

CONGO

CCPR A/42/40 (1987)

224. The Committee considered the initial report of the Congo (CCPR/C/36/Add.2) at its 732nd, 733rd and 736th meetings, on 7 and 9 July 1987 (CCPR/C/SR..732, 733 and 736).

225. The report was introduced by the representative of the State party, who referred to the main provisions of the Congolese Constitution of 1979, as amended in 1984, guaranteeing rights and fundamental freedoms in his country. He also outlined Congolese legislation on civil and political rights, in particular, and mentioned the support that his country was giving at the international level to efforts to combat apartheid and to national liberation movements.

226. The members of the Committee welcomed the fruitful dialogue that had recently been initiated between the Congolese Government and the Committee. They nevertheless noted that the report of the Congo was limited to references to the text of articles of the Constitution and laws, and did not contain sufficient information on the practical implementation of legal and constitutional provisions in the Congo or on their interpretation by the competent judicial and administrative organs. They stated that it would be useful for the Committee to have examples of case-law and administrative and judicial decisions in order to be able to assess the extent to which the Covenant was implemented in the Congo. It would also be helpful if the Congolese Government could provide information on cultural, economic and social factors that might affect implementation of the Covenant in the Congo, and on any other institutional or legal difficulty encountered in efforts to attain the objectives of the Covenant. In addition, the report referred to the amendments made to the Congolese Constitution in 1980 and 1984; it would be helpful if the Committee could be told what those amendments were.

227. Referring to article 2 of the Covenant, the members of the Committee asked what the actual situation of the Covenant was in the Congolese legal system and, in the event of a discrepancy between a law and the Covenant, which of the two texts was applied and what measures had been taken in the Congo to publicize the rights that could be exercised by private individuals. They also asked whether schoolchildren and members of the police and armed forces received training on that subject, whether the text of the Covenant had been translated into languages other than French, whether a private individual could directly invoke the provisions of the Covenant in the courts or whether that possibility was subject to the gradual incorporation of those provisions within the Constitution, and whether courts had handed down decisions concerning provisions of the Covenant that had not yet been incorporated within domestic Congolese law. It was noted that almost all provisions of the Congolese Constitution referred to the rights of citizens and it was asked whether or not the rights provided for in the Covenant were extended to aliens in the Congo. It was also noted that, under covenant were extended to aliens in the Congo. It was also noted that, under article 119 of the Congolese Constitution, the Constitutional Council could declare a treaty commitment to be unconstitutional, and it was asked whether such a case had already arisen and whether there was a time-limit for the denunciation of an international instrument, as provided for in the Vienna Convention on the Law of Treaties between States and International Organizations

or between International Organizations. ^{8/}

228. In connection with article 3 of the Covenant, members of the Committee asked what percentage of women in the Congo were members of the People's National Assembly and the various judicial bodies, taught in schools and universities, and worked in undertakings, what the conditions limiting the right to vote in accordance with the law were and whether specific examples could be given of the equality of men and women in the family, divorce proceedings, labour legislation and remuneration for work.

229. Referring to article 4 of the Covenant, members of the Committee asked in what circumstances the President of the Congo could proclaim a state of emergency or a state of siege, what the nature of the special powers that were conferred on him in such a situation was, what monitoring powers were held by the People's National Assembly concerning the duration of the state of emergency or state of siege, and whether there was a habeas corpus procedure or other remedies against violations of Covenant provisions during that period. It was also asked whether a state of emergency had ever been declared in the Congo and, if so, what rights had been restricted.

230. In connection with article 6 of the Covenant, members of the Committee inquired what crimes carried the death penalty in the Congo, how many persons under sentence of death had been executed during the past five years, what the infant mortality rate in the Congo was and what measures had been taken to combat epidemics or food shortages. Reference was made to the information that a defendant under the age of 16 could be acquitted and handed over to his parents, depending on the circumstances in question, and it was asked how responsibility for corrective measures could be transferred to the parents and what the judicial practice was in that connection. Clarification was sought on the exact meaning and scope of the text of article 7 of the Congolese Constitution concerning protection of the person.

231. With regard to articles 7 and 10 of the Covenant, members of the Committee asked whether members of the police and armed forces, medical and prison personnel, persons responsible for interrogations and other officials were given instruction in the requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials and the Standard Minimum rules for the Treatment of Prisoners. They also asked what administrative, legislative and other measures were in effect to prevent torture, whether any cases of torture had been reported, whether allegations of torture were the subject of an independent investigation, whether confessions obtained under torture were admissible in the courts, and whether police or prison personnel had been prosecuted for such violations of human rights. In addition, the members of the Committee asked what regulations were in force in places of detention, what organ supervised places of detention, in what circumstances detainees could be subjected to rigorous imprisonment, what the most severe punishments imposed in places of detention in accordance with the law were and what rules governed visits by relatives and lawyers of detainees.

^{8/} United Nations, Juridical Yearbook 1969 (United Nations publication, Sales No. E.71.V.4), p. 140.

232. In connection with article 8 of the Covenant, it was recalled that the Congolese practice of forced labour, known as “compulsory labour in the social interest”, had prompted ILO to express its concern in 1985 and information was requested on the current situation in that respect. It was also noted that the report of the Congo did not indicate what law prohibited slavery and trafficking in slaves in that country, in the absence of an explicit provision of the Constitution.

233. With regard to article 9 of the Covenant, members inquired whether persons detained without trial, in particular for their political opinions, had remedies similar to habeas corpus or amparo, whether the courts could rule on cases of unlawful detention, and in what circumstances the maximum legal time-limit for custody could be doubled and the time-limit for detention extended.

234. In connection with article 11 of the Covenant, it was recalled that the Congolese Government had expressed a reservation on that article; members asked whether the Congolese authorities had considered amending the existing legislation and withdrawing that reservation.

235. In relation to article 13 of the Covenant, members of the Committee noted that an alien could only be expelled from the country following a judicial decision, with the exception of expulsions ordered by the political authorities involving various considerations relating to national sovereignty; they asked what law applied in that case in the Congo and in which cases expulsion was ordered by the political authorities. They also asked whether the remedy available to aliens in the Congo against an expulsion order had a suspensive effect and what the exact significance of expulsion as an accessory penalty was.

236. In connection with article 14 of the Covenant, the members of the Committee referred, inter alia, to the observations made by the Congo regarding the Committee’s general comments on the provisions of that article (CCPR/C/40). They inquired what legal provisions existed in the Congo to ensure the independence and impartiality of judicial bodies and lawyers, whether that independence manifested itself only at the trial stage or whether it also characterized the stages prior to judicial proceedings, by whom and for what reasons judges could be dismissed or transferred, whether magistrates from the Government Attorney’s Office received only instructions concerning the case before them or more general guidelines, and in what circumstances special courts could be instituted. They also asked whether special courts had already been set up and in what circumstances, what procedure was followed for the appointment of judges to those courts, whether the special courts followed a particular procedure or whether they applied the Code of Penal Procedure, and whether their decisions were susceptible of appeal or cassation. In addition, further information and explanations were sought about “non-professional” magistrates and the system whereby the promotion roster for judges ceased to be valid at the end of the year for which it had been drawn up and inclusion on eligibility lists was final. Details were also requested concerning the nature of the revolutionary courts. Members inquired whether the Directorate General for State Security was subject to supervision by the judiciary or other independent institutions, what the procedure was for exercising the right to lodge a complaint against state organs, as provided for in article 28 of the Congolese Constitution, and whether a party in a civil or criminal trial was allowed to express himself in a language other than French.

237. In connection with article 17 of the Covenant, details were requested on the means of legal protection existing in the Congo against intrusion upon privacy and on remedies for victims of

human rights violations of that type.

238. On the question of freedom of religion, as embodied in article 18 of the Covenant, members of the Committee requested further information on the meaning of article 18 of the Congolese Constitution providing that religion might not be used “for political ends”, on possible cases in which that provision had been implemented and on the existence at least of a law defining the acts in question. They also asked what religions existed in the Congo, whether there were any statistics on those religions, how they were organized and whether the churches were subsidized by the State, whether there were religious minorities in the Congo and, if so, what their legal status was.

239. Several questions were asked about articles 19, 21 and 22 of the Covenant. Members of the Committee asked, in particular, what the conditions determined by law, as referred to in article 16 of the Congolese Constitution were for exercising the freedoms of expression and association, what restrictions were imposed on the formation and organization of political parties and trade unions, whether there were limitations on freedom of expression in the Congo and, in particular, on the dissemination of information by the national and foreign press and by other media, whether there were official censorship organs and, if so, what their powers were, whether they practised preventive or repressive censorship, in particular of national and foreign literature, how many daily newspapers and radio and television stations existed in the Congo and to whom they belonged or by whom they were controlled, and whether censorship decisions could be challenged in the courts. Some members of the Committee also asked about the compatibility of the establishment of a single-party political system in the Congo with the provisions of article 19, paragraph 1, of the Covenant and of the creation of a trade-union monopoly with the provisions of article 22 of the Covenant, about the role of the masses as referred to in article 3 of the Congolese Constitution and about the way in which the representatives of the people were responsible to the organs of the single party, in accordance with article 5 of the Constitution. They also requested clarification concerning article 29 of the Constitution, in accordance with which Congolese citizens could not exercise rights conferred on them by the Constitution to amend the constitutional order of the People’s Republic of the Congo “for anti-democratic purposes”.

240. In connection with article 23 of the Covenant, members asked whether the Congolese Government felt that any traditional attitudes that might continue to exist in the Congo created difficulties concerning the equality of the spouses with regard to marriage, during marriage and at the time of its dissolution.

241. In connection with article 25 of the Covenant, members inquired how candidates were chosen for elections to the Congolese People’s National Assembly.

242. With regard to article 27 of the Covenant, members of the Committee asked about the composition of the Congolese population by ethnic group, by language and by religious belief.

243. Replying to the questions asked by the members of the Committee, the representative of the State party outlined the efforts and objectives of the Congolese public authorities in the area of social policy and pointed out that the amendments to the 1979 Constitution had related only to the powers of the President of the Republic as Head of Government and to the establishment of a Constitutional Council having powers that had until then been conferred on the Supreme Court.

244. Referring to article 2 of the Covenant he said that the Congo respected the principle that treaties had priority over the law and that the force of the Covenant outweighed that of domestic law. However, it had not yet happened that a citizen had invoked a provision of the Covenant in a Congolese court. The Covenant was publicized in universities, schools and cultural institutions, and radio and television carried programmes describing various concepts of law and public freedoms in French and reported court proceedings in the two national languages. In the courts, “people’s legal information centres”, composed of judges, lawyers and clerks of the court, provided all necessary information to Congolese citizens or aliens. The information was given in French and in the two national languages. The term “citizen” had been used in the Constitution because that instrument had been drafted primarily for the benefit of the Congolese, but it did not imply discrimination against aliens in judicial matters.

245. On the question of the principle of equality of men and women as set forth in article 3 of the Covenant, he stated that in his country several women occupied senior positions in political life, in public administration, in the army and in the professions, and that the Family Code recognized the joint authority of both parents over children.

246. Referring to article 4 of the Covenant, he said that, in the event of the proclamation of a state of emergency or a state of siege, the powers of the President of the Republic could be conferred in accordance with the Constitution only in exceptional circumstances, but that constitutional provision had never been implemented.

247. With regard to article 6 of the Covenant, he explained that, under the Congolese Penal Code, the death penalty could be pronounced only in cases of assassination, poisoning, patricide, murder - when it had preceded or accompanied another crime - and conspiracy, as practised, for example, by the secret society known as “Andzimba”, which pursued criminal purposes. During the past five years, five death sentences had been pronounced in the Congo, but none had been carried out. He also gave explanations on cases in which a person sentenced to death by the Criminal Court could bring his case before the Supreme Court; if the Supreme Court overturned the decision of the Criminal Court, the former had the right to reach a final judgment. Minors under the age of 18 were tried by the juvenile courts, in accordance with the Code of Penal Procedure; minors were answerable for criminal matters, but the father was answerable for civil matters.

248. In connection with article 8 of the Covenant, he explained that the concept of forced labour existed in the Congo only in name, being used in the Penal Code, which was in the process of being revised; in practice, only minor tasks were involved.

249. With regard to article 9 of the Covenant, he referred to the question of custody, which was governed by articles 46 ff. of the Code of Penal Procedure. In urban districts with a court of first instance, where there existed serious and concordant evidence against a person such as to justify his being charged, the police were required to bring him before the Public Prosecutor after not more than 72 hours in custody. That time-limit could be extended by a further 48 hours through written authorization of the Public Prosecutor or the examining magistrate. In places containing divisions of courts of first instance and courts of minor jurisdiction, extension of the time-limit on custody was granted in the light of each case by the divisional judge or the judge of minor jurisdiction. The above-mentioned time-limits were doubled outside urban districts containing a court of first

instance, a court of minor jurisdiction or a divisional court. Provisional detention or detention pending trial was governed by articles 111 ff. of the Code of Penal Procedure and was imposed without distinction between Congolese and aliens. Any material error involving the time spent by an individual in provisional detention was susceptible of redress in the sentence. The detainee could be freely visited by his lawyers and relatives and could also receive authorization, issued by the competent judge, to travel to his home.

250. In connection with article 13 of the Covenant, the representative of the Congo said that aliens could be expelled by administrative or judicial order. If an alien was sentenced to a custodial penalty, the court was required to order the principal penalty to be accompanied by the accessory penalty of expulsion from the national territory, which was executed even if the person concerned appealed against the court's decision.

251. Referring to article 14 of the Covenant, he outlined the judicial system of his country as it had been determined by Act No. 53/83 of 21 April 1983. He explained, *inter alia*, that non-professional magistrates were citizens from all walks of life and all occupations who sat, deliberated and passed judgement alongside professional judges in all courts, with the exception of military courts, with the aim of democratizing justice. Non-professional magistrates in the Supreme Court were appointed by the People's National Assembly. Judges were appointed by decree of the President of the Republic, but enjoyed very great independence. They were required to observe the law throughout the judicial proceedings and not only at the time of passing judgement. Lawyers, also, enjoyed complete independence and any person could freely choose his defence counsel or secure a court-appointed counsel. The language used during trials was French or the national language of the defendant if that was the only language he knew. Interpreters were available for aliens. All the principles relating to the rights of the defence were guaranteed in emergency courts and decisions handed down by those courts could be the subject of an appeal for pardon to the President of the Republic. The administrative tribunals ruled on appeals against State organs, in accordance with article 28 of the Congolese Constitution.

252. In connection with article 18 of the Covenant, he explained that the constitutional provision forbidding the use of religion for political ends had been prompted by the existence in the Congo of a religious movement that had originated in colonial times and had consistently opposed a number of political or administrative acts by the central authorities. He further informed the Committee that the establishment of cults in the Congo was governed by Act No. 2180 of 10 October 1980. Seven religious movements had been authorized and there were also more than 50 religious sects in the Congo.

253. Referring to articles 19 and 22 of the Covenant, he listed the titles of the national newspapers and foreign publications available in the Congo and said that Congolese radio and television were making a considerable effort to give the public information in French and in the two national languages. For the purposes of creating an association in his country, the statutes of the association must be deposited with the Ministry of the Interior; the association could not be a political party since that would be incompatible with the single-party principle.

254. The members of the Committee thanked the representative of the Congo for his replies to several of their questions. They nevertheless observed that more information was necessary in order

to understand more clearly the mechanism for the implementation of the Covenant in the Congo, in particular on the following subjects: the concept of citizenship, the absolute prohibition of torture, the system of appeal on the legality of an arrest or detention, freedom of expression and censorship, and the status of religious minorities.

255. In conclusion, the Chairman said that a constructive dialogue had been started between the Committee and the Congolese Government, in whose second periodic report the Committee hoped to receive further information on those questions on which clarification had been sought and observations regarding the general comments made by the Committee on several provisions of the Covenant.

CCPR A/55/40 (2000)

260. The Committee considered the second periodic report of the Republic of the Congo (CCPR/C/63/Add.5) at its 1813th and 1814th meetings (CCPR/C/SR.1813 and 1814), held on 13 and 14 March 2000, and adopted the following concluding observations at its 1823th and 1824th meetings, held on 21 and 22 March 2000.

1. Introduction

261. The Committee welcomed with interest the submission of the second periodic report of the Republic of the Congo and the supplementary written information provided on the period since the submission of that report. It also noted the delegation's commitment to submit additional information on, inter alia, the implementation of the Covenant by the Congolese courts.

262. The Committee expresses its satisfaction at the efforts made by the delegation to provide answers to the questions asked. It regrets, however, that the report was submitted six years late and more as a matter of form, in that it is limited to a description of legal measures and does not refer to any implementation in practice. The Committee regrets that the precise information which it had requested was not fully provided.

263. The Committee notes that the delegation itself acknowledged that serious human rights violations occurred during the civil wars that have raged in the Congo since 1993/94, but that peace and reconciliation are now fundamental priorities.

264. The Committee notes the statements on creating conditions conducive to respect for human rights and the functioning of Congolese institutions according to the rule of law. It notes that a constitutional referendum is scheduled for 2000 and presidential elections for 2001.

265. The Committee takes note of the information provided by the delegation on the establishment of a national human rights commission by the end of 2000 and on the organization of a human rights education and awareness campaign.

2. Main positive aspects

266. The Committee expresses its satisfaction at the return home of more than half of the displaced population and hopes that this process, having begun, will be completed as soon as possible. It also welcomes the return of refugees, and the return to their villages of persons who had taken refuge in the forests.

3. Principal subjects of concern and recommendations

267. The Committee is gravely concerned at the information provided on summary and extrajudicial executions, disappearances and arbitrary arrests and detentions carried out in the past seven years not only by the armed forces but also by the militias and other paramilitary groups, as well as by foreign soldiers, in violation of articles 6, 7 and 9 of the Covenant.

268. The State party should conduct all appropriate inquiries and investigations into these crimes and take the necessary measures to bring the perpetrators to justice and effectively protect the right to life and to security of person.

269. The Committee regrets that the precise information which it had requested on the status of women was not fully provided.

270. The State party should take the necessary steps to increase women's participation, without discrimination, in political and social life, in accordance with article 3 of the Covenant. It should provide fuller information, including statistics, on the status of women in its next report.

271. The Committee is also gravely concerned at the rape of women and the perpetration of other forms of violence against them by armed men, and is disturbed at the extent and persistence of these crimes, in violation of the obligations imposed under articles 3, 7 and 9 of the Covenant.

272. The State party should give women the necessary protection and assistance, ensure the reintegration of rape victims, and do everything possible to identify and prosecute the perpetrators of these crimes.

273. The Committee is concerned at the persistence of polygamy, in violation of articles 3 and 26 of the Covenant.

274. The State party should take the necessary steps to abolish polygamy and to implement educational measures to prevent it.

275. The Committee observes that the political desire for an amnesty for the crimes committed during the periods of civil war may also lead to a form of impunity that would be incompatible with the Covenant. It considers that the texts which grant amnesty to persons who have committed serious crimes make it impossible to ensure respect for the obligations undertaken by the Republic of the Congo under the Covenant, especially under article 2, paragraph 3, which requires that any person whose rights or freedoms recognized by the Covenant are violated shall have an effective remedy. The Committee reiterates the view, expressed in its General Comment 20, that amnesty laws are generally incompatible with the duty of States parties to investigate such acts, to guarantee freedom for such acts within their jurisdiction and to ensure that they do not occur in the future.

276. The State party should ensure that these most serious human rights violations are investigated, that those responsible are brought to justice and that adequate compensation is provided to the victims or their families.

277. The Committee is concerned at the use of torture and cruel, inhuman or degrading treatment and at the failure to criminalize torture as such in internal law in such a way that it is no longer possible to treat cases of torture as simple cases of voluntary infliction of blows and wounds.

278. The State party should take effective measures, in accordance with articles 7 and 10 of the Covenant, to combat torture, to criminalize torture and other cruel, inhuman or degrading treatment or punishment in internal law, to punish the perpetrators of such crimes and, in future, to avoid

treating cases of torture as simple cases of voluntary infliction of blows and wounds.

279. The Committee expresses its concern at the attacks on the independence of the judiciary, in violation of article 14, paragraph 1, of the Covenant. It draws attention to the fact that such independence is limited owing to the lack of any independent mechanism responsible for the recruitment and discipline of judges, and to the many pressures and influences, including those of the executive branch, to which judges are subjected.

280. The State party should take the appropriate steps to ensure the independence of the judiciary, in particular by amending the rules concerning the composition and operation of the Supreme Council of Justice and its effective establishment. The Committee considers that particular attention should be given to the training of judges and to the system governing their recruitment and discipline, in order to free them from political, financial and other pressures, ensure their security of tenure and enable them to render justice promptly and impartially. It invites the State party to adopt effective measures to that end and to take the appropriate steps to ensure that more judges are given adequate training.

281. The Committee notes the precarious conditions of prisoners who are not being held in the central prison of Brazzaville, which are incompatible with article 10 of the Covenant.

282. The State party should guarantee minimum conditions for all prisoners and should provide them, *inter alia*, with the necessary medical care.

283. The Committee regrets that the Republic of the Congo has maintained its reservation to article 11 of the Covenant.

284. It calls on the State party to withdraw that reservation, bring articles 386 to 393 of the Code of Civil, Commercial, Administrative and Financial Procedure into line with the Covenant, and make sure that no one is imprisoned for debt.

285. The Committee is concerned at the violations of secrecy of correspondence in the Republic of the Congo and at the repercussions of such violations.

286. The Committee reminds the State party of its obligations in regard to the secrecy of correspondence under article 17 of the Covenant and requests it to draft rules and procedures to guarantee the secrecy of correspondence and to punish violations of such secrecy.

287. The Committee is deeply concerned at the tendency of political groups and associations to resort to violent means of expression and to set up paramilitary structures that encourage ethnic hatred and incite discrimination and hostility.

288. The Committee calls on the State party, in accordance with articles 20 and 22 of the Covenant, to take effective steps to combat hatred, violence and discrimination and to impose on all actors and political forces rules of conduct and behaviour that are compatible with human rights, democracy and the rule of law.

289. The Committee is concerned at the increase in the number of children at risk owing, inter alia, to civil wars. It is deeply concerned in particular at the enlistment of children in armed groups and militias.

290. The State party should redouble its efforts to take care of children at risk, assist them, ensure them adequate development, and adopt measures to afford them the protection required by their status as minors, in accordance with article 24 of the Covenant.

291. The Committee notes with concern that the Congolese people have been unable, owing to the postponement of general elections, to exercise their right to self-determination in accordance with article 1 of the Covenant and that Congolese citizens have been deprived of the opportunity to take part in the conduct of public affairs in accordance with article 25 of the Covenant.

292. The Committee calls on the State party to organize general elections as soon as possible in order to enable its citizens to exercise their rights under articles 1 and 25 of the Covenant and thus to participate in the process of reconstruction of the country.

293. The Committee regrets the lack of specific information on the different ethnic groups in the Congo, particularly the Pygmies, and on measures taken to guarantee, simultaneously, the full and equal enjoyment of their civil and political rights and respect for their rights under article 27 to enjoy their own cultural traditions.

294. More detailed information on minority groups and on the measures taken to protect the rights of persons belonging to minority groups should be provided in the State party's third periodic report.

4. Dissemination of information about the Covenant (art. 2)

295. In submitting its third periodic report, which is expected by 31 March 2002, the State party must take into account the Committee's revised guidelines. It must ensure that its third periodic report and the present observations are broadly disseminated. In that report, it must, inter alia, provide information on the present concluding observations and on the follow-up actions taken in that regard.