: United Nations agencies and international NGOs active in the DRC are offering their local partners many social protection services. For example, the United Nations Population Fund (UNFPA), in partnership with WHO, UNICEF, USAID and the International Committee of the Red Cross, is working in the area of reproductive health, family planning, and combating STI and HIV/AIDS through the National Reproductive Health Programme (PNSR) of the Ministry of Health.

283. These international agencies are also involved in:

(a) Medical assistance and psychological and social rehabilitation for victims of rape and violence against women.

(b) Lobbying against rape, violence and abduction of women and girls in armed conflict zones.

(c) Financing campaigns for the eradication of childhood diseases. For example, the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) is facilitating the transport of vaccines during the synchronized vaccination campaign for children ages 1 to 5 years in the provinces.

### **Article 13**

284. Free primary education was included among the guidelines of the national action plan to promote and protect human rights, developed in December 1999. That guideline was taken into account in the draft of the Congolese Charter on the Rights

of Man and the People adopted in June 2001, article 56.4 of which declared that education is compulsory and free to the end of secondary school.

285. Consistent with this guideline, article 43.4 of the Constitution provides that primary education is compulsory and free in public schools.

286. Framework Law 86-005 of 22 September 1986 on national education specifies that education is compulsory for all Congolese boys and girls from the age of 6 to 15 years, and that the obligation to attend school applies to every Congolese child entering the first year of primary school and ends at the age of 15 years, whether the child has completed school or not.

287. At the present time there are no public or private education institutions that provide free education to children: the framework law on national education provides (articles 11, 111 and 114) that "parents have the right to participate in the management of the educational institution to which they send their child. They have the obligation to contribute financially to the costs of that establishment. The State shall determine each year the parents' share in the costs of public education institutions. The parents' share of the costs of private education institutions shall be set by those institutions themselves, in consultation with the State and the parents' representative."

288. In practice, these provisions impose a heavy burden on parents, whose low purchasing power prohibits them from bearing the high cost of school fees, ranging between 100 and 300 dollars per child per year in urban areas.

289. As to technical and vocational secondary education and higher and university education, the Constitution and the framework law on national education make them generally accessible to all students, provided they meet the criteria established by law, in particular that they have a primary school certificate, a State diploma, or equivalent documentation approved by the public authorities and that they succeed in any admissions test required by the institution in question.

290. We may note that there is a shortage of technical and vocational secondary schools throughout the country, by comparison with the number of general education establishments, reflecting the high cost of equipping such facilities.

291. Accessibility to these institutions is impeded in practice by distance from place of residence in rural areas and, more generally, by the high cost of school fees that parents must pay for their upkeep.

292. In an effort to reduce the high costs of school enrolment in the DRC, the Minister of EPSP, with UNICEF support, sponsored a workshop on 5 and 6 August 2004 to seek ways and means of doing so, to assess the impact of reducing or eliminating the parental burden of paying teachers, and to seek support from development partners.

293. The cost of higher education has not been accurately assessed for lack of statistics on all its constituent elements. With respect to enrolment fees (minerval) and course costs, institutions charge between US\$100 and \$250 for a graduate degree or professional license.

294. For foreign students, the rate is the same as for nationals when there is a cooperation agreement with the DRC. In the absence of such an agreement, the rate is double that for nationals.

295. All the above costs are borne by the parents, and there are no waivers of fees for students enrolled at this level of education.

296. In order to provide a basic education to those who never attended or completed primary school (adult literacy), it must be noted that, as a result of the multifaceted crisis gripping the country, the social centres and facilities that once provided training of this kind have ceased to function. Nevertheless, as part of the strategies and priority actions set forth in the PRSP 1, the government has included literacy among the programmes of remedial education and vocational training and has tasked the Ministry of Social Affairs to pursue this in cooperation with UNESCO, NGOs and churches (PRSP 1, page 31).

297. The DRC faces many difficulties in giving effect to the right to free education as called for in Article 12 of the Covenant. These include:

- (a) The obvious inadequacy of budget allocations to national education.
- (b) The sheer geographic size of the country, which makes it difficult to narrow the distance between schools and students.
- (c) The fact that much of the population is unaware of the laws in general and of the mechanisms for protecting and defending their right to education in particular.

298. The Government of the DRC has developed a national strategy to boost the quality of education, to raise the professional level of teaching, and to promote access to education. That strategy calls for:

- (a) Allocating at least 10% of the government budget to education.
- (b) Extending primary education to all young people, with a long-term view to making it free of charge.
- (c) Establishing vocational schools.
- (d) Rehabilitating facilities and equipment in the schools and in the higher education institutions and universities.
- (e) Promoting technical, professional and scientific skills to create a better match between training, employment and development.
- (f) Rehabilitating vocational training and extension institutes.
- (g) Enhancing the prestige of the teaching profession: ongoing education, capacity building and retraining, and upgrading of work and living conditions (PRSP 1, p. 40, §130).

299. Literacy statistics. MICS2/2001 (page 82) places the illiteracy rate among the adult population 15 years and over (those who can neither read nor write) at 32% overall. For men, the rate is 19%, while for women it is 44%. It blames this situation on the lack of a national adult literacy programme, shortcomings in training facilities, lack of interest in literacy, and certain cultural and social factors.

300. Illiteracy rates in rural areas are much higher than in the cities (40% versus 14%). The rate among rural women (50%) is more than double that of urban women (21%). The illiteracy rate varies from 10 to 43% for the wealthiest and poorest households. MICS2/2001 concludes that the level of poverty determines the level of illiteracy.

301. The adult illiteracy rate varies among provinces from 11% in Kinshasa to 48% in Nord-Kivu and in Équateur. This rate was unchanged between 1995 and 2001. It went from 33 to 32% for the country as a whole, from 18 to 19% among men and from 46 to 44% among women, and the trend has been similar regardless of place of residence.

302. The illiteracy rate among young adults aged 15 to 24 years (a group that includes pupils and students at the primary, secondary and university levels) is still high: 29% in this age bracket can neither read nor write. The rate is higher among women than among men (22%). This reflects several factors:

(a) A significant proportion of children has never attended school and has never benefited from any literacy programme.

(b) The retention rate in primary, secondary and university education is low.

(c) Moreover, the teaching system does not prepare young people for adult life by giving them basic reading and writing skills. The risk of being functionally illiterate is great.

303. There is little preschool education offered, and only 3% of children between 36 and 59 months are enrolled in such programmes, which remain the preserve of city dwellers and the wealthiest households.

304. Enrolment and admission rates in the first year of school are very low: only 17% of children begin primary school at age 6. Late enrolment may reflect parents' economic problems and the distance from home to school. There has been a downward trend since 1995. Of every 100 children registering in the first year of primary school, only 20 are at the legal age of six. Children nine years and older represent 32% overall, and 41% in rural areas.

305. According to the MICS2/2001 survey, school dropout rates are very high. Of every 100 children entering the first year of primary school, only 25 will reach the fifth year. Lack of motivation and the physical and intellectual aging of the teaching staff, the shortage of teaching materials, and the social and economic environment all contribute to this fact. To these factors may be added the tendency of the Congolese school system to screen for the brighter pupils in the lower grades, which means that only the best performers will complete the cycle (MICS2, pages 78 and 79).

306. The education level of the population 15 years and older varies by place of residence and by sex. Nearly one-quarter of this population (24%) has no schooling, and 39% has only a primary education. The population with secondary or university-level schooling is 36%. In rural areas, nearly a third (31%) of adults have no schooling, and among adult women this rate is 44%. In the cities, persons with a secondary education are the majority, and those with no schooling account for less than 10%. There is a disparity between the sexes: women are more likely to be found in the first two categories (no schooling or primary education only) (MICS2, page 84).

307. The following table shows the percentage of people aged 15 years and over who have never attended school.



Place of residence	Males		Females		Both sexes	
	%	Number	%	Number	%	Number
Urban	2.5	4,474	12.5	4,721	7.6	9,195
Rural	14.4	9,283	42.0	10,102	28.8	19,385
Country as a whole	10.5	13,757	32.6	14,823	22.0	28,580

Source: MISC2 pp. 83 to 85.

308. No province today meets the 80% threshold, one of the objectives of the World Summit for Children. The provinces that were once reputed to have high enrolment levels are still in the lead, namely Kinshasa, Bas-Congo, Bandundu and Kasai Oriental. The provinces of Nord-Kivu and Équateur have the lowest rates of primary school attendance among school-age children, at 34 and 37% respectively (MICS2, pages 73 to 85).

309. Secondary school graduation rate. Since the institution in 1967 of "State Examinations" in the DRC, more than 1.5 million children have earned the *Diplôme d'État*, the secondary school graduation diploma (as of 2003).

310. In fact, according to the national State Examination Correction Centre, of the 2,858,064 students sitting the exams during this time, 1,576,096 passed them and obtained their diplomas, for an average success rate of about 55% across the country.

311. The best results were those achieved by students in the graduating classes of 1967 (70%), 1976 (70 %), 1972 (68 %), 1970 (67 %), 1991 (67 %) and 1997 (66 %). From 1997 to 2000, results were also satisfactory, with average success rates of 66, 63, 63 and 65 % respectively, but performance fell off sharply in 2001 (33 %) and in 2002 (41 %). That downturn reflected changes both in the subject matter and in the marking criteria for the examinations. The lowest success rate was recorded in 1978, at only 18%.

312. In the absence of statistics on graduation rates by sex and by religion, data on these points cannot be provided.

313. The national education budget effort has been modest, as the following statistics covering 1991 to 1997 show.

#### State budget: national education

(in millions of zaïres)

Year	National education budget	Total government budget	Percentage
1991	118 015	28 120 555	0.40
1992	10 911 546	729 676 152	1.49
1993	24 659 397	13 108 755 100	1.81
1994	1 703	334 482	0.50
1995	25 161	2 006 752	1.25
1996	135 524	15 297 997	0.88
1997	77 099	42 789 654	0.18

Source: *Conjoncture économique*, 1991-1997, published by the *Centre d'études et de planification industrielle* CEPI (Ministry of Industry), p. 2.15 and 2.17.

314. Apart from the years 1992, 1993 and 1995, when the budget share allotted to national education slightly exceeded 1%, government allocations to the education sector have been well below 1%, i.e. far from the generally recommended 30% of the government budget. It is this funding shortfall that lies at the root of the deterioration of education, in particular the saturation of schoolrooms, the dilapidation of facilities, the lack of teaching materials, the lowering of teacher morale, and poor student performance as measured by failure or dropout rates.

315. The Annual Report of the Central Bank of the Congo 2002-2003 (pp. 102 and 90) tracks the education budget from 1995 to 2003:

Current expenditures (teacher payroll) in CFG 000:								
1995	1996	1997	1998	1999	2000	2001	2002	2003
251.61	1,355.24	770.99	1,398	19,296	21,856	191,654	342,053	831,381
Capital expenditures (investments) in CFG 000:								
21.77	198.4	669.9	-	-	-	-	12,101	6,000

316. As will be seen, the portion of total government expenditure earmarked for national education from 1997 to 1999 averaged around 0.7%. There was no funding for capital expenditures between 1998 and 2001. In 2002, national education received 0.15%. Overall, the education sector has been very modestly funded, leaving it unable to achieve such objectives as free primary schooling and effective access to education at all levels.

317. The Congolese school system embraces the following four levels:

- Three years of kindergarten (*Maternel*).
- Six years of primary school, covering elementary (1-2), intermediate (3-4) and final ("*terminal*", 5-6).
- Six years of secondary school, covering the "lower" cycle (1-2) and the "upper" cycle (3-6).
- Higher or university level, covering three years to a degree (*graduat*) and two years to a *license*.

318. New school construction. There is no programme, except for one to rehabilitate schools affected by the war and by natural disasters, with support from external partners.

319. There is no great problem of proximity to schools in the DRC, as far as the cities are considered, in the countryside, however, school location is a problem and students often have to travel long distances.

320. The school year in the DRC at the kindergarten, primary and secondary level begins in September (normally between September 6 and 13) and ends on 2 July of the following year, with Christmas and Easter breaks and vacation time.

321. Equality of access to the different levels of education. This issue is covered above under non-discrimination. MICS2 reports that the rate of transition from primary to secondary school is high. Of 100 students completing the sixth primary year, 81 will go on to the first secondary year, with little difference between boys

and girls nationwide. The transition rate in the cities, at 85%, is higher than in rural areas, at 77% (MICS2, page 82).

322. Groups at a disadvantage with respect to the right to education at all levels and participation in literacy activities: girls outnumber boys (49% to 41%) among children who do not attend school, a classification that applies to 53% of rural children versus 27% of urban children (MICS2, page 77).

323. Generally speaking, vulnerable and disadvantaged groups do not enjoy the right to education, for various reasons: the predisposition to early marriage of girls, lack of income for poor families, distance from school for rural children, and the high cost of education for physically or mentally handicapped children who require education in specialized schools.

324. Children of immigrants and migrant workers: children belonging to linguistic, racial, religious and other minorities, and aboriginal children, enjoy the right to education and literacy.

325. The government is planning the following measures to guarantee equal access at all levels of education:

(a) Enlist the public in maintaining and rehabilitating school infrastructure and furnishings.

(b) Provide facilities to support community initiatives in the sector, and adapt fiscal policy to make low-cost school furnishings more available.

(c) Ensure training in the construction trades for young people who have an interest.

326. Economic and living conditions of teaching staff. We may note that salaries are still low for teachers at the primary and secondary levels, as they are for civil servants, reflecting the difficult economic situation the DRC has experienced for many years. Teaching staff in the primary and secondary public schools as well as those at the higher-education and university level have lodged demands complaining about low salaries, late payment, and poor working conditions (a situation that has sparked much harassment of pupils, students and their parents).

327. The Ministry of Primary, Secondary and Vocational Education, through Ministerial Decree CABMIN/EP/FIN/BUDGET/009/2004 of 15 March 2004 establishing the intermediate school pay scale, has satisfied one of the teachers' demands (low salaries). Its essential contribution is to have the government recognize seniority for full-time teachers at this level. This means that teachers at the primary, secondary, technical and vocational level are now entitled to an annual seniority bonus that increases every three years over their career. In addition, at the higher-education and university level, teachers' demands have already met some positive responses from the government, in particular the recently announced salary scale which raises their pay quite significantly. Yet further efforts will be needed to make the required improvements in the situation of teaching assistants and similar personnel, as well as that of administrative staff.

328. The right and the freedom to create and direct an education establishment are guaranteed for individuals and legal persons in the DRC, subject to the provisions of article 47.1 and 2 ("Education is free... it is however subject to official oversight under the conditions established by law"). Article 6 of the framework law is explicit

on this point, and provides that "national education is dispensed in authorized public and private education establishments. The first are created by the public authorities and the second by private initiative"

329. Article 49 of framework law 86-0005 on national education provides as follows: "Any private individual or legal person, Congolese or foreign, who presents the necessary political, legal, financial, material, and moral and pedagogical guarantees, may create a private kindergarten, primary or secondary education establishment."

330. The move by the Ministry of Higher Education and Universities to cancel the licenses originally granted to certain unviable establishments should not be interpreted as an obstacle to the right to create and direct education establishments.

331. As to the number of education establishments, the directorate of primary, secondary and vocational school infrastructure estimates that there are around 18,000 primary, secondary, technical and vocational schools licensed and operating in the country. The lack of statistics makes it impossible to categorize these schools. Statistics on higher education and university institutions, however, show that there are 134 authorized private establishments: in Kinshasa there 13 public and 40 private institutions at this level; in Bandundu, 20 public and 11 private; in Bas Congo, 12 public and 12 private; in Équateur, 10 public and 10 private; in Province Orientale, 13 public and 11 private; in Kasai Occidental, 11 public and 9 private; in Kasai Oriental, 9 public and 18 private; in Maniema, 12 public and 1 private; in Nord Kivu, 14 public and 7 private; in Sud Kivu, 6 public and 19 private; and in Katanga, 15 public and 16 private (Ministry of Higher Education in Universities, General Secretariat, Academic Affairs Directorate).

332. It may be noted that, during the period covered by this report, the right to education has been vitiated by a number of factors, including galloping inflation, which has further eroded parents' already low purchasing power, political instability caused by the looting episodes of 1991 and 1992, and the wars of 1996-1997 and 1998-2001.

333. International assistance is playing a positive role in helping to guarantee effective exercise of the right to education in the DRC. In particular we may cite the US\$23,422 that UNDP contributed to the government between 1997 and 1999 and the role of MONUC in delivering the State examination forms to the provinces and even into territories formerly in rebel hands. In addition, several schools have been rehabilitated through funding provided to the government by the international community. The International Organization for Migration has fielded teaching staff to fill gaps in the ranks of polytechnic personnel. Belgium has supplied textbooks for the fifth and sixth years of secondary school. UNICEF has distributed school supplies to selected schools.

## **Article 15**

334. The right to culture is recognized and guaranteed in the DRC by the Constitution, article 46 of which declares that the right to culture, the freedom of intellectual and artistic creation, and the freedom of scientific and technological research are guaranteed, subject to observance of the law, public order and decency; that copyright and intellectual property rights shall be guaranteed and protected by

law; and that, in fulfilling its duties, the State shall take account of the country's cultural diversity.

335. Apart from the constitutional guarantee of this right, the DRC is also a party to the following international conventions:

(a) The Paris Convention of 20 March 1883 for the Protection of Industrial Property, intended to protect patents, models, designs, brands and trademarks.

(b) The Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works.

(c) The African Cultural Charter of 5 July 1976, the first article of which defined its objectives.

(d) The Convention of 8 January 1983 creating the International Centre for Bantu Civilization (CICIBA), the objectives of which are to conserve, promote and preserve the authentic values of Bantu civilizations (the cultural heritage common to the Bantu languages and cultures north and south of the equator and those of the diaspora).

336. A number of laws and regulations have been adopted to allow the Congolese people to exercise their right to culture:

- Ordinance 11-208 of 14 June 1952, which provides for a local government official to certify the reproduction of literary or artistic works in any public place or place accessible to the public at the request of the creator of the work, his successor or his agent upon payment of certification and transport costs.
- Ordinance 69-064 of 6 December 1969 authorizing creation of a national cooperative corporation of editors, composers and authors, SONCA.
- Law 78-013 of 11 July 1978 on the general archives regime.
- Ordinance 86-033 of 5 April 1986 on the protection of copyright and neighbouring rights.
- Ordinance 87-013 of 3 April 1987 creating the Cultural Promotion Fund (for the promotion of creative literary, artistic and musical works).
- Ordinance 89-027 of 26 January 1989 creating a public service known as the "National Archives of Congo" (ARNACO).
- Ordinance 70-089 of 11 March 1970 creating the National Museums Institute.
- Ordinance 78-306 of July 1978 creating the National Theatre.
- Ordinance 86-167 of 5 June 1986 creating an office for questions relating to La Francophonie.
- Ordinance 89-010 of 18 January 1989 creating the National Library of Congo (BNC).
- Ordinance 89-21 of 26 January 1989 creating the National Archives of Congo.
- Decree 0009 of 6 April 1955 creating a language observatory.
- Ministerial order 225 of 23 August 1967 creating the Commission of Music Censors.

- Departmental order 007/BUR/CECA/75 of 31 March 1975 prohibiting the export of and trade in Congolese antiquities.
- Departmental decree 008/BUR/CECA/75 of 25 April 1975 creating the National Public Monuments Commission.
- Departmental order 0009/CAB/MCA/70 of 21 December 1977 establishing copyright for public exhibitions.
- Departmental decree 009/BUR/CECA/75 of 25 April 1975 creating a national commission for the selection of works of modern art destined for the State collection and for official national and international exhibitions.
- Departmental order 010/BUR/CECA/75 on the functioning of orchestras.
- Ministerial order 00 19/CAB/19 CA/93 of 13 August 1993 creating the Zoo cultural centre.

337. To allow the Congolese people to exercise their right to culture, decree 003/027 of 16 September 2005, on the powers of ministries in the transition government, gives the Ministry of Culture and Arts responsibility for:

- (a) Promoting and developing cultural and artistic activities.
- (b) Protecting sites and monuments of the nation's cultural and artistic heritage.
- (c) Bilateral and multilateral cultural relations.
- (d) Copyright matters.
- (e) Management of the national archives and the national museums.

338. Today, the attention of the transition government, through the Ministry of Culture, is focused on organizing a national conference (*États généraux*) on culture, the repatriation of Congolese cultural works, the reform of natural resource management, the restoration of colonial monuments, and the recognition and appreciation of Congolese traditional art. As planned by the Ministry of Culture, the *États généraux* will serve to establish a cultural policy for sustainable development.

339. The resources of the Cultural Promotion Fund come from an ad valorem royalty, the rates of which are established as follows:

- (a) Value of 5% on:
  - Gross revenues of bookstores and stationery shops established in the DRC.
  - Gross revenues of cinema houses, and proceeds from the sale or rental of videocassettes.
  - Proceeds from the sale of each foreign CD sold in the DRC.
  - Gross revenues from performances (shows, concerts, ballet, theatre, circuses etc.) presented in the DRC.
  - The value of each work of art at the time of its export.
  - Payments by SONECA to artists, musicians and writers.

- Revenues from exhibitions of works of art, beauty contests, and other similar events.
- Gross revenues of architects and sculptors established in the DRC.
- Fees for the decoration of public or private buildings, exhibition stands or booths at fairs and other locations.
- Invoices for advertising services involving any medium (billboards, posters, signs, graphics, radio, television, printed press).
- Gross receipts of fashion houses, jewellers, decorator firms, films, beauty parlours, hairdressers and kiln operators.

(b) Value of 2% on the proceeds from the sale of each Congolese CD in the DRC.

340. The institutional infrastructure in place for promoting culture is inadequate for the country as a whole. Many cultural buildings and centres were destroyed during the rebellion. Accordingly, the Ministry of Culture and Arts is preparing to hold the *États généraux* of culture and arts to take stock of the situation. There is a National Library and a National Museum. The city of Kinshasa has a number of libraries, most of which belong to higher-education institutions and universities, although some are run by religious groups.

341. For the promotion of cultural identity as a factor of mutual appreciation and understanding between individuals, groups, nations and regions, the DRC has established a national commission to select works of modern art destined for the State collection and for official national and international exhibitions. No work of art may be added to a government collection or shown in exhibitions organized by the Congolese government unless it has been selected by this commission.

342. Pursuant to decree 003/027 of 16 September 2003 establishing the powers of the ministries of government, the Ministry of Culture and Arts is responsible for bilateral and multilateral cultural relations. It provides opportunities for Congolese artists to perform and exhibit abroad, and they have taken part in many festivals and other cultural events around the world.

343. The information and communications media, as factors for encouraging participation in cultural life, play a fundamental role in expanding and disseminating Congolese culture via TV, radio and the printed press.

344. Safeguarding and preserving the cultural heritage of humanity. The DRC Constitution (article 46.5) requires the State to protect the national cultural heritage. By virtue of that provision, some national parks have been classified as part of the cultural heritage of humanity.

345. Ordinance-Law 86-033 of 5 April 86 on copyright and neighbouring rights guarantees the freedom of creation and artistic production in the DRC. Article 4 provides: "Without prejudice to the provisions of Law 82-001 of 7 January 1982 governing industrial property, this ordinance-law protects copyright over all artistic, literary and musical works regardless of their type, form of expression, merit or destination." The same ordinance-law establishes limitations (section 2), but also authorizes reproduction, for cultural, scientific, educational, critical or polemical goals and the use of quotations or fragments of protected works, provided the source, title and name of the author are mentioned.

346. Professional education in the cultural and artistic field is offered in the following establishments:

(a) Academy of Fine Arts (*Académie des beaux-arts*).

(b) National Arts Institute.

(c) Superior Institute of Arts and Trades (Institut supérieur des arts et métiers), and some secondary schools.

347. The Ministry's plan to convene the *États généraux* on culture and the arts will serve to maintain, develop and disseminate culture.

348. As declared in article 49 of the Constitution, the right to benefit from scientific and technological progress is guaranteed in the DRC. Ordinance-Law 82-040 on the organization of scientific and technical research as well as decree 003/027 of 16 September 2003 on the powers of ministries give shape to this right.

349. To ensure that everyone benefits from scientific progress, while safeguarding the natural heritage of humanity and helping to maintain a healthy and pure environment, the DRC issued law 017-2002 of 16 October 2002 on protection against the hazards of ionizing radiation and physical protection of nuclear materials and installations, a matter of considerable importance for the country as it has a nuclear centre at the University of Kinshasa. Article 2 of that law declares the following objectives:

(a) To protect people in general, and personnel exposed to radiation in particular, and the environment against the harmful and undesirable effects of ionizing radiation.

(b) To prevent radiological emergencies and to minimize the consequences if they occur.

(c) To eliminate or reduce to a minimum the risks of sabotage or unauthorized removal of nuclear materials.

(d) To allow the State to take prompt measures as needed to locate nuclear or radioactive materials, to recover them if they have been stolen or lost, and to cooperate with the security authorities to reduce the radiation consequences to a minimum.

(e) To ensure the physical protection of nuclear facilities and radioactive materials.

(f) To enforce in the DRC the relevant provisions of the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, of which the DRC is a signatory.

350. As one of its responsibilities, the Ministry of Scientific Research publishes and disseminates the results of scientific and technological research, while ensuring that scientific and technological progress is not used for purposes contrary to the enjoyment of human rights. Thus, when it comes to protection against the hazards of ionizing radiation, any practice or any activity involving exposure to ionizing radiation is subject to prior authorization, and this includes the possession of ionizing radiation sources of all kinds (articles 5 and 13 of Law 017-2002). Such



authorization will be granted only if the practice or activity complies with the following fundamental principles:

- It respects the law, public order and decency.
- It does not involve uncontrollable risks to the health and safety of persons exposed and of the population in general.
- Precautionary measures must be taken to ensure optimal protection for persons, property and the environment.
- It is undertaken only by persons who are professionally qualified and equipped to ensure responsibility and proper supervision.

351. Articles 2 and 5 of Ordinance-Law 86-033 of 5 April 1986 on the protection of copyright and neighbouring rights guarantees the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production (“works of the mind”) of which he is the author in the following terms:

- “The author of a work of the mind shall enjoy in that work, by the mere fact of its creation, an exclusive incorporeal property right which shall be enforceable against all persons. This right shall include attributes of an intellectual and moral nature as well as attributes of an economic nature, as determined by law. The existence or conclusion of a contract for hire or of service by the author of a work of the mind shall in no way derogate from the enjoyment of the author’s recognized moral and economic rights.
- “A work shall be deemed to have been created, irrespective of any public disclosure, by the mere fact of realization of the author's concept, even if incomplete.
- “This law applies to Congolese works. It does not apply to foreign works, except where there is reciprocity or an international convention to the contrary, unless they are published in the Democratic Republic of the Congo.
- “This law shall protect the rights of authors in all works of the mind, whatever their kind, form of expression, merit or purpose.”

352. The problems facing full exercise of this right include the lack of appropriate facilities for combating piracy of the musical works of Congolese artists and other creative works.

353. The government of the DRC, which is a full member of UNESCO, has taken steps to ensure the maintenance, development and dissemination of science and culture, in particular through the following laws:

- Framework law on national education, covering primary, secondary, higher and university education, described above.
- Law 82 on scientific and technological research.
- Decree 003/027 of 16 September 2003 establishing the powers of the Ministry of Primary, Secondary and Vocational Education, Higher Education and Universities, the Ministry of Scientific Research, and the Ministry of Culture and the Arts.

354. The observance and protection of the indispensable freedom of scientific research and creative activity are guaranteed by the Ministry of Scientific Research, the objectives of which are to coordinate, promote and finance scientific and technological activities in the country. Specifically, it is responsible for:

(a) Encouraging and facilitating research undertaken by private agencies or by certain especially talented and inventive independent researchers, through the granting of appropriate funds.

(b) Supporting research planned or already undertaken by certain private agencies or by independent researchers, through the special fund.

(c) Ensuring that the results of research by private agencies and by independent researchers funded by the State are the property of those who developed them.

355. The mandate of the Ministry of Scientific Research is to boost Congolese participation in cooperative scientific and technological undertakings internationally, particularly through the exchange of competent and senior personnel. In practice, researchers take part in many international scientific forums. They are often restricted in their travel, however, by the shortage of government funding.

356. The government of the DRC encourages and fosters cooperation and international contacts in the field of science and culture, and has ratified a number of treaties or agreements to this effect. Yet for lack of financing because of the economic situation gripping the country, the people it fields to international meetings often lack the standing to participate in discussion and to vote.

357. The war that ravaged the DRC had a disastrous impact on the scientific and cultural fronts. Some research centres were occupied by rebels, making access to them difficult or impossible and preventing any kind of scientific work.

358. The role of international assistance in ensuring effective exercise of cultural, scientific and technological rights should be to supply sufficient funding so that the DRC, in this post-conflict situation, can fulfill its obligations and strengthen the capacities of Congolese researchers, artists and intellectuals by making available to them new techniques for obtaining information on the scientific, technological, artistic and cultural sector.

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