

# ATTACKS ON JUSTICE – DEMOCRATIC REPUBLIC OF CONGO

## *Highlights*

Despite political progress towards a democratic state based on the rule of law, ongoing violence has hampered the effectiveness of the judicial system. A new Transitional Constitution providing for the independence of the judiciary was promulgated on 4 April 2003. However, the judiciary's situation is still worrying, since impunity is the norm, and corruption and interference by the executive are widespread. In 2003 and 2004, 1,700 magistrates were intermittently on strike demanding the effective independence of the judiciary. Attacks against lawyers have continued to occur regularly.

## BACKGROUND

The **Inter Congolese Dialogue**, which started in **October 2001** and continued throughout 2002 (see "Attacks on Justice", 11th edition), concluded in Pretoria, South Africa, on **17 December 2002** with a **Global and All-Inclusive Agreement on the Transition in the Democratic Republic of Congo (DRC)** which was signed by all parties to the conflict. They undertook to end the war, to ensure reconciliation, reunification, pacification and reconstruction and to establish a democratic constitutional regime. On **2 April 2003**, the *Final Act of the Inter Congolese Dialogue* was signed in Sun City, South Africa, and includes the *Global and All-Inclusive Agreement on the Transition in the DRC* and the *Agreement on the Transitional Constitution*, adopted on **1 April 2003**. A transitional constitution, effective until free general elections are held in **June 2005**, was promulgated on **4 April 2003** and **President Joseph Kabila** was sworn in. The **Transitional Government**, established on **30 June 2003**, must disarm, demobilize and reintegrate combatants into civil society. A joint military command for an integrated and restructured army was put in place on **5 September 2003**. A new constitution will be adopted at the end of the 24-month transitional period, although this period may be extended for six months, renewable once, if problems related to the organization of the June 2005 election require it.

Although all transitional institutions have been established and are operational, the **National Human Rights Observatory** (regulated by *Law No 04/019* of **30 July 2004**) and the **Truth and Reconciliation Commission** (regulated by *Law No 04/018* of **30 July 2004**) lack proper resources. A national consultation on the Truth and Reconciliation Commission, held in **February 2004**, concluded that the commission needed time before it functioned properly.

In **August 2002**, the Ministry of Justice revived the DRC's **Permanent Commission on Law Reform**, which had been suspended for many years. Its mandate is to develop new laws in keeping with the DRC's social realities and its international obligations; to harmonize and modernize internal legislation in accordance with

customary and international law, such as the *1987 family law code (Law No. 87-010 of 1 August 1987)* or the *2002 labour code (enacted by Law No. 015/2002)*.

The mandate of the **UN Mission in the DRC (MONUC)** was re-extended until **31 March 2005** by *Resolution 1565* of **1 October 2004**. MONUC's peace monitoring mandate evolved in **2003** into maintaining or imposing peace. As of **1 October 2004**, it is authorized to use "all necessary means" to protect civilians under threat of violence in the DRC, and to provide advice and assistance to the Transitional Government.

Despite progress towards democratization in **2003 and 2004**, fighting, massacres and grave human rights violations have continued, and may amount to genocide, crimes against humanity and war crimes. Local human rights defenders are targeted, and freedoms of association and assembly, of speech and of the press are not respected by parties to the conflict. Human rights violations mostly still go unpunished despite international appeals for accountability. The illegal exploitation of natural and economic resources continues to drive conflict, as both a source of funding for combatants and a reason for fighting (see the **October 2003** "Report of the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the DRC" (S/2003/1027)).

## JUDICIARY

The Congolese judicial system does not meet the minimum required international standards relating to the administration of justice. Despite the principle of separation of powers enshrined in the *Constitution* – Article 147 of the Transitional Constitution provides for the independence of the judiciary – the executive continues to interfere with the judiciary, particularly in nominating, promoting, imposing sanctions against and dismissing judges and prosecutors without consulting the **Supreme Council of the Judiciary** (for this council's legal position, see under General Country Information). There are reports of the executive instructing magistrates, judges and prosecutors as to how cases are to be treated, or obstructing the implementation of decisions. Given their precarious social conditions, judges, prosecutors, clerks and other judicial staff are often corrupted; some are said to undermine the functioning of justice, either actively or passively, with arbitrary arrests, the trading of favours and blackmail.

Judges in military courts established under the November 2002 laws (see below under General Country Information, b.3) are members of the military; they are nominated by the President and appointed by the Minister of Justice. They can be moved on a discretionary basis without any reason being given.

A recent **audit on the judicial system** by 14 national and international experts, conducted between **October 2003 and May 2004** at the request of partners in development, concluded that the judicial system is ineffective due to corruption, insufficient judicial independence from the executive and a lack of qualified and trained judges and of resources. Following this audit, a framework programme was defined in **November 2004** by the Transitional Government and its partners to improve the judicial system. The **reform agenda** includes the promotion of judicial

independence, an improved control of judicial activities, and the appointment of magistrates and judicial officers throughout the country by means of legal reforms, advocacy and training. A follow-up committee is also expected to be set up to monitor the implementation of this reform framework. Meanwhile, local and international NGOs, organizations and donors in association have organized seminars and workshops for the benefit of the country's judicial actors. Programmes are being implemented to restore the criminal system throughout the country: as a result, the Court (*Tribunal de Grande Instance*) of Bunia and the Prosecutor's Office are again effectively functioning (see <http://hrw.org/backgroundunder/africa/drc0904/index.htm>).

## Cases

### **Rehabilitation of 315 illegally dismissed magistrates**

As a result of Communication No 933/2000 (CCPR/C/78/D/933/2000) ([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4f5cbe8702acb2e5c1256dc6004300eb?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4f5cbe8702acb2e5c1256dc6004300eb?Opendocument)) related to the massive judicial dismissals of 315 magistrates (lower court judges) in November 1998 (see "Attacks on Justice", 9<sup>th</sup> edition), the **Human Rights Committee** held, in **September 2003**, that the DRC had committed a violation of the following articles of the ICCPR: 25(c), on the right to have access to public service in a person's country; 14(1), on equality before the law and right of due process; 9, on the right not to be subjected to arbitrary arrest and detention; and 2(1), the application of the Covenant without distinction of any kind. The authors of the **1999** communication, **Adrien Mundy Busyo, Thomas Osthudi Wongodi and René Sibum Matubuka**, acted on their own behalf and on that of 68 other dismissed judges. The Human Rights Committee considered that the dismissals constituted an attack on the independence of the judiciary, since the magistrates did not benefit from the guarantees to which they were entitled in their professional capacity. Indeed, it was at the request of the Minister of Justice that the President of the Republic dismissed them, even though under articles 11 and 12 of *Décret-loi* of **27 May 1997**, he can dismiss a civilian judge only at the request of the Supreme Council of the Judiciary. Furthermore, the authorities did not fulfil their obligation to respect the adversarial principle and its corollaries, including the presumption of innocence; and any chance of a fair hearing of the case was undermined when the President of the Supreme Court publicly supported the dismissal before any case had been heard.

Meanwhile, the **Inter Congolese Dialogue** proposed the reintegration and rehabilitation of the 315 magistrates through its April 2002 *Resolution No. DIC.CPJ/07*. Following this resolution, on **25 November 2003** the **Transitional Government** issued *Decree on Judicial Organization No. 03/037*, revoking the *Decree No. 144* of **6 November 1998** that had dismissed the magistrates. They were then reinstated in their old positions.

### **Magistrates' protests over poor conditions and lack of independence**

Between **1 November 2003 and 5 January 2004**, 1,700 magistrates across the DRC, mobilized by the *Syndicat National Autonome des Magistrats de la RDC* (Congolese National Magistrates' Union), went on strike with three main demands: an increase in their salaries; the effective implementation of the 1986 Act on the *Conseil Supérieur de la Magistrature* (Supreme Council of the Judiciary) (*Law No. 86/006* of **23 November 1986**); and the promotion of judicial independence. According to *Decrees No. 03/25 and 03/27* of **26 September 2003** concerning the functions of the Transitional Government, the Supreme Council of the Judiciary became a specialized

service of the Ministry of Justice. The *Syndicat National* considered this provision to conflict with the Constitution since it completely undermined the independence of the judiciary.

The **Minister of Justice, Mr Kisimba Ngoy**, announced, on **28 December 2003**, that magistrates, judges and prosecutors (all of them *magistrats*) would receive a minimum salary of US\$100 per month, instead of their former income of US\$12–\$40. The increase has been implemented in most cases; however, judicial officers in South Kivu went on strike from **11 to 16 October 2004**, demanding payment of the allowance and the salary rise promised by the government. According to reports, members of the *Syndicat National Autonome des Magistrats* committee who participated in the strike are still being subjected to pressure from the Ministry of Justice, and are threatened with dismissal or sanctions. A number of them were suspended in **December 2004** over their protests against the illegal promotion of some magistrates in the province of Katanga.

On **4 August 2004**, in a protest march in Kinshasa, members of the judiciary called on the DRC Government and the judicial authorities to adopt decrees or laws to protect and regulate the status of judges, magistrates and prosecutors.

#### **Attacks on judges**

On **5 November 2004**, **Mr Mboyo Bola Edo**, judge at the Cataractes court, was illegally arrested and tortured by members of the security forces in Mbanza-Ngungu, and was then transferred to the Tshatshi camp in Kinshasa, reportedly because he had criticized the 1998 presidential decree dismissing the 315 magistrates (see above). The *magistrats* and human rights defenders who subsequently participated in a peaceful march to demand his release are being threatened with arrest.

## **LEGAL PROFESSION**

The situation for lawyers in the DRC is as precarious as for judges: they are subjected to threats, ill treatment, arbitrary arrest and detention both by the executive and by the different armed groups involved in the internal conflict.

#### **Cases**

On **20 February 2002**, **Maître Willy Wenga Ilombe**, a member of the NGO *Centre africain pour la paix, la démocratie et les droits de l'homme* (ACPD), was arrested by the former **Court of Military Order** (*Cour d'ordre militaire*) but was not charged. He was interrogated on his relationship with **Major Bora Uzima Kamwanya**, one of the presumed assassins of former **President Laurent-Désiré Kabila**. He was then held in detention as a threat to state security. These actions apparently preceded the publication of a report by the ACPD denouncing the judiciary's lack of independence. He was detained for 11 months and was released on **26 January 2003** at the instruction of **President Joseph Kabila**.

On **19 April 2002**, **Maître N'sii Luanda**, president of the NGO *Comité des observateurs des droits de l'homme* was arrested after a search at his home in Ngiri-Ngiri by two judicial inspectors from the Court of Military Order's prosecutor's office. He was subsequently held in the Court of Military Order's jails and transferred

in **June 2002** to Kinshasa prison. He was interrogated about his relationship with **Michel Bisimwa**, who was accused of criminal conspiracy and an attack on state security in the case of the assassination of **President Laurent-Désiré Kabila**. M<sup>e</sup> Luanda and his NGO had indeed participated actively in the processes leading to the transfer of Michel Bisimwa's case from the Court of Military Order to the Court of State Security. No charges were formally brought against M<sup>e</sup> Luanda: he was released on **26 January 2003** at the verbal orders of **President Joseph Kabila**. But in **November 2004**, M<sup>e</sup> Luanda was prevented from visiting his clients in prison, and on **3 December**, at Michel Bisimwa's hearing, a military official declared that the public prosecutor had issued, in **August 2003**, a summons against M<sup>e</sup> Luanda for treason.

On **15 October 2002**, **Maître Sébastien Kayembe Nkokesha**, lawyer and chairman of the board of directors of the **Congolese Human Rights Observatory**, an NGO specializing in the fight against torture, was abducted by armed men in uniform, was tortured and accused of being 'the devil's lawyer', since he was one of the lawyers who had represented those accused of assassinating **President Laurent-Désiré Kabila**. He was left unconscious and was not charged or imprisoned. These actions followed M<sup>e</sup> Kayembe's attempt to persuade the court to prosecute members of the Cabinet of Security and Public Order. M<sup>e</sup> Kayembe had also argued against the lifting of the moratorium on the death penalty.

On **25 May 2003**, **Maître Charles Katambay**, a member of the NGO *Groupe des Sans Voix*, of the DRC Bar Association and of an association for the defence of judges, was shot by a soldier from RDC-Goma (the *Rassemblement Congolais pour la Démocratie*, a guerrilla rebel faction) in front of his house in Uvira. His work in favour of human rights is suspected to be the reason for his assassination.

On **9 May 2004**, **Maître Mulunda Kazela**, a member of the Lubumbashi bar, was assassinated in unclear circumstances while working in his office. His case is still under investigation.

On **14 August 2004**, **Maître Théodore Ngoy** was arrested in Kinshasa for an offence against the transitional authorities and for contempt of court. M<sup>e</sup> Ngoy had publicly criticized on television the Minister of Justice's law project on nationality earlier that month. M<sup>e</sup> Ngoy is still held in the Kinshasa prison.

On **29 September 2004**, **Maîtres Aimé Magbo and Christian Lukusha**, members of the NGO **Justice Plus** in Bunia, were arrested for visiting the Bunia prison without permission and for drafting a report on the functioning of the judicial system in Bunia.

## ACCESS TO JUSTICE

The shortage of magistrates, judges and judicial officers can cause delay and negligence in the administration of justice, thereby violating the procedural law that stipulates that a verdict must be reached within eight days in criminal and commercial proceedings (the limit is 15 days in civil matters). In this situation, where there is little judicial accountability, training or discipline, and where the general administration of justice lacks funds, material and infrastructure, the public has little confidence in the judiciary. In some areas, such insecurity affects the whole judicial process – judicial

staff, witnesses, victims, detainees and plaintiffs – and weakens the effectiveness of judges.

### **Death Penalty**

**On 23 September 2002**, the Government announced the end of its **moratorium on the death penalty**, which had been in place since December 1999, and death sentences have been carried out since then. The DRC is not a party to the *Second Optional Protocol to the International Covenant on Civil and Political Rights* (ICCPR), which aims to abolish the death penalty.

### **Amnesty law**

**On 15 April 2003**, President Kabila proclaimed, by *décret-loi No. 03/001*, a temporary amnesty for political crimes, acts of war and crimes of opinion committed between 2 August 1998 and 4 April 2003 until the future adoption by Parliament of an amnesty law. This amnesty excludes crimes against humanity, genocide and war crimes.

### **The International Criminal Court (ICC)**

In **July 2003** the Permanent Law Reform Commission issued a draft law implementing the *Rome Statute of the International Criminal Court*, previously ratified by the DRC in April 2002. The future adoption of this draft law by the transitional parliament is an important step towards justice in the DRC, as it includes safeguards for fair trial and respect for the rights of the accused whatever the crime. It also provides definitions of war crimes, crimes against humanity and genocide, and ensures the co-operation of the DRC Government and judicial authorities with the International Criminal Court authorities. (For a commentary, see [http://web.amnesty.org/pages/int\\_jus-legislation\\_drc\\_commentary2003-eng.](http://web.amnesty.org/pages/int_jus-legislation_drc_commentary2003-eng.))

In **March 2004**, **President Kabila** asked the **ICC Chief Prosecutor, Mr Luis Moreno-Ocampo**, to investigate violations of international law committed in the DRC after 1 July 2002. In **July 2004** the **Presidency of the ICC** decided to assign the DRC to Pre-Trial Chamber and investigators from the ICC visited the DRC that month, meeting Congolese political and judicial authorities, diplomats, representatives from NGOs and civil society organizations. In **October 2004**, the ICC and the DRC signed an agreement on judicial co-operation, allowing the court to begin investigations into war crimes and crimes against humanity committed within the DRC, since the draft legislation implementing the *Rome Statute* domestically had not yet been adopted. Following this, the ICC and the DRC signed a provisional “Memorandum of Understanding on the Privileges and Immunities of the Court” to guarantee that the ICC will be able to carry out its activities in the DRC independently, safely and confidentially, until an agreement on privileges and immunities is ratified.

### **The military court system**

The **Court of Military Order** (*Cour d'ordre militaire*, or COM), a special tribunal instituted in **1997** (*décret-loi No. 19*) to punish military offences, conducted unfair trials and pronounced the death penalty in numerous cases, including against civilians.

It was the COM that, beginning in **March 2002**, conducted the trial of 135 persons – both military and civilian – accused of the assassination in Kinshasa of **President**

**Laurent-Désiré Kabila on 16 January 2001.** In **January 2003**, following a trial that did not respect the principles of fair and impartial proceedings, the COM passed 30 death sentences, 27 life sentences and 20 sentences of imprisonment from six months to 20 years, and made 50 acquittals. Under Article 5 of the 1997 *décret-loi* creating the COM, no appeal could be made against this verdict. The death sentences have not yet been carried out.

However, the COM was suppressed on **25 March 2003** when laws *Nos. 023/2002 and 024/2002* of **18 November 2002** came into force, providing for a code of military justice and a military criminal code. Under this, civilians are subjected to military justice only when they incite, hire or assist a member of the military forces to commit an offence against military laws and regulations, or when they commit offences against the army and the police (Article 112). Another novelty of these codes is a new definition of ‘war crimes’ and ‘crimes against humanity’, adapted to conform with international standards, in particular the *International Criminal Court Rome Statute*.

Members of the military who have committed grave human rights violations reportedly have escaped punishment in the military courts, or their sentences have not reflected the seriousness of the crimes committed.

### **Cases**

Some child soldiers are being held in custody under military jurisdiction accused of military offences or common criminal offences, or both. This is contrary to the *2002 military codes*, which prohibit trials of children under the age of 18. In **June 2003**, **Isongo Zabenga**, aged 16, was arrested and then sentenced to death for murder by a military tribunal, contrary to the new legislation. His sentence has not yet been carried out.

In **July 2004**, pursuant to Communication No. 962/2001 (CCPR/C/81/D/962/2001) (<http://www1.umn.edu/humanrts/undocs/html/962-2001.html>), the **Human Rights Committee** held that the DRC had violated article 9, paragraphs 1, 2 and 4 of the *ICCPR* (the right not to be subjected to arbitrary arrest and detention). The applicant, **Mr Mulezi**, a civilian, was arrested without a warrant and under false pretences by the military; his arbitrary detention without charge in military camps lasted more than 16 months (from December 1997 to his escape in May 1999). He was unable to appeal against the lawfulness of his detention to any civil or military court.

### **LEGAL REFORMS DURING THE PERIOD**

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|------------------------|---|
| <b>July 2001:</b>      | <i>Law No. 02/2001</i> of 3 July on the creation, organization and functioning of commercial courts.                          |
| <b>2002:</b>           | <i>Law No. 015/2002</i> enacting the Labour Code.   |
| <b>April 2002:</b>     | DRC ratified <i>Rome Statute of the ICC</i> .   |
| <b>August 2002:</b>    | Permanent Commission on Law Reform re-established.  |
| <b>September 2002:</b> | Government ended its 1999 moratorium on the death penalty.  |
| <b>November 2002:</b>  | <i>Laws Nos. 023/2002 and 024/2002</i> of 18 November providing for both a new code of military justice and military criminal |

code. They came into force in March 2003, superseding the Court of Military Order (COM).

- April 2003:** *Transitional Constitution* adopted, effective until elections in June 2005.
- April 2003:** *Décret-loi No. 03/001* giving temporary amnesty for political crimes, acts of war and crimes of opinion committed between August 1998 and April 2003 proclaimed by President Kabila.
- July 2003:** Draft law implementing the *Rome Statute of the International Criminal Court (Projet de Loi de Mise en Oeuvre du Statut de la Cour Pénale Internationale)*.
- September 2003:** *Decrees No. 03/25 and 03/27* of 26 September concerning the functions of the Transitional Government. Under these, the Supreme Council of the Judiciary became a specialized service of the Ministry of Justice.
- November 2003:** *Decree on Judicial Organization No. 03/037* issued by the Transitional Government issued, revoking the *Decree No. 144* of 6 November 1998 that had dismissed 315 magistrates.
- July 2004:** *Law No 04/018* (of 30 July) concerning the Truth and Reconciliation Commission.
- July 2004:** *Law No 04/019* (of 30 July) concerning the National Human Rights Observatory.



## II. General Country Information

### a. Legal system overview

#### 1. Rule of Law and independence of the judiciary

The **transitional institutions** of the DRC are the **President**, the **Government**, the **National Assembly**, the **Senate** and the **Judiciary**. The Transitional Constitution created an independent **Electoral Commission**, a **High Authority for Media**, an **Ethics and Anti-corruption Committee**, a **National Human Rights Observatory** and a **Truth and Reconciliation Commission** to support the transition to democracy.

The **April 2003 Transitional Constitution** provides for the sharing of power and responsibilities between all parties present at the Inter Congolese Dialogue. Its aim is a peaceful transition under consensus and fair regional, social and political representation to achieve national reconciliation.

The constitution guarantees the inviolability of fundamental rights and freedoms. Its Article 147 provides for an independent judiciary. This same article states that the President of the Republic is the guardian of this independence. In practice, however, the executive branch interferes in the judiciary and the administration of justice. Judicial independence has been impeded by a number of factors, such as judicial bodies' lack of economic autonomy, the tendency of executive and legislative authorities to exert pressure on the judiciary and the prevailing corruption of judges and magistrates. Corruption has been facilitated by very low salaries or, in certain cases, no salary at all.

The Supreme Court of Justice has the final say in the interpretation of existing constitutional provisions and of existing laws. However, in practice, the Government does not always observe the Supreme Court's decisions.

#### 2. Sources of law

The **Transitional Constitution** is the main basis of the DRC's legal system, together with the customs and general principles of law and equity. The civil and criminal codes are based on Belgian and customary law.

Article 193 of the Transitional Constitution stipulates that international treaties and agreements have, after their publication, a higher authority than the law, subject to their implementation by the other parties to the agreement. The DRC is a party to the *International Covenant on Civil and Political Rights and its first optional protocol*, the *International Covenant on Economic, Social and Cultural Rights*; the *Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment*; the *Convention on the Elimination of All Forms of Discrimination against Women*; the *International Convention on the Elimination of All Forms of Racial Discrimination*; and the *Convention on the Rights of the Child and its optional protocol on the involvement of children in armed conflict*. The DRC is also a party to the **African Charter on Human and Peoples' Rights**.

### **3. Publication of laws and judicial transparency**

Laws are published in the Gazette (*Journal Officiel*). However, it operates with difficulty due to a lack of resources. Judicial decisions have not been published for more than 20 years.

### **4. New counter-terrorist measures**

In **April 2004**, the **ICJ** and **INTERIGHTS** submitted to the African Commission on Human and People's Rights a joint document relating to human rights protection in the fight against terrorism in Africa. This document calls on the African Commission to draft guidelines on terrorism and human rights and to monitor national counter-terrorism measures in the region. At the African Commission's 36th session (**November–December 2004**), a resolution was drafted by African Commission Commissioner Rezag-Bara with the assistance of ICJ and INTERIGHTS. Due to a lack of time, the resolution was not adopted but was postponed to the African Commission's extraordinary session, which should take place in **March 2005**. The DRC has not so far adopted any laws relating to terrorism and human rights protection.

## **b. The judiciary**

### **1. Judicial structure**

Under Article 147 of the Transitional Constitution, the judiciary is composed of the **Supreme Court of Justice**, the **Court of Security of the State**, the **Courts of Appeal** and the **civilian and the military courts and tribunals**, as well as the **prosecutors**.

*Law No. 02/2001* of **3 July 2001** provides for the creation, organization and functioning of **commercial courts**, which fall within the ordinary jurisdiction of first instance.

Parallel to this official judicial system, and due to difficulties within the judiciary, an informal judicial power has emerged in practice. This power is exercised by local customary chiefs and other local leaders, including religious leaders, rebels and other armed factions, the army and the police.

## **2. Military tribunals**

The Court of Military Order (*Cour d'Ordre Militaire*) created in **1997** (see “Attacks on Justice”, 11th edition) was suppressed with the coming into force, on **25 March 2003**, of laws *No 023/2002* and *024/2002* providing for a code of military justice and a military criminal code. These laws provide for a classic system of military jurisdiction in conformity with fair trial standards and the applicable international standards.

Article 1 of law *No 023/2002* lays down the structure of the military courts, which consists of **military police tribunals**, **military garrison tribunals** (lower courts), **military courts** and **operational military courts**, and the military High Court. Article 276 provides the option of an appeal against these courts’ decisions, except for those decisions pronounced by operational military courts in wartime. Article 129 states that court procedure is similar to that of regular courts. Judges are members of the military, nominated by the President and appointed by the Minister of Justice. They can be moved on a discretionary basis without any reason being given.

## **3. Judicial council**

The **Supreme Council of the Judiciary** is the institution appointed to resolve all disciplinary matters affecting judges and prosecutors, but cannot operate efficiently due to a lack of financial support. The new decrees concerning the functioning of the Government (*Decrees No 03/25* and *03/27* of **September 26, 2003**) state that the Supreme Council of Judiciary is an ordinary service under government authority, thus openly denying its independence.

## **4. Budget and autonomy**

The judiciary in the DRC suffers from desperate financial conditions. Judges are paid poorly and only on an intermittent basis. Before their November 2003–January 2004 strike, magistrates (lower court judges) were paid between US\$12 and US\$40; since then, the minimum salary has risen to US\$100 per month. There are substantial shortages of personnel, supplies and infrastructure. The financial autonomy of judicial institutions is not assured and pervasive corruption continues to affect the judiciary. These grave circumstances affect other judicial officers, including court clerks.

### **c. Judicial Actors**

#### **c.1. Judges**

##### **1. Independence and impartiality**

Article 147 of the Transitional Constitution provides for an independent judiciary. However, in practice, in cases where political and administrative interests are involved, judges are subject to executive interference and to influence from other interested parties. Low salaries and rampant corruption are also important factors hindering the independence and impartiality of judges.

##### **2. Qualifications, appointment and training**

There is no permanent judicial training for judges.

### **3. Discipline, suspension and removal**

The Supreme Council of Judiciary is the institution appointed to resolve all judicial disciplinary matters, but it does not operate efficiently due to a lack of financial support.

The President has the legal power to dismiss and replace judges and magistrates, following a petition of the Supreme Council of Judiciary.

### **4. Accountability and corruption**

Corruption is widespread within the judiciary, especially because of the poor conditions of work and the meagre salary of magistrates.

## **c.2. The Legal Profession**

### **1. Independence**

In theory, lawyers are able to perform their professional functions with total independence. In practice, however, they are subjected to threats, harassments, arbitrary arrest and detention as well as ill-treatment by members of the security forces and of armed groups.

### **2. Professional associations**

In order to practise, lawyers are required to join the Bar association.

## **c.3. Prosecutors**

### **1. Disciplinary Proceedings**

The **President** has the power to dismiss and replace officials in the Public Prosecutor's Office, following a petition of the Supreme Council of Judiciary. The new decrees concerning the functioning of the Government (*Decrees No 03/25 and 03/27 of September 26, 2003*) state that the Supreme Council of Judiciary is an ordinary service under government authority, thus denying its independence.

## **d. Access to Justice**

### **1. Access to Justice**

The law lays down a right to expeditious public trial, the presumption of innocence and the right to legal counsel at all stages of proceedings. However, in practice, the Government continues not to respect these rights.

### **2. Legal Aid**

Under the law, counsel should be made available at state expense in capital cases and when requested by courts. However, in practice, counsel are provided at the Government's discretion.