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~~Draft Prepared By~~  
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THE CONSTITUTION OF THE REPUBLIC OF THE CONGOThe Preamble

In order to foster our national unity, to maintain our independence and territorial integrity, and to promote our mutual happiness and welfare, we, the people of the Republic of the Congo, have adopted the following Constitution:



## PART I

### 1. The Ethics and Aims of the Republic

Art.1 The Republic of the Congo is a democratic and sovereign State.

Art.2 (1) The Republic repudiates any recourse to force as a means of solving international conflicts and, to this end, it favours and encourages recourse to arbitration, to international courts and to any other organ of international adjudication for the promotion of international peace and security.

(2) The Republic affirms and recognizes the right of all peoples to self-determination, and condemns any intervention in the internal affairs of other States.

(3) The Republic recognizes the necessity of developing co-operation with all States on the basis of reciprocity, favours and supports international organizations, and respects international law and treaty obligations.

Art.3 The Republic shall have the sole right to declare war, make peace and conclude treaties and other international agreements with other countries.

Art.4 The defence of the fatherland is a sacred duty of every Congolese citizen.



Art.5 No Province or other part of the territory of the Republic may secede from it.

Art.6 (1) The Republic shall protect the family as the natural and moral basis of society.

(2) All public authorities shall support parents in the tasks of bringing up and educating their children.

(3) For those who are of marriageable age as fixed by law the freedom to marry shall be guaranteed.

Art.7 The Republic shall take all necessary steps to create institutions and establish conditions for the protection of youth from exploitation and physical, moral or intellectual neglect.

Art.8 (1) The Republic shall be impartial in regard to the various religious persuasions.

(2) No person shall on religious ground alone be discriminated against in respect of any employment or public office anywhere within the Republic.

(3) Religious associations shall have the same obligations and rights as other associations permitted by law.

Art.9 (1) The Republic shall protect work in all its forms and shall take effective steps to encourage vocational training so as to combat unemployment and vagrancy.



(2) It shall see to it that the following are guaranteed to all:

- (a) Equitably remunerated employment, regardless of sex;
- (b) Decent and humane conditions of work;
- (c) Time-off and leisure, in particular by reasonable limitation of hours of work by periodic holidays with pay;
- (d) Hygienic conditions compatible with the age, sex and state of health of the workers;
- (e) A retirement pension and financial assistance in case of accident, illness or other incapacity.

Art.10 (1) The right to strike may not be exercised for political ends nor may its exercise be allowed to interfere with the liberty of workers or property rights.

(2) The law may lay down that certain procedures for solving labour disputes be followed before the declaration of a strike as well as when the prolongation of the strike affects the national interest.

Art.11 (1) There shall be free private enterprise.

(2) But the law shall determine such limitations as are justified on the grounds of public order and the general interest of the national economy.



(3) In the national interest certain economic activities may be reserved as within the competence of the Republic, the Provinces or other public institutions.

(4) The Republic shall take all necessary measures to ensure the economic security and to increase the general well-being of all its nationals.

Art.12 (1) The Republic shall maintain and safeguard public health and hygiene.

(2) Within the limits required by respect for individual freedom and dignity, the law shall give the relevant authorities all necessary powers for these ends.

Art.13 No citizen of the Republic shall receive or retain any honour, title, gift, salary or pension from any foreign Government.

Art.14 While the foregoing provisions shall not be enforceable in any court of law, all legislation shall be guided and informed by their spirit and content.



2. The Republic and its territories

Art.15 (1) The Republic of the Congo shall comprise a Capital Territory and the following Provinces:

The Capital Territory of Leopoldville, Kongo Central, Ubangi, Kwilu, North Orientale, South Orientale, North Kivu, South Kivu, North Katanga, South Katanga, North Kasai, South Kasai.

(2) The Capital Territory of Leopoldville shall for the purposes of this Constitution rank as a Province.

(3) The exact boundaries of the Capital Territory of Leopoldville and of the constituent Provinces shall be as defined in Schedule I to this Constitution.

Art.16 (1) The National Congress shall have the power by law to admit or establish new Provinces, to increase or diminish the area of or alter the name or the boundaries of any Province, or to create a new Province by uniting two or more Provinces or parts of Provinces or by uniting any territory to a part of any Province or by carving a new Province out of any existing Province.

(2) Legislation for the purpose of carrying out the provisions of sub-section (1) of this Article shall be introduced into the National Congress only in accordance



with the procedure laid down in Part IX of this Constitution for the admission or creation of new Provinces.

- Art.17 (1) Notwithstanding that Article 16 (2) has been complied with, any of the purposes stated in Article 16 (1) shall not be carried out except by and under the supervision of the Central Government, which shall also have the duty to organize and provide for the due administration of the new Province or such of the existing Provinces as may be affected.
- (2) Before acting in accordance with the provisions of sub-section (1) of this Article, the Central Government may hold a referendum and require that before and during the referendum, the authority of the Province concerned shall be temporarily replaced by that of the Central Government and its duly appointed functionaries.

### 3. Citizenship

- Art.18 There shall be only one citizenship of the Republic of the Congo, and it shall be governed entirely by Central Government legislation.
- Art.19 Every person shall be a citizen of the Republic of the Congo who, at the coming into operation of this Constitution is domiciled in any part of the Republic and who or one of whose parents was born therein or who has been ordinarily resident therein for not less than seven years immediately



before this Constitution comes into force.

- Art.20 Any person who or either of whose parents or any of whose grand-parents was born in the Republic and who is ordinarily resident outside the Republic shall be deemed to be a citizen of the Republic if he has been so registered by the diplomatic or consular representative of the Republic or of the former Belgian Congo in the country of his residence.
- Art.21 Every person born in the Congo after the commencement of this Constitution shall become a citizen of the Republic at the date of his birth unless:
- (i) either of his parents was not at that time a citizen of the Republic, or
  - (ii) his father was then an enemy alien and the birth took place in any enemy-occupied territory.
- Art.22 No person who has voluntarily acquired the citizenship of any foreign State shall be a citizen of the Republic.
- Art.23 Any person who, being twenty-one years of age, was a citizen of the Republic and also a citizen of a foreign country shall cease to be a citizen of the Republic upon his reaching the age of twenty-one years unless he has legally given up



his citizenship of that foreign country or has renounced such citizenship in any manner that Parliament may prescribe by law.

Art.24 Notwithstanding the provisions of this Section, Congress shall have the power to make provision for the acquisition, deprivation, renunciation and termination of citizenship of the Republic of the Congo.



## PART II

### Fundamental Rights

Art.25 In the present Part, the terms "constitution" and "laws" shall be construed as designating the constitution and laws of the Republic and of the Provinces.

Art.26 The Fundamental Rights stated in this Part are binding on the legislative, the Executive and the judiciary of both the Republic and the Provinces.

Art.27 (1) Every person shall have the right to respect and protection of his life and the inviolability of his person.

(2) No person may be subjected to torture nor to inhuman or degrading treatment or penalties.

(3) No person may be intentionally done to death except in execution of a capital sentence pronounced by a competent court.

(4) Death resulting from recourse to force made absolutely necessary shall not be considered as a violation of the present Article if brought about

(a) in legitimate self-defence or the defence of others, or

(b) for the suppression by legitimate means of a riot or insurrection.



Art.28 No person may be held in slavery or servitude or any other analogous condition.

Art.29 No person may be compelled to perform forced or obligatory labour, except:

- (a) Labour normally required from a person subjected to detention under the conditions stipulated in Article 6;
- (b) Service required in the event of crises or calamities threatening the life or wellbeing of the community;
- (c) Work or service that is part of civil or military obligations imposed on citizens under the law.

Art.30 (1) No person may be deprived of his liberty except in the following cases and in accordance with legal procedure:

- (a) If he is regularly detained after conviction by a competent court;
- (b) If he is under arrest or regular detention, either for infringement of a court order made in conformity with the law, or in order to guarantee the execution of an obligation prescribed by law;



- (c) If he has been arrested and detained with a view to being brought before the competent judicial authority, when there is plausible reason to suspect that he has committed an offence or when there are reasonable grounds to believe that it is necessary to prevent him from committing an offence or from fleeing after its accomplishment;
  - (d) In the case of the regular detention of a minor decided on for the purpose of supervising his education, or his regular detention for the purpose of bringing him before the competent authority;
  - (e) In the case of regular detention of a person likely to spread an infectious disease, a lunatic, an alcoholic, a drug addict or a vagrant;
  - (f) In the case of the arrest or regular detention of a person in order to prevent his irregular entry into the territory, or of a person against whom a deportation or extradition order has been issued.
- (2) Every arrested person must be informed in the shortest possible time and in a language that he understands of the reasons for his arrest and any accusation made against him.



(3) Every person arrested or detained under the conditions stipulated in sub-section 1 (c) of the present Article must be brought within forty-eight hours before a judge or a magistrate empowered by law to exercise judicial functions, and shall have the right to be judged within a reasonable period of time, or to be freed during the proceedings.

Liberation of such person may be made subject to payment of bail so as to ensure the appearance of the accused in court.

(4) Every person deprived of his liberty by arrest or detention shall have the right to bring the matter before a court, so that it may in a short space of time determine the legality of his detention and order his liberation if such detention is illegal.

(5) Every person who is the victim of arrest or detention under conditions contrary to the provisions of the present Article shall have the right to redress or compensation.

Art.31 (1) Every person shall have the right to an equitable trial of his cause before an independent and impartial court, which shall come to a decision by means of well-founded judgment given at a public hearing either on his rights and obligations, or on the cogency of any criminal accusation made against him.



(2) All hearings shall be in public unless considerations of public morals or public order require a hearing in camera, in which case the court shall decide the issue.

Art.32 (1) (a) No person may be prosecuted for an act or omission that did not constitute an offence both at the time of its commission or omission and of the proceedings.

(b) If the law in force imposes a lesser penalty for an offence committed under an earlier law, the law in force shall be complied with.

(2) Every accused person shall have the right, in particular:

- (a) To be informed in the shortest possible time, in a language that he understands and in a clear manner, of the nature and ground of the accusation brought against him;
- (b) To be given the necessary time and facilities to prepare his defence;
- (c) To make his defence in person or to have the assistance of defence counsel of his own choice;
- (d) To interrogate prosecution witnesses or have them interrogated and to have defence witnesses summoned and interrogated under the same conditions as prosecution witnesses;



(e) To be given the free assistance of an interpreter if he does not understand or speak the language used at the hearing.

(3) Every person accused of an offence shall be presumed innocent until his guilt has been established by a final judgment.

(4) No penalty may be prescribed or administered except by virtue of a law.

(5) The right of appeal shall be guaranteed to every one in accordance with the law.

Art.33 (1) Every person shall have the right to freedom of thought, conscience, and religion; this right shall include his freedom to change his religion or belief, as well as to manifest his religion or belief, individually or collectively, in public or in private, by teaching, practices and observances.

(2) No limitations may be imposed upon the freedom to manifest religion or belief than those prescribed by law as necessary for public security, the protection of public order, health or morals or the protection of the rights and freedoms of others.



(3) No person attending any place of education shall be required to receive any religious instruction or to participate in any religious ceremony or observance other than his own.

Art.34 (1) Every person shall have the right to freedom of expression, including freedom to express his opinions and feelings, in particular, by word of mouth, in writing, and by pictorial means.

(2) The freedom of expression may not be subject to any other limitations than those prescribed by law as necessary for purposes of national security, public safety, the defence of order and the prevention of criminal offences, the protection of health and morals, the protection of the reputation or rights of others, and also to prevent the divulgence of confidential information or to guarantee the authority and impartiality of the judiciary.

Art.35 Art, science, as well as artistic and scientific education shall be free, so long as due regard is had to public order and public morals.

Art.36 (1) Every person shall have the right to secrecy of his correspondence and all other forms of communication.



(2) The public authority may not interfere with the exercise of this right except in cases clearly provided by law.

Art.37 Every person shall have the right to inviolability of domicile. The provisions of Article 36 (2) shall apply to the exercise of the rights guaranteed in the present Article.

Art.38 (1) Every person shall have the right to freedom of assembly and association. In particular this right includes the freedom to found trades unions and political parties with others as well as the freedom to join a trade union and political party for the defence of his interests or opinions.

(2) No restrictions may be imposed on the freedom of assembly and association other than those provided by law as necessary for national security, public safety, the defence of order and the prevention of crimes, the protection of health or morals as well as of the rights and freedoms of others.

(3) The present Article does not preclude the imposition of lawful restrictions on the exercise of these freedoms by members of the armed forces, the police and the gendarmerie.

Art.39 (1) Every citizen of the Republic of the Congo shall have the right to move his domicile and settle freely throughout the entire extent of the territory of the Republic.



(2) No restriction may be imposed on the exercise of this right except under the law, and then only where it is necessary for the protection of youth against neglect, or to combat the danger of an epidemic or to prevent the commission of crimes.

Art.40 (1) Every citizen of the Republic shall have the right freely to leave and to return to the territory of the Republic.

~~Art.40~~ (2) No restriction may be imposed on the exercise of this right except under the law and then only in so far as restriction of personal liberty is permitted under this Constitution.

Art.41 No Congolese citizen may be deported from the territory of the Republic.

Art.42 In the event of war or other public danger threatening the life of the nation, the Central Government and the Provincial Governments may take measures derogating from Articles 30 (1) and (4), 34, 37 and 38, but strictly as required for the maintenance or re-establishment of public peace.

Art.43 No one's property, movable or immovable may be expropriated in any part of the Republic of the Congo except by Central Government law providing for the payment of adequate



compensation and for any person claiming such compensation to have, in case of dispute, a right of access to the ordinary courts for the determination of his rights and the amount of equitable compensation.

- Art.44 (1) The property of certain private enterprises or classes of enterprises that are of pre-eminently national interest may be transferred by Central Government law to the Republic, a Province or some other public collective.
- (2) In respect of any enterprise that may be thus expropriated, the law shall provide for the payment of equitable indemnification to their owners.



PART III

A. THE PRESIDENCY

Art.45 (1) The executive authority of the Republic is vested in the President.

(2) He shall not be responsible for acts done in exercise of the duties of his office, except in the case of high treason or an infringement of the Constitution.

(3) All acts of the President shall be countersigned by the Prime Minister, or by the competent Central Minister, whose responsibility such acts shall thereby become.

Art.46 The prerogative and powers of the President shall be as follows:

(1) (a) He shall accredit and receive ambassadors and envoys extraordinary;

(b) (i) He shall have the authority to sign treaties and other international agreements on behalf of the Republic;

(ii) In the case of treaties and agreements of a political nature, of arbitration and settlement of legal cases, or whenever financial commitments are involved, approval of the draft signed by the plenipotentiaries shall be required in due legal form;



(iii) If a treaty involves a change to the territory of the Republic, the procedure of Constitutional revision shall be followed.

(2) (a) He shall order new elections to the two Chambers of the National Congress, shall fix the date of their first meeting and may call extraordinary sessions of the National Congress; he may dissolve one or both Chambers, if a Government crisis lasts longer than three months because a vote of confidence is refused, or if at least three Ministerial crises occur over a period of twelve months by reason of votes of no-confidence in both Chambers.

(b) He shall promulgate all Central laws. Before promulgating a law, he may request both Chambers, by a message giving full reasons, to hold new deliberations on the law; he may submit each Central law to the Constitutional Court for decision as to the constitutionality of the law.

(c) He may issue decrees having the force of law, as well as regulations.



(3) (a) (i) He shall appoint the Prime Minister and, on the latter's recommendation, the other ministers of the Central Government;

(ii) He shall not remove the Prime Minister from office unless the latter is shown to have lost the support of the majority of the members of the Lower Chamber of Congress.

(iii) He shall not remove a Central Minister from office except upon the recommendation of the Prime Minister.

(b) He shall administer the oath of office to the members of the Central Government, as well as the judges of the Constitutional Court and the Commander-in-Chief of the Armed Forces.

(c) He shall be the Supreme Commander of the Armed Forces; he shall preside at the Supreme Defence Council, and shall proclaim a state of war decided by the Chambers.

(d) (i) He shall appoint the Commander-in-Chief and the other commanders of the Armed Forces above the rank of Colonel or equivalent;

(ii) He shall appoint the Director-General of the Security Services and other officials as prescribed by law.



- (4) (a) He shall appoint four of the judges of the Constitutional Court.
- (b) He shall appoint the President of the Supreme Court of Justice.
- (c) Acting on the advice of the Council of Ministers he may grant free pardons and commute sentences. When a member of the Central Government has been judged guilty by the Constitutional Court, the Federal President may not grant a free pardon except at the request of the National Congress.
- (5) He shall confer all the honours and decorations of the Republic.
- (6) In exercising any of the functions assigned to him under this Constitution the President shall act on the advice of the Council of Ministers or of a Central Minister duly authorized by the Council of Ministers, except when he exercises his power to appoint the Prime Minister or to dissolve Congress or to appoint members of his personal staff or to appoint a deputy for the Prime Minister during the latter's temporary absence or illness.



Art.47 (1) Election of the President shall be by secret ballot on the affirmative vote of an absolute majority of the members of the two Chambers meeting in joint session.

(2) If no candidate has received an absolute majority after two ballots, the one having the largest number of votes cast in his favour shall be considered elected on the next succeeding ballot.

Art.48 (1) Any Congolese citizen of at least 40 years of age and enjoying all civil and political rights is eligible for the Presidency.

(2) The office of the Presidency is incompatible with any other office.

(3) The President may stand for immediate re-election only once.

Art.49 (1) The President's term of office shall be fixed at 5 years.

(2) If, on the expiration of the President's term of office, at least one Chamber is dissolved or if there are only three months unexpired before at least one Chamber is dissolved, the election of the President shall take place within fifteen days after the meeting of the totally or partially reconstituted Congress.



(3) The powers of the President in office shall in the meantime be extended.

Art.50 Before entering on the duties of his office, the President shall take the following oath before the Chairman of the Senate, the members of the Central Government and the other members of the National Congress meeting in joint session:

"I swear to uphold the Constitution and laws of the Republic and to maintain its national independence and the integrity of its territory."

Art.51 (1) The functions of the President shall be exercised by the Chairman of the Senate in all cases in which the President is temporarily unable to carry out such functions.

(2) In the event of death, permanent incapacity or resignation of the President, the Chairman of the Chamber of Deputies shall order the election of the new President within 30 days.

(3) If the Chambers are dissolved or if there are less than three months unexpired before the end of their term, the election of the new President shall take place within 15 days after the meeting of the totally or partially reconstituted Congress.



Art.52 (1) Whenever the President shall be duly charged with High Treason or an infringement of the Constitution, he shall be indicted by the two Chambers voting by an absolute majority of their members in secret ballot.

(2) He shall be arraigned before the Constitutional Court, which may pronounce sentence of dismissal without prejudice to the operation of the criminal law.

Art.53 All criminal prosecutions shall be instituted in the name of the President.



## B. The Central Government

- Art. 54. The Central Government shall be in the charge of a Council of Ministers which shall consist of the Prime Minister and Central Ministers.
- Art. 55. The President shall have the power to appoint as Prime Minister a member of the lower House of Congress who, in his opinion, has the support of the majority of the total membership of that Chamber of Congress.
- Art. 56. Other Ministers of the Central Government shall also be appointed by the President who shall act in accordance with the advice of the Prime Minister, but so that in making such appointments, the Central Government shall include at least one Minister from each of the Provinces of the Republic.
- Art. 57. No one may be a Central Minister and a Provincial Minister at the same time.
- Art. 58. The Prime Minister shall have the responsibility for allocating any business of the Government including the administration of any Government Department to any Minister of the Central Government.
- Art. 59. It shall be the duty of the Prime Minister to keep the President fully informed concerning the administration of all Government business.
- Art. 60. The functions of the Prime Minister shall, during his absence or illness or for any other reason, be performed by a Deputy Prime Minister in order to seniority or by such other Central Minister as may be authorised so to act by the President acting wherever possible in accordance with the advice of the Prime Minister.
- Art. 61. The Central Government shall determine and conduct the general policy of the Republic and shall have at its disposal a Central administration and Congolese armed forces, under conditions fixed by Central law.



Members of the Central Government shall be collectively responsible for the general policy of the Government and individually responsible for their respective Departments of the Central Government.

Art. 62. There shall be Central Secretaries of State who shall exercise functions that are specifically delegated to them by the Prime Minister or by the Central minister whose subordinates they are. The power to make decisions by countersigning cannot be delegated to them.

- Art. 63. (1) The Central Government shall be responsible to the National Congress.
- (2) This confidence may be secured by the vote of an absolute majority of the members of each of the Chambers of Congress.
- (3) A vote of confidence shall be requested within 15 days following the constitution of the Government by the President.
- (4) During the period preceding the vote of confidence, the outgoing government shall continue to transact all current business.

Art. 64. Before entering upon the duties of their office, members of the Federal Government shall take the following oath of office administered by the Federal President in the presence of the National Congress:

"I swear to uphold the Constitution and the Federal laws."

- Art. 65. (1) The collective responsibility of the members of the Central Government shall be invoked before the National Congress by a motion of no-confidence tabled and signed by at least one quarter of the members of each of the two Chambers.
- (2) i. Voting on a motion of no-confidence shall not take place until at least four days after the tabling of the motion, which shall be adopted by an absolute majority of the members of each of the two Chambers;
- ii. If it is adopted, the Federal Government shall be considered as having resigned;
- iii. It shall continue to transact current business until such time as a new Government shall have been formed and shall



have received a vote of confidence.

Art. 66.

The individual responsibility of a member of the Central Government shall be invoked before each Chamber by the tabling of a motion of censure signed by at least one quarter of the members of each of the Two Chambers, and shall be considered adopted if approved by the vote of an absolute majority of the members of each Chamber.

Art. 67.

The signatories of a motion of no-confidence or of a motion of censure that has been rejected cannot, in the course of the same session, table a new motion of no-confidence or a new motion of censure aimed at the same member of the Central Government.

Art. 68. (1) Whenever a Prime Minister resigns, dies or is removed from office, the other members of the Government shall be considered as having resigned.

(2) All Central Ministers hold their office at the pleasure of the President and any of them may be called upon to resign his office by the President acting on the advice of the Prime Minister.

(3) Any Central Minister may also voluntarily resign his office at any time.

Art. 69. (1) Criminal proceedings may not be taken against any member of the Central Government if he has not first been indicted by the two Chambers of the National Congress.

(2) In such a case, he shall be brought before the Constitutional Court.



P A R T   I V  
The Central Legislature.

- Art. 70. (1) The legislative function shall be jointly exercised by the Chamber of Deputies and the Senate, which shall together constitute the National Congress.
- (2) The exercise of the legislative function cannot be delegated to the Central Government except for a limited period and for specified purposes, and the law shall determine the purposes, principles and extent of such delegation.
- Art. 71. (1) In extraordinary cases of necessity or urgency, the Central Government may issue decrees having the force of law, and such decrees shall be presented to the Chambers for conversion on the same day.
- (2) The Chambers shall be convened, even if they have been dissolved, within ten days.
- (3) If the decrees are not converted into laws within a period of 40 days following their publication, they shall automatically cease to be binding.
- Art. 72. (1) If a state of war or national emergency is declared by Congress, the Central Government may adopt absolutely urgent measures, which shall be submitted to Congress for approval as soon as possible thereafter.
- (2) i. If Congress, or one of its Chambers, is dissolved, or if it is prevented from functioning by exceptional circumstances the measures shall immediately be submitted to the Constitutional Court, which shall decide whether they are ultra vires or not;
- ii. The Constitutional Court shall have power to declare null and void any measure it considers to be ultra vires.
- Art. 73. (1) The power to initiate legislation shall lie with the Central Government or with one-sixth of the total membership of either Chamber.
- (2) Draft legislation shall first be submitted to a Legislative Council, which shall ensure that they contain all the necessary elements and that they do not clearly violate this Constitution.



- (3) If the Legislative Council considers that the draft legislation should be revised, supplemented, or withdrawn, it shall return same with its report, and such draft legislation may not be submitted to the competent committees of the two Chambers except by a joint decision of their two Chairmen, who shall give full reasons therefor.
- (4) The committees shall examine the proposals and submit them with a detailed report to the Chambers, which shall decide on them article by article, followed by a final vote.
- (5) If the consideration of a draft legislative measure is declared urgent by the Government, it shall be given priority in accordance with the regulations prescribed beforehand by each of the Chambers; but any such priority procedure may not be applied to measures involving constitutional revision, electoral laws, proposals for delegation of legislative power and the approval of treaties, international agreements, budgets and accounts.

- Art. 74. (1) A proposal for new legislation originates that in Congress shall be examined on a priority basis by the Chamber other than the one in which the proposal has been initiated.
- (2) If such a proposal is originated by the Government, it shall be examined by the two Chambers in succession.
  - (3) Ordinary laws shall be approved by an absolute majority of each Chamber voting in succession.

Art. 75. No law or act having the force of law may have the effect of imposing new obligations or monetary charges on private individuals in respect of events antedating the entry into force of such law or act.

- Art. 76. (1) No legislative act or regulation shall be enforceable until ten days after its publication in the official journal of the Republic.
- (2) A shorter period than ten days may be expressly stipulated in any particular measure.

Art. 77. (1) Elections to the Chamber of Deputies shall be by direct and secret universal ballot and on the basis of one Deputy per 60,000 inhabitants.



- (2) Anyone who qualifies as an elector and who is over 25 years of age may be elected a Deputy.
- (3) Electors shall be citizens over 21 years of age and enjoying full civil and political rights.

Art. 78. (1) The Chamber of Deputies shall be elected for a period of four years.

- (2) New elections shall take place during the course of the last quarter of the legislative period, and, in the event of premature dissolution, within 60 days.

Art. 79. (1) Elections to the Senate shall be by direct and secret universal ballot, for a period of five years and on the basis of six senators for each Province and for the Capital Territory of Leopoldville.

- (2) Anyone who qualifies as an elector and who is over 30 years of age may be elected a Senator.
- (3) Electors shall be citizens over 25 years of age.
- (4) Former Presidents of the Republic shall be Life Members of the Senate.
- (5) Elections to the Senate shall be subject to the same conditions as elections to the Chamber of Deputies.

Art. 80. Every duly elected Member of a Chamber shall before taking any part in its business shall swear or affirm in a form to be presented by Congress.

Art. 81. No one may simultaneously be a member of both Chambers, or a member of a Central Chamber and a Provincial Assembly.

Art. 82. (1) Each of the Chambers shall be the judge of the qualification of its new members and of grounds of ineligibility and incompatibility of membership.

- (2) Membership of a Chamber may be terminated by death, absence for more than the stipulated period, permanent incapacity or voluntary resignation.

Art. 83. (1) The first meeting of the Chambers shall take place within 30 days following the elections.

- (2) Until such a meeting is held, the lives of the previous Chambers shall be extended.



- (3) The Chambers shall meet in full session twice annually from the first Monday in April (if not a public holiday), to the first Monday (if not a public holiday), and from the first Monday of October (if not a public holiday) to the first Monday of January (if not a public holiday).
- (4) Extraordinary sessions shall be convened in the cases mentioned in Arts 2 and 3.
- (5) Such extraordinary sessions may also be convened with a definite agenda on the initiative of the President, the Chairman of either Chamber, or one-third of the total membership of each Chamber.
- (6) Whenever one of the Chambers meets in extraordinary session, the other is deemed to be automatically convened in regular session.
- (7) No deliberation may be considered valid unless two-fifths of all the members of either Chamber are present and vote.
- (8) Members of the Central Government, even if they are not members of either Chamber, have the right and, if their presence is required, they duty to attend any session; and they have the right to be heard whenever they so request.

Art. 84. (1) Each of the Chambers shall elect from among its members a Chairman, two Vice-Chairmen and a Secretary.

- (2) Whenever the two Chambers meet in joint session, the Chairman and Praesidium shall be those of the Chamber of Deputies.

Art. 85. (1) Each of the Chambers shall adopt its own Standing Orders by an absolute majority of its members.

- (2) For the purpose of conducting ordinary legislative business, meetings shall be open to the public, unless secret session has been decided on by an absolute majority of the members present.
- (3) Where constitutional matters are involved, the decision whether or not the meeting should be secret shall be taken by the appropriate majority of the total membership of each Chamber.

Art. 86. (1) Every Member of Congress shall exercise his functions at his absolute discretion and not as a mandatory.



- (2) He may not be prosecuted either for any opinions expressed, or for any vote cast by him in the performance of his duties as a Member of Congress.

Art. 87. (1) Before a Member of Congress can be subjected to criminal prosecution to arrest or deprivation of personal liberty, or to any search whatsoever, the permission of the Chamber of which he is a member shall be required, except when he is caught "in flagrante delicto" or in cases of crimes against the life, liberty and property of other persons.

- (2) Either Chamber may suspend the state of detention of one of its members, except in the cases mentioned in Subsection (1) of this Article and even in the event of the execution of a sentence not subject to appeal.

Art. 88. The official language of the National Congress shall be French.

#### The Provinces.

Art. 89. The executive authority of each Province shall be vested in a Governor who shall be appointed by the President of the Republic acting on the advice of the Prime Minister.

Art. 90. (1) The Government of each Province shall consist of the Provincial Governor and such Ministers, not being more than ten, as the Governor may be empowered by the Central Government to appoint for the law, order and good government of the Province.

- (2) All Ministers shall be appointed from among the members of the Provincial Assembly.

- (3) A Provincial Minister shall cease to be a member of the Provincial Government in precisely the same way as a Central Minister.

Art. 91. (1) Subject to the provisions of this Constitution, in particular those of Part V, each Province shall enjoy such a degree of autonomy within its own spheres as is compatible with its rights and obligations.

- (2) The autonomy of a Province may not be revoked except by



the procedure for amendment and revision prescribed in Part IX of this Constitution.

Art. 92. A Provincial Assembly shall be elected every four years.

Art. 93. (1) The members of the Provincial Assembly shall be elected on the basis of direct and secret universal adult suffrage by Congolese who have their domicile or, failing this, their permanent residence within the Province.

(2) The detailed rules shall be laid down in Electoral Regulations approved by the Provincial Assembly.

Art. 94. No person shall be disqualified by Provincial legislation from exercising his electoral rights on grounds more restricted than those laid down by Central laws with respect to elections to the National Congress.

Art. 95. In the application of the central laws a Provincial Government shall be under an obligation to carry out all necessary directions of the Central Government and Ministers.

Art. 96. In times of war, whenever a state of emergency has been proclaimed or where there has been a breakdown in the administration of a province, the President of the Republic, acting on the recommendation of the Prime Minister, shall appoint a temporary government under a Special Administrator to take over the administration of the Province until a regular government is re-constituted as provided by law:

Provided that the President's decree appointing the Special Administrator is submitted to Congress for its approval within sixty days of its first promulgation.

Art. 97. Each Province shall have the power to recruit, maintain and dispose of its own police force in accordance with a Police Statute enacted by the Provincial Assembly.

Art. 98. The official language of a Provincial Assembly shall be French



## P A R T V

### Relations between the Centre and the Provinces.

#### A. The Distribution of Powers.

- Art. 99. All matters stated in Schedule A below shall be deemed to be within the exclusive competence of the Central Government, and a Province may legislate on any of them only if so specially authorised by the National Congress.
- Art. 100. All matters stated in Schedule B below shall be deemed to be within the concurrent competence of both the Central and Provincial Legislatures, but so that any Provincial legislative measure which is inconsistent with the Central legislative measure concerning the same subject matter shall to the extent of such inconsistency be absolutely void.
- Art. 101. (1) All matters stated in Schedule C below shall be deemed to be within the competence of the Provinces and the National Congress shall not in normal times exercise any legislative power in respect thereof.
- (2) Subject to the provisions of this Constitution, Provincial Assemblies may make laws with regard to any matter not included in either Schedule A or Schedule B.

#### Schedule A.

1. Foreign relations, i.e. diplomacy, foreign trade, international technical and financial assistance;
2. The external and international security of the Republic;
3. The monetary system; currency, coinage and legal tender;
4. Customs and excise duties (including export duties);
5. The Public finance of the Republic.
6. Postal, telephone and telegraph services as well as meteorological services; allocation of wavelengths for wireless, broadcasting and television transmission;
7. Air and sea routes as well as any other transport routes of national interest (1);
8. Legislation on nationality considered from the international



- point of view and legislation on naturalization;
9. The public services of the Central Government.
  10. The organization of applied jurisdictions and written laws, including administrative jurisdiction;
  11. Medical legislation;
  12. University education, the conferment of official academic degrees, the elaboration of secondary school curricula leading to the university;
  13. The Central Government Police;
  14. Co-ordination of the legislation on energy and mines;
  15. Weights and Measures;
  16. Passport and Visas;
  17. Powers, Privileges and Immunities of both Chambers of Congress and their Members;
  18. Public Debt of the Republic;
  19. Copyright, Patents, trade marks, designs and merchandise marks;
  20. Defence;
  21. Extradition and Deportation;
  22. External Borrowings on behalf of the Republic or a Province;
  23. Immigration and Emigration;

(1) A route is of general interest when it serves the interests of the entire Republic: all natural transport routes (waterways and lakes), man-made transport routes (railways and air routes, main roads and highways as well as canals, if any, including their passing tracks, (railways passing around rapids and connecting two navigable reaches) providing access to the sea.

24. Mercantile Law;
25. Accounts and Audit of Accounts of the Republic;



### Schedule B

1. Economic co-ordination;
2. Co-ordination of the social policy of the Provinces;
3. Fundamental rights as laid down in this Constitution;
4. Civil and commercial statute law;
5. Criminal law;
6. Higher technical education;
7. Scientific and industrial research;
8. Information;
9. Co-ordination of the civil services of the Province;
10. Prospecting of the soil and sub-soil;
11. Co-ordination of public health;
12. Traffic on Central trunk roads;
13. Prisons and other institutions for the treatment of offenders;
14. National Monuments, Parks, etc. situated in a Province;
15. Legal and Medical Professions.
16. Statistics and census.

### Schedule C.

1. The political and administrative institutions of the Province;
2. Regional and local legislation;
3. Administrative services of the Province;
4. Public finance of the Province;
5. Customary or tribal const. jurisdiction;
6. Customary or tribal law;
7. Police;
8. Primary, normal, professional, technical and secondary education;
9. Public works of local significance;
10. The granting of concessions and lease of land and mines.

### B. The Constitutional Court.

Art. 102. (1) There shall be established in the Federal Territory a Constitutional Court which shall ensure the due observance of and compliance with the provisions of



this Constitution.

- (2) It shall consist of a "Chambre de Constitutionnalité" and a "Chambre des Conflits".
- (3) The Constitutional Court shall be composed of fifteen judges, three of whom shall be elected by each Chamber of the National Congress, four shall be appointed by the President, three by the Supreme Court of Justice, one by the Law Faculties of Congolese Universities and one by the Bar association. The President of the Court shall be appointed by the President of the Republic on the recommendation of the Prime Minister.
- (4) Any eight judges including the President shall constitute each of the two Chambers of the Constitutional Court.
- (5) Central Government legislation shall prescribe the other rules necessary for the organization and operation of the Court. The absolute independence of Constitutional judges in the exercise of their functions shall be ensured. The function of a Constitutional judge shall be incompatible with the exercise of any other profession and with the exercise of any official, political or administrative function.

- Art. 103. (1) The Chambre de Constitutionnalité shall have power to pronounce, either of its own motion or on a reference to it by the Prime Minister or the President of each Chamber of the National Congress or of a Provincial Assembly, on the conformity or otherwise of a Central or Provincial legislative measure to any of the provisions of this Constitution.
- (2) Where it chooses to make a decree of its own motion, on a draft law, it shall do so before its promulgation or, in the case of an ordinance law, before it is signed by the President of the Republic or by a Provincial Governor, as the case may be.
  - (3) Where it is asked for an opinion on any law it may decide to suspend its execution for a maximum period of three months, or it may pronounce the law or ordinance unconstitutional, in which case the particular law or



decree may not be promulgated.

- (4) In every case in which the Chambre decrees a measure or ordinance law to be inconsistent with this Constitution, the measure or ordinance law in question shall be regarded as void to the extent of the inconsistency.

- Art. 104. (1) The Chambre des Conflits has jurisdiction to settle conflicts of authority between the Central and the Provincial Governments.
- (2) Disputes referred to it by the President, the Prime Minister, the President of either Chamber of Congress or the Governor of a Province, shall be such as arise out of claims to legislative competences on the part of the Central or the Provincial executive in respect of subjects within the Exclusive, the Concurrent and the Provincial Legislative Lists.
  - (3) A decree of this Chamber shall be regarded as absolutely definitive of the respective legislative competence of the Central and the Provincial Governments and executive authorities.
  - (4) Any legislative measure enacted or any executive action taken by any of the Governments and authorities of the Republic in contravention of a decree of this Chamber under sub-paragraph (3) of this Article shall be absolutely void.

- Art. 105. There shall be no appeal whatsoever from any decision, decree or opinion of the Constitutional Court or of either of its constituents, Chambre de Constitutionnalité and Chambre des Conflits.



## PART VI

### A. The Public Service

- Art. 106. There shall be a Central Government Public Service and a Public Service for each of the Provinces.
- Art. 107. (1) Each Department of the Central Government shall be under the immediate supervision of a Chef de Cabinet who, as an officer in the Central Public Service shall be under the general direction and control of a Central Minister.
- (2) The Chef De Cabinet shall have the duty of executing such policy decisions of the Council of Ministers as relate to his own Ministry, and the Secretary-General, who is also an officer in the Central Public Service, shall supervise the work of all the staff of his Department or Departments where more than one Department has been placed under his charge.
- Art. 108. A Central Department or any branch thereof may be located in any Province for the purpose of discharging effectively Central Government responsibilities for certain public services of the Republic.
- Art. 109. The Public Service of a Province shall also be organized in Departments, each one or more being placed under a Provincial Secretary who shall perform similar functions to those of the Central Secretary-General.
- Art. 110. (1) The terms and conditions of service of all the members of the Central Public Service shall be as are laid down in a Civil Service code to be established by or under Federal Congress legislation, and those of a Provincial Public Service shall be as laid down by or under Provincial legislation.
- (2) All Public Service matters shall be the exclusive responsibility of the Fonction Publique.
- Art. 111. (1) There shall be a Procurator-General for the Republic and one for every Province, and <sup>he</sup> shall be an officer in the Central or the Provincial Public Service as the case



may be.

- (2) It shall be his responsibility to institute all public prosecutions in respect of crimes committed within the area of his authority, but the Central Procurator-General shall have the power to institute or terminate prosecutions in any Province if the administration of justice so requires.

#### B. The Police

- Art. 112. (1) There shall be a Central Government Police Force for the Capital Territory of Leopoldville.
- (2) In cases of emergency, a contingent of the Central Police Force may be deployed by the Central Government in any Province which has requested Central Government intervention or in which the Central Government considers such an intervention necessary in the interests of the maintenance of law and order.
  - (3) For the purposes of paragraph 2 of this Article, the Central Government may direct one Provincial Government to send any contingent of its police to another or other Provinces, and the Provinces concerned shall comply accordingly.

Art. 113. Each Province shall have its own Police Force which may be made up of Local Authority police units and the Provincial police.

- Art. 114. (1) The discipline, control and the general terms and conditions of service of the police shall be as laid down in the Federal Police Force Code or in the Provincial Force Code by or under Congress or Provincial legislation, as the case may be.
- (2) All police service matters shall be the responsibility of the Fonction Publique.

Art. 115. The gendarmerie and the secret service shall be under the exclusive control and supervision of the Central Government



C. The Armed Forces

- Art. 116. (1) There shall be only one national army, navy and airforce for the Republic of the Congo.
- 117 (2) The President shall be the supreme commander of the armed forces of the Republic and shall, for the purposes of this Article, act only in accordance with the advice of the Prime Minister on behalf of the Council of Ministers.
- Art. 117. The Central Minister of Defence shall be chairman of the Defence Council composed of such representatives of the Central and Provincial Governments as may be prescribed by National Congress law.
- Art. 118. Garrisons of the Republican army, navy or airforce stationed in any Province shall be subject only to the direct control and disposition of the Central Government, and shall not be in any political or military relationship with the Provincial or the local authorities.
120.  
Art. 119. A Central Government Military Statute shall govern the organization, discipline and service conditions of all members of the armed forces - the army, the navy and the airforce of the Republic.



PART VII  
The Judiciary

121. (1) There shall be the following categories of courts:  
The Supreme Court of Justice, the Courts of Appeal, the Courts of First Instance, the Police Courts, and Customary Courts.
- (ii) Every Province shall have all the categories of courts except the Supreme Court of Justice.
122. (i) The Supreme Court of Justice shall be a final court of appeal for all the courts in the Republic, and shall consist of :
- (a) The Chief Justice of the Republic;
  - (b) Such number of Central Justices (not being less than five) as Congress may prescribe;
  - (c) All the Chief Justices of the Provinces and of the Court of Appeal in the Capital Territory of Leopoldville.
- (ii) Any three judges of the Court shall form a quorum, and not more than seven may sit together.
- (iii) The Capital Territory shall be the seat of the Supreme Court, but the Chief Justice may from time to time appoint such other places in the Republic as he may deem fit.
123. (1) The Chief Justice and the Justices of the Supreme Court of Justice shall be appointed by the President of the Republic on the advice of the Prime Minister.



(2) No person, who has not held high judicial office or who has not been a distinguished jurist or who has not had at least ten years' practical experience at the Bar, shall be qualified for appointment as Chief Justice of the Republic or as a Justice of the Supreme Court.

(3) If there is a vacancy in the office of the Chief Justice or if he is for any reason unable to act, then the President of the Republic acting on the advice of the Prime Minister may designate any one of the other Justices of the Supreme Court to perform the functions of the office of Chief Justice.

(4) The President of the Republic may on the advice of the Prime Minister similarly designate any person, who is qualified as stated in the second paragraph of this Article, to act as a Justice of the Supreme Court.

124. (1) The Chief Justice or a Justice of the Supreme Court shall vacate his office on his attaining the retiring age fixed by law.

(2) Neither the Chief Justice nor a Justice of the Supreme Court shall be removed from office except on the grounds of misbehaviour, bodily or mental incapacity, or any other cause rendering him unable to discharge the duties of his office.

(3) The removal from office of the Chief Justice or of a Justice of the Supreme Court shall be by a resolution of not less than two-thirds of the members of each Chamber of the National Congress.



125. (1) The Supreme Court of Justice shall have no original jurisdiction in any criminal matter, but shall have original jurisdiction in any dispute between the Central Government and a Province, or between one Province and another, and in any other case in which Congress may confer additional jurisdiction upon it.

(2) The jurisdiction conferred upon the Supreme Court in sub-section (1) of this Article exists only in disputes involving the determination of the existence or extent of a legal right.

126. (1) The Supreme Court shall have appellate jurisdiction in both civil and criminal causes brought from all the Courts of Appeal in the Republic, and in such other cases as may be prescribed by law. X

(2) All decisions of the Supreme Court shall be binding on all Courts in the Republic.

(3) The decisions of the Supreme Court shall be enforced in any part of the Republic by the Court of Appeal and other courts of law and by all persons and authorities having jurisdiction in that part.

(4) Unless Congress otherwise provides, the Supreme Court shall have power to make rules regulating the practice and procedure in all the Courts of the Republic.

127. (1) There shall be a Court of Appeal for the Capital Territory of Leopoldville and for each Province of the Republic.



(2) Except in Constitutional Cases, all appeals from Courts of First Instance shall be to a Court of Appeal, which shall have no original jurisdiction in any cause or matter.

128. (1) A Court of Appeal shall consist of a Chief Justice and such number of judges (not being less than three) as Congress may prescribe.

(2) Any three judges of the Court shall form a quorum, and not more than five may sit together.

(3) For the purposes of this Constitution the Court of Appeal exercising jurisdiction in any Province immediately before the commencement of this Constitution shall be deemed to be the Court of Appeal for the corresponding Province.

129. The appointment, tenure of office, filling of a vacancy, retirement, and removal of the Chief Justice and of a Judge of the Court of Appeal shall be subject to the same terms and conditions as those stipulated in Articles 123 and 124, except that a minimum of seven years' practical or judicial experience shall be sufficient in the case of the Chief Justice or a Judge of the Court of Appeal.

130. In addition to the Supreme Court of Justice, the Courts of Appeal and the Courts of First Instance, Congress shall have power to establish courts of law or to modify the jurisdiction of any court in any part of the Republic.



131. (1) A Court of First Instance shall be a superior court of record, and shall be presided over by a judge of not less than five years' standing after admission to practice as an advocate.

(2) It shall be a court of appeal for all subordinate courts, and shall have general powers of superintendence over all subordinate courts within its area of jurisdiction.

(3) It shall have original jurisdiction to entertain all causes involving (a) a claim to any of the fundamental rights embodied in this Constitution, (b) an interpretation of the Constitution. In cases coming under (b) appeals lie direct to the Constitutional Court. X

132. (1) There shall be two types of Police Courts: Grade A and Grade B.

(i) The Grade B type shall consist of only one juge de paix and shall exercise power of summary jurisdiction in all minor civil and criminal cases involving such pecuniary damages and penalties as may be fixed by law.

(ii) The Grade A type shall consist of a bench of a maximum of five and a minimum of three juges de paix who shall exercise civil and criminal jurisdiction in the more important cases, the nature and character of which shall be fixed by law.



(2) This second type of police magistrate court shall have both original and appellate jurisdiction.

(3) Appeals shall lie to it from the Grade B Police Courts and from the Customary Courts in all except land tenure cases.

(4) Appeals shall lie from it to a Court of First Instance.

(5) All Police Court magistrates shall be appointed (and dismissed) by the President of the Republic ~~from a list of candidates proposed by the President of the Republic~~ from a list of candidates proposed by the Provincial Assembly, or in the case of the Capital Territory of Leopoldville, by the Municipal Council.

133. (1) Customary Courts shall hear and determine all cases concerning immemorial customs and usages of the people within their respective areas of jurisdiction, so long as the rules and observances they enforce are not repugnant to any statute law, equity and good conscience.

(2) In particular, a customary court shall have original jurisdiction in all cases involving traditional or customary marriage, family rights and obligations, land tenure, inheritance and succession, and chieftaincy matters.

(3) An appeal lies direct to a Court of First Instance in all land tenure as well as inheritance and succession cases.

(4) All Customary Court Judges shall be appointed (and dismissed) by the President of Provincial Assembly from a panel proposed by the relevant Local Government Authority of the area.



134. . Before entering upon the duties of his office, every judge of the Supreme Court, of a Court of Appeal, a Court of First Instance, a Police Court or a Customary Court, shall take and subscribe the oath of allegiance and such other oath for the due execution of his office as Congress may prescribe.

Judges of Police Courts and Customary Courts shall take the oath before the Provincial Governor, and those of all other courts before the President of the Republic.

135. The qualifications of candidates for appointment as Police Court and Customary Court Judges shall be laid down by the National Congress by special statutes.

136. The composition and jurisdiction of military tribunals and their practice and procedure shall be such as are laid down by law.

137. Save as Congress may otherwise expressly prescribe, the salaries of all judges of the Supreme Court of Justice, the Courts of Appeal and the Courts of First Instance shall be a charge on the Consolidated Revenue Fund of the Republic, and shall not be diminished during their tenure of office.

138. The salaries of Police Court and Customary Court Judges shall be such as are fixed by the Provincial Assembly concerned, which shall have power under the authority of the Governor of the Province to vary such salaries by legislation as occasion may warrant.



139. (1) Every Judge shall be entitled to such allowances, leave of absence, and pension as may be determined from time to time by or under law made by the National Congress.
- (2) In the case of Judges other than those of the Police Courts and Customary Courts, neither the allowances nor their leave and pension rights shall be varied to their disadvantage during their tenure of office.
140. The appointment of officers and servants of the Supreme Court and of a Court of Appeal shall be made by the Chief Justice of such a court, and that of officers and servants of other courts shall be made by the Governor of a Province in consultation either with the Judge of a Court of First Instance or with the Local Authority in charge of the area of the jurisdiction of the courts concerned.



Part VIII

Finances of the Republic

141. No tax shall be levied or collected otherwise than in accordance with a duly enacted law.
142. (1) Save as otherwise provided in this Part, all revenues received by the Central Government, all loans raised and all moneys received by the same Government in repayment of loans shall form one consolidated fund to be entitled "the Consolidated Fund of the Republic of the Congo"; and all revenues received by the Government of a Province, all loans raised and all moneys received by the same Government in repayment of loans shall form one consolidated fund to be entitled "The Consolidated Fund of the Province".
- (2) All other public moneys received by or on behalf of the Central Government or of a Provincial Government shall be credited to and form part of the public account of the Republic or of the Province as the case may be.
- (3) There shall be no appropriation of any money out of the Consolidated Fund of the Republic or of a Province except as provided in this Constitution.
143. A Contingency Fund in the nature of an imprest account may be established by Congress or by the Provincial Assembly, as the case may be, and placed at the disposal of the President of the Republic or the Governor of a Province to enable him make advances out of such Fund for the purpose of meeting



unforeseen expenditure pending necessary legislative authorization by Congress or by the Provincial Assembly, as the case may be.

144. (1) Congress shall regulate by law the custody of the Consolidated Fund of the Republic and the Contingency Fund, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of other public moneys, their payment into the public account of the Republic, and the withdrawal of moneys from such account, and all other related matters.
- (2) A Provincial Assembly shall likewise provide for the custody of all equivalent Provincial Funds, public accounts and other moneys.

145. All moneys received by or deposited with any court within the Republic to the credit of any cause, matter, account or persons, and all moneys received by or deposited with any employee of the Central or a Provincial Government shall be paid into the public account of the Republic or of a Province, as the case may be.

146. (1) The following duties and taxes shall be levied and collected by the Central Government but the proceeds in any financial year shall be assigned to the Provinces within which they are leviable:
- (i) stamp and excise duties mentioned in the Exclusive Legislative List;
  - (ii) taxes on goods or passengers carried by railway, sea or air;
  - (iii) taxes on railway fares and freights;



(iv) taxes on the sale or purchase of newspapers.

(2) These taxes and duties shall not form part of the Consolidated Fund of the Republic, but shall be distributed among the Provinces within which they are leviable in accordance with the principles of distribution laid down in a statute enacted by Congress.

147. Taxes on income throughout the Republic shall be levied and collected by the Central Government and distributed between the Republic and the Provinces on a percentage basis to be fixed by Congress by law.

But taxes payable in respect of Central Government employees' emoluments shall form part of the Consolidated Fund of the Republic of the Congo and shall not form part of such distributable percentage.

148. Nothing contained in Articles 146 and 147 shall preclude Congress from increasing any of the taxes and duties mentioned therein by a surcharge for the purposes of the Republic, and prescribing that the entire proceeds of any such surcharge shall form part of the Consolidated Fund of the Republic.

149. Any legislative measure which imposes any such surcharge for the purposes of the Republic as is referred to in Article 148, or which varies or imposes any tax or duty in which the Provinces are interested, or which affects the principles on



which under any of the foregoing provisions of this Part moneys are or may be distributable among Provinces, shall not be introduced or moved in Congress except on the recommendation of the President of the Republic acting on the advice of the National Economic Council.

150. (1) Congress may by law authorize the grant to any Province of such sums out of the Consolidated Fund of the Republic as are from time to time deemed necessary to assist the Province in particular cases.
- (2) It may be made a condition of such ~~grants~~-in-aid that certain categories of undertakings by a Province requiring assistance shall have received the prior approval of the Central Government.
151. (1) A State shall have the power to enact a law imposing taxes in respect of professions, trades, callings or employments carried on therein, such taxes being for the benefit of the State itself or of a municipality or other local authority therein.
- (2) The power thus given to a Province shall not be construed as limiting in any way the power of the National Congress to make laws relating to taxes on income accruing from or arising out of professions, trades, callings and employments.
152. (1) There shall be a single currency as legal tender throughout the Republic.



(2) The franc is the monetary unit of the Republic, and the Central Government shall have the exclusive right to mint metallic species of gold as legal tender in the manner prescribed by law.

(3) The "Institut Fédéral d'émission", which is the National Bank, shall be the only Bank of issue.

153. The financial year begins on April 1 and ends on March 31 of the next following year.

154. (1) The Central Minister charged with responsibility for finance shall prepare and lay before Congress at the beginning of each financial year estimates of revenue and expenditure of the Republic for the next following financial year.

(2) The heads of estimates shall be included in a Bill providing for the issue out of the Consolidated Fund of the Republic of all the moneys necessary to meet that expenditure, and the Bill shall be enacted into law.

(3) If the amount appropriated proves insufficient or if no amount has been appropriated for an unforeseen but necessary expenditure, a supplementary estimate showing the sums required or spent shall be laid before Congress under cover of a supplementary appropriation Bill which shall be enacted into law.

(4) Any advance made in accordance with Article 143 shall also require the presentation of a supplementary estimate and a supplementary Bill shall be introduced as soon as conveniently may be for the purpose of replacing the amount so advanced.



155. The provisions of Article 154 apply mutatis mutandis to the Provinces.
156. (1) There shall be a Central Director of Audit whose duty shall be to audit and report on the public accounts of the Central Government and of all officers, courts and authorities of the Republic. To enable the Director discharge his duties, he or any person duly authorized by him shall have access to all books, records, returns and other documents relating to such public accounts.
- (2) A Director of Audit shall perform similar functions in each Province.
157. (1) The Public Debt of the Republic of the Congo and of a Province shall be secured on the revenues and assets of the Republic and of the Province concerned.
- (2) The term "public debt" shall include the interest payable on that debt, sinking fund payments in respect of that debt and the costs, charges and expenses incidental to its management.
158. (1) In every financial year, a Provincial Government shall pay to the Central Government a sum of money equivalent to such part of the expenditure incurred by the Central Government in respect of the Department of Customs and Excise for the purpose of collecting import, export and excise duties as is proportionate to the share of the proceeds of those duties received by that State in respect of the financial year concerned.



(2) The Central Government shall have power to set off any sum payable (under this Part) by it to a Province in or towards the payment of any money that is due from that Province to the Central Government in respect of any loan made by the latter to that Province.

(3) Nothing contained in sub-paragraph (2) of this Article shall affect the right of the Central Government to obtain payment of any money due to it from a Province in respect of any loan.

(4) The Central Director of Audit shall certify all amounts payable under this Article.

159. (1) The Central Government shall pay to each Province an amount equal to forty per cent of the net proceeds of the rents and royalties received in respect of any mineral or mineral oil extracted in that Province, including its continental shelf.

(2) An amount equal to thirty per cent shall be retained for Central Government purposes, and the remaining thirty per cent shall be credited to a Distributable Pool Account, of which proportionate fractions fixed by Congress by law shall be paid to each Province in the Republic at stated periodic intervals.

160. A commission consisting of representatives of the Governments of the Republic shall be appointed from time to time by the Central Government to review the provisions in Article 18 and to make recommendations thereon.



161. (1) There shall be established a National Economic Council consisting of a Chairman and six other members to be appointed by the President of the Republic.

(2) The method of selection and the qualifications requisite for appointment of all the members of the Council shall be determined by Congress.

(3) The Council shall have such power to determine their procedure and to perform their functions as Congress may prescribe by law.

162. (1) The National Economic Council shall be charged with the duty to make recommendations to the President of the Republic in respect of :

(i) the co-operation of the economic policy of the Provinces and of the Central Government;

(ii) the distribution between the Republic and the Provinces of the proceeds of taxes divisible between them and the allocation between the Provinces of their respective shares of such proceeds;

(iii) the principles upon which the Central Government should act when considering the making of grant-in-aid to Provinces under Article 150 (1);

(iv) any other financial or economic matter referred to the Council from time to time by the President.

(2) The President of the Republic shall cause every recommendation made by the National Economic Council under this Article, together with an explanatory memorandum as to the action taken thereon, to be laid annually before Congress.



163. (1) Unless otherwise provided by Congress, the property of the Republic shall be exempt from all taxes imposed by a Province or by any authority within a Province.
- (2) No Provincial law shall impose, or authorize the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place outside the Province, or in the course of the import of the goods into or export of the goods out of the territory of the Republic, or in the course of inter-Provincial trade or commerce.
- (3) No Provincial law imposing, or authorizing the imposition of, a tax on the sale or purchase of any such goods as have been declared by Congress by law to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent.
164. (1) Subject to the power of Congress to impose, or authorize the imposition of, any tax in respect of a trade or business of any kind carried on by or on behalf of the Government of a Province, or any property used or occupied for the purposes of such trade or business, or any income accruing from or arising in connection therewith, the property and income of a Province shall be exempt from Central taxation.
- (2) Any trade or business that Congress may by law declare to be incidental to the ordinary functions of government shall not be affected by the provisions of paragraph (1) of this Article.



165. (1) The Central Government shall have power to borrow, both internally and externally, upon the security of the Consolidated Fund of the Republic and to give guarantees within the limits fixed by Congress.

(2) The Government of a Province shall have power to borrow only within the Republic upon the security of the Consolidated Fund of the Province and to give guarantees within the limits fixed by the Provincial Assembly.

(3) Subject to such conditions as Congress may prescribe by or under any law, the Central Government may make loans out of the Consolidated Fund to any Province or, in proper cases, give guarantees in respect of loans raised by any Province.

(4) No Province may without the consent of the Central Government raise any loan if there is still outstanding any part of a loan which has been made to the Province by the Central Government or in respect of which a guarantee has been given by the Central Government.

(5) The consent required in paragraph (4) may be given subject to such conditions, if any, as the Central Government may think fit to impose.

166. Any property without an owner which is situate within a Province shall vest in such Province, and shall in any other case, vest in the Central Government on behalf of the Republic.

167. The Central Government and the Provincial Governments shall have power to acquire land for public purposes, and all property acquired for the purposes of the Republic or of a Province shall vest in the Republic or such Province, as the case may be.



168. (1) All contracts made in the exercise of the executive power of the Republic or of a Province shall be expressed to be made by the President or by a Provincial Governor , as the case may be.

(2) No personal liability attaches to either the President or a Provincial Governor in respect of contracts entered into in accordance with paragraph (1) of this Article.



## PART IX

### Amendment and Revision of the Constitution

#### 1. Amendment

169. In order to amend an Article of this Constitution it shall be necessary that a Bill be introduced into both Chambers of the National Congress by the Federal Government, that the Bill be approved by the votes of a majority of all the members of each Chamber and by the votes of at least two-thirds of the members of each Chamber present and voting, and that upon the signification of the President's assent to the Bill the amendment to the Constitution shall become effective either on the date when the assent is given or on such other date as might be determined by the President.

170. Where, however, a proposed amendment may alter any of the provisions relating to Fundamental Rights, Article 159, Part V, or this Article, it shall not come into effect unless and until the amendment has also been ratified by resolution of the majority of all the Provincial Assemblies prior to the signification of assent to the Bill by the President.

#### 2. Revision

171. For a complete revision of the Constitution, a resolution to that effect shall be introduced into Congress by the Central Government, and shall be passed by not less than three-fourths of all the members of each Chamber and of those present and voting; the resolution shall thereafter be ratified by a majority of all the Provincial Assemblies, each Assembly voting by not less than three-quarters of all its members; a Bill shall then be introduced and passed in accordance with the procedure laid down in Article 169, except that a three-fourths majority shall be required wherever a two-thirds majority is mentioned.



3. Admission or Creation of New Provinces

172. (a) An amendment of this Constitution for the purpose of admitting a new Province or of creating a new Province out of one or more existing Provinces shall, either of its own motion or upon a petition signed by not less than one-quarter of the total membership of either Chamber of Congress, be initiated by the Central Government by a resolution passed by a majority of not less than three-fourths of the total membership of each Chamber of Congress;
- (b) The resolution thus passed shall then be approved by a majority of all the Provinces, each Provincial Assembly ratifying by a majority of not less than three-fourths of its total membership;
- (c) A Bill setting out the boundaries of the new Provinces and making other consequential provisions including the holding of a referendum in all the Provinces or parts of Provinces affected shall thereafter be introduced and passed in accordance with the provisions of Article 169;
- (d) If the Bill is approved in such a referendum by a majority of not less than two-thirds of all those who voted, it shall then be presented to the President for his assent and the new Province shall form part of the territory of the Republic with effect from the date such assent is signified or from such other date as may be appointed by the President acting upon the advice of the Prime Minister.



P A R T X

Miscellaneous Provisions

173. This Constitution shall be deemed to come into effect on 1 January, 1962, or on such other date as the Congress shall determine.
174. (1) All the existing laws, decrees, orders and regulations shall continue in force as if enacted, declared or made by or under this Constitution, and shall be valid and of full effect until duly repealed or modified, or until the date of commencement of this Constitution.
- (2) Subject to the provisions of subsection (1) of this Article, no such existing laws, decrees, orders and regulations shall have effect if repugnant to any of the operative provisions of this Constitution or of any other legislative or administrative measure having the force of law prior to the commencement of this Constitution.
- (3) The expression "existing law" shall include all laws enacted or made by a legislative or other competent authority in the Congo prior to the commencement of this Constitution and not previously repealed, whether or not such laws or parts of them may not be then in operation either at all or in particular areas.
- (4) Nothing in this Article shall be construed as continuing any temporary law in force beyond the date fixed for its expiration or the date on which it would have expired if this Constitution had not come into force.
175. All the political and judicial institutions, offices, arrangements and observances that have been lawfully established, organised and ordered shall continue to be valid until superseded by other institutions, offices, arrangements and observances brought into being under this Constitution.
176. The Loi Fondamentale sur les structures du Congo shall be automatically repealed with effect from the date on which this Constitution comes into force.



CONSTITUTION DE LA REPUBLIQUE DU CONGO

draft prepared by  
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- french text  
(spare copy)

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# CONSTITUTION DE LA REPUBLIQUE DU CONGO

-1-

## Préambule

Afin de réaliser leur unité nationale, de maintenir leur indépendance et l'intégrité de leur territoire, et de promouvoir leur bonheur et leur prospérité, les citoyens de la République du Congo ont adopté la présente Constitution.



## PREMIERE PARTIE

### Ethique et buts de l'Etat *la République*

Art.premier La République du Congo est un Etat démocratique et souverain.

Art. 2 1) La République répudie tout recours à la force comme moyen de solution des conflits internationaux et, dans ce but, elle favorise et encourage le recours à l'arbitrage, aux juridictions internationales et à tout autre organe de compétence internationale pour le maintien de la paix et de la sécurité dans le monde.

2) La République affirme et reconnaît à tous les peuples le droit de disposer d'eux-mêmes et condamne toute intervention dans les affaires intérieures des autres Etats.

3) La République reconnaît la nécessité de développer la coopération avec tous les Etats sur la base de la réciprocité; elle aide et favorise les organisations internationales et respecte les obligations découlant du droit et des traités internationaux.

Art. 3 La République a seule le droit de déclarer la guerre, de faire la paix et de conclure avec d'autres pays des traités et autres accords internationaux.

Art. 4 La défense de la Patrie est un devoir sacré de chaque Congolais.

Art. 5 Aucune province ou autre partie du territoire de la République ne peut faire sécession.

Art. 6 1) La République protège la famille comme base naturelle et morale de la société.

2) Les pouvoirs publics soutiennent les parents dans la tâche d'élever et d'éduquer leurs enfants.

3) A partir de l'âge nubile fixé par la loi, la liberté du mariage est garantie.

Art. 7 La République prend toutes mesures nécessaires pour établir des



institutions et créer des conditions propices en vue de soustraire la jeunesse à l'exploitation et à l'abandon physique, moral et intellectuel.

- Art.8 1) La République est neutre à l'égard des différentes confessions religieuses.
- 2) Nul ne peut, du seul fait de sa religion, être l'objet de mesures discriminatoires en matière d'emploi ou de fonction publique sur une partie quelconque du territoire de la République.
- 3) Les associations religieuses ont les mêmes obligations et les mêmes droits que les autres associations admises par la loi.

- Art.9 1) La République protège le travail dans toutes ses formes et elle prend des initiatives efficaces pour encourager la formation professionnelle en vue de combattre le chômage et le vagabondage.
- 2) Elle veille à ce que soient assurés à tous :
- a) un travail équitablement rémunéré sans distinction de sexe;
  - b) des conditions de travail décentes et humaines;
  - c) un repos et des loisirs, notamment par une limitation raisonnable de la durée du travail et par des congés payés périodiques;
  - d) des conditions hygiéniques conformes à l'âge, au sexe et à l'état de santé des travailleurs;
  - e) une pension de retraite et l'assistance financière, en cas d'accidents, de maladie et d'invalidité.

- Art.10 1) Le droit de grève ne peut pas être exercé à des fins politiques et son exercice ne doit jamais porter atteinte à la liberté des travailleurs, ni au droit de propriété.
- 2) La loi peut prescrire que certaines procédures pour la solution des conflits de travail soient suivies avant que la grève ne soit déclarée ou lorsque le prolongement de la grève porte atteinte à l'intérêt



national.

- Art.11 1) L'initiative économique privée est libre.
- 2) Toutefois, la loi détermine les limitations justifiées pour des raisons d'ordre public et d'intérêt général de l'économie nationale.
- 3) Certaines activités économiques pourront être réservées à la République, aux Provinces et autres institutions publiques si l'intérêt national le demande.
- 4) La République prend toutes les mesures nécessaires pour assurer la sécurité économique et accroître le bien-être de tous les citoyens.
- Art.12 1) La République veille à la sauvegarde de la santé et de l'hygiène.
- 2) La loi donne aux autorités tous les pouvoirs nécessaires à ces fins, dans les limites découlant du respect de la liberté et de la dignité individuelles.
- Art.13 Un citoyen de la République ne peut accepter d'aucun gouvernement étranger une distinction honorifique, un titre, un don, une rémunération ou une pension quelconque, et ne peut garder ceux qu'il aurait reçus.
- Art.14 Les dispositions ci-dessus ne sont pas exécutoires en justice, mais leur esprit et leur lettre inspirent et éclairent toute la législation.

## 2. La République et ses territoires.

- Art.15 1) La République du Congo se compose du district de Léopoldville et des Provinces ci-après :
- le District de Léopoldville, Kongo central, Oubangi, Kwilou, Province Nord-Orientale, Province Sud-Orientale, Nord-Kivu, Sud-Kivu, Nord-Katanga, Sud-Katanga, Nord-Kasaï, Sud-Kasaï.
- 2) Aux fins de la présente Constitution, le district de Léopoldville est considéré comme une Province.
- 3) Les limites territoriales exactes du district de Léopoldville et



des Provinces qui constituent la République sont définies dans l'annexe I à la présente Constitution.

- Art.16 1) Le Parlement national peut, par voie de législation, admettre ou créer de nouvelles Provinces, accroître ou restreindre l'étendue d'une Province, en changer le nom ou en modifier les limites territoriales ou créer une nouvelle Province par la fusion de deux ou plusieurs Provinces ou parties de Province ou par la fusion d'un territoire quelconque et d'une partie de Province, ou encore en détachant une partie d'une Province existante.
- 2) Les projets de loi visant l'application des dispositions de l'alinéa 1 du présent article ne peuvent être déposés au Parlement national que suivant la procédure prévue dans la neuvième partie de la présente Constitution pour l'admission ou la création de nouvelles Provinces.

- Art.17 1) Nonobstant l'observance de l'alinéa 2 de l'article 16, aucun des objectifs mentionnés à l'alinéa 1 de l'article 16 ne peut être poursuivi si ce n'est par le Gouvernement central ou sous son contrôle; le Gouvernement central a en outre le devoir de prendre toutes mesures pour organiser la bonne administration de la nouvelle Province ou de celles des Provinces existantes qui seraient affectées.
- 2) Avant d'agir en vertu de l'alinéa 1 du présent article, le Gouvernement central peut organiser un référendum et exiger que, avant l'ouverture du référendum et pendant qu'il se déroule, l'autorité de la Province intéressée soit temporairement remplacée par celle du Gouvernement central et de ses fonctionnaires dûment attitrés.

### 3 De la citoyenneté.

- Art.18 Il y a une seule et unique citoyenneté de la République du Congo, qui est entièrement régie par la législation du Gouvernement central.

- Art.19 Est citoyen de la République du Congo tout individu qui, lors de l'entrée en vigueur de la présente Constitution, est domicilié dans



une partie quelconque de la République si lui-même ou l'un de ses parents y est né ou s'il y a sa résidence habituelle depuis au moins sept ans consécutifs à la date d'entrée en vigueur de la présente Constitution.

Art.20 Tout individu qui est né sur le territoire de la République, ou dont l'un des parents ou l'un des grands-parents est né sur le territoire de la République, et qui a sa résidence habituelle en dehors de la République, est considéré comme citoyen de la République s'il est inscrit en tant que tel auprès du représentant diplomatique ou consulaire de la République ou de l'ancien Congo Belge dans le pays où il réside.

Art.21 Tout individu né au Congo après l'entrée en vigueur de la présente Constitution devient citoyen de la République à la date de sa naissance, sauf :

- i) si l'un de ses parents n'est pas, à cette date, citoyen de la République, ou
- ii) si son père est, à cette date, sujet d'un pays ennemi et si la naissance a lieu en territoire occupé par l'ennemi.

Art.22 Nul ne peut être citoyen de la République s'il a volontairement acquis la citoyenneté d'un autre Etat.

Art.23 Tout individu, qui jusqu'à l'âge de vingt et un ans, était à la fois citoyen de la République et d'un pays étranger cesse, lorsqu'il atteint l'âge de vingt et un ans, d'être citoyen de la République à moins d'abandonner légalement sa qualité de citoyen du pays étranger ou d'y renoncer dans les formes prescrites par une loi du Parlement.

Art.24 Nonobstant les dispositions de la présente section, le Parlement a le pouvoir de prendre des mesures visant l'acquisition, la privation, l'abandon et la perte de la qualité de citoyen de la République du Congo.



## DEUXIEME PARTIE

### Des droits fondamentaux

- Art. 25 Dans la présente partie, les termes "Constitution" et "lois" désignent la Constitution et les lois de la République et des Provinces.
- Art. 26 Le respect des droits fondamentaux énoncés dans la présente partie est obligatoire pour les pouvoirs législatif, exécutif et judiciaire de la République et des Provinces.
- Art. 27 (1) Toute personne a droit au respect et à la protection de sa vie et de son intégrité corporelle.
- (2) Nul ne peut être soumis à la torture, ni à des peines ou traitements inhumains ou dégradants.
- (3) La mort ne peut être intentionnellement infligée qu'en exécution d'une sentence capitale prononcée par la juridiction compétente.
- (4) N'est pas considérée comme infligée en violation du présent article la mort qui résulterait d'un recours à la force si ce recours a été absolument nécessaire :
- a) pour des raisons de légitime défense ou pour défendre autrui ;
  - b) pour réprimer par des moyens légitimes une émeute ou une insurrection.
- Art. 28 Nul ne peut être tenu en esclavage ni en servitude ou autre situation analogue.
- Art. 29 Nul ne peut être astreint à accomplir un travail forcé ou obligatoire, sauf s'il s'agit :
- a) d'un travail requis normalement d'une personne soumise à la détention dans les conditions prévues à l'article 30;
  - b) d'un service requis dans le cas de crises ou de calamités qui menacent la vie ou le bien-être de la communauté;



- e) d'un travail ou d'un service faisant partie des obligations civiles ou militaires imposées aux citoyens en vertu de la loi.

Art. 30 1) Nul ne peut être privé de sa liberté, sauf dans les cas suivants et selon les voies légales :

- a) s'il est détenu régulièrement après condamnation par un tribunal compétent;
- b) s'il a fait l'objet d'une arrestation ou d'une détention régulière, soit pour insoumission à une ordonnance rendue conformément à la loi par un tribunal, soit en vue de garantir l'exécution d'une obligation prescrite par la loi;
- c) s'il a été arrêté et détenu en vue d'être conduit devant l'autorité judiciaire compétente, lorsqu'il y a des raisons plausibles de soupçonner qu'il a commis une infraction ou qu'il y a des motifs raisonnables de croire à la nécessité de l'empêcher de commettre une infraction ou de s'enfuir après accomplissement de celle-ci;
- d) s'il s'agit de la détention régulière d'un mineur, décidée pour son éducation surveillée, ou de sa détention régulière afin de le traduire devant l'autorité compétente;
- e) s'il s'agit de la détention régulière d'une personne susceptible de propager une maladie contagieuse, d'un aliéné, d'un alcoolique, d'un toxicomane ou d'un vagabond;
- f) s'il s'agit de l'arrestation ou de la détention régulière d'une personne pour l'empêcher de pénétrer irrégulièrement dans le territoire, ou contre laquelle une procédure d'expulsion ou d'extradition est en cours.

- 2) Toute personne arrêtée doit être informée, dans le plus court délai et dans une langue qu'elle comprend, des raisons de son



arrestation et de toute accusation portée contre elle.

3) Toute personne arrêtée ou détenue, dans les conditions prévues à l'alinéa 1e) du présent article, doit être traduite dans les 48 heures devant un juge ou un magistrat habilité par la loi à exercer des fonctions judiciaires et a le droit d'être jugée dans un délai raisonnable, ou libérée pendant la procédure. La mise en liberté peut être subordonnée à une caution de manière à assurer la comparution de l'intéressé à l'audience.

4) Toute personne privée de sa liberté par arrestation ou détention a le droit d'introduire un recours devant un tribunal qui statue à bref délai sur la légalité de sa détention et ordonne sa libération si la détention est illégale.

5) Toute personne victime d'une arrestation ou d'une détention dans des conditions contraires aux dispositions du présent article a droit à réparation ou dédommagement.

Art.31 1) Toute personne a droit à ce que sa cause soit entendue équitablement par un tribunal indépendant et impartial, qui décide par un jugement motivé rendu en séance publique, soit de ses droits et obligations, soit du bien-fondé de toute accusation en matière pénale portée contre elle.

2) Les débats sont publics, sauf si les bonnes mœurs ou l'ordre public exigent le huis clos, qui sera prononcé par jugement.

Art.32 1) <sup>a)</sup> Nul ne peut être poursuivi pour une action ou une omission ne constituant pas une infraction à la fois au moment où elle a été commise et au moment de la poursuite. Si la loi en vigueur frappe d'une peine <sup>b)</sup> plus légère l'infraction commise sous la vigueur d'une autre loi, la loi en vigueur doit être appliquée.

2) Tout inculpé a droit notamment :



- a) à être informé, dans le plus court délai, dans une langue qu'il comprend et d'une manière claire, de la nature et de la cause de l'accusation portée contre lui;
  - b) à disposer du temps et des facilités nécessaires à la préparation de sa défense;
  - c) à se défendre lui-même ou à avoir l'assistance d'un défenseur de son choix;
  - d) à interroger ou faire interroger les témoins à charge et obtenir la convocation et l'interrogation des témoins à décharge dans les mêmes conditions que les témoins à charge;
  - e) à se faire assister gratuitement d'un interprète s'il ne comprend pas ou ne parle pas la langue employée à l'audience.
- 3) Toute personne accusée d'une infraction est présumée innocente jusqu'à ce que sa culpabilité ait été établie par jugement définitif.
  - 4) Nulle peine ne peut être établie ni appliquée qu'en vertu d'une loi.
  - 5) Le droit d'appel est garanti à tous en conformité de la loi.

Art.33 1) Toute personne a droit à la liberté de pensée, de conscience et de religion; ce droit implique la liberté de changer de religion ou de conviction, ainsi que la liberté de manifester sa religion ou sa conviction individuellement ou collectivement, en public ou en privé, par l'enseignement, les pratiques et l'accomplissement de rites.

2) La liberté de manifester sa religion ou sa conviction ne peut faire l'objet d'autres restrictions que celles, qui, prévues par la loi, constituent des mesures nécessaires à la sécurité publique, à la protection de l'ordre, de la santé ou de la morale publique, ou à la protection des droits et libertés d'autrui.

3) Aucun élève d'un établissement d'enseignement ne peut être astreint à suivre des cours d'instruction religieuse, à participer à une



cérémonie religieuse ou à observer les rites d'une religion autre que la sienne.

Art.34 1) Toute personne a droit à la liberté d'expression; ce droit implique la liberté d'exprimer ses opinions et ses sentiments, notamment par la parole, la plume et l'image.

2) La liberté d'expression ne peut subir d'autres limitations que celles qui, prévues par la loi, constituent des mesures nécessaires à la sécurité nationale, <sup>à</sup> la sûreté publique, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale, à la protection de la réputation ou des droits d'autrui, pour empêcher la divulgation d'informations confidentielles ou pour garantir l'autorité et l'impartialité du pouvoir judiciaire.

Art.35 L'art et la science, ainsi que leur enseignement, sont libres sous réserve du respect de l'ordre public et de la morale.

Art.36 1) Toute personne a droit au secret de sa correspondance et de toutes les autres formes de communication.

2) Il ne peut y avoir ingérence de l'autorité publique dans l'exercice de ce droit que dans les cas clairement prévus par la loi.

Art.37 Toute personne a droit à l'inviolabilité de son domicile. Les dispositions de l'alinéa 2 de l'article 36 sont applicables à l'exercice du droit consacré par le présent article.

Art.38 1) Toute personne a droit à la liberté de réunion et à la liberté d'association. Ce droit implique notamment la liberté de fonder avec d'autres des syndicats et des partis politiques, ainsi que la liberté de s'affilier à des syndicats et à des partis politiques pour la défense de ses intérêts ou de ses opinions.

2) La liberté de réunion et la liberté d'association ne peuvent subir d'autres limitations que celles qui, prévues par la loi, constituent



des mesures nécessaires à la sécurité nationale, à la sûreté publique, à la défense de l'ordre et à la prévention des infractions pénales, à la protection de la santé ou de la morale ainsi qu'à la protection des droits et libertés d'autrui.

3) Le présent article <sup>n'empêche</sup> ~~n'interdit pas~~ <sup>l'imposition de</sup> les restrictions légitimes à l'exercice de ces libertés imposées par les membres des forces armées, de la police et de la gendarmerie.

Art.39 1) Tout citoyen de la République du Congo a le droit de se déplacer et de se fixer librement sur toute l'étendue du territoire de la République.  
2) Ce droit ne peut être limité que par la loi et seulement dans les cas où l'exigent la protection de la jeunesse contre l'abandon, la lutte contre les dangers d'épidémie ou la prévention d'infractions pénales.

Art.40 1) Tout citoyen de la République a le droit de sortir du territoire de la République et d'y rentrer librement.  
2) Ce droit ne peut être limité que par la loi et seulement dans les cas où une limitation de la liberté individuelle est admise par la présente Constitution.

Art.41 Aucun citoyen congolais ne peut être expulsé du territoire de la République.

Art.42 En cas de guerre ou en cas d'autre danger public menaçant la vie de la Nation, le Gouvernement Central et les Gouvernements des Provinces peuvent prendre des dispositions dérogeant à l'article 30, alinéas 1 et 4, et aux articles 34, 37 et 38, dans la stricte mesure exigée pour le maintien ou le rétablissement de la paix publique.

Art.43 Nul ne peut être exproprié de ses biens meubles ou immeubles dans une partie quelconque du territoire de la République du Congo sauf en vertu d'une loi du Gouvernement central prévoyant le versement d'une juste indemnité et le droit pour l'intéressé, en cas de contestation, de saisir les tribunaux ordinaires pour qu'ils déterminent ses droits et



fixent le montant d'une juste indemnité.

Art. 44 Une loi du Gouvernement central peut transférer à la République, à une Province ou à une autre collectivité publique la propriété de certaines entreprises ou catégories d'entreprises privées d'un intérêt national primordial.

2) Dans chaque cas d'expropriation ainsi prononcée, la loi prévoit l'indemnisation équitable des propriétaires.