



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Eighty-sixth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

DEMOCRATIC REPUBLIC OF THE CONGO

1. The Human Rights Committee considered the third periodic report of the Democratic Republic of the Congo (CCPR/C/COD/2005/3) at its 2344th and 2345th meetings on 15 and 16 March 2006 (see CCPR/C/SR.2344 and 2345). It adopted the following concluding observations at its 2358th meeting (CCPR/C/SR.2358), on 24 March 2006.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of the Democratic Republic of the Congo and the opportunity thus offered to resume its dialogue with the State party after more than 15 years. The Committee feels that the failure to submit a report for such a long period of time, even though the situation has been difficult, represents a breach by the Democratic Republic of the Congo of its obligations under article 40 of the Covenant and an obstacle to a more thoroughgoing consideration of the steps to be taken to ensure the satisfactory implementation of the provisions of the Covenant. The Committee invites the State party to submit its reports from now on in a timely manner, as indicated by the Committee. It welcomes the presence of a delegation that desires to continue the dialogue with it, and it encourages the State party to redouble its efforts to maintain this dialogue.

3. The Committee welcomes the information provided on the political and constitutional evolution of the State party and on the constitutional framework and legislation produced since 2002. It regrets, however, the formal presentation of the Democratic Republic of the Congo's third periodic report, which does not conform to the Committee's guidelines in that it

contains only partial information on the implementation of the Covenant in daily life and on the factors and difficulties encountered, focusing rather on the listing of relevant existing legislation or pending draft laws. The Committee also regrets that the delegation was unable to respond in detail to some of the questions and concerns expressed in the list of issues and during the consideration of the report.

4. The Committee has taken note of the State party's mention of the difficulties it has faced in relation to communications and those resulting from the fact that the eastern regions of the country - against which the Security Council, in its resolution 1493 (2003), has imposed an arms embargo - are not under the effective control of the Government. It reminds the Government, nonetheless, that the provisions of the Covenant and all the obligations thereunder apply to the territory in its entirety.

B. Positive aspects

5. The Committee is pleased at the democratic transition undertaken by the Democratic Republic of the Congo since the signing of the Pretoria Agreement of 17 December 2002, the entry into force of the Constitution of 18 February 2006 and the prospects for the first general elections to be held in the spring of 2006. It notes and appreciates the State party's efforts to ensure greater respect for human rights and establish the rule of law by inaugurating a legislative reform programme.

6. The Committee welcomes the State party's cooperation with the International Criminal Court in the context of the referral submitted to the Court by the Government of the Democratic Republic of the Congo on 19 April 2004. The Committee recommends that the State party should endorse the draft law on the implementation of the Rome Statute and ratify and enforce the Agreement on the Privileges and Immunities of the International Criminal Court.

7. The Committee notes with satisfaction the establishment, by Act No. 04/019 of 30 July 2004, of the National Human Rights Observatory, a national institution - independent of the Republic's other institutions - for the protection and promotion of human rights. It is hoped that the Observatory will receive adequate funding.

C. Principal subjects of concern and recommendations

8. The Committee notes that, under article 215 of the Constitution, the authority of treaties supersedes that of laws and that, according to the information provided by the delegation, the Covenant may be and sometimes is directly invoked before national courts. It regrets, however, that the delegation did not draw its attention to specific cases in which the direct applicability of the Covenant was invoked, or in which the national courts were asked to judge the compatibility of national laws with the Covenant. It also regrets the absence of precise information on the compatibility between customary law, which continues to be practised in some parts of the country, and the provisions of the Covenant.

The State party should maintain and improve the training programme for judges and lawyers, including those who are already employed, about the contents of the Covenant and other international human rights instruments ratified by the Democratic Republic of the Congo. The Committee expects that more complete

information on the actual remedies available to individuals in cases of human rights violations under the Covenant will be provided in the next periodic report, together with concrete examples of cases where the courts have invoked the provisions of the Covenant and clarifications concerning the functioning of the customary courts.

9. While welcoming the delegation's assertion that the judges who wrote communication No. 933/2000 (*Busyo et al.*) can once again practise their profession freely and have been compensated for being arbitrarily suspended, the Committee remains concerned that the State party failed to follow up on its recommendations contained in many Views adopted under the Optional Protocol to the Covenant (such as the Views in cases Nos. 366/1989 (*Kanana*), 542/1993 (*N'Goya*), 641/1995 (*Gedumbe*) and 962/2001 (*Mulezi*)).

The State party should follow up on the Committee's recommendations in the above-mentioned cases and submit a report thereon to the Committee as soon as possible. The State party should also accept a mission by the Committee's special rapporteur to follow up the Views and discuss possible ways and means of implementing the Committee's recommendations, with a view to ensuring more effective cooperation with the Committee.

10. Despite the information from the delegation on several criminal proceedings against human rights violators, the Committee notes with concern the impunity with which many serious human rights violations have been and continue to be committed in the territory of the Democratic Republic of the Congo, even though the identity of the perpetrators of these violations is often known (article 2 of the Covenant).

The State party should take all appropriate steps to ensure that all human rights violations brought to its attention are investigated, and that those responsible for such violations are prosecuted and punished.

11. The Committee notes with concern the persistent practice of discrimination against women with regard to education, equal rights of both spouses within marriage and the management of family assets. The Committee reminds the Democratic Republic of the Congo, in particular, of its general comment No. 28 (2000), on equality of rights between men and women. The Committee expresses its concern at the State party's admission (paragraphs 51, 54 and 55 of the report) that women do not enjoy equal rights with men in the areas of political participation and access to education and employment (articles 3, 25 and 26 of the Covenant) and at the legislation on forced marriage, which is incompatible with the Covenant (articles 3, 25 and 26 of the Covenant).

(a) The State party should speed up the process of adapting the Family Code to international legal instruments, especially articles 3, 23 and 26 of the Covenant, in particular with regard to the rights of both spouses within marriage (paragraph 48 of the report) and the quasi-impunity of forced marriage.

(b) The State party should increase its efforts to promote women's participation in political affairs and their access to education and employment. In its next report, the State party should inform the Committee of any relevant actions taken and their outcomes.

12. The Committee is concerned at the reports of domestic violence in the Democratic Republic of the Congo and of failures by the authorities to ensure the prosecution of the perpetrators and care of the victims. It reminds the State party that the distinctive nature of such violence calls for the enactment of special legislation (articles 3 and 7 of the Covenant).

The State party should adopt the draft law prohibiting and punishing domestic and sexual violence. Adequate protection of victims should also be provided for. The State party should engage in a policy of prosecution and punishment of such violence, in particular by providing the police with clear guidelines on the matter, together with awareness-raising and other training.

13. In view of article 15 of the Constitution, which stipulates that the authorities should ensure the elimination of sexual violence, the Committee is concerned at the number of acts of aggravated assault, including sexual abuse and many cases of rape, committed against women and children in the war zones. It also notes the reports alleging that members of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) committed sexual abuse (articles 3, 6 and 7 of the Covenant).

The State party should take all necessary steps to strengthen its capacity to protect civilians in the zones of armed conflict, especially women and children. Relevant guidelines should be made available to all members of the armed forces and human rights training should be made compulsory for all members of the State party's armed forces. The State party should prevail upon the States of origin of MONUC troops suspected of having committed acts of sexual abuse to open inquiries into the matter and take the appropriate measures.

14. The Committee remains concerned by the very high maternal and infant mortality rates in the Democratic Republic of the Congo (paragraphs 71 and 72 of the report), owing in particular to the difficulty of access to health and family planning services and the low level of education (article 6 of the Covenant).

The State party should strengthen, in particular, its efforts to increase access to health services. The State party should ensure that health-care personnel receive better training.

15. The Committee remains concerned at the large number of forced disappearances or summary and/or arbitrary executions committed throughout the State party's territory by armed groups. These violent acts in turn result in mass migrations of the affected populations, thereby contributing to an ever-increasing number of displaced persons, especially in the provinces of Ituri, North and South Kivu and Katanga (articles 6, 7 and 9 of the Covenant).

The State party should open inquiries into any forced disappearance or arbitrary execution reported to it, appropriately prosecute and punish the perpetrators of such acts and grant effective reparations including appropriate compensation, to victims or their families (articles 6, 7 and 9). It should also strengthen measures to curb the displacement of civilian populations.

16. The Committee regrets that the Penal Code of the Democratic Republic of the Congo still contains no definition of torture, although a draft law to make torture a criminal offence is currently before Parliament. The Committee notes with concern the reliable reports of many acts of torture allegedly committed by, in particular, officers of the judicial police, members of the security services and armed forces, and rebel groups operating in the national territory (article 7 of the Covenant).

The State party should define, as soon as possible, the concept of “torture” and make torture a criminal offence. An inquiry should be opened in each case of alleged torture, and the perpetrators of such acts should be prosecuted and punished appropriately. Effective reparations, including adequate compensation, should be granted to victims.

17. While noting that the Congolese Charter of Human Rights, adopted in June 2001, provides for abolition of the death penalty, the Committee is concerned at the many death sentences handed down, especially by the former Military Court, against an indeterminate number of persons, and the suspension in 2002 of the moratorium on executions. It also notes that the delegation was unable to provide sufficient details on the nature of offences punishable by death, which would have allowed the Committee to determine whether these offences were included among the most serious crimes within the meaning of article 6, paragraph 2, of the Covenant.

The State party should ensure that the death sentence is imposed only for the most serious crimes. The Committee would like to receive more detailed information on the death sentences imposed by the former Military Court and would like to know exactly how many executions took place between 1997 and 2001. The Committee encourages the State party to abolish capital punishment and accede to the Second Optional Protocol to the Covenant.

18. While noting the delegation’s comments on the subject, the Committee remains concerned at the trafficking of children, especially for the purposes of sexual or economic exploitation, and the forced recruitment of many children into armed militias and, although to a lesser extent, into the regular army (article 8 of the Covenant).

The State party should pursue its efforts to eradicate these phenomena. Information on steps taken by the authorities to prosecute child traffickers and eliminate the forced recruitment of minors into the armed forces and rehabilitate and protect the victims, among other things by reinforcing the activities of the National Commission for the Demobilization and Reintegration of Child Soldiers (CONADER), should be provided in the next periodic report.

19. The Committee notes that although pretrial detention is the exception, in accordance with article 17 of the Constitution and article 28 of the Code of Criminal Procedure, it seems rather to be the rule. While an arrest must be authorized by a warrant issued by the public prosecutor’s office, such a warrant is often not produced, and although pretrial detention is not supposed to exceed 48 hours, such detention is often prolonged considerably beyond this limit. The

Committee is also concerned that the civil and military security forces place detainees in unauthorized and/or secret holding cells or centres, often without allowing them to contact a lawyer or a member of their family (article 9 of the Covenant).

The State party should ensure that its practice with regard to detention and oversight of the legality of detention conforms to all the provisions of article 9 of the Covenant. All unauthorized holding cells or centres should be closed immediately. Precise details on steps taken to ensure respect in practice for the rights of persons held in police custody, and on methods of supervising the conditions of such detention, should be provided in the next periodic report.

20. The Committee notes that the report (para. 112) and the delegation frankly acknowledge the poor conditions of detention in the country's prisons, including the unacceptable state of sanitation and nutrition and the widespread overcrowding in these institutions (article 10, paragraph 1, of the Covenant).

The State party should ensure that conditions of detention in the country's prisons are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners, and that prisoners are adequately fed. The country's prisons should also be modernized.

21. The Committee is concerned at the continued existence of military courts and at the absence of guarantees of a fair trial in proceedings before these courts. It is also concerned at the clearly insufficient number of active judges in the Democratic Republic of the Congo, and at the low pay they receive, which frequently results in their corruption, according to information provided to the Committee. The shortage of judges contributes to the increase in crime and to the failure to prosecute criminal offences (article 14 of the Covenant).

The State party should abolish military courts for ordinary offences. It should fight the corruption of judges, recruit and train enough judges to ensure the proper administration of justice throughout the territory of the Republic, fight crime and impunity, and allocate sufficient budgetary resources for the administration of justice.

22. The Committee notes with concern that many journalists have been prosecuted for defamation or have been subjected to pressure, intimidation or acts of aggression, including imprisonment or harsh treatment, on the part of government authorities. The Committee feels that these measures, in most cases, are aimed at impeding journalists' legitimate performance of their work (article 19 of the Covenant).

The State party should guarantee freedom of speech and of the press and other media, and ensure that any restriction on press and media activities is strictly compatible with the provisions of article 19, paragraph 3, of the Covenant.

23. The Committee is concerned that many human rights defenders cannot freely carry out their work because they are subjected to harassment or intimidation, prohibition of their demonstrations or even arrest or arbitrary detention by the security forces (articles 9, 21 and 22 of the Covenant).

The State party should respect and protect the activities of human rights defenders and ensure that any restriction on their activities is compatible with the provisions of articles 21 and 22 of the Covenant.

24. The Committee is concerned at the fate of thousands of street children whose parents have died as a result of either the armed conflict or AIDS. These children are often victims of violent treatment by the police or are sexually exploited (article 24 of the Covenant).

The State party should further develop and strengthen the programme for the care of orphans, especially by public organizations, referred to in paragraph 273 of the report. It should also appropriately punish any person guilty of abusing such orphans.

25. The Committee is concerned at the very limited effectiveness of civil status registries and at their complete absence in some localities (articles 16, 24, paragraph 2, and 25 (b) of the Covenant).

The State party should continue taking appropriate steps to improve or establish, as the case may be, an effective system of civil status registries, including for adults and older children not registered at birth.

26. While noting the State party's comments on the Government's policy of preserving the cultural identity of the various ethnic groups and minorities (paragraph 294 of the report), the Committee is concerned at the marginalization, discrimination and at times persecution of some of the country's minorities, including pygmies (article 27 of the Covenant).

The State party is urged to provide detailed information in its next report on measures envisaged or taken to promote the integration of minorities and the protection of their rights and to guarantee respect for their cultures and dignity.

27. The Committee has set 1 April 2009 as the date on which the next periodic report of the Democratic Republic of the Congo will be due. It requests that the text of the present report and these concluding observations be made public and broadly disseminated throughout the Democratic Republic of the Congo, and that the next periodic report be made available to civil society and to non-governmental organizations operating in the State party.

28. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit information within one year on the follow-up given to the Committee's recommendations contained in paragraphs 9, 10, 15 and 24. The Committee requests the State party to provide information in its next report on the other recommendations and on the applicability of the Covenant as a whole.
