


<b>AFRICAN UNION</b>		<b>UNION AFRICAINE</b>
<b>الاتحاد الأفريقي</b> <b>African Commission on Human &amp; Peoples' Rights</b>		<b>UNIÃO AFRICANA</b> <b>Commission Africaine des Droits de l'Homme &amp; des Peuples</b>
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## 65<sup>th</sup> Ordinary Session

**21 October to 10 November, 2019**  
**Banjul, The Gambia**

### **Concluding Observations and Recommendations on the Periodic and Combined Periodic Report of the Democratic Republic of Congo on the Implementation of the African Charter on Human and Peoples' Rights (2008 - 2015) and the Initial Report on the Maputo Protocol (2005 - 2015)**

#### **I. Introduction**

1. The Democratic Republic of Congo (DRC) is a State Party to the African Charter on Human and Peoples' Rights (The African Charter) which it ratified on 20 July, 1987.
2. The Democratic Republic of Congo presented its (11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup>), combined periodic reports in accordance with Article 62 of the African Charter and the Initial Report as prescribed by Article 26 of the Maputo Protocol at the 61<sup>st</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (The Commission), held from 1 to 15 November, 2017 in Banjul, Republic of Gambia.
3. The report was presented by the Delegation of the Democratic Republic of Congo (The Delegation), led by Her Excellency Mrs Marie-Ange MUSHOBEKWA, Minister of Human Rights.
4. The delegation consisted of the following personalities:
  - Mr Gérard Katambwe Malipo, Senior Legal Adviser at the Presidency of the Republic,
  - Mr Richard Lukunda Vakala Mfumu, Adviser at the Diplomatic College,
  - Mr Willy Ngashi Ngashi, Legal Assistant of the Director of Cabinet of the Head of State,
  - Mr Vincent Umba Ketshi, Political and Diplomatic Adviser,

- Mr Jean Kinongi Kimafu; Legal Adviser in charge of Mediation in Human Rights,
- Mr Jean-Baptiste Ingoli Bolomba, Permanent Secretary of the Inter-Ministerial Committee on Human Rights,
- Mrs Alice Mushobekwa Murangaza, Official in charge of Missions.

5. The Report highlights developments in the DRC concerning human and peoples' rights, including legislative, administrative and other measures taken towards the implementation of the provisions of the African Charter in the aftermath of the presentation of its 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> combined periodic reports during the 48<sup>th</sup> Ordinary Session held from 10 to 24 November, 2010 in Banjul, Republic of The Gambia.
6. These Concluding Observations present the positive factors as well as factors inhibiting the effective enjoyment of human and peoples' rights and areas of concern regarding human rights in the country pursuant to the African Charter and the Maputo Protocol. Furthermore, the Commission makes recommendations to the DRC government on ways to strengthen the enjoyment of human rights by all the people of the Democratic Republic of Congo.
7. The Commission commends the DRC delegation for the frank and constructive dialogue that characterized the presentation of the combined periodic report and the information provided in response to the concerns expressed by members of the Commission.

## **PART ONE: THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS**

### **I. POSITIVE FACTORS**

#### **Reporting Obligation and Cooperation with the Commission**

8. The Commission:

- i. Commends the DRC for the political will demonstrated by the country for the regular manner it has presented its periodic reports.
- ii. Notes with satisfaction the inclusive and participatory approach used in drafting the report, particularly the establishment of an Inter-ministerial Technical Committee responsible for the preparation of reports, the composition of which covers all the relevant ministerial departments, the National Human Rights Commission, the Mediator of the Republic and the Office of the United Nations High Commissioner for Human Rights in the DRC, in its capacity as an Observer; and the inclusion of non-governmental organizations in the process of preparing and validating this report.

- iii. Commends the Democratic Republic of Congo for its report which contains detailed statistical information and relevant analyses of the prevailing human rights situation, including related challenges in the country.
- iv. Welcomes the steps taken towards the implementation of the recommendations made by the Commission following the review of the 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> combined periodic report at the 48<sup>th</sup> Ordinary Session held from 10 to 24 November, 2010 in Banjul, Republic of Gambia.

### **Ratification of Regional/International Human Rights Instruments**

9. The Commission commends the DRC for having ratified the following instruments:

#### *At the Regional Level:*

- The African Youth Charter (2012)
- The Protocol to the African Charter on the Rights of Women in Africa (2009)
- The African Charter on Democracy, Elections and Governance (2008)
- The Protocol on the Establishment of an African Court on Human and Peoples' Rights (2005)
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2005)
- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (2005).

#### *At the International Level*

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

### **Civil and Political Rights**

10. The Commission commends the DRC for the following:

- i. Maintaining in its Constitution, as amended by Law No. 11/002 of 20 January, 2011 on the review of some Articles of the Constitution of 18 February, 2006, in its Title III, all the human rights and fundamental freedoms enshrined in the African Charter on Human and Peoples' Rights; most importantly, the civil and political rights;
- ii. The passage and enactment of the following ordinary and organic laws:
  - Organic Law No. 11/001 of 10 January, 2011 on the organisation, responsibilities and functioning of the Higher Council for Audio and Television Broadcasting and Communication (CSAC);

- Law No. 10/010 of 27 April 2010 on Public Procurements;
- Passage of the organic law No. 13/011-B of 11 April, 2013 on the organisation, functioning and remit of the legal courts of law, conferring on the appeal courts the powers to also prosecute at first instance the crime of genocide, war crimes and crimes against humanity committed by persons within their area of jurisdiction and those of High Courts which, previously, were under the jurisdiction of only military courts;
- Law No. 11/008 of 9 July, 2011 on criminalisation of torture;
- Law No. 011/22 of 24 December, 2011 on the fundamental principles governing agriculture;
- Law No. 11/007 of 6 July, 2011 on the implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction in the DRC;
- Law No.011/009 of 9 July, 2011 on the fundamental principles governing environmental protection;
- Law No.11/003 of 25 July, 2011 amending Law No. 06/006 of 9 March 2006 on the organisation of presidential, legislative, provincial, urban and local elections;
- Law No. 11/014 of 17 August, 2011 on the distribution of seats according to electoral constituencies;
- Organic Law No. 13/010 of 19 February, 2013 on the procedure at the Court of Cassation;
- Organic Law No. 13/011-B of 11 April 2013 on the organisation, functioning and responsibilities of the legal courts of law;
- Organic Law No.13/012 of 19 April, 2013 amending and supplementing Organic law No. 10/013 of 28 July, 2010 on the organisation and functioning of the CENI;
- Law No. 13/005 of 15 January, 2013 on the military status of the Armed Forces of the Democratic Republic of Congo;
- Law No. 13/013 of 01 June, 2013 on the status of the career staff of the National Police Service;
- Organic Law No.13/026 of 15 October 2013 on the organisation and functioning of the Constitutional Court;
- Law No.13/011 of 21 March 2013 on the establishment of the National Human Rights Commission.
- Law No.15/001 of 12 February, 2015 amending and supplementing the law on the organisation of the presidential, legislative, provincial, urban, municipal and local elections as amended by Law No. 11/003 of 25 June, 2011.
- Law No.016/08 of 15 July, 2016 amending and supplementing the Family Code of 1987.

## **Prohibition of Torture and Cruel, Inhuman and Degrading Treatment or Punishment**

11. The Commission commends the government for the following:
- i. The adoption of various legislative texts on torture, namely:
    - Law No.11/008 of 9 July, 2011 on criminalisation of torture;
    - Directive No. AG/0793/10 of 23 June, 2010 of the Auditor General of the Armed Forces of the Democratic Republic of Congo on Torture;
    - Instruction No. 0905 PNC/CIAT General/084/SVJur&Cont. /2015 of 7 May, 2015 on the humanisation of services by the Directorate-General of the Congolese National Police;
    - Instruction by Letter No. 1981/PNC/CG/COMDT/2014 of 16 July, 2014 issued by the Commissioner General of the Congolese National Police to all Commanders of Units, Heads of Pools to ensure strict compliance with legality of acts by the latter within the context of transparent judicial proceedings in the services, especially in cases of torture.
  - ii. The organisation of a sensitisation campaign by the Ministry of Justice and Human Rights among the security agencies and the population regarding the Law of July 2001;
  - iii. The monitoring of cells and prisons by the Ministry of Human Rights;
  - iv. The capacity building of police criminal investigation officers on the rights of persons arrested, in collaboration with the United Nations Joint Human Rights Office.

## **Administration of Criminal Justice**

12. The Commission takes note of the following:
- i. The strengthening of the judicial system through the recruitment of judges and the establishment of magistrate courts in all the provinces to facilitate justice to doorsteps of all;
  - ii. The 20% increase in the salaries of all the 3750 civilian and military judges in order to strengthen their independence;
  - iii. Implementation of the legal and judicial assistance programme, in collaboration with the various Bar Associations of the country;
  - iv. The special protection provided to witnesses and victims of sexual violence;
  - v. Capacity building of law enforcement agencies and judicial service authorities by undertaking the following actions:
    - Continuation of the establishment of special courts in 2013, particularly commercial, labour and children's courts;
    - Establishment of a judicial support unit as part of military justice, currently being piloted in the East;
    - Appointment by Presidential Decrees of magistrates since 1 June 2013 for the operationalisation of the newly-established magistrates courts, commercial, as well as children and labour courts.

- Continuation of the judicial system reforms with the adoption of new laws, notably: Organic Law No. 13/00-B of 11 April 2013 on the organisation, functioning and powers of the courts of law; Organic Law No. 13/010 of 19 February, 2013 relating to proceedings at the Court of Cassation and the Law on the organisation and functioning of the Constitutional Court
- vi. The organisation of the usual training sessions for magistrates and court officers by the Ministry of Defence and War Veterans and the Ministry of Justice and Human Rights, with the support of international and national partners (MONUSCO and others);
- vii. The organisation of a national popularisation campaign on Law No. 11/008 of 9 July, 2011 on the criminalisation of torture among the defence forces, the security agencies and officials of the prison administration under the auspices of the Ministry of Justice and Human Rights (July 2012-November 2013) in 11 provincial capitals and cities;
- viii. The organisation of several awareness raising campaigns on criminalisation of torture among judicial staff (magistrates and lawyers), prison staff and some civil society organisations, with the support of the technical and financial partners, particularly the United Nations Joint Human Rights Office;
- ix. The adoption of the Prime Minister's Decree No. 11/01 of 5 January 2011 defining the jurisdictions and the conventional judicial locations for children's courts to ensure their establishment;
- x. The adoption of Orders No. 001/CAB/MIN/J&DH/2011 and No. 002/CAB/J&DH/2011 on the respective establishment of secondary locations for Children's Courts and the determination of their jurisdictions and clustering of the jurisdictions of Children's Courts for the implementation of custody, education and protection measures and Judicial Organisation Order No. 029/CAB/MIN/J&DH/2013 of 28 January 2013 on the establishment, organisation and functioning of the Local Budget Management Monitoring Committees for Provincial Central Prisons and Detention Camp;

## **Detention Conditions**

13. The Commission commends the Congolese government for the establishment of policies to ease the overcrowding in prisons, particularly through:
- i. The adoption of the Decree on judicial organisation No. 029/CAB/MIN/J&DH/2013 of 28 January 2013 on the establishment, organisation and functioning of local budget management monitoring committees of Provincial Central Prisons and Detention Camp by the Ministry of Justice and Human Rights, which provides significant innovations in the management of correctional facilities and establishes, for each prison, a Fund Management Committee to cater for the food needs of the inmates;
  - ii. Introduction of numerous measures for the improvement of detention conditions, namely:

- The regular inspection of cells and other places of detention by prosecutors;
  - The monitoring of places of detention by the Directorate in charge of Protection at the General Secretariat for Human Rights;
  - Capacity building of criminal investigation officers on the rights of persons arrested;
- iii. Assigning to the NHRC the responsibility of undertaking periodic visits to places of detention all over the country.

### **Right to freedom of expression and access to information**

14. The Commission commends the government for the following:
- The bill submitted to Parliament on decriminalisation of press offences for the benefit of media professionals;
  - The proposed law on access to information submitted to Parliament;
  - The establishment of the Higher Audio and Television Broadcasting and Communication Council (CSAC) by Organic Law No. 11/001 of 10 January 2011;
  - The adoption of Edict No. 001/2016 of 10 February 2016 on the protection of human rights defenders and journalists in the South-Kivu Province.

### **Human Rights Defenders**

15. The Commission takes note of the following:
- i. The adoption of Ministerial Order No. 219/CAB/MINJ&DH/2011 of 13 June 2011 on the establishment, organisation and functioning of a Human Rights Defenders Protection Unit;
  - ii. The efforts made to amend the title of the law on the protection of human rights defenders and the on-going harmonisation of its content in accordance with the recommendations of the African Commission and various partners and with the provisions of the United Nations Declaration on Human Rights Defenders.

### **Economic, Social and Cultural Rights**

[Include information on Right to Property if any]

#### **Right to Work**

16. The Commission takes note that the government has initiated a policy on major works, the implementation of which has led to the creation of new jobs for the national labour force (156, 887 jobs created, 2011 to 2013).

#### **Right to Education**

17. The Commission notes with appreciation the following:

- i. The adoption in March 2010, of a new education policy (2010-2016 Primary, Secondary and Vocational Education Development Strategy) aimed at three main objectives:
  - Enhance access, accessibility, equity and retention in the various levels of education, particularly at the basic education level;
  - Improve the quality and relevance of education, and;
  - Strengthen the governance of the sector;
- ii. The gradual offer of free primary, secondary and vocational education with the formulation of a national education strategy launched in 2010 and the implementation of an interim education plan (2012-2014);
- iii. The improvement of access to education in accordance with the interim education plan (PIE);
- iv. The building of schools and health centres from government's own resources and the total eradication of the phenomenon of child soldiers from the army.
- v. The increase in the gross enrolment ratios from 83.4% to 98% between 2007 and 2012, as a result of the free education policy;
- vi. The building and rehabilitation of school infrastructure (1000 schools with 128 of them already built, while 513 of these projects are on-going and 149 schools built under the basic education support project code-named "PROSEB");
- vii. The building of training and resource centres for continuing education of teachers (Kinshasa, Bandundu, Kalemie, Kolwezi, Kikwit, Mbandaka, Kisangani),
- viii. The increase in the share of the national budgetary allocation for education from 15% to 17% (2014);
- ix. The offer of school textbooks to pupils in the primary schools and a curriculum guide to teachers;
- x. Adoption of a curriculum on human rights at the Faculty of Law by the Congolese Universities Administration Council, a competent body responsible for the design of Faculty programmes in the country.

## **Right to Health**

18. The Commission welcomes the following:

- i. The inclusion of traditional medicine into the national health policy;
- ii. The facilitation of access to healthcare for Congolese citizens through the following measures:
  - Equipping and rehabilitating 66 reference general hospitals and 330 health centres with the support of UNICEF and GAVI;
  - Rehabilitation of 120 other reference general hospitals and 1280 health centres with the support of the Global Fund;
  - Rehabilitation of the Kinshasa Medical Education Institute.
- iii. Pursuit of the following actions by the government:



- Distribution of treated mosquito nets for prevention and treatment of malaria;
  - Vitamin A supplementation;
  - Establishment of the minimum conditions for emergency surgery and emergency obstetrical care;
  - Immunisation campaigns against tuberculosis, poliomyelitis and yellow fever.
- iv. Increase in life expectancy of men of between 48 years (2011) and 53 years (2012) and that of women of between 48 years (2011) and 56 years (2012)

## HIV/AIDS

19. The Commission notes with appreciation the following:

- i. The enactment and the effective implementation of Law No. 8/0011 of 14 July 2008 on the protection of the rights of persons living with HIV/AIDS through the following measures:
  - The Presidential Order No. 11/023 of 18 March 2011 amending and supplementing Presidential Decree No. 04/029 of 17 March 2004 on the establishment and organisation of PNMLS which provides direction for the national HIV/AIDS control policy and organises the implementing bodies of the National Strategic Plan (PSN) both at the central and decentralised government levels;
  - Formulation of the 2011-2013, 2014-2017 National Strategic Plan;
  - Appointment of a Country Focal Person for Justice and Human Rights (Ministry of Justice);
  - Establishment of a "Rights and HIV" Group made up of stakeholders working on HIV-related human rights;
  - Production of several documents (Review of the legal framework, Mapping of stakeholders and interventions, the INDEX STIGMA Investigation Report, Response Strategy in the prison environment, ...);
  - Organisation of several capacity building sessions in the area of HIV/AIDS-related human rights;
- ii. Establishment of a National AIDS Control Programme (PNLS) to stop and reverse the spread of the HIV/AIDS, as the coordinating structure for all the measures geared towards the control of HIV/AIDS, and for promoting awareness raising among the population and providing care for HIV/AIDS-related patients and orphans;
- iii. Adoption of the 2018-2021 National Strategic Plan aimed, among others, at promoting a favourable response environment devoid of any forms of stigmatisation and discrimination towards people living with HIV/AIDS, persons affected, key population groups and victims of sexual violence.
- iv. The organisation of mass campaigns and the provision of Medical Kits for people living with HIV/AIDS;
- v. Establishment since 2003 of the National Adolescent Health Programme through

- a Ministerial Order No. 1250/CAB/MINIS/001 of 13 January 2003 which introduced an adolescent health programme aimed at sensitising teenagers against early and unprotected sexual relations, early and unwanted pregnancies and risks of contracting HIV/AIDS and sexually transmissible infections (STIs) as well as against unsafe abortions in schools, in particular, and among the youth, in general;
- vi. Establishment of teenage and youth centres across the country to provide specific reproductive health services, ensuring the promotion of the use of condoms for the prevention of STIs and HIV/AIDS and the creation of a Youth Network for HIV/AIDS Control;

### **Indigenous Populations and Communities**

20. The Commission takes note of the efforts made by the Congolese government concerning the indigenous populations/communities mainly through:
- i. The establishment of a specific Ministry in charge of Customary Affairs;
  - ii. The adoption of a Ministerial Order No. 006 CAB/MIN/AFF-COUT/GM/AS/nmr/217 of 10 July, 2017 on the creation, organisation and functioning of advisory committees all over the country on the settlement of customary disputes into which the indigenous pigmy dignitaries and traditional leaders have been co-opted;
  - iii. The inclusion of the indigenous communities in decision-making processes and the development of projects concerning them;
  - iv. The consultation carried out among the indigenous populations/communities with the aim of implementing the recommendations made by the African Commission to stop the use of the term “pygmy” in reference to the indigenous populations/communities, leading to the choice by the latter to keep the term “Pygmy” since it is a very significant and determining factor in identifying the indigenous people as a means of safeguarding their specificity and their identity.
  - v. The on-going review of the Land Law as part of the land tenure reforms in order to strengthen Articles 101 to 103 on expropriation for purposes of public utility with the view to redefining clearly the appropriate mechanisms concerning compensations for concessionaires and the preparation of a land development plan which will be accompanied by a land transfer plan according to land rights holders and according to the customs; these measures are all intended to stop the numerous land-related disputes in the DRC and the dual nature of the written law and the customary law;
  - vi. The involvement of indigenous populations/communities concerning matters of expropriation, seizing of lands and evictions of indigenous populations from their ancestral lands as part of the land reform.

### **Refugees, asylum seekers, internally-displaced persons and migrants**

21. The Commission notes with appreciation the following:

- i. The ratification by Law No. 14/025 of 8 July 2014, of the African Union Convention on the Protection and Assistance of Internally-Displaced Persons adopted on 22 October 2009 in Kampala
- ii. The existence of a draft bill on the assistance and protection of internally displaced persons, formulated by an Ad Hoc Committee of the Ministry of the Interior and Security;
- iii. The options of national integration provided to Angolan and Rwandan refugees in clauses intended to stop their status as refugees, have been signed and they include, in particular:
  - Granting of a temporary resident permit accepted for that purpose in the DRC to former Angolan refugees who requested to be integrated into the nation while waiting for the issuance of Angolan passports by the government of the Republic of Angola, which involved 18 500 beneficiaries;
  - The exemption from the clause on cessation of refugee status presented a real need for protection arising from previous persecutions, through which 631 persons were able to keep their status.

### **Extractive Industries, Environment and Human Rights**

22. The Commission notes with appreciation the following:

- i. The promulgation of the following laws:
  - Law No.11/09 of 9 July 2011 on the fundamental principles governing environmental protection;
  - Law No. 014/003 of 11 February 2014 on the conservation of nature.
  - Law No. 18/001/of 9 March 2018 amending and supplementing Law No. 007/2002 of 11 July 2002 on the Mining Code which is an improvement on the existing legal framework on the extractive industries:
    - The inclusion of the storage, holding and transportation of minerals into the scope of the current code;
    - The restriction of the eligibility for mining rights to only corporate entities;
    - The adoption of incentives for provinces that lack infrastructure in order to promote economic growth;
    - The inclusion of principles and criteria on the Extractive Industries Transparency Initiative;
    - The clarification of the legal framework that could authorise raw export of minerals, under exceptional circumstances;
    - The replacement of the environmental opinion by an environmental certificate;
    - The obligation to construct a building to house the headquarters in the major city of the province where operations take place;
    - The enforcement of linear depreciation rules on capital assets;

- The pegging of the corporate capital at a minimum of 40 percent of the necessary resources for undertaking investments.
  - Implementation of a mechanism for the reduction of emissions from Deforestation and Forestry Degradation (REDD).
  - Subscription in 2012, to the objectives of the initiative dubbed “Sustainable Energy For All” to be achieved by 2030 : (i) universal access to electricity, (ii) the two-fold increase in the share of renewable energy in the energy mix in order to achieve at least a 30% ratio of energy used in the country, and (iii) the two-fold increase in energy efficiency.
- ii. The improvement of the governance of the sector and the launch of major hydro projects;
  - iii. The liberalisation of the power sector in all its various chains (production, transmission and distribution) by a Law of June 2014;
  - iv. The adoption of different certification systems in order to avoid the introduction of blood minerals into the market, such as:
    - The Regional Certification Mechanisms of the CIRGL (3T Coltan, Cassiterite, Wolframite and Gold) ;
    - The Kimberley Process, KP;
    - The reasonable due diligence obligation of mining companies under OECD standards;
    - The Inter-ministerial Order No. 206/CAB/MIN/FINANCES/2010 of 15 October 2010 on mining products traceability manual of procedures on extraction for export.

## **Rights of Persons with Disabilities**

23. The Commission takes note of the following:

- i. The existence of a directorate for the coordination of readaptation activities for persons with disabilities (DICOEPHA) at the Ministry of Social Affairs which supervises specialised services of the Ministry and civil society organisations;
- ii. The presentation of the bill on the protection of persons with disabilities to Parliament (2015).

## **II. FACTORS INHIBITING THE ENJOYMENT OF THE RIGHTS GUARANTEED BY THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS**

24. The lack of financial resources for the effective implementation of government programmes aimed at deepening the enjoyment of a number of rights.

25. The recurrence of armed conflicts in the East of the country, which requires the allocation of a large proportion of the resources available with the aim of creating peace all over the country;
26. The poor specialisation of stakeholders concerning the promotion and protection of human rights.
27. The lack of human and financial resources on the part of human rights defence institutions and organisations.
28. The influence of sociological and cultural factors, the persistence of customs as well as deep-rooted prejudices, particularly towards women are hindrances to the full attainment of the rights of women.

### **III. AREAS OF CONCERN**

#### **Reporting Obligation and Cooperation with the Commission**

29. Though the Commission appreciates the positive responses provided by the Democratic Republic of Congo concerning its combined periodic reports (8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup>), of 2010, it however notes that the report does not provide the precise and detailed responses regarding some of the concerns expressed during its interaction with the Congolese delegation.

#### **Ratification of regional/international human rights instruments**

30. The Commission notes that:
  - i. The following human rights instruments have not been ratified
    - African Charter on the Rights and Welfare of the Child
    - African Youth Charter;
    - African Charter on Democracy, Elections and Governance;
    - Protocol on the Status of the African Court of Justice and Human Rights
    - Protocol to the African Charter on Human and Peoples' Rights on Older Persons in Africa.
  - ii. The slow pace of the ratification process of the Additional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty and abolishing the death penalty from the relevant texts in force, particularly from the Criminal Code;
  - iii. The slow progress made in depositing the ratification instruments of the Kampala Convention, even though it has been indicated in the answers provided that the DRC has ratified the African Union Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), by Law No. 14/025 of 8 July 2014.

## **Civil and Political Rights**

31. The Commission is not satisfied with the lack of information on the participation and representation of the youth in the country's public affairs.

## **Administration of Criminal Justice**

32. The Commission is concerned about:

- i. The low number of female judges in the entire judicial system;
- ii. Lack of women Senior Divisional Commissioners, Senior Commissioners and low representation of women deputy divisional commissioners and commissioners;
- iii. The lack of alternative forms of punishments in place of imprisonment;
- iv. The persistence of long periods of preventive detention.

## **Conditions of Detention and Policing**

33. The Commission is concerned by the following:

- i. The dilapidated nature of prisons;
- ii. The lack of disaggregated data on the number of detainees: women, men, minors and foreign detainees and pregnant women;
- iii. The lack of statistical data on the percentage of prisoners in preventive custody;
- iv. The lack of information on the treatment meted out to vulnerable groups in the prisons, especially to persons with disabilities;
- v. The lack of information on the types of medical equipment and installations;
- vi. The inability of civil society organisations to visit the prisons and other detention centres,

## **Freedom of expression and access to information**

34. The Commission notes the non-existence of a national law on access to information.

## **Human Rights Defenders**

35. The Commission notes the following:

- i. The lack of capacity building on the part of human rights defenders, particularly in carrying out their human rights defence activities;
- ii. The non-existence of a law on the protection of human rights defenders;
- iii. The lack of a reaction on the part of the Government concerning urgent appeals transmitted to it.

## **Economic, Social and Cultural Rights**

### **Include Right to Property**

**Include Right to Work – check on issue of ‘child labour’ with regards to coltan**

### **Right to Health**

36. The Commission is not satisfied with the low budgetary allocation to health (8%), which is not in keeping with the Abuja Declaration according to which governments should allocate at least 15% of their budget to the health sector;

### **HIV/ AIDS**

37. The Commission notes the lack of information on:

- i. The absence of information on the existence a nutritional programme in addition to the distribution of ARVs to support persons living with HIV;
- ii. The slow pace of the amendment of Articles 37 and 39 of the Law on the protection of PLWHA and persons affected, regarding the obligation of minors not to go through any screening except with the express permission of their parents or in the presence of their parents or guardian and the obligation not to hand over the results of the HIV to any other person except to their parents or guardian.

### **Right to Education**

38. The Commission is concerned by the slow pace observed in the adoption of the draft bill on the protection of the rights of indigenous people pending before Parliament since 2015;

### **Indigenous Populations and Communities**

39. The Commission is concerned about the slow pace in the enactment of the draft bill on the protection of the rights of indigenous populations pending before Parliament since 2015;

### **Extractive Industries, Environment and Human**

40. The Commission notes the lack of information on:

- i. The number of businesses engaged in the extractive industry and their area of activity;
- ii. The extent of small-scale mining operations in the country and the existence or non-existence of programmes or policies intended to monitor or regulate this practice;

- iii. A government policy on awareness raising regarding safety standards in view of the threat posed to the environment and to the health of these small-scale miners;
- iv. Measures put in place in cases of violations of environmental standards or in cases where the activities of the extractive industries lead to environmental degradation.

### **Rights of Persons with Disabilities**

41. The Commission is concerned about the slow pace that has characterised the enactment of a bill on the protection of persons with disabilities pending before Parliament since 2015.

**Mute: Include area of concern on ‘torture’; acts of sexual violence: concern in respect of numerous reports of security forces and militia who use rape as a weapon of war; Welcomed ratification of OPCAT, and asked to confirm whether NHRI had been designated as NPM**

**Same-sex conduct - LGBTI individuals routinely arrested and persecuted in accordance with [...] law on public decency**

**Include death penalty**

**Include IDPS, refugees and migrants**

## **V - RECOMMENDATIONS**

### **Reporting Obligations**

42. The Democratic Republic of Congo must continue to comply with its obligations under Article 62 of the African Charter by implementing the recommendations thereof;

### **Ratification of regional/international human rights instruments**

43. The Democratic Republic of Congo should:

- i. Take all the necessary measures to accelerate the ratification process of the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty and abolishing the death penalty from the relevant texts in force, particularly from the Criminal Code.
- ii. Take measures towards the ratification of the following human rights instruments:
  - African Charter on the Rights and Welfare of the Child
  - African Youth Charter;
  - African Charter on Democracy, Elections and Governance;
  - Protocol on the Status of the African Court of Justice and Human Rights



- Protocol to the African Charter on Human and Peoples' Rights on Older Persons.
- Depositing the ratification instruments on the Kampala Convention.

### **Civil and Political Rights**

44. The Democratic Republic of Congo should take the youth dimension into account in implementing the right of the youth to take part in the management of the country's public affairs.

### **Administration of Justice**

45. The Democratic Republic of Congo should,
- i. Take the necessary measures to increase the number of women in the judicial system;
  - ii. Establish policies to ensure the effective presence of women in decision-making positions in the Police Service;
  - iii. Ensure alternative punishments to imprisonment;
  - iv. Take the necessary measures to stop long periods of preventive custody.

### **Conditions of Detention**

46. The Government should:
- i. Provide disaggregated data on the number of detainees: women, men and minors including the percentage of prisoners in preventive custody;
  - ii. Ensure decent treatment for vulnerable groups in the prisons, particularly for people with disabilities;
  - iii. Ensure that the prisons are fitted with good medical equipment;
  - iv. Adopt legislative measures to guarantee access by civil society organisations and institutions to the prisons and other places of preventive custody in the DRC in line with international standards;
  - v. Make use of the Luanda Guidelines on Conditions of Arrest, Custody and Preventive Detention in Africa and train police officers, review laws and policies on arrest, custody and preventive custody.
  - vi. Establish an independent monitoring institution within the police service where civilians are free to draw attention to any cases of human rights violations perpetrated by the police.

### **Freedom of Expression and Access to Information**

47. The government should enact an access to information law consistent with the Model Law on Access to Information in Africa formulated and adopted by the African Commission on Human and Peoples' Rights.

### **Human Rights Defenders**

48. The Commission recommends the following to the government:
- i. Continue with and increase the number of support activities and training aimed at developing the capacity of human rights defenders to ensure that they are better equipped;
  - ii. Accelerate the process of adoption of the law on the protection of human rights defenders;
  - iii. Ensure follow-up of urgent appeals transmitted to the State Party.

### **Extractive Industries, Environment and Human Rights**

49. The government should:
- i. Provide statistical information on the number of businesses engaged in the extractive industry and their areas of activity;
  - ii. Monitor and support small-scale mining activities in the country through programmes and policies intended to monitor or regulate this practice;
  - iii. Establish a government policy intended to raise awareness on safety standards in view of the threats posed to the environment and to the health of the small-scale miners;
  - iv. Put into effect measures on cases of violations of environmental standards or cases where activities in the extractive industry have resulted in environmental degradation.

### **Right to Health**

50. The DRC should take the necessary measures to comply with the requirements under the Abuja Declaration specifying that at least 15% of the national budget should be allocated to health.

### **HIV/AIDS**

51. The government of the Democratic Republic of Congo should:
- iii. Establish a nutritional programme in addition to the ARV distribution programme to support persons living with HIV/AIDS;
  - iv. Accelerate the process of amending Articles 37 and 39 of the Law on protection of PLWHA and persons affected in respect of the obligation of minors not to go for screening without the express permission of their parents or in the presence of their parents or guardian including the obligation not to show the results of the HIV test to anyone except to the parents or guardian.

## **Rights of Persons with Disabilities**

52. The Commission urges the government to accelerate the process of adoption of the draft law on the protection of persons with disabilities which has been pending before Parliament since 2015.

# PART TWO: THE MAPUTO PROTOCOL

## I- POSITIVE FACTORS

53. The Commission takes note of several positive aspects regarding compliance by the Democratic Republic of Congo with its obligations pursuant to the Maputo Protocol:

### **Reporting Obligation and Cooperation with the Commission**

54. The Commission appreciates in a positive light the presentation of the first report pursuant to Article 26 of the Maputo Protocol. This report is presented in two parts with one of them focused on the implementation of the Maputo Protocol.

### **Legal Framework on the Rights of Women in the Democratic Republic of Congo**

55. The Commission notes with satisfaction the adoption of a legal framework on the rights of women through the adoption of legislative texts and Orders:

*i. Laws:*

- Law No. 06/018 of 20 July, 2006 Code on the Congolese Criminal Code amending and supplementing the Decree of 30 January 1940;
- Law No. 06/019 of 20 July 2006 on the Congolese criminal procedure code amending and supplementing the Decree of 6 August 1959
- Law No. 73-021 of 20 July 1973 on the general regime of properties, land tenure and immovable property systems and the security rights regimes as amended and supplemented to date;
- Law No. 001/2001 of 17 May 2001 on the organisation and functioning of political parties.
- Law No. 08/005 of 10 June 2008 on public financing of political parties.
- Law No. 08/011 of 14 July 2008 on protection of the rights of people living with HIV/AIDS and persons affected.
- Law No. 09/001 of 10 January 2009 on child protection.
- Law No. 15/013 of 1 August 2015 on implementation modalities of the rights of women and parity.
- Law No. 015/016 of 15 July 2016 amending and supplementing Law No. 87- 010 of 1 August 1987 on the Family Code.

*ii. Edicts:*

- Edict No. 29/K.OCC/2015 of 18/05/2015 on the prohibition of degrading customs towards women in the Western Kasai province
- Edict No. 27/K.OCC/2015 of 18/05/2015 on the prohibition of employment and exploitation of children in the Western Kasai mining communities;

- Edict No. 001/bdd/2013 of 18/01/2013 on the protection of the child in the Bandundu province.
- iii. *Other Measures*
  - National Women's Promotion Programme (2002)
  - Gender Integration Strategy (2004)
  - National Gender Policy (2009)
  - National Strategy on for addressing Gender-Based Violence (2009)
  - National Strategy for Combating Morbidity and Infant and Maternal Mortality (2010)
  - National Strategy for the Integration of Gender into National Development Policies and Programmes (Updated Version of the 2004 Strategy)
  - Priority Government and Sectoral Programme of Action (PAP) (2012)
  - Medium Term Expenditure Framework (MTEF) (2016)
  - Priority Government Programme of Action on Gender (2012)
  - Governmental Programme of Action -May 2012
  - Roadmap for the Implementation of Women's Rights (2012)
  - Government Plan of Action on the Implementation of Resolution 1325 (2013)
  - National Strategy for Gender-Sensitive Planning and Budgeting (2013)
  - Strategy for the Political Participation of Congolese Women in Democratic Governance (2015)

### **Government Institutions Responsible for Women's Rights -related Issues**

56. The Commission takes note with appreciation the establishment of the following institutions:

- The Ministry of Women, Family and Children's Affairs and its specialised structures:
  - The Study and Planning Unit for the Promotion of Women, the Family and Children's Protection, dubbed "CEPFE "in 2007;
  - The National Agency for Addressing Violence Perpetrated against Women, the Youth and the Girl Child, referred to as "AVIFEM", established in 2009;
  - The National Fund for the Promotion of Women and Child Protection, dubbed "FONAFEN", established in 2009;
  - The Regional Research and Documentation Centre on Women, Gender and Peace Building in the Great Lakes region, code-named "CERED-GL", established in 2008;
  - The National Family Documentation and Information Centre, associated with the CERED-GL, code-named "CENADIF/CNACR", established in 2008.
- The National Women's Council and its provincial representations.
- The Ministry of Justice and Human Rights.
- The Provincial Governments and provincial synergies
- The National Human Rights Commission (CNDH).

- The specialised structures of the Ministry of Women, Family and Children's Affairs, among others:
  - The Study and Planning Unit for the Promotion of Women, the Family and Child Protection, code-named "CEPFE", established in 2007;
  - The National Agency for Addressing Violence perpetrated against women, young people and the girl-child, code-named "AVIFEM", established in 2009;
  - The National Fund for the Promotion of Women and Child Protection, dubbed "FONAFEN", established in 2009;
  - The Regional Research and Documentation Centre on Women, Gender and Peace Building in the Great Lakes region, code-named "CERED-GL", established in 2008;
  - The National Family Documentation and Information Centre, associated with the CERED-GL, code-named "CENADIF/CNACR", established in 2008.
- The Interministerial Technical Committee for the Formulation and Monitoring of Initial and Periodic Human Rights Reports.
- The Parliamentary Networks for Human Rights and Gender

**Physical integrity and dignity, including sexual violence, trafficking in women and medical and scientific experiments (Article 3 and 4)**

57. The Commission notes the following:

- i. The inclusion of different forms of sexual violence in the Criminal Code as constituting an offence and the definition of rape in accordance with international standards applicable thereof, and the determination of the related punishments;
- ii. The adoption of Law No. 06/018 on deterrent measures against sexual violence which punishes the deliberate transmission of incurable sexually transmissible infections;
- iii. The establishment of legal clinics further strengthens the provision of care for victims of sexual violence;
- iv. The establishment in 2013 of the Office of the Special Adviser to the Head of State in addressing sexual violence and the recruitment of children into armed groups;
- v. Formulation of a National Strategy to Combat Gender-based Violence in order to contribute to the prevention and reduction of sexual and gender-based violence, to the improvement of holistic care for survivors of violence and re-education of the perpetrators of such acts, a strategy together with a plan of action, which defines government policy and steps to be taken concerning the fight against this canker, among others:
  - The fight against impunity, protection and prevention, security sector reform, multi-sectoral reform, data and mapping;

- Establishment of a National Agency to address violence perpetrated against women (AVIFEM);
  - Establishment of a National Fund for the Promotion of Women and Child Protection (FONAFEN)
  - The Study and Planning Unit for the Promotion of Women, the Family and Children's Protection, dubbed "CEPFE "in 2007), a strategic body of the Ministry responsible for gender issues, which, among others, is responsible for collecting, processing and publishing statistical data in the area of violence perpetrated against women and children;
  - Establishment of several sectoral thematic groups, as spaces for dialogue, among which are the Gender Thematic Group (GTG) of which one of the sub-groups focuses on sexual and gender-based violence to ensure monitoring of the implementation of sectoral policies as part of the Growth and Poverty Reduction Strategy Paper (DSCR II).
- vi. Organisation of several awareness raising and education campaigns among the population, particularly the campaign code-named "Break the Silence" as a means of dealing with sexual violence, under the leadership of the Bureau of the Special Adviser to the Head of State on combating sexual violence and the recruitment of children into armed groups;
  - vii. The deployment of awareness raising campaigners to the North and South Kivu provinces from 5 to 24 January 2013 by the Civic Education, Patriotic and Social Action Service of the Army among units engaged in operations against the M23 on rules of humanitarian law, especially on sexual violence;
  - viii. Sentencing of more than 150 perpetrators of rape by the military justice system including a Brigadier General of the armed forces and a senior Commissioner of the Congolese National Police with the definitive exclusion of the latter;
  - ix. The formulation of key messages on Resolutions 1325, 1820, 1888, 1889 of the United Nations Security Council and their popularisation among the units of the Armed Forces of the Democratic Republic of the Congo (FARDC) ;
  - x. The integration of the notions on Human Rights, the international humanitarian law, Gender, Rights-related to Child Protection in the training manuals of the FARDC;
  - xi. The establishment of the Bureau of the Special Adviser to the Head of State in charge of combating sexual violence and recruitment of children into armed groups; the opening of a hotline at a Call Centre for victims of sexual violence and cases of abuse and recruitment of children into armed groups;
  - xii. The construction and rehabilitation of about twenty buildings housing the Courts and Tribunals and the Offices of the special units of the national police responsible for combating sexual violence in the major cities of Goma, Bukavu, Kindu, Bandundu and Bunia, and the publication of a directive by the Attorney General of the Republic instructing magistrates to swiftly deal with all cases of sexual violence and not to grant bail to alleged perpetrators by placing them in

- preventive custody;
- xiii. The establishment of units to deal with sexual violence in all the Public Prosecutors Offices of the higher courts of the DRC;
- xiv. The organisation of vocational training for women victims of sexual violence and demobilised children, particularly in Nyiragongo in the North Kivu province by the National Vocational Preparation Institute (INPP).

### **Domestic Violence (Article 4(2) (a))**

58. The Commission notes the following:

- i. The existence of the National Agency in charge of combating sexual violence within the Ministry of Women, Family and Children's Affairs;
- ii. The recognition by the government of the urgency in responding adequately to this problem.

### **Stereotyping of Women (Article 4(2) (c))**

59. The Commission commends the DRC for the following:

- i. Putting into effect measures to combat stereotyping of women, among which are:
  - The promotion of gender equality in the area of education,
  - The review of the Family Code (formulation of a new Gender-sensitive Code),
  - The adoption and promulgation of laws guaranteeing equal access to employment and social protection,
  - The ratification of the OHADA accounting plan which lays key emphasis on non-discrimination between men and women in the economic domain,
  - The encouragement and strengthening of the representation of women in political structures, etc...
- ii. Adoption of a National Strategy for addressing gender-based violence, the objectives of which are to:
  - Deal with all forms of impunity in the area of sexual and gender-based violence,
  - Prevent and protect through the empowerment of women and children,
  - Incorporate gender-specific needs of women,
  - Provide multi-sectoral response to the needs of survivors of gender-based sexual violence (VSBG);
  - Manage and monitor the database information on regular basis.
- iii. Conduct of various studies in order to identify the root causes of violence perpetrated against women, ascertaining the effects and taking adequate measures for their prevention and their elimination, in particular:
  - Studies on the determinants of gender-based violence in conflict and non-conflict zones;
  - Provincial gender profiles;



- Communication strategy for behavioural change as part of the means of addressing sexual and gender-based violence;
- Study on the contradictory relationship between idealised male hegemony and the realities of the life of men;
- Study on masculinity and the transformation of masculinity;
- The study on assistance to victims of sexual violence in the DRC;
- Mapping of gender-based violence in order to determine the types of violence faced by women, the causes and effects and the related socio-cultural factors involved across the various provinces of the country:

### **Harmful practices to which women are subjected, including female genital mutilation (Article 5)**

60. The Commission takes note of the legislative reforms initiated by the government to address this situation:
- i. The two laws of 20 July 2006 on sexual violence set forth sanctions against the perpetrators of such harmful activities, such as sexual mutilation, incitement of minors to debauchery, pimping, enforced prostitution, harassment and sexual slavery, forced marriages, zoophilia, deliberate transmission of sexually transmissible infections, trafficking and exploitation of children for sexual purposes, pregnancy and forced sterilisation, prostitution and child prostitution.
  - ii. Article 407 of the Family Code has fixed the marriage age at 18 years even though the idealisation of marriage pushes some girls to contract marriage at an early age in order not to lose the opportunity especially when the parents are poor. For the government, no official can officiate a marriage for which both spouses or one of them is less than 18 years.

### **Sexual Harassment**

61. The Commission notes that legal provisions have been put into effect to address the issue of sexual harassment, among which:
- i. Articles 73 and 74 of the Labour Code provide for breach of contract by the employer or worker if one of them commits a serious offence which allows the worker to breach the contract when he seriously defaults in the contract particularly in cases where the employer or his employee is guilty for lack of integrity; sexual or moral harassment, intimidation, assault and battery, serious insults or tolerates from any of his employees any similar acts..... “ ;
  - i. The Laws on sexual harassment of 2006, punish sexual harassment as an offence in the sense described under the new criminal code.

## **Political Participation and Decision-Making (Article 9)**

62. The Commission notes with satisfaction the following legislative measures adopted by the government:

- Law on political parties which prohibits ethnic-based discrimination, religion, sex and language in the establishment, organisation and functioning of political parties. Under the terms of Article 13 on the law of financing political parties, a political party can be eligible for financing with public funds only when it has been able to establish gender parity in its electoral roll;
- Organic Law on the functioning of the Independent National Electoral Commission, which sets forth in Article 7, that the appointment of members must take into account the national representation of its members, including that of women;
- Law No. 11/013 of 11 August 2011 on the organisation and functioning of the Congolese National Police (PNC) which encourages and promotes the recruitment of women into the police service as contained in Articles 56 and 59 which stipulate that “the number of employees at all levels, roles and the command, at all times and in all circumstances, must take into account objective criteria related to both the physical aptitude, adequate level of education and proven moral background as well as a fair representation of the provinces respectively. It must also take into account gender representation...” and that “the recruitment into the national police should take place by competitive entrance examinations, either internally or directly, according to the needs expressed in the annual budget by taking into consideration the balance between the provinces, gender and the adjustments set out in the services and units” ;
- Law No. 015/013 of 1 August 2015 on the modality for the implementation of the rights of women and the parity determining the modalities for the implementation of these rights in accordance with Article 14 of the Constitution. This Law also focuses on international legal instruments ratified by the country; this is also a further demonstration of the political will and commitment of the Congolese authorities to incorporate the gender dimension into all activities of national life.

## **Education (Article 12)**

63. The Commission notes the targeted measures taken by the government, among others:

- i. The removal of all barriers impeding access by girls and boys to go to school;
- ii. The consolidation of the presence and maintenance of girls and women in

- higher education (sciences, mathematics and technology),
- iii. The reduction of the basic functional literacy gap between men and women, and;
- iv. The removal of obstacles impeding school attendance by pregnant teenagers through the adoption of a circular note by the Ministry of primary and secondary education requesting all heads of schools to allow pregnant girls/ mothers to continue their studies,
- v. Establishment of various programmes:
  - Programme for the acceleration of enrolment by girls initiated by the Government with the support of UNICEF, the special programme for the elimination of illiteracy, the sexual representation in French and Mathematics textbooks in the DRC and gender equality, the policy on specific opportunity costs for girls with the aim of promoting the retention of vulnerable girls of 12 years and over in primary schools as well as the communication and mobilisation programme intended to ensure mobilisation of girls for schools.
- vi. Organisation of awareness raising campaigns by the government in partnership with civil society organisations and technical and financial partners with flagship themes such as: “Girls and boys in school”, “Education is the Child’s Right”.

### **Sexual Education (Article 14(1) (G))**

64. The Commission commends the government for the following:
- i. The establishment since 2003, of the National Adolescent Health Programme and the adoption of the Ministerial Order No. 1250/CAB/MINIS/001 of 13 January 2003 which puts into effect an adolescent health programme with the aim of preventing early sexual relations and unprotected sex among teenagers, early and unwanted pregnancies and risks associated with contracting HIV/ AIDS and sexually transmissible infections as well as unsafe abortions in schools in particular, and among the youth in general;
  - ii. The establishment of adolescent and youth health services all over the country to provide specific health services in areas such as reproduction and ensure the promotion and use of condoms for the prevention of STIs and HIV/ AIDS and the establishment of Youth Networks to address issues of HIV/ AIDS;
  - iii. The incorporation into the formal education system since 2014 of subjects on family planning and sex life to address matters on the transmission of HIV/ AIDS and sexually transmissible infections in schools.

### **Protection of widows including their inheritance rights (Articles 20 & 21)**

65. The Commission commends the government for the following:
- i. Adoption of the necessary legislative measures to ensure the protection of widows,

particularly,

- Article 16(4) of the 2006 Constitution which stipulates that; nobody can be subjected to cruel, inhuman or degrading treatment;
  - Law No. 87-010 of 1 August 1987 on the Family Code which establishes the automatic dissolution of marriage in Articles 541 and 544 upon the death of the husband; it also establishes punishment for anyone who imposes on the widow or widower or on their relatives a degrading treatment or the performance of rites that are inimical to human dignity. Articles 545, Articles 758b, 760,785,790 of the same law, generally provide information on the inheritance procedure after the death of any one of the spouses;
  - Law No. 13/013 of 1 June 2013 on the status of employees of the national police service in Articles 246, 247,248 and 249 determines the benefits and rights of the spouse of a policeman upon his demise. The same applies to Law No. 13/005 of 15 January 2013 on the status of the military man in the armed forces (FARDC) in Article 207;
  - The Decree-Law of 29 June 1961 on the organic framework of the social security, in Articles 41 and 43 awards a pension or survivor's allocation to the spouse whose deceased husband would have been entitled to a retirement pension;
  - Law No. 15/013 of 1 August 2015 on the modalities for the implementation of the right of women and parity in Article 19, prohibits, in the event of a demise, the infliction of inhuman, shameful and degrading treatment on the surviving spouse, subject to legal proceedings;
- ii. The abrogation of the decree of 4 April 1950 on polygamy and the establishment of monogamy by the Family Code;
  - iii. Organisation of a campaign for the regularisation of marriages by civil registration authorities for the improvement of the rights of the widow in the area of inheritance;
  - iv. Withdrawal of the issue of the rights of persons and the family from the jurisdiction of the traditional customary authorities to the magistrates courts and higher courts;
  - v. Identification of three categories of intestate successors by the Family Code , namely: the children of the deceased, boys and girls, born out of the marriage or out of wedlock but recognised by the latter while he was alive including his adopted children, the surviving spouse (widow or widower), the fathers and mothers, the brothers and sisters of the deceased, the uncles and aunts of the deceased as well as other relatives;
  - vi. Adoption of the national strategy for the social protection and awareness raising and training of widows on empowerment.

### **Protection of Older Women (Article 22)**

66. The Commission takes note of the various measures taken by the government such as:
- i. The establishment of administrative measures such as the Ministerial Order No. CAB/MIN/AFF.SO/053/95 of 25 March 1995 on the establishment of a national supervision directorate for senior citizens, which is in charge of ensuring the running of older persons' residential facilities and homes and the upkeep of very old senior citizens in the DRC;
  - ii. The creation of the national social protection strategy for vulnerable groups and the national fund for the promotion of social service.

### **Protection of Women with Disabilities (Article 23)**

67. The Commission notes the existence of a directorate responsible for the coordination of readaptation activities for persons with disabilities (DICOEPHA) at the Ministry of Social Affairs which has oversight responsibility for specialised services at the Ministry and civil society organisations.

### **Protection of Women in Distress (Article 24)**

68. The Commission notes the establishment of a rural development fund to facilitate access to credit within the rural communities. A suitable micro-credit scheme for women in the rural areas has been organised to support their income-generating activities.

## **I. FACTORS INHIBITING THE ENJOYMENT OF RIGHTS GUARANTEED BY THE MAPUTO PROTOCOL**

69. The full enjoyment of rights guaranteed by the Maputo Protocol is impeded by various factors such as:
- The lack of ownership by the women of the content of the legal texts on human rights in general, and the rights of women in particular;
  - The non-inclusion of women as stakeholders in dynamic and inclusive development in line with the rights-based approach;
  - The lack of optimal harmonization of legislation in accordance with the provisions of international conventions it has ratified;
  - The lack of specialisation on the part of magistrates and the poor case law in respect of human rights in general and women in particular;
  - The weak capacity of human rights institutions;
  - The poor nature of human and financial resources of human rights defence organisations, in general, and those focused on women's affairs, in particular.
  - Difficulties in the implementation of some rights related to the influence of sociological and cultural factors, the persistence of the custom as well as deep-rooted prejudices specifically targeted at women are some of the obstacles

impeding the full enjoyment of the rights of women according to the principles outlined in the Maputo Protocol.

### **III. AREAS OF CONCERN**

70. In spite of the government's efforts to promote and protect the rights of women, the Commission is still concerned by the following:

#### **Political participation and decision-making**

71. The Commission is concerned by the following:

- i. The poor representation of women in decision-making bodies;
- ii. The negative socio-cultural bottlenecks, the low involvement of women in political activities and the poor access by women to incomes and credit, to training and information;
- iii. The lack of a law on quotas for participation in political life.

#### **Physical integrity and dignity, including sexual violence, trafficking in women and medical and scientific experiments (Article 3 and 4)**

72. The Commission is concerned by the following:

- i. The poor means of communication impedes, among others, contact with displaced women, the release of women sex slaves and child soldiers taken hostage by armed groups;
- ii. The budgetary constraints are a limiting factor in the care provided for rape survivors;
- iii. The presence of armed groups in some parts of the country;
- iv. The difficulties encountered in prosecuting members of the armed groups responsible for perpetrating sexual violence and their identification in cases of widespread rape.

#### **Harmful practices to which women are subjected including female genital mutilation (Article 5)**

73. The Commission is concerned by:

- i. The persistence of harmful practices inflicted on women, young people and young girls such as early marriage of girls (more than 51% of marriages in the DRC are targeted at girls below 18 years of age), marriage by abduction, sexual violence and poor treatment meted out to widows;
- ii. The early sexuality of young girls, 45% of girls between 16 and 18 years have sexual relations with adults as a result of poverty,
- iii. Fight against early prostitution;
- iv. The disruption of schooling because of early marriages arranged by parents

- in order to take advantage of the dowry due to dire economic conditions;
- v. The use of rape, sexual mutilation, forced sterilisation as a weapon of war.

### **Reproductive Health (Article 14 (2) (c))**

74. The Commission is not satisfied that:

- i. The DRC does not have any provision or legal instrument for the promotion of medical abortion, even in cases of sexual assault, rape or incest though it is recommended that rules of medical ethics be applied, as a precautionary measure for the appropriate treatment when the pregnancy poses a danger to the physical and mental health of the mother or the expectant mother's life or the foetus. But this can only be done upon approval by a forensic medical officer;
- ii. The criminalisation of any practice of abortion under Articles 166 and 167 of the Criminal Code which sanctions persons deemed to have practised abortion to a term of 5 to 15 years' imprisonment and the woman who has undergone abortion to a term of 5 to 10 years' imprisonment.

### **Education**

75. The Commission is concerned by the persistence of socio-cultural bottlenecks as well as wide disparities between girls and boys at the secondary level and with regard to access by women and girls, to education and training.

### **Harassment**

76. The Commission is concerned by:

- i. The wide inequalities in the education sector where there are less and less women in higher education as compared with men, particularly, due to sexual harassment to which girls are exposed;
- ii. The widespread existence of harassment in professional spheres in the process of recruitment, promotions and other social benefits;
- iii. The harmful effects of sexual harassment on access by women to education, training and the job market.

### **Domestic Violence (Article 4(2) (a))**

77. The Commission is concerned by:

- i. The widespread nature of domestic violence in the Congolese society, manifested in physical, verbal and psychological forms;
- ii. The large proportion of men in the DRC, even among the highly educated ones, do not approve of gender equality and are still so much attached to stereotyping;

- iii. The socio-cultural and religious bottlenecks which contribute to the internalisation by women of their alleged “inferiority” which justifies the various forms of violence meted out to women;
- iv. The lack of a specific law aimed at punishing domestic violence.

**Measures for the protection of women displaced, repatriated, seeking refuge or asylum and punishment for the violation of these protections (Art. 11 (1) - (3))**

78. The Commission notes that:

- i. The report does not provide any information on displaced women refugees except on sexual violence, and also it does not give information on care provided for them when they have fallen victim to sexual violence;
- ii. The.

**Protection of Older Women (Article 22)**

79. The Commission notes the difficulties faced in implementing policies and programmes for the improvement of conditions of older women as a result of inadequate financial and material resources.

**Protection of Women with Disabilities (Article 23)**

80. The Commission takes note of the poor efforts made in catering for women with disabilities and the systematic provision of support for families of children with a disability.

**HIV/AIDS**

81. The Commission is not satisfied that the issue of HIV/ AIDS has been given a feminine and juvenile character

**V - RECOMMENDATIONS**

**Reporting Obligations**

82. The government should continue to comply with its obligations under Article 26 of the Maputo Protocol by implementing the recommendations of the Commission.

**Harmonisation of national texts with the Maputo Protocol**

83. The Government should take all the necessary measures for the total domestication of the Maputo Protocol through the adoption of legislative texts and other administrative measures.



## **Political Participation and Decision-making**

84. The government should continue with its efforts to improve the representation of women in politics and in decision-making bodies, particularly through the adoption of a law on quota.

## **Physical integrity and dignity, including sexual violence, trafficking in women and medical and scientific experiments (Article 3 and 4)**

85. The Commission recommends to the government to:

- v. Strengthen the means of communication in order improve the contact with displaced women, the release of women sex slaves and child soldiers taken hostage by armed groups;
- vi. Increase the budgetary outlay to cater for rape survivors,
- vii. Strengthen the collaboration with MONUSCO in order to consolidate the security of the Congolese territory,
- viii. Continue with the efforts already made concerning legal prosecutions of members of armed groups perpetrating sexual violence and identifying them in cases of widespread rape.

## **Harmful Practices inflicted on women including female genital mutilation (Article 5)**

86. The Commission recommends to the government to:

- vi. Take the necessary measures to end harmful practices against women and young girls such as; early marriages, marriage by abduction, sexual violence and maltreatment of widows;
- vii. Effectively address the issue of early sexuality of young girls by taking measures towards the eradication of poverty,
- viii. Early prostitution;
- ix. Encourage the retention of girls in schools;
- x. Severely punish the use of rape, sexual mutilation and forced sterilisation as a weapon of war.

## **Reproductive Health (Article 14 (2) (c))**

87. The government should:

- i. Guarantee women access to medical abortion any time this is deemed as necessary;
- ii. Take legislative measures to decriminalise abortion.

## **Education**

88. The government should take measures to:
- i. Improve girls' enrolment ratio and prevent school dropout at the secondary level,
  - ii. Increase vocational training programmes for young girls;
  - iii. Intensify awareness raising campaigns on the importance of educating girls and maintaining them in schools.

### **Harassment**

89. The Commission recommends to the government to:
- iv. Work towards reducing inequalities in the education sector between men and women by effectively addressing sexual harassment to which the girls are subjected;
  - v. Take measures to punish harassment in the professional environment during recruitment processes and the social benefits which are often contingent on the granting of sexual favours requested from women by senior officials or business leaders;
  - vi. Raise awareness about the harmful effects of sexual violence on access by women to education, training and the job market and take support measures to assist women who are victims of harassment to reintegrate professional life.

### **Domestic Violence (Article 4(2) (a))**

90. The government should:
- i. Formulate and adopt a specific law on domestic violence;
  - ii. Carry out awareness raising campaigns aimed at changing behaviours that perpetuate domestic violence, in particular socio-cultural bottlenecks, customs and traditions.

### **Measures for the protection of displaced, repatriated women refugees and those seeking asylum and punishment against such protective measures (Art. 11 (1) - (3))**

91. The government should:
- i. Strengthen the provision of care for internally displaced women, refugees and repatriated women and asylum seekers generally through specific training and reintegration programmes into the society with regard to displaced and repatriated women and women refugees and asylum seekers;
  - ii. Find financing mechanisms in order to adequately cover the needs of these different categories of women.

### **Protection of Older Women (Article 22)**

92. The government should take measures towards the effective implementation of

policies and programmes aimed at improving the conditions of older women due to inadequate financial and material resources.

### **Protection of Women with Disabilities (Article 23)**

93. The government should redouble its efforts towards improved care and support for women with disabilities, particularly for young girls with disabilities.

### **HIV/AIDS**

94. The government should:

- i. Take measures in order to reduce the risks inherent in the transmission of HIV/AIDS to women;
- ii. Carry out information and sensitisation campaigns among women concerning the different modes of transmission and protection of HIV/AIDS.

### **General**

95. The government should provide in its next periodic report all the information on the effective implementation of the recommendations made in these Concluding Observations on these two reports.

**Adopted by the African Commission on Human and Peoples' Rights at its 65<sup>th</sup> Ordinary Session held from 21 October to 10 November 2019 in Banjul, Republic of Gambia.**