



**International Convention  
on the Elimination  
of all Forms of  
Racial Discrimination**

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**COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION**

Seventy-first sessions  
30 July-17 August 2007

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the  
Elimination of Racial Discrimination**

**DEMOCRATIC REPUBLIC OF THE CONGO**

1. The Committee considered the eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports of the Democratic Republic of the Congo, submitted in a single document (CERD/C/COD/15), at its 1827th and 1828th meetings (CERD/C/SR.1827 and 1828), held on 6 and 7 August 2007. At its 1844th meeting (CERD/C/SR.1844), held on 17 August 2007, it adopted the following concluding observations.

**A. Introduction**

2. The Committee welcomes the report submitted by the State party and commends the honesty with which it has recognized certain situations that have had a serious impact on the Democratic Republic of the Congo. The Committee regrets, however, that human rights NGOs were not involved in the preparation of the report.

3. The Committee appreciates the opportunity to resume its dialogue with the State party after a long hiatus. It welcomes the large, high-level delegation, to which it extends its thanks for the supplementary information provided orally and in writing.

4. The Committee takes note of the delegation's announcement that a core document has been drafted and will be forwarded shortly. It invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, approved by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

### **B. Positive aspects**

5. The Committee welcomes the promulgation of the 18 February 2006 Constitution, which reflects the desire of the Democratic Republic of the Congo to ensure the prevalence of the rule of law and its commitment to meeting its international human rights obligations.

6. The Committee notes with satisfaction the State party's signature in 2006 of the Pact on Security, Stability and Development in the Great Lakes Region.

7. The Committee commends the ratification by the Democratic Republic of the Congo of the Rome Statute of the International Criminal Court and the measures taken to implement the recommendations of the conference on peace in Ituri. It welcomes the fact that, after having requested the establishment of a special criminal court to try war crimes and crimes against humanity committed in the Democratic Republic of the Congo, the State party seized the International Criminal Court of those crimes.

8. The Committee notes with satisfaction the establishment of a technical inter-ministerial committee responsible for drafting reports to the treaty bodies on the implementation of international instruments to which the State is a party.

### **C. Factors and difficulties impeding the implementation of the Convention**

9. The Committee recognizes and is deeply disturbed at the State party's present frail and vulnerable condition, as reflected in the fragility of the peace, within the country as well as on its borders, which hinders it from preventing violations of human rights in general and of the rights contained in the Convention in particular. The Committee is aware of the serious economic, administrative and social challenges facing the State party.

### **D. Concerns and recommendations**

10. While noting the State party's intention to conduct a scientific census in 2009, the Committee remains concerned at the fact that the last census in the Democratic Republic of the Congo was conducted in 1970, and that as a result the information provided by the State party on the ethnic and linguistic make-up of its population, including indigenous peoples, refugees and displaced persons, is not comprehensive. The Committee recalls that information on demographic characteristics enables both the Committee and the State party to better assess the implementation of the Convention at the national level.

**(a) The Committee recommends that the State party should include the information yielded in the 2009 census in its next report and encourages it to ensure that the census form contains relevant questions that will make it possible to obtain a clear picture of the ethnic and linguistic make-up of the population, including the indigenous peoples. The Committee draws the attention of the State party to the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1).**

**(b) The Committee invites the State party to submit data on refugees and displaced persons in order to enable it to assess the extent, distribution and impact of their movements.**

11. The Committee regrets that the National Human Rights Observatory ceased to exist in accordance with the Transitional Constitution and notes that the State party has not yet set up an analogous independent body to promote and monitor the enjoyment of human rights, particularly in areas relating to the prohibition of racial discrimination and the promotion of tolerance among ethnic groups.

**The Committee encourages the State party to create an independent national human rights institution in line with the Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (General Assembly resolution 48/134) (arts. 2, 6, 7).**

12. The Committee notes with concern that, while the State party does not deny the existence of ethnic conflicts in the Democratic Republic of the Congo, there is no definition of racial discrimination in domestic law that reflects the definition given in article 1 of the Convention.

**The Committee recommends that the State party take the necessary legislative measures to adopt in domestic law a definition of racial discrimination that is fully consistent with article 1 of the Convention.**

13. The Committee notes with concern that one of the candidates in the last provincial election campaign in Katanga in October 2006 made racist comments about other candidates and that, although the High Authority for the Media banned him from making statements to the media, no judicial proceedings were taken against him.

**The Committee recommends that the State party take appropriate measures to effectively counter all attempts, and particularly attempts by political leaders, to single out, stigmatize or stereotype individuals because of their race, colour, descent or national or ethnic origin. It should also ensure that criminal proceedings and penalties are instituted against those who engage in incitement to racial or tribal hatred. The Committee further recommends that Ordinance-law No. 25-131 of 25 March 1960, on the suppression of manifestations of racism or religious intolerance, the Decree of 13 June 1960, on racial discrimination in shops and other public places, and Ordinance-law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, should be revised in order to make them more effective and bring them into line with the Convention (art. 4 (a)).**

14. The Committee takes note that, according to the State party's Constitution, the State party's aim of building a nation based on the principle of equality for all is to be pursued with safeguards for ethnic and cultural diversity. It notes with regret, on the other hand, the State party's reluctance to acknowledge the existence of indigenous peoples in its territory. It also regrets that it has received no clarification of the contradiction between article 51 of the Constitution, which establishes a duty to ensure the protection and advancement of vulnerable groups and all minorities, and the delegation's repeated statements to the effect that minorities are not recognized by the State party.

**The Committee wishes to remind the State party that the principle of non-discrimination requires it to take account of the cultural characteristics of ethnic groups. The Committee strongly urges the State party to respect and**

**protect the existence and cultural identity of all the ethnic groups living in its territory. It further invites the State party to review its position on indigenous peoples and minorities, and in that context to take into account the way in which such groups perceive and define themselves. The Committee recalls in this regard general recommendation No. 8 (1990), concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and general recommendation No. 23 (1997) on the rights of indigenous peoples (arts. 2 and 5).**

15. While welcoming the fact that according to article 15 of the Constitution all forms of sexual violence, including those with intent to destroy a people, constitute criminal offences, the Committee remains appalled by the situation of Congolese women, who continue to be the victims of sexual violence as a result of inter-ethnic conflicts.

**The Committee urges the State party to take steps to protect the victims of sexual violence and to undertake to prosecute the perpetrators of such acts. The penalties imposed should be proportional to the seriousness of the offences and an information campaign concerning the criminal nature of such acts should be conducted among the public and the armed forces (arts. 2 and 5).**

16. The Committee notes with concern the information received about the de facto segregation in Kinshasa, where Luba Congolese and Swahili-speakers are discriminated against and have difficulty finding housing.

**The Committee requests the State party to define a strategy and take immediate and effective measures to prevent de facto segregation. The Committee draws the State party's attention to its general recommendation No. 19 (1995) on racial segregation and apartheid (arts. 3 and 5 (e) (iii)).**

17. While welcoming the adoption of the Act of 12 November 2004, granting the Banyarwanda Congolese nationality, the Committee is concerned to note that in practice Congolese nationality is particularly difficult to acquire by members of this group. The Committee also notes that, according to article 10 of the Constitution and article 14 of the 2004 Act, Congolese nationality is one and exclusive.

**The Committee invites the State party to ensure that the application of the above provisions do not give rise to discrimination in the enjoyment of the right to nationality by members of certain ethnic groups residing within its territory (art. 5 (d) (iii)).**

18. The Committee notes with concern that the rights of the Pygmies (Bambuti, Batwa and Bacwa) to own, exploit, control and use their lands, their resources and their communal territories are not guaranteed and that concessions are granted on the lands and territories of indigenous peoples without prior consultation.

**The Committee recommends that the State party take urgent and adequate measures to protect the rights of the Pygmies to land and: (a) make provision for the forest rights of indigenous peoples in domestic legislation; (b) register the ancestral lands of the Pygmies in the land registry; (c) proclaim a new moratorium on forest lands; (d) take the interests of the Pygmies and environmental**

**conservation needs into account in matters of land use; (e) provide domestic remedies in the event that the rights of indigenous peoples are violated; and (f) ensure that article 4 of Ordinance-law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, is not used to ban associations engaged in defending the rights of indigenous peoples. In addition, the Committee invites the State party to take account of its general recommendation No. 23 on indigenous peoples (art. 5).**

19. The Committee remains concerned that Pygmies are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market. The Committee is particularly concerned at reports that Pygmies are sometimes subjected to forced labour.

**The Committee encourages the State party to intensify its efforts to improve the indigenous populations' enjoyment of economic, social and cultural rights and invites it in particular to take measures to guarantee their rights to work, decent working conditions and education and health (art. 5).**

20. The Committee regrets that, as reported by the State party, the Congolese courts have practically no case law on discrimination due to a lack of complaints.

**The Committee requests the State party to include in its next periodic report statistical data regarding prosecutions initiated and sentences handed down for offences related to racial discrimination, to which the relevant provisions of existing domestic law have been applied. It wishes to remind the State party that the lack of complaints or court action by the victims of racial discrimination may be chiefly due to the absence of relevant specific legislation, unawareness of available remedies or the authorities' unwillingness to prosecute. It requests the State party to ensure that domestic law includes appropriate provisions and inform the public of all legal remedies available with regard to racial discrimination (art. 6).**

21. The Committee notes with concern that, as recognized by the State party, the Convention and other texts and laws concerning racial discrimination have not been sufficiently publicized in the Democratic Republic of the Congo.

**The Committee invites the State party to integrate the Convention in programmes in schools and in courses, in particular for judges and prosecutors, staff of the armed forces, police, prison personnel, security forces and the media (art. 7).**

22. The Committee is concerned at the persistence of tensions between the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups.

**The Committee invites the State party to take steps to enable the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups to live in harmony. It also invites it to promote their cultural identities and preserve their languages (art. 7).**

23. The Committee recommends that the State party should take account of the relevant paragraphs of the Durban Declaration and Programme of Action when incorporating the

Convention in the domestic legal system, in particular articles 2 and 7, and provide information in its next periodic report on any plans and other measures it may have adopted in follow-up to the Durban Declaration and Programme of Action at the national level.

24. The Committee notes the State party's intention to make the optional declaration under article 14 of the Convention and encourages it to do so as soon as possible.

25. The Committee recommends that the State party should ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and approved by the General Assembly in resolution 47/111. In this respect the Committee recalls resolution 59/176 of 20 December 2004, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

26. The Committee recommends that the State party make available its periodic reports to the public as soon as they are submitted, and likewise the Committee's concluding observations, in the official and national languages and, if possible, the main minority languages.

27. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information, not later than 31 August 2008, on its follow-up to the recommendations contained in paragraphs 15, 18 and 19 in the course of the year following the adoption of these concluding observations.

28. The Committee recommends that the State party should submit its sixteenth, seventeenth and eighteenth periodic reports in a single document on 21 May 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1), and covering all the points raised in these concluding observations.

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