

s **AFRICAN UNION**

**African Committee of Experts on the
Rights and Welfare of the Child**



UNION AFRICAINE

**Comité Africain d'Experts sur les Droits et
le Bien-être de l'Enfant**

الاتحاد الأفريقي

"An Africa Fit for **UNIÃO AFRICANA**
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**CONCLUDING OBSERVATIONS AND RECOMMENDATIONS BY THE AFRICAN
COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD
(ACERWC) ON THE REPUBLIC OF CONGO REPORT ON THE STATUS OF
IMPLIMENTATION OF THE AFRICAN CAHRTER ON THE RIGHTS AND WELFARE
OF THE CHILD**

I. INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) extends its compliments to the Government of the Republic of Congo and wishes to acknowledge with thanks receipt of the initial report on the status of the implementation of the African Charter on the Rights and Welfare of the Child (the African Children's Charter/ the Charter). The ACERWC, during its 26th Ordinary Session, considered the Republic of Congo's initial report which was submitted in accordance with the State Parties obligation under Article 43 of the African Charter on the Rights and Welfare of the Child.
2. The Committee commends the State Party for its delegation led by Ms. Emilya Rau, Director General of the Ministry of Social Affairs, Humanitarian Actions and Solidarity for the open and constructive dialogue.
3. The Committee notes with appreciation that the State Party ratified the African Charter on the Rights and Welfare of the Child and took various initiatives to implement the rights and duties enshrined in the Charter. However, the Committee regrets that the report was submitted with considerable delay, which prevented the Committee from reviewing the implementation of the Charter by the Republic of Congo for some years after the ratification.

II. PROGRESS IN THE IMPLEMENTATION OF THE CHARTER

4. The Committee commends the State Party among others on the following achievements;
 - a) The ratification of international and regional human rights instruments;
 - b) The enactment of the 2002 Constitution;
 - c) The adoption of various legislations including Act No 4-2010 of June 2014 on child protection;
 - d) The adoption of Act No 10-2012 on the establishment of the Family Plan and children in difficulty;
 - e) The adoption of Act No 009/92 on the status, promotion and protection of persons with disability;
 - f) The adoption of the Strategic Plan (2009-2013) on birth registration; and
 - g) The establishment of two Committees to draft and revise the Family Code and the Penal Code to reform and modernize institutional frameworks and the Commission to review and draft main codes and working tools;

III. AREAS OF CONCERN AND RECOMMENDATIONS

A. General Measures of Implementation

5. The Committee appreciates the enactment of the 2002 Constitution and the adoption of various legislations to protect the rights of children including Act No. 4-2010 of 14 June 2010 on child protection. The Committee also welcomes the establishment of the Commission on the reform and modernization of the institutional framework and the Commission on the review and drafting of work tools or main codes in the Republic of Congo for the revision of various laws including the Family Code and the Penal Code in order to harmonize them with the Constitution and the African Children's Charter. In this regard, the Committee recommends the State Party to fast-track the harmonization process.
6. Commending the State Party for establishing the National Human Rights Commission and the Office of the Ombudsman, the Committee recommends the Government of Congo to continue providing financial and technical support the two institutions and to ensure non- interference in their works. Further recommends establishing a unit on children rights in both institutions.
7. The Committee noted that there is no vigorous child rights coordination and monitoring system. Therefore, the Committee recommends the Government of the Republic of Congo to ensure the establishment of an operational and effective coordination and monitoring mechanisms for the various stakeholders working with and for children. Furthermore, the Committee recommends the State Party to create conducive environment to CSOs and to collaborate with CSOs in the implementation of the African Children's Charter.
8. While the budget increment for Ministry of Social Affairs is commendable, the Committee remains concerned whether this increment is proportional with the growth of population. Therefore, the Committee recommends the Government of the Republic of Congo to increase the budget for social development in proportion to the growth of the population as a means of ensuring equitable provision of services to all children.
9. The Committee calls upon the State Party to put in place a comprehensive data collection and keeping system and to include disaggregated statistical data for all clusters in its next report to be submitted for the Committee.

10. The Committee encourages the State Party to continue commemorating and celebrating the Day of the African Child (DAC) in each region every year with the objective of bringing impact on the life of children. Furthermore, the Committee recommends the Government of the Republic of Congo to regularly submit a report to the Committee on the commemoration of the Day of the African Child.
11. The Committee calls upon the State Party to discourage any custom, tradition, cultural and religious practices that are inconsistent with the African Children's Charter. Moreover, the Committee encourages that State Party to promote positive cultural values and traditions.
12. The Committee further calls upon the State Party to disseminate the African Children's Charter and to create awareness about rights and obligations enshrined in it among children, parents, teachers and community leaders. Furthermore, the Committee calls upon the State Party to widely disseminate for the public its report to the Committee on the implementation of the African Children's Charter.

B. Definition of the child

13. From the State Party report, the Committee noted 'a child refers to every human being below the age of eighteen years and who has not yet reached the age of majority by special provision'. The Committee is concerned that the text might be widely interpreted in contrary to article 2 of the Charter. Therefore, the Committee urges the State Party to harmonize its definition of the child in line with the provisions of the Charter.
14. Furthermore, the Committee is highly concerned that under article 129 of the Family Code, a minor girl can marry provided that parents gave their consent. The Committee urges the State Party to harmonize its family law with article 21 (2) of the Charter which set the minimum age of marriage at the age of 18 years old for both boys and girls.
15. The Committee is concerned that the Ministry of Education is given the discretion to grant a waiver for a child below the age of 16 years old to be employed. The Committee recommends the State Party to ensure that such discretionary power does not violate the international standard for minimum age of employment.
16. The Committee is concerned by the non-existence of minimum age of criminal responsibility. Therefore, the Committee recommends the State Party to set the

international minimum age of criminal responsibility which is at the age of 12 years old.

C. General principles

Non-discrimination

17. The Committee commends the State Party for its various laws such as the Constitution, the Child Protection Act and the Family Code that incorporate the principle of non-discrimination. However, the Committee is concerned that the girl child and children from indigenous groups face discrimination. Therefore, the Committee urges the Government of the republic of Congo to ensure that all children are not discriminated and are enjoying their rights and freedoms irrespective of their parents' or guardians' origin, ethnic group, color, sex, language, religion, political or other opinion, national or social origin, fortune, birth or other status. Moreover, the Committee recommends the State Party to ensure the implementation of the principle in all administrative and judicial measures of the Government and provision of services to children living in rural areas, children with disabilities, children with albinism, indigenous children, children with HIV/AIDS, and children in the streets.

The Best Interest of the Child

18. Appreciating the legislative framework to safeguard the best interest of the child, the Committee recommends the State Party to supervise and monitor the full application of this principle overriding other interests in all administrative and judicial decisions that affect the life of children and particularly in case of issuing maintenance and custody.

The Right to Life, Survival and Development

19. While being aware of the efforts of the Government to ensure respect for the right to life, survival and development of children, the Committee is highly concerned about the high rate of maternal and infant mortality and threat to the right to life of children with albinism. Therefore, the Committee recommends the State Party to adopt a child health policy as a policy intervention to reduce infant and under-five mortality. In addition, the Committee recommends the State Party to adopt and implement programmes for appropriate home care and timely treatment of complications for newborns, integrated management of childhood illness for all children under five years old, expanded and strong immunization, infant and young child feeding, and to promoting breast feeding and provision of nutrients.

20. Moreover, the Committee urges the Government of the Republic of Congo to accord a special protection for children with albinism and to come up with a short term plan to enhance health facilities such as by providing affordable sunscreen and other sun

protective gears. In addition, the Committee recommends the Government of the Republic of Congo, in collaboration with CSOs to set a strategy to empower local leaders to collaborate in protecting children with albinism from attacks.

Child Participation

21. Appreciating the establishment of children's parliament, the Committee recommends the State Party to continue encouraging the participation of children in decision and policy making process and to continue its support to the Children's Parliament and to take into consideration the views of the Children's Parliament in making decisions that have impact on children.
22. Further, the Committee recommends the State Party to establish and strengthen child friendly courts and procedures for child victims and witnesses; ensure that children are heard in civil judicial proceedings affecting them, including divorce, separation, and adoption; ensure that children have the opportunity to use broadcast media to communicate their own views; and set in place confidential mechanisms for children who are victims of abuse and violence to complain and to seek redress.

D. Civil Rights and Freedoms

Name, Nationality, Identity and registration at birth

23. The Committee commends the adoption of the Strategic Plan on Birth Registration (2009-2013) and facilitating registration in health care centers. However, the Committee notes that the period of the Plan has lapsed and that there is a high rate of birth registration disparity between urban and rural areas. Therefore, the Committee recommends the State Party take measures to narrow the gaps by establishing mobile and regular civil registration systems in rural and remote areas. Furthermore, the Committee recommends the State Party to abolish barriers to birth registration including fees.
24. To this effect, the Committee highly encourages the State Party to use as a guideline the Committee's General Comment on Article 6 of the African Children's Charter.

Freedom of Expression, Conscience, Thought and Religion

25. Commending the legislative framework for freedom of expression, freedom of conscience, thought and religion, the Committee recommends the State Party to strengthen its efforts to ensure that such freedoms are not violated by parents, teachers, community leaders and government officials.

Protection from abuse and torture

26. The Committee commends the adoption of law No. 4-2010 of June 2010 which bans corporeal punishment in all settings. However, the Committee is concerned that corporeal punishment is practiced both in homes and schools. Therefore, the Committee recommends the State Party to take measures against those who practice the act and to promote positive discipline.

27. The Committee recommends the State Party to set in place a child friendly reporting mechanism for victims of abuse and torture, to increase the work pool of psychologists and social workers in the criminal justice system, to improve the conviction rate of offenders, to establish victim rehabilitation and reintegration programs, and to continue promoting community outreach efforts with the view of raising awareness.

E. Family Environment

Parental Guidance and Responsibilities

28. The Committee noted that the Family Code identifies the father as the head of the family creating inequality between a mother and father in raising children. Therefore, the Committee recommends the State Party to amend the provisions of the Family Code in line with article 18 (2) of the Charter.

Family reunification and children deprived of the family environment

29. The Committee appreciates the State Party for the legislative framework that is in place to protect children deprived of family environment. However, the Committee is concerned about the situation of children living in alternative care institutions. Therefore, the Committee recommends the State Party to set in place a mechanism for regular and frequent supervision and monitoring of the institutions. Furthermore, the Committee recommends the State Party to promote alternative family care instead of institutional care.

Adoption

30. The Committee recommends the State Party to consult the Guideline for Action on Inter-country Adoption in Africa in dealing with domestic and international adoption and to ratify the Hague Convention on Protection Of Children and Co-Operation in Respect of Inter-country Adoption.

F. Basic Health and Welfare

Children with Disabilities

31. Commending the adoption of the National Action Plan for Persons with Disability and other efforts of the Government of Congo to cater for the needs of persons with disability, the Committee recommends the State Party to continue its efforts to address the need of children with disability through proper implementation of its policies and particularly by providing orthopedic services and where services are available to ensure that the services are more accessible, and flexible. Moreover, the Committee encourages the State Party to review existing programs essential for children with disability and to improve their coverage, effectiveness and efficiency.

Health and Health Services

32. While commending the efforts of the Government of the Republic of Congo in reducing child mortality by taking various measures such as improving antenatal and postnatal care, the Committee is concerned that the rate of infant and maternal mortality is still high mainly caused by preventable diseases such as diarrhea and malaria. The Committee is also concerned by the high rate of acute malnutrition, child retardation and underweight due to malnutrition. Therefore, Committee recommends the State Party to strengthen its efforts and work towards the reduction of child and maternal mortality to zero rate by providing adequate response to underlying determinants of children's health. The Committee also recommends the State Party to continue promoting exclusive breast feeding for the first six months and to strictly regulate the promotion of supplementary foods; to provide complementary foods and feeding programs, and to strengthen its collaborate with CSOs and the international community for financial and technical support.

33. The Committee further recommends the State Party to realize children's right to health through equitable distribution of clean drinking water in all regions.

34. Moreover, the Committee recommends the State Party to ensure that provision of public health services particularly the provision of primary health care services is evenly distributed in urban and rural areas. In addition, the Committee recommends the State Party to take action to increase the number of health workers and professionals and to ensure their deployment in all regions.

35. The Committee is concerned of the high rate of pregnancy among adolescent girls. Therefore, the Committee recommends the State Party to promote reproductive health education and services in schools.

36. The Committee recommends the State Party to put in place primary care mechanisms to facilitate for early detection and treatment of children's psychosocial, emotional and mental problems.

37. Appreciating the measures taken by the State Party to combat the transition of HIV/AIDS, the Committee notes that HIV still poses a challenge on the realization of children's rights. Therefore, the Committee recommends the State Party to continue taking all the necessary prevention, care, treatment and support actions accompanied by effective awareness creation campaigns.
38. The Committee recommends the State Party to ensure the meaningful participation of CSOs and the community in the planning and management of basic health care services for children.

G. Education, leisure and cultural activities

39. While appreciating the various measures of the State Party which among others include the production of the 2007 Situation Report on the National Education System (RESEN), development of the Paper Strategy on the Education Sector (DSSE) and increase in budget for the education sector to ensure the realization of children's rights to education, the Committee recommends the State Party to ensure the provision of free and compulsory primary education for all children within its territory including refugee children. Furthermore, the Committee recommends the State Party to ensure that quality education is given in both private and public schools by setting in place regular monitoring and evaluation mechanisms.
40. The Committee commends the State Party for its efforts of promoting early childhood education. However, the Committee noted from the State Party Report that early childhood education remains to be predominant in urban areas and is mainly run by the private sector. Therefore, the Committee recommends the State Party to establish early childhood education centers for children in rural and remote areas. Furthermore, the Committee recommends the State Party to regularly monitor and supervise those centers owned by private entities.
41. The Committee recommends the State Party to devise a policy on inclusive education for children with disability and to ensure that the manner and form of inclusive education is dictated by the individual educational needs of every child. Moreover, the Committee urges the Republic of the Congo to cater for the children's' specific needs by re-evaluating its education curriculum to address challenges faced by children with disability, by incorporating special needs education in teachers and other personnel involved in the education system trainings, and by providing and improving basic infrastructures suitable to children with disability.

42. In addition, the Committee recommends the State Party to ensure that children of indigenous groups have access to education and that they are not discriminated on the basis of their origin.
43. The Committee recommends the State Party to take practical measures such as establishing recreational centers and playing grounds in schools and in dwelling areas to ensure the harmonious mental, physical and emotional development of children to the fullest potential of their ability and capacity.

H. Special protection measures

Refugee, Migrant and Displaced Children

44. The Committee applauds the State Party for hosting a large number of refugees from neighboring countries affected by conflicts. The Committee also commends the State Party for the draft Bill on refugees. However, the Committee is concerned that the adoption of the Bill has taken time and as a result refugee children are facing multi-faceted challenges. The Committee noted from the State Party report that refugee children face challenges to access basic services in general and particularly to access education. Therefore, the Committee recommends the State Party to expedite the adoption of the Bill. In addition, the Committee recommends the Government of the Republic of Congo to continue its efforts and to collaborate with UN agencies, CSOs and the international community to ensure the provision of basic services for all refugee and asylum seeking children without discrimination and to provide them with durable solutions.
45. The Committee is highly concerned of cases of abuse and violence against girls in refugee camps. Henceforth, the Committee recommends the State Party to take effective preventive measure, to prosecute perpetrators, to provide psychosocial support for the victims and to put in place mechanisms to redress the victims.
46. The Committee is concerned about the situation of children who are displaced and orphaned as the result of the explosion of ammunition at the Mpila Camp in 2012. Therefore, the Committee recommends the State Party to take swift measure to provide alternative family environment for the children and to ensure their access to basic services. Moreover, the Committee recommends the Government of the Republic of Congo to ratify the African Union Convention on Internally Displaced Persons in Africa.

Children in Conflict with the Law

47. The Committee welcomes article 73-77 of the Child Protection Act which provides for among others detention of juvenile offenders as a last resort and prohibit death penalty on juvenile offenders. However, the Committee is concerned about the absence of minimum age of criminal responsibility, detention of juveniles with adults, and the limited number of specialized courts. Therefore, the Committee recommends the State Party to set by legislation the minimum age of criminal responsibility at the age of 12 years old which is the international standard. Furthermore, the Committee recommends the Government of the Republic of Congo to strengthen the existing child friendly court through training of its officials on child rights issues and recruiting psychologists and social workers and to establish child friendly courts across the country. To this effect, the Committee recommends the State Party to refer to the Guidelines on Action for Children in the Justice System in Africa.
48. The Committee noted that the Prison Policy of the Republic of Congo does not provide for education of juvenile offenders. Therefore, the Committee recommends the State Party to take measures to ensure the mental and psychological development of imprisoned children through the provision of formal and informal education.

Children of Imprisoned Mothers

49. The Committee commends the efforts of the State Party to respect the rights of children of incarcerated mothers and recommends the State party to make reference and use as a guideline the Committee's General Comment on article 30 of the African Children's Charter in its future actions. The Committee also recommends the Republic of the Congo to extend special treatment for mothers beginning from arrest throughout conviction, sentencing, imprisonment and reintegration phase of the criminal justice process.

Children in Armed Conflict

50. Commending for measures it has taken to reintegrate ex-child soldiers with the society, the Committee recommends the State Party to strengthen its efforts and provide psychosocial and other necessary assistance for children affected by the conflict and particularly those fleeing from the Democratic Republic of Congo and the Central African Republic.

Economic Exploitation and Child Labor

51. The Committee recommends the State Party to prevent and combat child labor in action and to ensure that the minimum age of child labor and hazardous works is respected; to strengthen its inspection mechanisms; prosecute individuals and companies that engage children in worst forms of child labor; introduce corporate social responsibility for the private sector; and review existing programs aimed at addressing child labor and economic exploitation of children.

52. Moreover, the Committee recommends the State Party to ensure that working children enrolls in school and to encourage businesses that recruit children to provide for services such as education as a means of discharging its social responsibility.

Sexual Exploitation

53. The Committee noted with concern that the number of violence cases against women and children increased over the past decade. Henceforth, the Committee recommends the Government of the Republic of Congo to take all necessary actions by establishing accessible and friendly reporting mechanisms, and to put in place a system for rehabilitation and reintegration of victims.

Sale, Trafficking and Abduction

54. The Committee appreciates the State Party for the measures it has taken to implement the Palermo Protocol with neighboring countries, for the Bill on Human Trafficking, and for designing an Action Plan against Human Trafficking (2012-2015). However, the Committee is concerned about the persistency of human trafficking in central Africa due to various factors. Therefore, the Committee recommends the State Party to strengthen its anti-trafficking efforts. To this end, the Committee recommends the State Party to put in place mechanisms to inspect formal and informal tourist destinations and hotels; to make public disclosure of information about perpetrators and to hold them accountable; and to sensitize families, communities, and the private sector to protect children from any form of sale, trafficking and abduction.

Harmful Traditional Practices

55. The Committee recommends the State Party to launch the African Union Campaign to End Child Marriage and to end child marriage and other harmful traditional practices that affect the wellbeing of children by partnering with traditional and religious leaders, parents, and schools.

Children from Minority Groups

56. The Committee is highly concerned about the situation of children from indigenous groups such as the pygmies who face exclusion and as a result have a high rate of school nonattendance and drop outs. Therefore, the Committee urges the State Party to address the problem and to ensure that children from indigenous groups are not discriminated on the basis of their origin.

I. Responsibilities of the Child

57. The Committee welcomes the inclusion of the responsibility of the child under 319 of the Family Code and recommends the State Party to closely work with parents, schools and community leaders to create suitable conditions for children to discharge their responsibility. The Committee also recommends the State Party to ensure that children are given responsibilities taking into account their age, maturity and ability. Moreover, the Committee recommends the State Party to ensure that the responsibilities of the child is interpreted and applied in compatibility with the contents of other provisions of the African Children's Charter and by any means derogates the rights enshrined therein.

J. Conclusion

58. The African Committee of Experts on the Rights and Welfare of the Child appreciates with satisfaction the efforts by the Government of the Republic of Congo to promote and respect the rights of children and aspires to the implementation of these recommendations. The Committee would like to indicate that it will undertake a follow up Mission to ascertain the implementation of these recommendations in the foreseeable future. The Committee would also like to invite the State Party to submit its combined second, third and fourth periodic reports by October 2020 and to include in it information on the implementation of the present Concluding Observations and Recommendations. The African Committee of Experts on the Rights and Welfare of the Child takes this opportunity to renew to the Government of the Republic of Congo, the assurances of its highest consideration.