



Contact:  
Suzana Grego, Director of Communications  
International Center for Transitional Justice  
Tel: 917.438.9331 | E-mail: [sgrego@ictj.org](mailto:sgrego@ictj.org)

### **Congolese Rights Groups Seek Vital Changes to DRC Draft Constitution**

NEW YORK, April 13, 2005—The International Center for Transitional Justice (ICTJ) calls attention to a press release issued last week by a coalition of human rights organizations in the Democratic Republic of the Congo. The release appeals for important changes to the draft constitution that is currently under discussion by the Congolese National Assembly. The ICTJ urges the Congolese government to implement these revisions immediately.

In its April 7 press release, the Congolese Coalition for Transitional Justice (CCJT) signaled its serious concerns regarding two provisions of the draft constitution. Article 154 would give military tribunals jurisdiction over violations committed by the military and the civilian police force, potentially including serious human rights violations committed by these forces. Such sweeping powers contravene the evolving international principle of restricting the jurisdiction of military courts to specifically military offences committed by military personnel, to the exclusion of human rights violations. These violations should come under the jurisdiction of ordinary domestic courts or, where appropriate, of an international or internationalized court. This principle was recently reaffirmed in the 2005 report of the UN's Independent Expert on Impunity to the UN Commission on Human Rights.

Article 212 of the draft constitution extends the mandate of the Truth and Reconciliation Commission (TRC) by 24 months, and introduces a process for appointing commissioners that threatens the independence of the Commission. The mandate and composition of the current TRC have been widely criticized. A new Commission should be established through a broad and inclusive national consultative process in order to avoid replicating the problems that plague the current TRC.

The full text of the CCJT's April 7 press release follows.

**THE CONGOLESE COALITION FOR TRANSITIONAL JUSTICE (CCJT)  
EXPRESSES CONCERN OVER PROVISIONS IN THE DRAFT  
CONSTITUTION REGARDING MILITARY TRIBUNALS AND THE TRUTH  
AND RECONCILIATION COMMISSION (TRC).**

The CCJT<sup>1</sup> is closely following the debates on the draft Constitution currently taking place at the National Assembly.

The CCJT is particularly concerned about articles 154 (paragraph 1) and 212 of the Constitution which address the issue of military tribunals and the TRC respectively.

Article 154 states: *“the jurisdiction of military courts and tribunals is limited to crimes committed by members of the military force and the civilian police force...”*<sup>2</sup>

The above article violates United Nations principles that recommend limiting the jurisdiction of military tribunals to specifically military offences committed by military personnel, to the exclusion of serious crimes under international law which shall come under civilian jurisdiction.

Violations committed by members of the civilian police force should be tried under the jurisdiction of civilian tribunals, given that police officers are themselves civilians.

Article 212, addressing the issue of the Commission, states: *“...institutions in support of democracy shall be dissolved with the establishment of the new Parliament, with the exception of the Truth and Reconciliation Commission whose mandate is extended by 24 months. [The TRC’s] current members will be dismissed as soon as the new elected Parliament is established. Nine new members will be appointed according to the same procedure used to appoint members of the Constitutional Court.”*

The CCJT notes that the extension of the Commission’s mandate in its current form is inappropriate due to the significant criticism it faces, with particular regards to: the lack of a broad consultation process before the adoption of the law on the TRC, the weaknesses of its mandate, and the inefficiency of its actions on the ground.

The CCJT considers the TRC and the Constitutional Court, which is comprised of three members appointed by the President of the Republic, three members appointed by Parliament in Congress and three members appointed by the Superior Judicial Council, to be two completely separate institutions and thus strongly believes that the appointment process for its members cannot be the same. Also, the political nature of this process will jeopardize the Commission’s independence, impartiality and efficiency. To avoid past

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<sup>1</sup> The Congolese Coalition for Transitional Justice (Coalition Congolaise pour la Justice Transitionnelle) is a platform for human rights organizations to monitor transitional justice issues in the DRC created in Lubumbashi in December 2004.

<sup>2</sup> All quotations from the draft Constitution have been translated by the ICTJ and are not official translations.

mistakes, the CCJT supports the creation of a new Commission through an extensive, inclusive and participatory consultative process.

The CCJT recommends the following:

- Amendment of article 154 as follows: “the jurisdiction of military courts and tribunals is limited to specifically military offences committed by military personnel.”
- Complete removal of all references to the TRC in article 212.
- Insertion of a new article, not included under title IX, as follows: “A Truth and Reconciliation Commission is created. Its mission, composition, organization, attributions, and the length of its mandate shall be established by an organic law.”

Bukavu: April 7, 2005

Members of the CCJT:

/s/ Rapahël Wakenge, ICJP/Bukavu  
/s/ Maître Freddy Kitoko, ASADHO/Katanga  
/s/ Maître Dieudonné Diku, OCDH/Kinshasa  
/s/ Godé Mpiana, Justice Plus/Bunia  
/s/ Peter Ngoy Kaodi, ACIDH/Lubumbashi  
/s/ Immaculée Birhaheka, PAIF/Goma  
/s/ Julienne Lusenge, SOFEPADI/Beni  
/s/ Paul Nsapu, Ligue des Electeurs/Kinshasa  
/s/ Innocent Mbumba, LIZADEEL/Kananga  
/s/ Pierre Kibaka, Justice et Libération/Kisangani