



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Forty-third session

#### Summary record of the 31st meeting

Held at the Palais Wilson, Geneva, on Tuesday, 3 November 2009, at 10 a.m.

*Chairperson:* Mr. Marchan Romero

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### Consideration of reports:

- (a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant

*Combined second, third, fourth and fifth periodic reports of the Democratic Republic of the Congo*

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*The meeting was called to order at 10.15 a.m.*

**Consideration of reports:**

**(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant**

*Combined second, third, fourth and fifth periodic reports of the Democratic Republic of the Congo (E/C.12/COD/5; E/C.12/COD/Q/5 and Add.1)*

1. *At the invitation of the Chairperson, the members of the delegation of the Democratic Republic of the Congo took places at the Committee table.*

2. **The Chairperson** paid tribute to the efforts made by the Democratic Republic of the Congo to submit its consolidated report, in view of the difficult circumstances that had prevailed since it had submitted its initial report in 1988, and welcomed its compliance with its commitments. The Committee and the international community looked forward to the dialogue with the delegation, which he hoped would be dynamic and constructive.

3. **Mr. Upio Kakura Wapol** (Democratic Republic of the Congo), introducing his country's combined second, third, fourth and fifth periodic reports (E/C.12/COD/5), emphasized its commitment to constructive dialogue with all the treaty bodies. That document took into account the concluding observations that the Committee had made on the initial report in 1988. It also provided information on the programmes and policies that had been adopted and on the significant progress that had been made in ensuring compliance with the rights enshrined in the Covenant.

4. However, numerous factors had hampered full compliance with the country's obligations under the Covenant. The principles expressed in article 1 of the Covenant had been violated by 30 years of dictatorship followed by 10 years of occupation and pillage of his country's natural resources and wealth, which had undercut the foundations of economic, social and cultural rights and deprived the people of the means of ensuring their own livelihood.

5. Title II of the new Constitution, promulgated in 2006, was devoted to human rights, fundamental freedoms and the duties of citizens and the State, and chapter II of the Constitution dealt with economic, social, cultural and other rights. In order to realize the rights guaranteed under the Constitution, a priority programme had been adopted to address the five key areas of infrastructure, housing, employment, health and education, and water and electricity. The major infrastructure projects under way would create thousands of jobs by 2010. Improvements in the real estate sector and the construction of social housing were indicative of the new housing policy. Water and electricity provision had improved, in particular to rural areas.

6. With regard to employment, in 2006, 2.4 per cent of the potential workforce had been engaged in the formal sector. The minimum wage (SMIG) had been increased in 2008 and 2009 and, as the global economic and financial crisis had caused some difficulties, the interministerial committee responsible for monitoring compliance with SMIG was ensuring that the latter increase was implemented as agreed by stakeholders. In 2010, the Government would focus on three main areas, namely, aligning salary scales by increasing salaries in particular employment categories; pensioning off public-sector employees; and recruiting several hundred magistrates and finance inspectors to improve governance and combat impunity, as well as a large number of agricultural experts to implement the farm mechanization project designed to achieve food self-sufficiency, and establishing hundreds of new units for the services involved in improving the roads infrastructure. Moreover, the organic decree-law of 1961 on social security was to be revised.

7. The health sector was also undergoing reform. Hundreds of health centres and hospitals, as well as medical teaching facilities, had been built or equipped and benefited from subsidized pharmaceuticals. Other projects to rehabilitate the health sector were under way, including the construction of the fiftieth anniversary hospital in Kinshasa. A new statute governing the activities of physicians, issued in September 2009, had had a positive effect on medical salaries. Furthermore, at least 15 per cent of the national budget was to be allocated to health, particularly in rural areas. Access to information about HIV/AIDS, especially by vulnerable groups, would be improved; national and international partnerships and sectoral strategies against HIV/AIDS and poverty would be strengthened; and health centres and public hospitals would be better equipped to deal with HIV/AIDS.

8. Budget allocations for all stages of education had been increased by 178 per cent for 2010. A programme to raise teaching standards in universities had been implemented and, since 2007, hundreds of schools and higher education establishments nationwide had been built or rehabilitated in cooperation with development partners. Campaigns to increase school enrolment among girls since 2003 had led to gender parity in enrolment in 2007, and the Government distributed necessary school supplies to some 416,000 children to encourage them to remain at school. Parliament was considering a Bill on national education.

9. In addition to Government health and education initiatives, mining, forestry, oil and other companies were also required to invest in the health and education of local communities and to protect the environment. In that connection, the Government considered that indigenous peoples' cultural, economic and property rights, which were guaranteed by law, were of particular importance.

10. The effects of the global economic crisis had caused some economic activities in the Democratic Republic of the Congo to slow down and, in particular, had reduced export earnings, foreign direct investment and official development assistance. Nevertheless, his country was committed to implementing the rights enshrined in the Covenant and, also, the recommendations to be formulated by the Committee. To that end, it would require considerable financial support and technical assistance from the international community.

11. The national action plan to promote and protect human rights had a section on economic, social and cultural rights and was the ideal framework within which to implement all of the national strategies and policies to promote and protect those rights. The State budget for 2010 included major investment projects that would require external resources to be mobilized effectively if they were to succeed. At the same time, reaching the completion point of the Heavily Indebted Poor Countries (HIPC) Initiative would help his country to obtain additional financial resources. The international community and donors should recognize the efforts that his country was making and support its efforts to implement the Covenant.

12. His delegation reserved the right to submit written replies to some questions following the dialogue.

13. **The Chairperson** invited Committee members to pose questions on articles 1–5 of the Covenant.

14. **Mr. Atangana** said that the judicial system of the Democratic Republic of the Congo had come under some criticism, including for being slow and understaffed, and observed that without a system of justice, economic, social and cultural rights could not be protected. He therefore asked what steps were being taken to improve the system in response to those criticisms and the results that had been obtained in that regard. He also wished to know whether there had been any court decisions in cases relating directly to the victims of violations of economic, social and cultural rights.

15. Moreover, he enquired whether there had been any court rulings on corruption cases since the adoption of the anti-corruption act in March 2005. From the Government's replies to the list of issues (E/C.12/COD/Q/5/Add.1) it appeared that a number of judges had been subject to disciplinary sanctions, including dismissal for corruption; he therefore requested information on the advanced training given to judges and asked whether the Ecole supérieure de la magistrature mentioned in the replies was now operational.

16. **Mr. Dasgupta** asked why pygmy communities were reportedly subject to discriminatory bureaucratic procedures, including differential access to identity documents and consequently to education and health care, in violation of article 12 of the national Constitution. He also asked the delegation to provide further details with regard to the administrative instructions on eliminating discriminatory practices against pygmy communities.

17. The discriminatory provisions contained in articles 444 and 448 of the Family Code clearly violated the principle of the equal rights of men and women. He asked for further information on how the amended text of the law on the equality of men and women that had been submitted earlier in 2009 removed the discrimination reflected in those two articles and, also, for up-to-date information on the status of Government action in that regard.

18. **Mr. Kerdoun** said that Congolese society needed to be stabilized before economic, social and cultural rights could be realized. The Democratic Republic of the Congo was vast, with immense natural wealth. However, 30 years of social disruption caused by external aggression and dictatorship had had a dramatic effect on the country, including the economy. Despite some signs of recovery, including the adoption of a new Constitution, greater investment and macroeconomic control, and a gradual return to peace, the economy was not as dynamic as it should be, and he therefore wished to know why economic development was sluggish and how the Government planned to resolve the problems that it faced, so that the Committee could better understand the efforts that were being made to build a country in which the rule of law and respect for economic, social and cultural rights prevailed. In that regard, education was of particular interest.

19. **Mr. Pillay**, noting that the Judicial Service Commission was not functioning because no budget had been allocated to it and magistrates' salaries were not being paid, asked what measures were being taken to ensure that the judicial infrastructure operated properly and to prevent political interference with judicial office, and whether a constitutional court had been created. Recalling that the State party itself had acknowledged that a culture of impunity existed as a result of political interference, insufficient funding and bribery and corruption in the judicial system, and noting with concern that victims of violations of economic, social and cultural rights had limited recourse to justice, he asked how the State party was working to ensure redress for victims of human rights violations and accountability for those responsible.

20. **Mr. Sadi**, noting the general comments in the written replies that human rights treaties enjoyed superiority over national legislation, that the judiciary had been reformed to ensure that all human rights were respected and that corruption was being combated, asked for specific details on how the State party was building the infrastructure necessary to ensure respect for human rights. He commented that the conflict, while clearly having hindered economic development in the State party, could not be used as an excuse for the existence of legislation that discriminated against women, for the prevalence of corruption or for the deforestation in Katanga for mining purposes. He requested further details on the status of the creation of a national human rights institution and on the provision of human rights education, including exactly how and at what levels it was delivered and what the courses involved.

21. **Mr. Texier**, referring to reports that justice had become an instrument of oppression rather than protection in the State party, commented that fundamental reform of the judicial system was required in order to address the problem of impunity and to rectify the current situation in which insufficient law courts had been constructed, the budget for provincial authorities was low and there was a shortage of judges. Urgent measures were required to address the dichotomy in the State party between the riches of its natural resources and the overall poverty level among the population, which had been created by corruption, poor State governance and exploitation of the country's wealth by multinational companies, whose sole aim was to make profits, at the expense of the general population. He asked whether the State party would be prepared to take immediate measures to repeal legislation that discriminated against women; such action would require no funding and could be undertaken very quickly.

22. **Ms. Bras Gomes**, pointing out that the Committee's aim was not to ensure that States parties guaranteed the realization of the economic, social and cultural rights of every citizen, but that they treated those rights as a core responsibility and took action accordingly, said that what was necessary in the State party was political will and a change of mindset, which required no resources. She asked what specific measures had been taken in accordance with the national Constitution to eliminate discrimination against women, in particular to repeal discriminatory laws. Noting that no reply had been given to question 15 of the list of issues regarding the national programme for the advancement of women, she asked whether the State party had sought advice from the United Nations system in order to make progress on that issue. She asked what measures were being taken to address discrimination against pygmies, noting that pygmy children who had been forced to relocate as a result of deforestation currently suffered dual discrimination since they were not permitted to enrol in local schools. She requested further information on reports that human rights defenders in the State party were facing difficulties because they often exposed the illegal activities of mining companies.

23. **Ms. Bonoan-Dandan** requested further details with respect to the State party's reply to question 7 of the list of issues on reducing deforestation and protecting the economic, social and cultural rights of forest dwellers. She asked for details of mechanisms in place to ensure adherence to the Forest Code and of specific plans for reforestation and cooperation with non-governmental organizations (NGOs) in that respect. She requested clarification of the State party's position on the issue of development of forest land, given that a joint statement by Greenpeace, Global Witness and the Rainforest Foundation claimed that the Government had decided to reverse reforms in place and to expand industrial logging activity. Noting the reference in the written replies to the list of issues to progressive measures to protect pygmies from discrimination, including targeted programmes, she asked for further specific information, especially with respect to reports that the belief that sex with Bambouti women could cure back pain had been used as justification for rape. Recalling the State party's core obligation to protect its population but noting its comment that action to protect particularly vulnerable groups was limited for financial and structural reasons, she asked how much of the State income from logging actually benefited the communities affected.

24. **Mr. Kedzia**, commenting that it was possible to make progress despite the structural challenges faced by the State party, reiterated requests by other Committee members for updated information on the planned reform of the judicial system. He asked what measures the Government had taken to prevent recurrence of violations of economic, social and cultural rights, including in the corporate sector; to ensure access for those who claimed to have suffered violation of their rights to appropriate legal or organizational remedies and to assess the effectiveness of such remedies; and to provide legal aid to disadvantaged groups. He enquired as to when the National Commission for Human Rights would be created, noting that progress in that regard had been slow, and what role that Commission would

play in ensuring respect for economic, social and cultural rights. He asked what percentage of gross domestic product was spent on reforms in the area of the rule of law and what steps were being taken to obtain assistance from partners to accelerate such reform, including developing or establishing institutions and procedures to protect economic, social and cultural rights.

25. **Ms. Barahona Riera** asked what authority the Ministry for Human Rights possessed to ensure effective realization of human rights through domestic legislation, and what resources were available to that end. She requested further information on the status of the amendments to the Family Code and the law on the equality of men and women, and on action being taken to ensure that they were approved as soon as possible to provide an adequate legal framework that did not discriminate against women. She asked how the State party was ensuring that companies involved in the exploitation of its natural resources respected their obligations to invest in health, education, the environment and local communities, and exactly what progress had been made in reviewing contracts for the development of forest land.

26. **Mr. Riedel**, noting that the Committee could be at its most useful to States parties when provided with specific details of actual results achieved on which to base its concluding observations, requested an update on the creation of the National Commission for Human Rights, on which a draft act had been submitted to the National Assembly for consideration after 15 September 2009. He asked how the administrative, financial and technical autonomy of the Commission would be ensured, what preparatory steps were being taken to ensure swift action following approval of the draft act and what specific outcome had been achieved by the State party's participation in the workshop for national human rights institutions in West and Central Africa in Lomé in January 2009.

*The meeting was suspended at 11.30 a.m. and resumed at 11.55 a.m.*

27. **Mr. Upio Kakura Wapol** (Democratic Republic of the Congo) said that the overriding concern for the Democratic Republic of the Congo was the disparity between the wealth of its natural resources and the extreme poverty of its people. That situation was the result of 30 years of dictatorship, which had plunged the country into a cycle of debt. Although efforts to exploit natural resources in the Democratic Republic of the Congo had included multinational companies, the Government had endeavoured to ensure national control of those resources, in order to plan a more secure future for the Congolese people. That political will had been translated into a new political and constitutional order, which focused on the implementation of international instruments to which the State was party, the adoption of new national legislation and the establishment of mechanisms for the promotion and protection of human rights.

28. A national reconstruction programme was under way, which had a significant budget, and a number of negotiations for external support, which were taking place at the bilateral and multilateral levels, would be finalized in 2010. It was hoped that agreements stemming from those discussions would enable the Congolese people to benefit from their natural wealth. While those measures to secure the economic, social and cultural rights of the Congolese people were positive steps, they would take time to come to fruition. Although it was sometimes alleged by external observers that the State was violating its own laws, that was not the case. The Government had a core responsibility for promoting and protecting all human rights, but could only do so within the bounds of its financial resources. Since the first free elections in 2001 and 2006, efforts had been made to build democracy and the rule of law, and permit national reconstruction in the wake of 30 years of dictatorship.

29. Turning to judicial matters, he said that justice was an integral part of the establishment of democracy and the rule of law. The justice system was being developed

with international support. Separation of powers was guaranteed under the Constitution, and the judiciary was therefore independent. The legal system was based on the Belgian and French systems, and had been adapted to the specific situation of the Democratic Republic of the Congo. The Judicial Service Commission was responsible for overseeing the functioning of the judiciary and providing adequate training for judges, a fundamental part of which involved ensuring that adequate focus was placed on human rights. There were a number of obstacles preventing the optimum efficiency of the justice system, including lack of financial resources and the size of the national territory, which resulted in some people having to travel distances of up to 300 kilometres to access their nearest court. There was also a shortage of judges as a result of the zero-tolerance policy on corruption and impunity, under which a considerable number of judges had been dismissed. A programme had been launched for the construction of courts in 147 provinces and territories, some of which had already been completed. It also provided for the building of new prisons, and ensured training for judges. An awareness-raising campaign was under way to inform the public of their rights regarding access to the judiciary. The amount of time taken to organize court hearings, particularly when plaintiffs were obliged to travel long distances to attend, was also a hindrance to the efficient functioning of the justice system, which the Government was taking measures to address.

30. A five-pillar development programme was being implemented, which required considerable financial resources. A debt relief programme under the HIPC Initiative would be implemented in the first quarter of 2010, in an effort to alleviate the \$10 billion debt burden that had been accumulated during the dictatorship. The relief of that debt would enable resources to be directed to address the needs of the population.

31. Regarding the situation of women, he said that legislative reforms were currently under way, including in respect of article 14 of the Constitution on equal gender representation, and the Family Code, to address the legal obligation of women to obey their husband and to obtain his authorization for any legal act, including employment. Appropriate amendments to the Code were currently before Parliament for adoption, but had been subject to delays. He called on NGOs to put pressure on Parliament to adopt those amendments promptly. A draft law on the establishment of a new national human rights institution was also before Parliament, but was unlikely to be adopted during the current parliamentary session owing to budgetary constraints.

32. On the issue of combating corruption, he said that his delegation intended to provide the Committee with examples of relevant court decisions.

33. Concerning forestry, measures to reduce deforestation included conducting a review of all existing contracts and extending only those that were in conformity with the provisions of the Forest Code. As a result, there had been a reduction in forested areas cleared for occupation, which had contributed to deforestation in the past. In addition, a national reforestation programme had been launched with the assistance of the World Bank and other donor organizations.

34. With regard to protecting indigenous populations, including pygmies and other forest communities, he said that multinational companies licensed by the Government to engage in mining and drilling activities had special clauses in their contracts obliging them to provide health care, housing, drinking water and electricity for local people. A monitoring mechanism was in place to ensure that the needs of the local inhabitants were met and that companies did not violate their rights. As for the Bambouti pygmies, he said that the situation was improving and they were beginning to have access to education and training and to employment in professions such as teaching and the police force. The full force of the law was used to reduce discrimination against pygmies, including prosecuting law enforcement officials who violated the rights of indigenous people.

35. He assured the Committee that cases of human rights defenders facing harassment, reprisals and infringements of their rights when they denounced violations of economic or social rights were extremely rare. However, he questioned whether all human rights defenders acted with probity in accordance with their recognized status. When NGOs made allegations that crimes had been committed, those were taken seriously by the justice system and legal proceedings were set in motion. The Government had a duty to ensure that the right to a fair trial was guaranteed in all cases.

36. As to the Ministry for Human Rights, he explained that it dealt with the effective implementation of international human rights instruments and undertook activities such as the dissemination of information, training, education and awareness-raising on human rights issues in partnership with other ministries. Despite its limited resources, it played an important role in following up legal reforms, especially with regard to women's and children's rights. It also acted as a neutral, independent mediator to facilitate dialogue between all human rights actors and to resolve sensitive problems.

37. He confirmed that the new National Commission for Human Rights would be an independent, consultative body to support and supplement the activities of the Government on the promotion and protection of human rights.

38. He said that the delegation would provide fuller, written answers to the list of issues contained in document E/C.12/COD/Q/5 in due course.

39. The contract review process, particularly in the mining sector, was important in monitoring compliance by operators with their obligations to respect workers' rights, provide resources and facilities for local communities and contribute to the State budget.

40. There were special measures in place to protect particularly vulnerable groups in general, but limited budgetary resources made it difficult to allocate substantial funds to a particular sector. However, steady economic growth meant that more resources should be available in the future for the protection of economic, social and cultural rights. It was therefore hoped that indicators in the next report would be more positive.

41. **Mr. Mutomb Mujing** (Democratic Republic of the Congo), responding to Mr. Kerdoun's concerns about the state of the national economy, said that the country had reached a crossroads. Its 40-year history of political instability and conflict had led to the current paradoxical situation of needing to prevent conflict while at the same time carrying out national reconstruction. Such a difficult challenge could only be overcome by ensuring good governance, consolidating peace and reducing vulnerability, strengthening economic growth and capacity-building, providing for basic social needs and coordinating external aid.

42. With regard to multinational companies, he noted that a problem had emerged in the east of the country because certain uninvited multinationals had taken advantage of instability in that area to exploit the country's resources cheaply with the assistance of armed groups. However, companies contracted by the Government could make useful contributions to the State.

43. **The Chairperson** said he was disappointed that some of the Committee's questions remained unanswered but looked forward to receiving the fuller, written replies and additional information promised by the State party.

44. **Ms. Bras Gomes** asked when the discriminatory provisions concerning women contained in the Family Code would be repealed.

45. **Mr. Sadi** asked whether the Democratic Republic of the Congo would consider seeking technical advice from the Office of the United Nations High Commissioner for Human Rights.



46. **Ms. Bonoan-Dandan** expressed concern that some of her questions had not been answered, especially with regard to deforestation and the protection of local communities. She urged the delegation to reply fully to questions orally at the current session rather than responding in writing later, which would make the Committee's task of preparing concluding observations more difficult.

47. **Mr. Kedzia** asked for clarification on the relationship between the delegation's statement that the National Commission for Human Rights was expected to support and supplement the activities of the Government and the need for the Commission to be independent and act in accordance with the Paris Principles.

48. **Ms. Barahona Riera** said that gender equality was fundamental to national development and that the draft legislation on the Family Code, parity and equality between men and women that was before Parliament should be placed at the top of the Government's list of priorities. Pressure on Parliament to pass those bills should come from the Government and not, as the delegation had suggested, from NGOs.

49. She asked for further information on what mechanisms were in place to ensure that, under the contract review process, clauses in new contracts guaranteed that multinational companies would contribute to national development and invest in social needs.

*The meeting rose at 1 p.m.*