



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Concluding observations on the fourth periodic report of the Democratic Republic of the Congo\*

1. The Human Rights Committee considered the fourth periodic report of the Democratic Republic of the Congo (CCPR/C/COD/4) at its 3414th and 3415th meetings (CCPR/C/SR.3414 and CCPR/C/SR.3415), held on 16 and 17 October 2017. At its 3444th meeting, held on 6 November 2017, it adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of the Democratic Republic of the Congo and the information presented therein, but regrets that the report was submitted seven years late. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken to implement the provisions of the Covenant. The Committee is grateful to the State party for the supplementary information provided to it in writing (CCPR/C/COD/Q/4/Add.1) in response to the list of issues (CCPR/C/COD/Q/4) and for the oral responses provided by the delegation

#### B. Positive aspects

3. The Committee welcomes the legislative and institutional measures taken by the State party, including:

- (a) Adoption of the Child Protection Act of 10 January 2009;
- (b) Adoption of the Criminalization of Torture Act of 9 July 2011;
- (c) Adoption of the Act of 21 March 2013 on the establishment, organization and operation of the National Human Rights Commission;
- (d) Adoption of the Act of 15 July 2016 amending the Family Code of 1987.

4. The Committee also welcomes the State party's ratification of or accession to the following international instruments:

- (a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2010;
- (b) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, in 2015.

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\* Adopted by the Committee at its 121st session (16 October–10 November 2017).



## C. Principal subjects of concern and recommendations

### Applicability of the Covenant in the domestic legal system

5. The Committee takes note of article 215 of the Constitution, under which treaties have primacy over laws. However, it reiterates its concerns and notes with regret that the State party has not cited any examples of cases in which Covenant provisions have been invoked before or applied by the courts. The Committee is also concerned about information indicating that the periodic report was prepared with little input from civil society (art. 2).

**6. The State party should take measures to raise awareness of the Covenant and the first Optional Protocol thereto among judges, lawyers and prosecutors in order to ensure that the provisions of these instruments are taken into account and applied by the national courts. The State party should hold open, broad-based consultations with civil society as part of the process of preparing its reports to the Committee and implementing the Committee's recommendations.**

### Views under the Optional Protocol

7. The Committee regrets the recurrent absence of comments from the State party on the communications submitted under the Optional Protocol, the lack of information on the implementation of the Views adopted and the absence of effective mechanisms and procedures that would enable the authors to seek the full implementation of the Views in law and in practice (art. 2).

**8. The State party should take all necessary measures to institute appropriate procedures for giving full effect to the Committee's Views in order to ensure that persons whose rights under the Covenant are violated have an effective remedy, in compliance with article 2 (3).**

### National Human Rights Commission

9. The Committee notes with concern that the National Human Rights Commission has actually received only 30 per cent of the budget allocated to it by law and that no funds have been provided to it since March 2017. Also worrying is the fact that the Commission, which is based in Kinshasa, does not have any regional offices through which to operate in the rest of the country. The Committee is also concerned about reports that the Commission is not perceived as a fully independent body (art. 2).

**10. The State party should see to it that the resources earmarked for the National Human Rights Commission are actually provided so as to enable it to discharge its mandate effectively. The State party should ensure that the Commission has offices and effective means of taking action throughout the country, and should take all necessary steps to bring the Commission into compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

### Impunity, effective remedies and reparations

11. The Committee takes note of the State party's stated intention to investigate human rights violations and of the State party's cooperation with the International Criminal Court. However, the Committee remains concerned about the fact that perpetrators of human rights violations continue to go unpunished and that such impunity is conducive to the commission of further violations by agents of the State and members of armed groups and militias. The Committee is also concerned about the difficulties that hinder victims' access to an effective remedy and to reparations (arts. 2, 6 and 7).

**12. The State party should take all necessary measures to end impunity for perpetrators of human rights violations, in particular the most serious violations, by establishing a transitional justice system for the prosecution of past violations and by systematically conducting prompt, impartial, effective and thorough investigations in order to identify and prosecute those responsible and to impose appropriate penalties**

**on those who are convicted of such violations, while ensuring that the families of the victims have access to effective remedies and to full reparation. The State party should also continue to cooperate with the International Criminal Court.**

#### **Non-discrimination**

13. The Committee is concerned about allegations that some individuals have been: (a) subjected to discrimination and violence because of their sexual orientation or gender identity; and (b) prosecuted under article 176 of the Criminal Code (concerning activities contrary to public decency) because of their sexual orientation. While taking note of the comments made orally by the delegation, the Committee recalls that, although it respects the diversity of cultures and moral values in the world, they must always be subordinate to the Covenant principles of universality and non-discrimination in the enjoyment of human rights. The Committee is also concerned about the lack of measures to address reported cases of discrimination and violence against persons with albinism and about the absence of comprehensive anti-discrimination legislation (arts. 2, 6, 7, 17 and 26).

**14. The State party should: (a) take effective measures to prevent discrimination and acts of violence based on discrimination, and ensure that victims receive full reparation; (b) guarantee the protection and enjoyment, on an equal footing, of Covenant rights for all persons with albinism; (c) ensure that no one is prosecuted under article 176 of the Criminal Code by reason of sexual orientation or gender identity; and (d) enact comprehensive legislation providing full and effective protection against discrimination in all spheres and containing an exhaustive list of prohibited grounds of discrimination, including sexual orientation and gender identity.**

#### **Gender equality**

15. The Committee is concerned about the low representation of women in political and public life, including at the highest levels of Government and in the judicial system. Other matters of ongoing concern are the persistence of gender stereotypes and the application of rules of customary law that perpetuate discrimination and certain traditions that are harmful to women (arts. 3, 7, 23, 25 and 26).

**16. The State party should take steps to eliminate gender discrimination. In particular, it should take all necessary measures to: (a) increase women's participation in public life, in particular their representation at the highest levels of government and in the judicial system; and (b) strengthen education and awareness-raising initiatives for the general public, including traditional leaders, to combat traditional practices that are discriminatory and harmful to women and to eliminate gender stereotypes on the subordination of women to men and on the respective roles and responsibilities of women and men in the family and society.**

#### **Domestic violence**

17. The Committee is concerned about the persistence of sociocultural traditions that condone domestic violence and about the absence of a legal framework for preventing and punishing such violence, including marital rape (arts. 2, 3, 6, 7, 23 and 26).

**18. The State party should intensify its efforts to prevent and combat all forms of domestic violence against women. To this end, it should: (a) enact legislation that duly protects women from domestic violence, inter alia by criminalizing domestic violence and marital rape; and (b) carry out nationwide awareness-raising initiatives and training activities for State officials, especially judges, prosecutors, police officers and medical and paramedical personnel, to ensure that they respond effectively in all cases of domestic violence.**

#### **Sexual violence**

19. While noting the State party's efforts to combat sexual violence, the Committee remains concerned about the persistence of the phenomenon in the State party, both within and outside conflict areas. The Committee is particularly concerned about the continued use of sexual violence as a weapon of war in conflict areas, both by armed groups and, in recent

years, by the armed forces of the Democratic Republic of the Congo. Also of concern are reports that victims have difficulty in gaining access to legal services and that they are deterred from filing complaints or continuing proceedings against their aggressors by a variety of factors, such as social stigma, fear of reprisals and inducement to accept amicable settlements (arts. 2, 3, 7 and 26).

20. **The State party should take all necessary measures to ensure that: (a) all cases of sexual violence are investigated and the perpetrators are prosecuted and, if found guilty, punished; (b) victims receive physical and psychological support, including through the reparations fund for victims of sexual violence, which should be put into operation as soon as possible; and (c) steps are taken to facilitate victims' access to legal services.**

#### **Voluntary termination of pregnancy**

21. The Committee notes: (a) Ordinance No. 70-158 of 30 April 1970 specifying the rules of medical ethics under which pregnancy may be terminated in order to protect the woman's life; and (b) the delegation's statement that judges may authorize the voluntary termination of pregnancy in cases of rape, although access to judges in order to obtain such authorization is difficult in some parts of the country. However, the Committee remains concerned about articles 165 and 166 of the Criminal Code, which criminalize the voluntary termination of pregnancy, leading women and girls to resort to unsafe abortion in conditions that put their lives and health at risk. The Committee is also concerned about the delegation's statement that little concrete action is taken to protect the rights of women and girls who resort to unsafe abortion (arts. 3, 6, 7, 17 and 26).

22. **The State party should amend its legislation with a view to guaranteeing effective access to safe, legal abortion when the life or health of a pregnant woman or girl is endangered and when carrying a pregnancy to term would cause the woman or girl substantial pain or suffering, most notably when the pregnancy is the result of rape or incest or when it is not viable. It should also ensure that women and girls who have recourse to abortion and the doctors who attend to them are not subject to criminal penalties, inasmuch as the existence of such penalties obliges women and girls to resort to unsafe abortion. The State party should furthermore implement policies to raise awareness and combat the stigmatization of women and girls who have recourse to abortion and should ensure that all women and girls have access to appropriate and affordable contraception and reproductive health services.**

#### **Death penalty**

23. While welcoming the State party's observance of a de facto moratorium on the death penalty, as shown by the fact that there have been no executions since 2003, the Committee remains concerned about: (a) the fact that death sentences are still handed down; and (b) the large number of prisoners on death row (art. 6).

24. **The State party should consider initiating a political and legislative process aimed at the abolition of the death penalty and should carry out public advocacy efforts and campaigns to promote that objective. It should also commute the sentences of individuals currently on death row and consider acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.**

#### **Conflict areas and protection of civilians**

25. The Committee is concerned at reports that serious human rights violations, including rape, torture and extrajudicial killings, have been and continue to be committed against civilians in conflict areas where various armed groups and militias are active. It is also concerned at reports that many such violations, which have resulted in the displacement of large numbers of people, have been committed by agents of the State. In this regard, the State's lack of an adequate legislative and regulatory framework for addressing the situation of internally displaced persons is troubling (arts. 2, 6, 7, 9 and 12).

26. **The State party should take measures to: (a) ensure that its agents, particularly the armed forces, offer victims of serious abuses perpetrated inter alia by third parties**

**the protection to which they are entitled and that such agents refrain from committing human rights violations and take all necessary precautionary measures to avoid harming civilians during attacks; (b) develop and adopt a legal framework and a national strategy for assisting and protecting internally displaced persons in accordance with the relevant international standards, including the Guiding Principles on Internal Displacement; and (c) create conditions that are conducive to sustainable solutions for displaced persons, including their voluntary and safe return.**

#### **Situation in Kasai**

27. The Committee is concerned about the conflict in Kasai, as a result of which 1.3 million people have been internally displaced and 30,000 people have fled to Angola as refugees. It deplores the many atrocities alleged to have been committed in that region, including extrajudicial killings; torture; mutilation; rape and sexual violence; destruction of houses, schools, places of worship and State infrastructure; and recruitment and use of child soldiers, noting that these acts, because of their nature and scale, could constitute international crimes. While taking note of the information provided by the State party on its efforts to protect civilians in Kasai, the Committee is also concerned about allegations of serious, large-scale, ethnically motivated human rights violations committed against civilians by security forces, affiliated armed groups and anti-Government militias. The Committee also deplores the killing of the United Nations experts Michael Sharp and Zaida Catalán and their four assistants from the Democratic Republic of the Congo while they were on mission to investigate the violations in Central Kasai (arts. 2, 6, 7, 9, 12 and 27).

**28. The State party should: (a) conduct a prompt, transparent and independent investigation to establish the facts and circumstances in which these alleged human rights violations and abuses were perpetrated by agents of the State and members of armed groups in the Province of Kasai; (b) undertake to dismantle and disarm the militias and pro-Government armed groups suspected of having committed the violations; (c) ensure that the members of the defence and security forces deployed in the region are properly trained and equipped to protect the population and have not been involved in serious human rights violations; and (d) cooperate fully with all United Nations entities, in particular the United Nations Joint Human Rights Office and the team of international experts mandated by Human Rights Council resolution 35/33 of 23 June 2017, which is responsible, inter alia, for determining the facts and circumstances of the alleged violations of human rights and international humanitarian law in the Kasai region.**

#### **Extrajudicial killings**

29. The Committee is concerned about reports that extrajudicial killings continue to be carried out in the State party, both by armed groups and by police and security forces. In this regard, it regrets that it has not received specific information about: (a) investigations into the extrajudicial killings that occurred in connection with the demonstrations of 19–21 September 2016 and 19 and 20 December 2016 and with Operation Likofi on 15 November 2013; and (b) investigations into the mass grave discovered in Maluku, Kinshasa, in March 2015 (arts. 2, 6 and 7).

**30. The State party should: (a) systematically undertake prompt, impartial and effective investigations into reported cases of extrajudicial killings, including those carried out by members of the police and security forces, and identify the perpetrators in order to bring them to justice; and (b) take all necessary measures to prevent such killings, determine the facts and provide full reparation to the victims' families.**

#### **Torture and cruel, inhuman or degrading treatment**

31. The Committee is concerned about reports that, despite the provisions of Act No. 11/08 of 9 July 2011, a worrying percentage of the deaths recorded in places of detention are due to acts of torture or ill-treatment inflicted by agents of the State. It is also concerned to note that persons who commit acts of torture are rarely prosecuted, and regrets that it has not received detailed information on the number of investigations carried out and convictions handed down for acts of torture since the law entered into force (arts. 2 and 7).

32. **The State party should: (a) strengthen the training of officials in the justice, defence and security sectors, in particular with respect to Act No. 11/08 of 9 July 2011; (b) see to it that alleged acts of torture and ill-treatment committed by members of the police, security and defence forces are thoroughly investigated; that suspected perpetrators are prosecuted and, if found guilty, duly punished; and that victims obtain reparation and are offered rehabilitation services, among other measures; and (c) establish a national mechanism for the prevention of torture, in line with the Optional Protocol to the Convention against Torture.**

#### **Prison conditions**

33. The Committee is concerned about the inadequate conditions of detention in almost all prison facilities in the State party and, in particular, about severe overcrowding in prisons and the high percentage of prisoners being held in pretrial detention. Moreover, it is concerned about: (a) reports that substandard conditions in terms of prisoners' health care, sanitation and food have led to a significant number of deaths in custody; (b) the failure to keep untried prisoners separate from convicted prisoners; and (c) reports that prison staff are insufficient in number and poorly trained (arts. 6, 7 and 10).

34. **The State party should take immediate steps to: (a) improve the living conditions and treatment of prisoners, including by giving them access to proper medical care and separating prisoners by category, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); (b) address the problem of prison overcrowding, including by implementing a policy on the use of non-custodial measures; (c) renovate existing detention centres and build new ones; and (d) carry out training activities for justice officials and prison staff throughout the country.**

#### **Arbitrary detention**

35. The Committee remains concerned at reported cases of arbitrary and secret detention in which persons have been held by agents of the State, in particular the National Intelligence Agency and the military intelligence service, at unofficial places of detention that are not subject to oversight of any kind, including judicial oversight. It is also concerned about: (a) the large number of people being held in pretrial detention; (b) the fact that, despite the relevant provisions of the Code of Criminal Procedure, pretrial detention continues to be the rule rather than the exception; and (c) the routine violation of the rights of detainees under article 9 of the Covenant, including the right to be informed of the reasons for their arrest and the right to have access to counsel (arts. 2, 9, 6, 7, 10 and 16).

36. **The State party should: (a) prohibit secret detention; (b) cease to empower the National Intelligence Agency and the military intelligence service to make arrests; (c) close all secret detention facilities and release all detainees still being held in them, while recognizing their right to an effective remedy and to full reparation; (d) take measures to address the situation of persons who have been in pretrial detention for many years; and (e) systematically ensure that persons being held in police custody or pretrial detention are informed of their rights and that the aforementioned basic legal safeguards are respected, particularly the right of access to counsel.**

#### **Administration of justice and military courts**

37. While taking note of the vast land area of the Democratic Republic of the Congo and the holding of mobile court hearings, funded primarily by international agencies, the Committee is concerned about the insufficient number of judges and the uneven geographical coverage of the court system, which in practice has made justice inaccessible to some citizens. Also troubling is the fact that access to legal aid is contingent on the issuance of a certificate of indigence and that a large number of prisoners escape from detention facilities. The Committee has taken note of Organic Act No. 13/011-B, but regrets that military courts continue to try some cases involving offences committed by civilians, as well as cases involving serious human rights violations (arts. 2 and 14).

38. **The State party should: (a) allocate the human and financial resources needed to enable the judicial system to function properly; (b) strengthen measures to ensure access to justice for all, including investment in mobile justice systems; (c) ensure that there are no indirect obstacles making legal aid mechanisms inaccessible; (d) take all appropriate measures to prevent and reduce prison escapes; and (e) ensure that military courts do not try civilians, and reform the legislative framework to ensure that only the ordinary courts are competent to hear cases involving serious human rights violations.**

#### **Freedom of expression**

39. The Committee is concerned about the closing down of public space in the Democratic Republic of the Congo through suspensions of social media and of television programmes and the jamming of radio broadcasts. It takes note of the information provided by the State party, but remains concerned at the ministerial order of 12 November 2016 restricting the ability of foreign media to broadcast in the country, as well as the maintenance of Ordinance-Law No. 300 of 16 December 1963 establishing criminal liability for press offences and for the offence of insulting the Head of State. It is also concerned about allegations of: (a) the detention of journalists in order to prevent them from covering the events of September 2016; and (b) judicial harassment, threats and abuses against media professionals, human rights defenders and political opponents (arts. 6, 7, 9, 19, 21, 22 and 25).

40. **The State party should: (a) take the legislative measures necessary to ensure that any restrictions on the exercise of freedom of expression comply with the strict requirements set out in the Covenant; (b) ensure that the Higher Audiovisual and Communications Council discharges its functions impartially and independently; (c) decriminalize press offences and the offence of insulting the Head of State; (d) investigate, prosecute and convict persons responsible for harassment, threats or intimidation against journalists, political opponents and human rights defenders; and (e) ensure the full effectiveness and independence of the Unit for the Protection of Human Rights established on 13 June 2011 and adopt the necessary measures, including legislation, to ensure the right of everyone, individually and in association with others, to protect and promote human rights.**

#### **Right of peaceful assembly**

41. The Committee is concerned to note that, despite the provisions of articles 25 and 26 of the Constitution, under which demonstrations are allowed if prior notice is given to the authorities, the legislative framework has not yet been harmonized and the authorities can impose a prior authorization requirement under current law. Of particular concern are allegations that authorization is systematically denied for demonstrations in support of the political opposition, but granted for demonstrations in support of the Government (arts. 2 and 21).

42. **The State party should: (a) harmonize its legislative framework with articles 24 and 25 of the 2006 Constitution; and (b) avoid taking any measures to deprive individuals of their right to freedom of peaceful assembly when such measures are not justified under the provisions of the Covenant.**

#### **Excessive use of force**

43. The Committee is concerned about allegations that police and security officers have used excessive force to disperse demonstrations, resulting in deaths and injuries in some cases, such as the demonstrations that took place between 19 and 21 September 2016 and on 19 and 20 December 2016 (arts. 6, 7, 19, 21 and 25).

44. **The State party should see to it that all instances of excessive use of force are promptly, impartially and effectively investigated and that those responsible are brought to justice. It should also take measures to effectively prevent and eliminate all forms of excessive use of force by police and security officers, including by providing**

**such personnel with training on the use of force, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

#### **Child protection and child labour**

45. The Committee, recalling in particular the recent concluding observations of the Committee on the Rights of the Child (CRC/C/COD/CO/3-5), is concerned at the number of children in street situations who are exposed to various forms of abuse, as well as the beliefs surrounding children who are accused of witchcraft. The Committee also reiterates its concern about: (a) the large-scale involvement of children in armed conflict; (b) the low rate of birth registration in the State party; and (c) the persistence of economic exploitation of children, including in the mining sector (arts. 6, 7, 8, 16 and 24).

**46. The State party should take the necessary steps to: (a) protect children without families against all forms of abuse, including by strengthening programmes for their care and advocacy efforts targeting religious leaders and parents in particular, and by criminalizing the persecution of children accused of witchcraft; (b) put an end to the involvement of children in armed conflict, while criminalizing the recruitment of persons under the age of 18; (c) facilitate birth registration, including by raising public awareness and facilitating and expediting access to civil registry offices; and (d) eliminate all forms of exploitation of child labour, particularly in the extractive industries.**

#### **Participation in public affairs and elections**

47. The Committee is concerned about reports of delays in voter registration by the Independent National Electoral Commission, particularly in Kasai, and delays in the implementation of the agreement of 31 December 2016 on the holding of presidential, legislative and provincial elections by 31 December 2017. It is also concerned about the acts of intimidation and violations of fundamental freedoms committed against opponents and candidates in the presidential election (art. 25).

**48. The State party should: (a) cooperate with all stakeholders in agreeing on an electoral calendar for the holding of free, peaceful and fair elections as soon as possible; (b) respect the constitutional right of every citizen to participate in public affairs; and (c) put an end to the intimidation of opponents and candidates in the presidential election and to violations of their Covenant rights, by taking the necessary measures to ensure their effective protection.**

#### **Rights of indigenous peoples**

49. The Committee is concerned about: (a) the overall situation of insecurity and vulnerability of Pygmy communities; (b) reports that these communities are discriminated against, particularly in the areas of health care and education; and (c) the State party's position that indigenous peoples are subsumed under the category of "local communities" in legislation, particularly in the Forestry Code. It is also concerned at the delay in adopting the law on the rights of indigenous peoples. The Committee deplores the serious human rights violations and forced displacement suffered by Pygmy communities in the Province of Tanganyika and the absence of decisive action to restore peace and ensure that the perpetrators of abuses are duly punished (arts. 2, 6, 7, 12, 26 and 27).

**50. The State party should: (a) carry out investigations with a view to prosecuting and, where applicable, punishing the perpetrators of crimes in the context of the conflict in Tanganyika, protect displaced populations and ensure their safe return; (b) change its position regarding the status of indigenous peoples in the State party and adopt legislation to protect their rights, in accordance with article 27 of the Covenant; (c) see to it that prior consultations are held with Pygmy communities in order to obtain their free and informed consent prior to the adoption or implementation of any measure that might have a substantial impact on their way of life, access to their traditional lands or their culture; and (d) take legislative and practical measures to combat discrimination against Pygmy communities.**



**D. Dissemination and follow-up**

51. The State party should widely disseminate the Covenant, the fourth periodic report, the written replies to the Committee's list of issues, and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The State party should ensure that the report, the written replies and the present concluding observations are translated into the principal written languages used in the State party.

52. In accordance with rule 71 (5) of the Committee's rules of procedure, the State party is requested to provide, within two years of the adoption of the present concluding observations, i.e. by 10 November 2019, information on its implementation of the recommendations made by the Committee in paragraphs 20 (sexual violence), 28 (situation in Kasai) and 48 (participation in public affairs and elections) above.

53. The Committee requests the State party to submit its next periodic report by 10 November 2021 and to include in that report specific and up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to consult widely with civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The Committee also invites the State party to agree, by 10 November 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to this list would constitute its next periodic report due under article 40 of the Covenant.

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