



# Convention on the Rights of the Child

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## Committee on the Rights of the Child Fiftieth session

### Summary record of the 1384th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 21 January 2009, at 10 a.m.

*Chairperson:* Ms. Lee

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

**Consideration of reports of States parties** (agenda item 4) (*continued*)

*Second periodic report of the Democratic Republic of the Congo ((CRC/C/COD/2); list of issues to be taken up (CRC/C/COD/Q/2); written replies by the State party concerning the list of issues to be taken up (CRC/C/COD/Q/2/Add.1); additional replies of the State party to the list of issues to be taken up (document without a symbol, distributed in the meeting room))*

1. *At the invitation of the Chairperson, the delegation of the Democratic Republic of the Congo took places at the Committee table.*
2. **Mr. Upio Kakura** (Democratic Republic of the Congo) said that despite the political and economic context related to the recurrent war in the eastern part of the country and the gross human rights violations that inevitably ensued from it, the Government of the Democratic Republic of the Congo had made the promotion and protection of fundamental rights and individual freedoms a priority. The Democratic Republic of the Congo had adopted the Child Protection Act, No. 09/001, which brought together in a single law all the legal provisions concerning children drawn up in accordance with the relevant international standards.
3. With regard to legislative measures, the Democratic Republic of the Congo had made considerable efforts since the submission of its initial report in 2001 to ratify most of the international and regional agreements for the protection of the rights of the child, such as the two Optional Protocols to the Convention on the Rights of the Child and the Convention concerning Minimum Age for Admission to Employment (Convention No. 138) and Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182) of the International Labour Organization (ILO).
4. The definition of the child was set out in article 41, paragraph 1, of the Constitution, which stated that “a minor is any person, regardless of gender, under the age of 18”. With respect to agencies for the promotion and protection of the rights of the child, it was worth noting the establishment in 1998 of the National Council for Children, a governmental body responsible for coordinating the activities to implement the Convention.
5. Budget resources set aside for the social sectors had been growing steadily since 2001. The share of the national budget allocated to education had gone from 3 per cent in 2004 to 8.2 per cent in 2008, and the Government granted a portion of its budget resources directly to the principal non-governmental children’s aid organizations.
6. The Convention and the principal international human rights instruments such as the African Charter on Human and Peoples’ Rights were disseminated by different methods and through various media. Furthermore, the Government of the Democratic Republic of the Congo abided by the general principles enshrined in the Convention, including non-discrimination and the best interests of the child.
7. The national plan of action to promote birth registration put in place in 2004 had been integrated in a comprehensive plan for the revitalization of public records in 2008, and was already showing encouraging results in terms of strengthening technical and institutional capacity. The number of declared births in the city of Kinshasa was steadily increasing.
8. The Government also paid particular attention to children’s right to life, survival and development and to participation, within the framework of developing policies and programmes and adopting legislative, administrative and judicial measures.

9. The Government of the Democratic Republic of the Congo deplored the fact that the efforts it was undertaking, with the support of its partners, had been nullified by the renewed outbreak of war in the eastern part of the country, which had affected first and foremost children and women. They constituted the majority of the 950,000 displaced persons registered in the eastern provinces of North and South Kivu, where thousands of children were recruited by armed groups.

10. The Government of the Democratic Republic of the Congo was making every effort to end that situation and increase the well-being of children. It was implementing many health programmes and had undertaken major public works projects to improve basic infrastructure and access to water, electricity and education.

11. The Ministry of Social Affairs, Solidarity and Humanitarian Action was implementing a national strategy to protect vulnerable groups such as children deprived of a family environment, which centred mainly on prevention of the break-up of families, assistance on the ground, reunification and reinsertion.

12. Concerning the campaign against violence, abuse and exploitation in all their forms, it should be noted that children accused of sorcery endured the worst kinds of abuse. The Democratic Republic of the Congo had therefore included combating violence and abuse in its Constitution and adopted a national plan of action for the prevention of violence against children, to be carried out in coordination with the Ministry of Gender, Family and Children. Furthermore, various laws stipulated heavy penalties against the perpetrators of acts of that kind.

13. The national policy implemented to ensure that all children had access to education and to achieve the Millennium Development Goals rested on several pillars, including the principle of free basic education, mass enrolment of school-age children, particularly girls, the renovation of dilapidated schools and the construction of new ones.

14. In the context of reform of the legal system, there were plans to build juvenile courts, to renovate and build new State childcare and education facilities and to train judicial, administrative and social welfare personnel.

15. **Ms. Khattab** (Country Rapporteur) commended the fact that the State party showed such a degree of self-criticism and thus highlighted the main areas of concern that would be taken up during the consideration of the State party's second periodic report. After welcoming the adoption of the Child Protection Act of 10 January 2009, she called on the State party to show even greater political will to implement the Convention. She noted the particularly difficult conditions that the country had been experiencing for several years and their effect on the welfare of the children and welcomed the efforts made by the Government of the Democratic Republic of the Congo to cooperate with Rwanda and Uganda in order to restore peace in the eastern part of the country, without which the State party would not manage to achieve the Millennium Development Goals.

16. She would like to know if children and non-governmental organizations had been consulted during the drafting of the report under consideration, if the State party would have the will to follow up on the concluding observations that the Committee would put forward at the end of the current session and, if so, if it would be capable of doing so. The question arose as to the level of attention that would be given to issues concerning children given the current situation in the Democratic Republic of the Congo, whether all persons were aware of the Convention, whether children were perceived as the subjects of rights and the extent to which the fighting was diverting attention from those issues and paralysing the civil service.

17. The State party should ratify without delay the International Convention for the Protection of All Persons from Enforced Disappearance, the Convention on the Recovery Abroad of Maintenance, the Hague Convention on Protection of Children and Cooperation

in respect of Intercountry Adoption of 1993 and the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

18. She would like to know what share of the total amount of international assistance granted to the State party by international donors, the International Monetary Fund (IMF) and the World Bank was spent on child welfare policies and why the resources devoted to the protection of children were generally presented as being a gift from the President or a charity.

19. Noting that the National Council for Children, which was responsible for coordinating all activities to implement the Convention, included members of and was partly funded by the Ministry of Gender, Family and Children, she questioned whether it could carry out its mandate in an independent manner. While the Ministry of Gender, Family and Children was obviously the body actually in charge of policy on children, it was unclear whether it had sufficient powers and whether its recommendations were binding and prevailed over the recommendations of other ministries when policy disagreements arose.

20. She asked whether the National Human Rights Monitoring Centre (the Observatoire national des droits de l'homme) had been replaced and whether the Government considered NGOs to be partners. Were NGOs given an annual budget that enabled them to plan their activities in advance or were they funded on a case-by-case basis.

21. Turning to discrimination, she noted with concern the treatment of children accused of sorcery, who in some instances were killed by their own parents, and the lack of a government policy to restore the rights of those children.

22. The Committee would appreciate additional information on the measures taken by the State party to implement the national strategy for girls' education and would like to know how many girls had already benefited from it.

23. Lastly, concerning sexual violence against girl children and adolescent girls, which was increasing exponentially because of the deterioration of the security situation in the eastern part of the country, including in the camps for displaced persons, she asked the delegation to describe the educational measures taken by the State party to change mindsets and enforce the new law prohibiting violence against children. She enquired whether any cases had been prosecuted under that law and, if so, what was their outcome.

24. **Mr. Filali** (Country Rapporteur) said that the difficulties faced by the Democratic Republic of the Congo in rebuilding the State, owing in part to the lack of infrastructure, made it difficult for the administration to operate at all levels. The State party had nevertheless been able to strengthen its legal framework relating to the protection of the rights of the child. It would be useful to know what impact the new laws had had on the situation of children. The fact that newly adopted laws did not necessarily abrogate older laws often gave rise to contradictory laws, and judges were sometimes faced with a dilemma as to which law to apply. The problem arose in particular in matters involving the minimum age of criminal responsibility, for which magistrates applied the Ordinance-Law of 4 July 1978, which stated that under criminal law minors were children under the age of 16 at the time of the offence. He asked how the State party planned to ensure that the definition of a minor was the one set out in the Constitution of 18 February 2006.

25. He also noted the lack of implementing decrees and the occasional failure to publish newly adopted laws in the *Official Bulletin*, which prevented judges from applying them. He would like to know what new provisions were contained in the Child Protection Act, what mechanisms would be put in place for its implementation and whether funds had been set aside to do so. He also enquired about the status of the bill concerning women, the

family and children, why it had not yet been adopted and when the State party intended to do so.

26. He would also like to know why the percentage of registered births had decreased from 34 per cent in 2001 to 31 per cent in 2007 and what measures the Government would take to rectify the situation.

27. **Mr. Siddiqui** asked whether there was a national agency responsible for statistical data and, if so, what was its role in collecting data on children. He would also like to know if the National Council on Children and the provincial councils on children had the necessary powers, if their staff was properly trained in collecting data on children and if the State party had requested the United Nations Children's Fund (UNICEF), to provide it with assistance in organizing this activity in the country.

28. He noted that, according to the report, while 10 per cent of the 2004 national budget should have been allocated to education the share had been only 3 per cent in the end. He would like to know the percentage of the national budget allocated to military spending and if those expenditures had increased in recent years. He also enquired how budget allocations for education, health and social security in the territories controlled by the authorities of the Democratic Republic of the Congo were spent and if budget resources were used by local public agencies, NGOs and central authorities or by all of them acting in collaboration. Lastly, he asked if there was a mechanism to monitor public spending and assess its effect on the situation of children.

29. **Mr. Kotrane** asked whether the State party planned to ratify the Convention on the Rights of Persons with Disabilities and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. He would like to know if the international instruments ratified by the State party took precedence over domestic law and whether magistrates had ever cited the provisions of the Convention on the Rights of the Child and other international instruments relating to the rights of children such as ILO conventions.

30. Referring to paragraph 67 of the periodic report (CRC/C/COD/2), he asked what impact the Act of 20 July 2006 concerning sexual violence, extending the protection against rape to all persons under age 18, could have on the interpretation of the discriminatory provision of article 352, paragraph 1, of the Family Code, which set the minimum age of marriage at 18 for men and 15 for women.

31. Noting that the new Labour Code has raised the minimal age for admission to employment to 16, he wondered up to what age education was compulsory and said that the two ages should be the same.

32. **Mr. Citarella** enquired about the status of children whose births had not been registered, whether they had access to education and health-care services and whether they encountered difficulties relating to the fact that they did not have official documents attesting to their nationality. That issue was particularly acute in areas still affected by conflicts in the eastern part of the country, as an unregistered child could easily fall prey to trafficking, be moved to another region of the country or even disappear.

33. **Ms. Smith**, noting the high levels of infant mortality and malnutrition and the large number of child soldiers, street children and internally displaced children, deplored the fact that the right to life was not guaranteed to the children of the State party. She asked whether it would be possible to raise awareness on the part of the administration and families about the fact that the interests of children should be taken into consideration as a matter of priority in all areas and to allocate more resources to the social sector to improve the situation of children.

34. **Mr. Pollar**, noting that the law provided for the free registration of births, asked to what extent the law was applied and whether the authorities were informing parents about the importance of registering births. He would like to know how the State party ensured that the officials who kept birth registers and the Prosecutor General, who signed those registers, performed their work properly and were paid decently. Further information was needed about the State party's legislation prohibiting and punishing torture and what the authorities were doing to prevent street children from being victims of murder and acts of torture.

35. **Mr. Puras**, noting that the State party mentioned in its report the existence of many children's committees, including 1 national committee, 11 provincial committees and more than 2,000 school committees, said that those committees had apparently lost all momentum and were active only on commemorative days and national holidays, for example. He would like to know what the State party intended to do to give those committees fresh impetus.

36. Noting that the children of the State party were often subjected to unlawful or arbitrary interference in their private life, he asked what measures the Government planned to take to ensure the right of children to the protection of the law against such invasions of privacy.

37. Lastly, he would like to know what the State party was doing so that young and adolescent children had access to information to help them to develop while protecting them from information that could harm their well-being, particularly information disseminated by the media.

38. **Mr. Parfitt**, noting that the report of the State party and the list of issues to be taken up contained only a few references to the best interests of the child, asked whether the delegation could give examples showing that the best interests of the child were taken into consideration in legal decisions. He also asked how the Cabinet of Ministers was ensuring that the best interests of the child were taken into account in the budget process or the development of programmes concerning children.

39. According to some sources, the National Human Rights Monitoring Centre had greatly reduced its operations over time and was currently almost inactive. He requested clarification of that matter and information about whether the Centre observed the Paris Principles and the Committee's general comment No. 2 on the role of independent national human rights institutions in the promotion and protection of the rights of the child (CRC/GC/2002/2) and whether it enjoyed genuine independence from the Government. Lastly, he wondered what authority Congolese children could appeal to if they considered that their rights were violated.

40. **Ms. Aidoo** noted with satisfaction that the Government was allocating funds to NGOs and asked what percentage of the State budget was represented by the 98 million CFA francs allocated in 2008 to about 10 NGOs and what criteria were used in the selection of NGOs that received such financial support. She would like to know if the State party had a comprehensive policy governing cooperation and relations between the Government and NGOs in matters concerning the promotion and implementation of the rights of the child.

41. **Ms. Ortiz** said that the accusations of sorcery against some children seemed to be a widespread and well-established practice, which violated the principle of non-discrimination and the best interests of the child, the right to life, survival and development and the right to participation. She asked what measures had been taken by the authorities to combat that scourge.

42. **Ms. Khattab** (Country Rapporteur) said that the budget resources allocated to areas affecting children were very low. A World Bank report showed that in 2007 the

Government spent 80 cents per inhabitant on health care, whereas the amount should be at least \$7. Spending on education had also decreased. The political will of the Government to address problems affecting children could thus be called into question. It would be good to know if there was a mechanism that allowed for monitoring the use of international assistance funds.

43. **Mr. Filali** (Country Rapporteur) would like to know if the Criminal Code included a definition of torture.

44. **The Chairperson**, noting that the report did not comply with the Committee's guidelines, asked how it had been prepared. She also enquired whether measures had been taken to protect Pygmy children, who were victims of discrimination.

45. **Ms. Kenge Ngomba Tshilombayi** (Democratic Republic of the Congo) said that the plan of action developed by the Government to combat sexual violence included a component on combating impunity and provided for the organization of awareness and legal literacy campaigns aimed at informing the people about their rights and encouraging them to report crimes. Access to justice had also been enhanced through the establishment of circuit courts, which enabled judges to visit regions of the country in which there were no courts.

46. The recruitment of judges, whose numbers were insufficient, the establishment of public prosecutor's offices specialized in matters of sexual violence, the introduction of children's judges, the promotion of women in judicial positions and capacity-building for magistrates in the application of laws were among the main components of Government action in the area of justice.

47. Children whose rights have been violated could apply to judicial bodies and to certain governmental bodies such as the Ministry of Gender, the Family and Children, in accordance with the Child Protection Code.

48. **Ms. Smith** wished to know whether there were plans to address the problem of low pay for judges.

49. **Ms. Parfitt** wondered whether a child's filing a complaint with the Ministry constituted an official procedure and systematically led to an inquiry.

50. **Ms. Kenge Ngomba Tshilombayi** (Democratic Republic of the Congo) said that the Government's activities, including its efforts to combat the stigmatization of victims of sexual violence, had resulted in a number of legal proceedings being instituted by both the victims themselves and NGOs. In addition, the Government had introduced an expeditious procedure to address the delays in the administration of justice.

51. **Mr. Filali** (Country Rapporteur) wished to know if children could take independent action for damages in criminal proceedings and whether they must be accompanied by a parent or lawyer for that purpose or whether it is for the prosecutor who had instituted the criminal proceedings to institute civil action.

52. **Ms. Khattab** (Country Rapporteur) pointed out that whereas the number of complaints filed had grown the number of cases that had been prosecuted continued to decline, which suggested that the judicial system was not capable of providing justice and compensation to the victims of violations.

53. **The Chairperson** asked whether children were aware of the remedies available to them. It would be useful to have a description of the procedure by which a child could file a complaint.

54. **Ms. Kenge Ngomba Tshilombayi** (Democratic Republic of the Congo) said that the children were represented by their parents under the law of the Democratic Republic of the Congo. Under the joint initiative to combat sexual violence, child victims of sexual

violence were provided with comprehensive care aimed at meeting their legal and medical, psychological and social needs. It could not be said that the legal system was failing to address the problem of violence, since the number of prosecutions had increased. It was true that there was a need to find a solution for the shortage of judges and courts in the country. The use of circuit courts was a first step forward.

55. **Mr. Upio Kakura** (Democratic Republic of the Congo) said that judges' salaries had just been increased. The State party's budget in 2009 amounted to \$5 billion, which, although very little for a country with a population of 67 million inhabitants, nevertheless constituted an increase as compared with 2008, when it was about \$3 billion. The Government considered that if peace were to be restored, the budget could attain \$10 to \$15 billion by 2010 or 2011. The country would have been capable of meeting its obligations, particularly with respect to child protection.

56. Turning to the share of international assistance that went towards improving the situation of children, he said that the Democratic Republic of the Congo was engaged in a process of debt reduction and cancellation and, as it must abide by the conditions imposed by the World Bank and IMF, it could only count on its own resources. The country was in a situation of conflict, and part of the resources that should be spent on children was allocated to the protection of the civilian population in conflict areas. The Government had indeed put in place mechanisms for the protection of children in those areas but its efforts were not as effective as it would have wished because of a lack of resources. The Board of Auditors and Office of the Comptroller were responsible for overseeing spending on child welfare.

57. **Ms. Khattab** (Country Rapporteur) would like to know if the budget was drawn up annually and whether it was on the rise or on the decline.

58. **Mr. Luyela Loyel** (Democratic Republic of the Congo) said that the NGOs mentioned in the report were among the organizations working for the protection and promotion of the rights of the child that were registered by the Ministry of Social Affairs and had been provided with special support measures. Those measures could take three forms, including subsidies drawn from the ordinary State budget, support in the framework of bilateral and multilateral cooperation, and tax exemptions granted by the State (including facilities for the import of goods used to care for vulnerable children). The criteria for the selection of NGOs receiving State support included their viability and their operational efficiency.

59. **The Chairperson** invited Committee members to turn to part II of the list of issues.

60. **Mr. Filali** (Country Rapporteur) enquired why minors aged 16 to 18 were still prosecuted under an Ordinance of July 1978. He said that there seemed to be some resistance on the part of certain judges, who insisted on applying that law instead of other laws that set the age of criminal responsibility at 18. Moreover, the procedures were often very slow because of the lack of qualified personnel, which was detrimental to minors. He asked if alternatives to custodial measures had been adopted or were being prepared in order to reduce the number of proceedings involving minors.

61. He deplored the almost total absence of temporary detention facilities for minors, which meant that they were held in police detention centres or together with adults. Furthermore, minors did not enjoy the assistance of legal counsel or case workers during their detention. He requested more information on that topic.

62. Noting that the statistical data gathered by various agencies were not always coherent, he wished to know the reasons for the sometimes significant discrepancies in those data.

63. **Ms. Khattab** (Country Rapporteur) asked whether measures had been taken to prevent interference in the administration of justice and corruption in cases involving

violence against children or sexual violence, as those practices had led to the almost systematic release of the alleged offenders. She would also like to know what the Government had done to address the challenges posed by victims' lack of access to legal institutions, the inducements to enter into agreements outside the courts, which in fact compromised the rights of victims, and the lack of skills and resources, with particular regard to techniques for investigating cases of sexual violence. She also asked why witnesses were reluctant to testify before the courts.

64. Between 2006 and 2007 more than 8,200 child victims of sexual violence out of 37,000 in total received support from UNICEF, and the perpetrators had not been prosecuted unless bilateral or multilateral organizations had borne the costs of the proceedings. She asked if the Government planned to cover the costs of that kind of legal action.

65. The Special Representative of the Secretary-General for Children and Armed Conflict, Ms. Coomaraswamy had visited the Democratic Republic of the Congo in 2007 and put forward a series of recommendations on violence in situations of armed conflict. She wished to know if the Government had taken measures to follow up on those recommendations and to ensure that the army of the Democratic Republic of the Congo did not commit violations or abuses against children, such as those perpetrated in October 2008 in Goma. She asked if the Government had taken measures concerning the militia groups that were supporting the Forces armées de la République démocratique du Congo (FARDC) to ensure that they did not continue to recruit or kill children. She also asked if the proceedings against the perpetrators of such acts had already been instituted.

66. Noting that street children were placed in detention, often with adults and under appalling sanitary conditions, she asked on what grounds those children were arrested, given that, according to information before the Committee, they were detained temporarily and released without being prosecuted.

67. **Mr. Parfitt** wished for information on the new poverty reduction strategy and programmes devoted specifically to improving the living conditions of children, including matters concerning water and sanitary conditions.

68. Children were still kidnapped by armed groups for the purpose of recruitment, sexual exploitation and forced labour. He requested further information on that issue and clarification as to whether there were bilateral or trilateral negotiations concerning abductions and trafficking. He also enquired whether there was evidence of cross-border trafficking in Congolese children, for what purposes such children were used, and if there were programmes aimed at arranging for their repatriation.

69. **Mr. Puras** said that, despite the efforts made in that area, health indicators for children remained very negative: 1 child in 8 died before the age of 1 and 1 in 5 before the age of 5. The maternal mortality rate was one of the highest in the region and in the world. He asked what measures had been taken to address the problem and why they did not seem to be effective.

70. HIV/AIDS was a serious public health problem in the Democratic Republic of the Congo, mainly among adolescents, despite the national health programme for adolescents, which seemed to have little impact on the ground. He asked what the State party was doing to improve the health situation of adolescents generally and in relation to HIV/AIDS in particular.

71. When a country had limited financial resources for health care it was crucial to put in place an effective system of primary care. According to information before the Committee, only 31 per cent of children between 13 and 25 months were vaccinated against illnesses that could be prevented by vaccination; moreover, sanitary conditions and clean drinking water supplies remained insufficient and had even deteriorated recently. He asked

how the Government planned to confront that alarming situation and what kind of outside assistance could be given to it. He would also like to know if the Government was planning to revise its national strategy to strengthen the health-care system or to draw up a more effective strategy. In addition, he enquired what measures had been taken by the Government to improve the situation of children with disabilities.

72. **Mr. Krappmann** said that too few children were enrolled in school and that school infrastructure was unsatisfactory. He asked if the Government had developed a strategic plan setting out measures, budget allocations, benchmarks and a performance monitoring system. He would also like to know if measures had been taken to guarantee the safety of students, if courses on human rights and the rights of the child were given in schools, how the Government was encouraging private initiatives to restore school infrastructure and facilitate the enrolment of vulnerable children, whether there were enough teachers in the country and if it would be possible to recruit new teachers if more students were enrolled in school. Furthermore, he asked for more information on the policies to integrate issues concerning education in the broader programmes to support children, focusing on food, health, recreational activities and culture.

73. **Ms. Ortiz** asked what were the strategies aimed at advising and helping families in the education of children. She would also like to know if there were support facilities at the community level and who was responsible for caring for the children in cases of parental neglect.

74. Concerning alternative care, she asked how many children lived in institutions, how many institutions there were in the country and what the breakdown was of State, private and religious institutions. She also requested more information on the standards governing those institutions, the situation of children living in them and the oversight mechanisms available to the authorities.

75. She wondered if the law currently authorized international adoptions and, if so, how many adoptions took place at the national level and how many at the international level. She also wished to know if there were traditional adoptions, decided on by justices of the peace or traditional leaders, and if measures had been taken so that the rights of the child were taken into account in all types of adoption. Lastly, she asked if the State party intended to ratify the Hague Convention on Intercountry Adoption.

76. **Mr. Pollar** asked if there were programmes aimed at providing assistance to non-accompanied refugee children and internally displaced children in the country and what measures were being taken to protect children against threats, extortion, discrimination and sexual violence. Noting that refugee children received material assistance from the Office of the United Nations High Commissioner for Refugees and were enrolled in school, he failed to understand why internally displaced children in the country were abandoned by the public authorities.

77. He asked if measures had been taken to combat the exploitation of children, particularly against exploitation and sexual abuse not related to armed conflict. He would also like to know what had been done to change mindsets with respect to gender equality. In addition, he asked what steps had been taken to implement the national plan of action to combat violence, particularly sexual violence.

*The meeting rose at 1 p.m.*