



**The Committee on Economic, Social, and Cultural Rights**  
**43<sup>rd</sup> Session: 2-20 November 2009**

**THE DEMOCRATIC REPUBLIC OF THE CONGO**

**INTRODUCTION:**

**The State Report:**

The Democratic Republic of the Congo (DRC) has not submitted a report to the Committee since its first in 1988 and so is submitting to the 43<sup>rd</sup> Session of the CESCR a combined second, third, fourth and fifth periodic report. The report is available [here](#)<sup>1</sup>.

**Shadow Reports:**

- [The International Commission of Jurists](#)<sup>2</sup>.
- [L'Observatoire pour La Protection des Defenseurs des Droits de l'Homme](#)<sup>3</sup>.
- [Confederation Paysanne du Congo](#)<sup>4</sup>.
- [Franciscans International](#)<sup>5</sup>.

**List of Issues and Replies:**

The Committee's List of Issues regarding the reports received, and the state party's replies are available [here](#)<sup>6</sup>.

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<sup>1</sup> <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.COD.5.doc>

<sup>2</sup> [http://www2.ohchr.org/english/bodies/cescr/docs/ngos/ICJ\\_DRC43.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/ICJ_DRC43.pdf)

<sup>3</sup> [http://www2.ohchr.org/english/bodies/cescr/docs/ngos/FIDH\\_OMCT\\_DRC43.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/FIDH_OMCT_DRC43.pdf)

<sup>4</sup> [http://www2.ohchr.org/english/bodies/cescr/docs/ngos/COPACO\\_DRC\\_43.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/COPACO_DRC_43.pdf)

<sup>5</sup> [http://www2.ohchr.org/english/bodies/cescr/docs/ngos/FI\\_DRC43.doc](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/FI_DRC43.doc)

<sup>6</sup> <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E.C.12.COD.Q.5.Add1.doc>

**WILPF REPORT ON THE SESSION:**

**1. Introductory Statement by the Head of the Delegation: Ulpio Kakura Walpol, Minister for Human Rights in the DRC**

Mr. Ulpio Kakura Walpol says that despite its traumatic and unstable recent history, which he specifies as resulting from thirty years of dictatorship followed by ten years of war, the DRC has made very encouraging progress in areas of economic, social, and cultural rights. This progress is most obviously evidenced by the state party's ability to report, at last, having been unable to do so due to the particular and well-known circumstances of the past two decades. Even so, the unique history of the DRC has severely inhibited its ability to fulfill the terms of the Covenant.

Mr. Ulpio Kakura Walpol cites other examples, in a very general and sweeping manner it must be noted, including:

- 18 November 2005, the DRC adopted a new constitution, the second section of which directly addresses the issues of human rights.
- Health:
  - New medical centers built
  - New status for doctors
  - Currently a reform bill going through Parliament
  - Spending on health increased to 15 per cent of national budget
  - Focus on rural areas
  - Focus on HIV/AIDS, and STDs
- Education:
  - 'hundreds of schools rehabilitated'
  - Enrolment of girls has increase
  - 24 per cent increase in attendance
  - In 2007, there was equity of enrolment of boys and girls
  - National law on education scheduled

However, the Head of the Delegation comments that in order for a comprehensive program for the protection of economic, social, and cultural (ESC) rights to be developed, the DRC will require greater financial and technical assistance from the international community.

**First Round of Questions: Introductory Statement and Articles 1-5 of the Covenant:**

**ATANGANA:**

- Comments on the brevity and vagueness of the state party's report, its replies to the list issues (in particular the replies to questions 1 and 10), and its introductory statement. This is disappointing according to Mr. Atangana.
- In seeking a more detailed appreciation of the state of affairs in the DRC, with particular regard to the judicial system, Mr. Atangana wishes to know exactly what is being done to improve the DRC's system of justice. Have there been any court decisions on ESC rights?
- Furthermore, have there been any rulings, decisions, etc relating to the fight against corruption? So far, all that the Committee has been told of is disciplinary action being taken, such as the dismissal of judges.

**DASGUPTA:**

- On the issue of the ESC rights of minority groups, Mr. Dasgupta wishes to know the specific detail of action being taken to prevent discrimination against the pygmies in the DRC.
- In addition, Mr. Dasgupta requests an update on the status of a proposed law on gender equality. What is the content of the amended text of the family code? Mr. Dasgupta draws particular attention to the 'alarming' content of Articles 444-448 of the Family Code which directly challenges Article 3 of the Convention of ESC rights.

**KERDOUN:**

- Mr. Kerdoun appreciates that since the 1970s the DRC has suffered serious social, economic, and political disruption and crises. As the establishment of a new Constitution in 2005 would suggest, a level of political stability has been reached, which is very positive and encouraging for the future. However, the DRC's economy is still 'stagnant'.
- Why, despite replete natural wealth, has the DRC failed to develop economically?
  - This question must precede and underpin any wider discussion of ESC rights.

**PILLAY:**

- What concrete measures are being enacted to ensure functionality of judicial structures? For instance, can the delegation provide detail of what funding is made available for the reform and functioning of the judicial system?
- How is political interference in the judiciary being stopped?
- What is being done to end the culture of impunity?
- What is being done to ensure access to justice for victims of abuses?
- Can the delegation provide examples of case law in its response?

### **S A ' D I :**

- Mr. Sa'di insists that the Committee and the international community as a whole must not victimize the DRC, but take a more positive position of enablement, to 'show [them] the way'.
- Mr. Sa'di remarks that the DRC's various submissions to this session of the CESCR have been 'long in generalities, short in detail'.
- For example, it is not enough to say that international treaties enjoy superiority over national law in the DRC. Exactly where? Can the delegation provide examples of this?
- Mr. Sa'di accepts that there are many aspects of ESC rights which can not yet be fulfilled due to the DRC's lack of economic development. For example, we can not expect full employment, or a comprehensive social security program. However, we 'absolutely can not accept' economic development, or rather the lack thereof, as an excuse for abuses which cost nothing to remove, such as the legal discrimination against women in the Family Code.

### **T E X I E R :**

- Mr. Texier mentions a recent report which suggests that the judicial system of the DRC oppresses the population, rather than securing its rights. Mr. Texier goes on to suggest that the Separation of Powers is a mere formality in the DRC, as in fact all three powers of legislative, executive, and judiciary are concentrated in the hands of the President.
- With this in mind, Mr. Texier asks whether the government of the DRC has a comprehensive plan of judicial reform.
- In addition, Mr. Texier addresses the issue of the 'gap' between the potential and actual wealth of the state party. The DRC depends heavily on multi-national corporations to close this 'gap' by exploiting the nation's resources to their full potential. However, these companies do not have as their first priority the betterment and protection of local communities in the state party, but instead prioritize profits. What mechanism is there to prevent the multi-nationals from abusing local populations and in what ways is the government ensuring that local resources benefit local people?

- Mr. Texier reiterates Mr. Sa'di's observation that certain safeguards of ESC rights cost nothing, such as the deletion of discriminatory laws.

**BRAS GOMES:**

- Ms Bras Gomes insists that it is a change of mindset which is needed in the DRC, not more resources.
- Ms Bras Gomes wishes to know exactly what state laws are being referred to in Article 14 of the state party's constitution which says that the laws of state will protect women from opporession.

**BANOAN DANDAN:**

- Ms Banoan Dandan notes that it is a commonly held belief in the DRC that sexual intercourse with a woman from the Bambuti tribe (one of the pygmy groups) will cure various pains and ailments. This has led to many rapes of Bambuti women. What is being done to end impunity in this instance?
- Ms Banoan Dandan also wishes to know what percentage of the profits from extractive industry is reinvested into the local community.

**KEDZIA:**

- Mr. Kedzia reiterates the Committee's request for further and more detailed information regarding the progress of judicial reform.
- In addition, Mr. Kedzia wishes to know what measures are being taken in the state party to punish and prevent abuses of ESC rights committed both by the state and by corporations.
- What is the level of access to legal aid for disadvantaged groups in the state party?
- What percentage of GDP is currently being spent on judicial reform?
- How will reform be accelerated? The current rate of progress is disappointing.

**BARAHONA RIERA:**

- Ms Barahona Riera wishes to know more about Mr. Ulpio Kakura Walpol's Ministry (of Human Rights): what is its budget? What is its jurisdiction and what are its competences to ensure compliance?
- What is the current status of the reforms of the Family Code?

- The national law of the DRC says that multi-national corporations *must* make a social investment. How is this commitment ensured in practice?

**RIEDAL:**

- Mr. Riedal comments that the Committee is less interested in knowing what drafts of reforms that state party has made, but wishes to know what **actual** results have been achieved.

**First Round of Responses: Introductory Statement and Articles 1-5 of the Covenant:**

**NOTE:**

The responses were all delivered by the head of the delegation from the DRC, Mr. Ulpio Kakura Walpol.

The responses were delivered in a general manner, rather than addressing each question separately. This led to at least one reminder coming from the Chairperson of the Committee, Mr. Marchan Romero, that the delegation should offer direct answers to the Committee's questions in as concise a manner as possible, avoiding repetition of previously submitted information. It is our observation that this made little difference to the nature or content of the delegation's responses. It may also be of interest to note that on several occasions, there was a great deal of head shaking and muttering amongst the Committee members which may be interpreted as an indication of a significant level of frustration as a result of the largely unsatisfactory answers being offered by the delegation to the Committee's questions.

**Responses:**

Mr. Ulpio Kakura Walpol reiterates his point that the DRC is still recovering from decades of dictatorship and war. However, this 'glorious march towards a radiant future' has made significant progress.

Together with the World Bank, the International Monetary Fund, and their Chinese partners he is confident that the DRC will be able to enjoy fully its natural wealth which Mr. Ulpio Kakura Walpol describes as a 'scandalous' amount considering the levels of poverty in the DRC.

The head of the delegation insists that any supposition that the DRC breaks its own laws (here, we assume that Mr. Ulpio Kakura Walpol is speaking of the suggestion made earlier that there is no effective separation of powers, or the underlying implication of many of the questions that the DRC does not enforce its

human rights laws) is an exaggeration, but the extent to which laws can be enforced is limited by budgetary constraints.

**Justice:**

- Just like the army and the police force of the DRC, the judicial system is part of the process of establishing and protecting the rule of law.
- There absolutely is a separation of powers.
- The President of the Republic has never has a concentration of prerogative powers.
- The DRC's judicial system is inherited from the French and the Belgians.
- The DRC is awaiting the establishment of the Court of Cassation, but in the meantime has the Supreme Court of Justice.
- The Ministry of Justice takes responsibility for the education of all those involved in the judicial system on matters of human rights.
- In many provinces there are new courts and prosecution offices, though there are still 147 regions where courts are needed.
- There is a great deal of work being done to improve conditions in prisons.
- 'Zero Tolerance' campaign against impunity and corruption has led to the removal and relocation of many magistrates.
- Efforts are being made to improve awareness of and access to justice in the area of human rights.
- A Children's Court is being set up.
- For all these reasons, Mr. Ulpio Kakura Walpol insists that the courts of the DRC are the guarantors of human rights.

However, according to the head of the delegation, there have been many difficulties:

- Financial- the DRC is a HIPC (Highly Indebted Poor Country) and spends \$500 million (it is not mentioned over what time scale) servicing its debt. Mr Ulpio Kakura Walpol asserts that if this debt were cancelled, more could be done to improve the judicial system in the DRC.
- The antiquated nature of the system inhibits reform.
- The vastness of the land and general environment has inhibited progress is raising awareness of human rights and access to justice. The example is offered that a victim may have to travel for hundreds of miles to find a magistrate, perhaps having to travel part of the journey by canoe due to the lack of roads.
- Overall the environment of the DRC is not conducive to a smooth running judicial system.

A final note to be made on the delegation's responses to questions regarding the justice system of the state party relates to access to justice. Whilst it must be acknowledged that the peculiarity of the following statement may be due to problems in translation, the head of the delegation at one point admitted that 'We currently have no mechanism for a citizen to apply to a court' seeking justice following abuse of his or her rights, 'but these rights are guaranteed'. Unfortunately, this was not followed up by the Committee in their final questions on Articles 1-5 of the Covenant.

**Women:**

- Legislative reform is underway, for instance, with regard to Article 14 of the Constitution, there is a Bill on Equality 'going through'.
- There will be reform of the Family Code, but for now the state party enjoys a 'tacit repeal' of any discriminatory provisions therein. The head of the delegation comments that he can think of no case whatsoever in which a wife has been refused permission by her husband to apply for a job or otherwise act in a legal capacity and the Family Code has been used as a legal barrier to her in support of his refusal. Mr. Ulpio Kakura Walpol adds that his own wife has never asked for his permission to apply for a job. Thus, he insists that there is de facto repeal, and whilst formal legal repeal is desirable, for now this will suffice.
- Responsibility for lobbying for accelerated reform is left to NGOs.
- With regard to the question on the situation of Bambuti women, the head of the delegation insists that improvements have been made. Traditions and customs are changing, and that a considerable number of pygmies now enjoy greater access to social services such as education, as well to the judicial system.

**The Ministry of Human Rights:**

- The Ministry deals with issues relating to the effective implementation of human rights, including human rights education, information, and training.
- It also assumes a mediatory role facilitating an engagement with all parties involved in disputes.
- There will be a new Human Rights Commission, which will be an 'independent consultative body, supporting and supplementing the activities of the government on human rights'.

**Vulnerable Groups:**

- The subject of 'special measures' (details not provided).

- **But again, one must take note here of financial constraints. The total resources available to the government in 2008 was \$2.5 billion, but the projected figure for 2010 is \$5.3 billion.**

#### **Economic Growth:**

- Mr. Ulpio Kakura Walpol offers another history lesson here to explain that the DRC has failed to develop economically due to thirty years of dictatorship and ten years of war following, let's not forget, colonial rule.
- He asserts that the DRC faces a 'paradox' in which it must maintain peace, but also proceed with national reconstruction. This point is not elaborated upon.
- Economic growth requires 'correct strategic development choices'- this is also not elaborated upon.
- The key to the DRC's development lies in good governance.

#### **Further Questions and Responses:**

##### **BRAS GOMES :**

- ***When will legal discrimination against women be legally repealed?***
- There has been de facto reform- the law in question is outdated and no longer applied. There has not been a single case of litigation in which a woman has been denied her husband's authorization. All the same, work is underway to remove all the 'dead wood' from the law, but Parliament's agenda is very heavily congested. The process may take a long time, but the intention is there to take action.

##### **S A ' D I :**

- ***Would the State Party accept technical advice from the OHCHR on how best to proceed?***
- There is no obstacle to assistance.

##### **K E D Z I A :**

- ***Can the delegation please clarify the obvious contradiction in the statement that the new Human Rights Commission will be 'independent' but 'support and supplement the activities of the government'?***
- Question not addressed.

**BARAHONARIERA:**

- *Will the State party prioritize gender equality laws as they are so fundamental to economic development?*
- Question not addressed.

**Questions on Articles 6-9 of the Convention:**

**TEXIER:**

- Mr. Texier requests that the delegation comment further on the issue of forced labor as, despite being banned, it is widely reported that the practice still goes on, particularly in mines.

**BRAS GOMES:**

- Ms Bras Gomes wishes to know exactly what sanctions are in place to ensure equal pay for equal work.

**RIEDAL:**

- Mr. Riedal wishes to know what action has been taken to end the culture of impunity with regard to abuses committed by the armed forces, especially in the case of rape.

**Responses:**

- Mr Ulpio Kakura Walpol insists that forced labor is neither encouraged nor tolerated by the government of the DRC. However, the labor inspectorate is not able to fulfill its legal obligations and so due to a lack of resources.

**Questions on Articles 10-12 of the Convention:**

**ATANGANA:** Mr Atangana asks the delegation to talk about Corporal punishment in schools and workplaces

**BRAS GOMES:** Ms Bras Gomes wishes to know more about what is being done in the state party to ensure representation of indigenous peoples.

**DASGUPTA:** Mr Dasgupta remarks that there have been reports of sexual violence on a massive scale, especially by members of the armed forces. What measures are being taken to prosecute perpetrators and to prevent repeat

occurrences? In DRC response “exemplary measures” were mentioned. Mr Dasgupta requests more details on what exact measures have been taken. The most horrifying aspect of sexual violence in the DRC is that perpetrators are often members of the government. What actions have been taken to stop this? Special Rapporteur on Violence Against Women says that no women have received monetary compensation for rape from government. Could the delegation please comment on this?

**P I L L A Y** : Mr. Pillay asks a question about homelessness.

**S A ’ D I** : Prostitution and child prostitution. DRC has both of these problems in enormous proportions. High magnitude, high brutality. 70% of perpetrators were members of security forces. The apprehension and prosecution of rapists should be paramount. The delegation has said that it is difficult to prosecute rapists because the DRC is so large that citizens would have to travel hundreds of miles, sometimes even via canoe, to reach a court. Mr. Sa’di suggests that the government of the DRC should consider a mobile court system. Mr. Sa’di says that he has even heard that UN peacekeepers have been accused of rape – what are the results of the investigation into this issue? ILO says in a 2008 report that the trafficking and sale of children is increasingly wide-spread. Whilst Mr. Sa’di acknowledges that he may be reading this incorrectly, but is there a law stating that marriage is prohibited before age 8? Impunity is key in these situations – it allows the perpetuation of the cycle. Some things can’t be tolerated and require proactive responses. Could the delegation please comment?

**S C H R I V E R** : Is there a structural policy in place to end the trafficking of persons? Access to food is alarmingly limited in the DRC but there is little re: structural policy (such as a food program) to report. To what extent is the DRC government seeking specific assistance for the purpose of aiding government to fulfill its obligations re: ESCR?

**Z H A N** : DRC’s maternal mortality ranks 1<sup>st</sup> in Africa. How will you reduce those levels?

**K E D Z I A** : Common view of difference UN bodies on the issue of sexual violence. Committee Against Violence towards Women and Committee on Rights of the Child agree on the importance of reform in DRC. They have made suggestions such as the establishment of a Child Help Line. What progress has there been on the implementation of this? Family Code says women can be married at 15 but younger with exceptions. Has the government been working to amend this code?

**D A N D E N** : Ms Danden asks a question about Childwitches.

**R I E D E L** : Mr. Riedel ask a question relating to the right to food.

**DRC Responses:**

- 1) Domestic violence, protection of family: Does the delegation have statistics? No. 'Figures are just figures'. Mr. Ulpio Kakura Walpol says that the government is in the process of organizing a National Statistics Institute to be able to collect accurate and relevant information. The head of the delegation states that years of war resulted in the destruction of all public administration offices – many buildings were burned to the ground and all data lost. As consequence, the government is starting from the very beginning.
- 2) Sexual Violence against Women and Girls: Mr Ulpio Kakura Walpol recognises that the image of his country is a poor one, based on sexual violence. He asserts that the government has mobilized 'their' women, and told them not to remain silent. This has magnified the problem in the eyes of the world. There are countries with greater problems, but they just do not talk about it. The head of the delegation asserts that the government has taken bold measures, for instance, it has publicly condemned members of the army and police for such crimes. But these are not the greatest offenders; independent actors are the biggest problem. He tells the Committee that he was horrified to learn that acts of sexual violence were being committed by children (younger than 18 years). How can justice be applied in these cases? It's hard to say.
- 3) Resources have been allocated to pay women compensation. It has been difficult to monitor the situation and ensure that money given to branches of the government to give to women is properly spent. Mr. Ulpio Kakura Walpol says that the government is thinking about setting up a special fund instead of dealing with individual complaints. (Because many raped women don't go to court). This would give the community a chance to benefit. Problem: each time someone commits a crime of rape, those responsible must be brought to court and punished. Since March the DRC has had a zero tolerance policy; high level officers have been prosecuted.
- 4) Prostitution: 50,000 street children, perhaps more in the DRC. Even mothers and fathers living on the street. Until armed conflict is over it will not be possible to end this problem. Even then the problem can only be addressed at a pace which resources will allow. Nevertheless, judges will be trained on how to deal with children so that there are fewer children on the streets. Trafficking of children is a problem of identifying those who are responsible. On this, and more broadly in trying to discover where the brothels are, the head of the delegation states that the government is conducting awareness campaigns, and has ratified relevant treaties.