Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Democratic Republic of Congo - 6th Session - 2009
3rd December, 9am to 12pm

National Report
20. For a number of years now, Congolese courts have been basing their decisions on international human rights treaties. For example, in refusing to conduct criminal proceedings against a child aged 17, the Magistrate's Court of Kinshasa/Assossa cited articles 2 and 17 of the African Charter on the Rights and Welfare of the Child, which establishes 18 years as the minimum age of criminal liability. The minor in question was then returned to the Prosecutor’s Office for referral to the juvenile court (cf. RP 4215/IV of 3 April 2006).

49. The Constitution provides that everyone has the right to receive an education through the national school system, which is composed of public and accredited private schools. Article 43, paragraph 5, of the Constitution states that primary schooling is compulsory and is provided free of charge in public schools (see also article 38 of the Child Protection Code).

50. Although this provision is not yet fully in effect, the Congolese Government is working to increase the budget allocation for education, which has risen from 5 per cent of the total budget in 2005 to 7.1 per cent in 2006, 7.8 per cent in 2007 and 8.2 per cent in 2008.

51. The public education system is faced with a number of challenges, however. Problems in this area include insufficient capacity, dilapidated infrastructure, shortages of teaching materials, a lack of motivation among teaching staff and a misalignment between the type of education that is being imparted, on the one hand, and students’ and society’s needs, on the other.

52. Considerable effort has gone into organizing State exams and publishing students’ scores promptly so that the school year can start on time and so that successful candidates have time to sign up with universities and other institutions of higher learning. With assistance from UNICEF and the United Kingdom, the country has achieved a significant increase in the basic education enrolment rate, especially for girls.

53. The country is now building more classrooms in primary, secondary and vocational schools in order to boost the school system’s capacity. State funds and grants from bilateral and multilateral partners are being used for this purpose.

54. Efforts are also being made to upgrade staff and make organizational improvements, in accordance with the applicable laws and regulations, in the universities and other institutions of higher learning.

72. Under the Child Protection Code (Act No. 09/01) of 10 January 2009, it is an offence to refrain from aiding a child in danger (arts. 191 and 193) or to refrain from assisting a woman who is giving birth (art. 146).

73. Legislation ratifying the Convention on the Rights of Persons with Disabilities is currently before Parliament. The provision of care for persons living with disabilities is ensured by the Ministry of Social Affairs and Humanitarian Action. The office within the Ministry that is responsible for coordinating rehabilitation services oversees the National Vocational Training Centre for Persons with Disabilities, the National Service for Rehabilitation and Retraining, and the National Institute for the Blind. The Government is working to systematize support services for families with disabled children, which are as yet quite limited.

On 21 January 2009, the Government presented its second periodic report on implementation of the Convention on the Rights of the Child to the Committee on the Rights of the Child at its fiftieth session and responded to the Committee’s questions on the subject.

The Government accords special priority to the promotion of gender equity and the equitable representation of women in the country’s institutions. Children and families should also be protected. The inclusion of the word “family” in the name of this ministry reflects the practical application of article 40, paragraph 2, of the Constitution, which stipulates that the family is to be placed under the protection of the State.

Under the aegis of the Ministry, the National Children’s Council and National Women’s Council were created and are now in operation under the terms of Orders Nos. 11/CA/V/M/ AFF/SOF/98 of 13 May 1998 and CAB/V/M/ AFF/ SOF/015/98 of 10 July 1998.

These two councils also have offices at the provincial and even at the district levels.

The functions and authorities assigned to the Ministry of Gender Affairs, the Family and Children include:

- Consideration and implementation of all such measures as may be necessary to put an end to discrimination and violence against women with a view to ensuring women’s equality with men before the law
- Reinforcement of the legal and institutional structure for ensuring women’s participation in the nation’s development and a meaningful level of representation in national, provincial and local institutions

Compilation of UN information

23. Particular concern was expressed in 2009 by the Committee on the Rights of the Child (CRC) and the Security Council Working Group on Children and Armed Conflict about the very high number of child soldiers. In November 2008, the Secretary-General reported that more than 31,000 children had been released since 2004, but was deeply concerned about the re-recruitment of children, due in part to insufficient reintegration support from earlier disarmament, demobilization and reintegration processes. New outbreaks of hostilities resulted in high trends in child recruitment. In March 2009, the seven special procedures reported on the recent explosion of child recruitment by non-State armed groups. Children were also still present in FARDC despite orders to the contrary. CRC was disturbed that children had been tried in military courts for crimes allegedly committed while they were enrolled. Special procedures recommended that all parties to the conflict prepare, in the framework of Security Council resolution 1612 (2005), action plans to identify, release and ensure reintegration of all child soldiers, to prevent further recruitment and to address all other grave violations against children. In April 2009, the Special Representative of the Secretary-General for children and armed conflict emphasized that the reintegration of children remained a critical priority.

26. In 2009, CRC was concerned that violence against children accused of witchcraft was increasing. The recommendation of the independent expert that the Government punish such conduct was echoed. CRC also recommended that the State explicitly prohibit corporal punishment in all settings and adopt a legal framework clearly defining the crime of trafficking for sexual exploitation, economic exploitation or other purposes. CRC was gravely concerned about reports that the military and police regularly harass, threaten, beat or arrest street children.

32. In 2009, CRC recommended ensuring the swift establishment of the juvenile court system envisaged by the Child Protection Code.

43. In 2009, CRC was concerned that child labour persisted and that five-year-old children worked in dangerous conditions in the mining industry, notably in the Katanga region. The ILO Committee requested information concerning measures taken to prohibit hazardous work for children in mines.

46. CRC and CEDAW expressed concern at the high level of poverty in the country as highlighted also by the Office of the United Nations High Commissioner for Refugees (UNHCR). While noting the State’s Poverty Reduction Strategy, CRC remained concerned that access to safe drinking water decreased between 1990 and 2004; that less than half of the population had access to hygienic sanitation facilities; that the majority of the urban population lived in an unhealthy environment and that there was a lack of food security in the country. The Secretary-General stressed that vital health, nutrition and food security indicators were at emergency thresholds and the independent expert that there was no real social security system.

47. CRC recommended that the Poverty Reduction Strategy take into account the root causes of poverty, including the inequitable distribution of available resources. The High Commissioner recommended enhancing the efficiency of, and increasing transparency over, the collection of State resources and prioritize the allocation of these resources to further the realization of human rights.

48. CRC expressed grave concern at the current situation in the health services sector, particularly in rural areas, and the deplorable conditions and lack of human, medical and financial resources in hospitals. It expressed concern, with CEDAW, at the very high rates of infant and maternal mortality, and at deaths caused by preventable diseases or by HIV/AIDS. According to the seven special procedures, the Government should progressively re-establish a functioning and accessible health system, while ensuring minimum standards right away. Other specific recommendations were made.
While noting the constitutional provision for free public primary education, CRC was concerned that schooling costs remained relatively high. Despite governmental efforts, school enrolment rates in primary and secondary schools were low; the educational infrastructure and equipment was poor; only a small percentage of teachers were qualified and salaries were not paid regularly. Similar concern was expressed by the independent expert. CEDAW was concerned about the high rate of illiteracy among women and the high drop-out rate of girls, including for reasons such as pregnancy and early and forced marriage. CRC recommended ensuring access to free primary education without discrimination; continuing efforts to reduce gender disparities in education, as also recommended by CEDAW; and increasing expenditure on the education sector.

Summary of Stakeholder information

4. Amnesty International (AI) stated that the 2006 Constitution contained important human rights commitments but that some enactments were in breach of the Constitution. The review of legislative enactments is an extremely slow process. However, important laws have been adopted, including the Law on the Status of the Political Opposition (2007), two laws on Sexual Violence (2006), a Law on Protection of Rights of People Living with HIV/AIDS (2008) and the Child Protection Code (2009). These laws have not been implemented in a satisfactory manner.

14. HRW referred to estimates of UNICEF that in late March 2009, 8,000 children remained in armed groups and some in FARDC. AI indicated that although FARDC formally ended the recruitment of children in 2004, an unknown number of children were reportedly still serving with them. 35 Serious crimes against child combatants were reported by Joint submission 5, including extreme forms of violence, killings and torture. Approximately 40 percent of child soldiers are female. World Vision (WV) was concerned that armed groups were reluctant to release young girls.

15. Les soumissions conjointes ont rappelé que ces recrutements ont lieu malgré le décret-loi 066/2000 relatif à la démobilisation sociale. 38 AI reported that child protection and community reintegration programmes remained under-resourced and entirely reliant on international and national non-governmental organizations (NGOs) and United Nations agencies. For Joint submission 5, these programmes showed considerable success, noting however that their framework seemed to be limited and that girls were under-represented. 40 Le BICE a fait rapport sur des cas d’enfants pour lesquels les formalités de démobilisation et de réinsertion étaient toujours présentes. 41 WV recommended enhancing the capacity of the governmental body responsible for disarmament, demobilization and reintegration and channelling additional resources towards long-term community-based reintegration support.

22. Selon la soumission conjointe 3, il y a plus de 30 à 40 000 enfants des rues à Kinshasa, le phénomène ayant gagné les autres grandes villes. 61 Le BICE a indiqué que de fréquentes opérations de rafle par la police ont lieu à Kinshasa, les enfants étant souvent envoyés au Centre pénitencier et de rééducation. 62 IIMA/VIDES a fait référence à ces enfants au Katanga. Ces enfants, selon le BICE, sont victimes de violences de la part d’autres enfants et des agents de l’ordre. IIMA/VIDES a souligné les violences et exploitations sexuelles dont sont victimes les filles de la rue. 64 et la soumission conjointe 3 a rappelé que l’éducation primaire n’était ni gratuite ni obligatoire, que la crise du système éducatif touchait les infrastructures et le fonctionnement même du système, et que se posait la question de la formation et du recyclage des enseignements, de leur traitement et de leurs conditions de vie et de travail. Cette situation devrait interpeller l’Etat quant à la mise en place d’un plan d’action ambitieux visant la réalisation de l’enseignement primaire gratuit et obligatoire.

37. According to WV, the new Child Protection Law which outlawed the marriage of children before 18 years is a welcome step, but must be accompanied by awareness-raising measures.

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57. Selon IIMA/VIDES, la pauvreté est une des causes déterminantes de la déscolarisation de nombreux enfants. Les familles doivent payer des frais ponctuels. WV recommended increasing the budget allocation to the education sector.

Final Report

29. Cuba appreciated the major efforts and political will of the Democratic Republic of the Congo to promote and protect human rights and noted positive developments in the institutional field, particularly regarding the protection of women and children rights. It urged the international community, particularly the developed countries, to step up economic cooperation with the Democratic Republic of the Congo.

31. Belgium noted that serious human rights violations continued to be committed in the Democratic Republic of the Congo. It welcomed the 2006 law on sexual violence and the campaign “zero children in forces and armed groups”. It expressed concerns about child rights, particularly the important number of child soldiers and the situation of human rights defenders. Belgium made recommendations.

34. Belarus noted with satisfaction the number of legislative initiatives, particularly the adoption of a law for the protection of child rights and to combat sexual violence. Belarus noted efforts to combat pandemics and ensure access to medical services, welcomed the
willingness of the Democratic Republic of the Congo to combat corruption and made recommendations.

39. Algeria noted that despite the fragile peace process and constraints, the Government had showed determination working with seven thematic Rapporteurs. It welcomed laws on the rights of the child and to combat sexual violence. Algeria made recommendations.

50. Switzerland welcomed the past cooperation with the International Criminal Court and encouraged its continuation. It was alarmed by sexual violence against women and children accused of witchcraft and the use of children in child labour and as soldiers. It criticized the intimidation of journalists and expressed concern at conditions in the prison system. Switzerland made recommendations.

52. Holy See noted the high number of abandoned children and asked about practical initiatives to protect children accused of witchcraft and reintegrate street children. It underlined the difficulties for students whose families did not have sufficient resources and drew attention to the crime of trafficking of children for sexual or economic exploitation. Holy See made recommendations.

53. India highlighted the re-establishment of the autonomous status of the Human Rights Ministry, the adoption of a zero tolerance policy on sexual violence, the law on sexual violence and the Child Protection Code. India hoped that the establishment of a national human rights commission would be expedited and encouraged a continued focus on health and education. India underscored the important role of the international community to assist the Democratic Republic of the Congo.

61. Morocco noted with satisfaction various constitutional, institutional and legislative reforms and welcomed the process of establishing a national institution for human rights. It welcomed efforts of the Government to realize the right to education. Morocco made recommendations.

62. Japan expressed concern at the worsening situation in the eastern Democratic Republic of the Congo and highlighted the important role of a fully equipped police force. It stressed the need to address impunity and hoped that the zero tolerance policy would produce results. It noted continued recruitment of child soldiers even in FARDC. Japan made recommendations.

64. Slovakia expressed deep concern at the human rights situation, noting that about 1,100 rapes were reported each month, often committed by members of armed groups, the army or the police. It welcomed the announcement of a zero tolerance policy. Slovakia expressed concern at child labour and the intimidation and torture of human rights defenders and journalists. Slovakia made recommendations.

67. Niger asked about measures to end the recruitment of child soldiers and the rape of women in conflict areas. It urged the international community and neighbouring countries to continue to support the efforts to ensure effective rule of law. Niger made recommendations.

69. Cameroon noted measures on child trafficking, education, sexual violence against women, child soldiers and corruption. Cameroon encouraged the Democratic Republic of the Congo to intensify measures to protect the rights of children and women, minorities and vulnerable populations and to combat impunity. It appealed to the Council and the international community for increased assistance.

70. Poland commended the adoption of the Constitution with human rights provisions, the Child Protection Code and the law on sexual violence. It recognized many challenges faced by the Democratic Republic of the Congo and expressed concern at widespread sexual violence. Poland made recommendations.

87. Uruguay stressed progress in implementing international child rights instruments. Uruguay referred to difficulties in implementing measures allowing children, particularly in rural areas, to have access to free, universal and compulsory education. It made a recommendation.

Conclusions and Recommendations

6. Ratify human rights instruments, particularly CRPD, OP-CAT and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. (Uganda);

19. Provide human rights education and sensitivity training to all members of civil service, armed forces, prison and judicial staff, focusing specifically on protection of human rights of women, children and other vulnerable groups. (Czech Republic);

29. Consider developing a comprehensive action plan to operationalize the recently adopted Child Code and to address concerns related to the care and protection of children; in this regard, give due consideration to the recently adopted Guidelines for the Alternative Care of Children. (South Africa)

34. Continue its efforts to protect and promote the rights of children to life and to a sufficient standard of living and education; and seek the assistance of relevant United Nations agencies and programmes for the establishment of reception and training centres for delinquent street children of school age. (Algeria);

35. Take all necessary steps to strengthen the protection of the civilian population, particularly women and children, from violence. (Germany);

36. Adopt effective measures, including allocating sufficient resources to implement the existing legislation for the protection of women and children. (Switzerland);

38. Ensure progress in combating trafficking in persons and overcoming violence against women and children. (Belarus);

39. Adopt a legal framework clearly defining crimes of trafficking of children for sexual exploitation, economic exploitation or other purposes, while imposing appropriate sanctions. (Holy See);
55. Accompany the policy of setting up provincial committees with sensitization campaigns against gender-based violence and discrimination to better prevent the voluntary recruitment of children in armed groups. (Spain);

56. Take the necessary steps to ensure, in the context of accelerated integration, that all child soldiers are released from the Congolese army. (United Kingdom);

57. Take actions to avoid the further recruitment of child soldiers, and ensure the reintegration of all ex-child soldiers to avoid future re-recruitment. (Argentina);

58. Give stronger emphasis to securing the identification, release and reintegration of all child soldiers and the prevention of further recruitment. (Germany);

59. Commit to action plans for indentifying, releasing and ensuring reintegration, and prevent the further recruitment of children. (Australia);

60. Undertake systematic actions for the reintegration of former child soldiers into civil society. (Hungary);

61. Prepare action plans to identify, release and ensure reintegration of all unlawful child soldiers, to prevent further recruitment, to investigate and prosecute those perpetrators of child soldiering who have violated domestic criminal law, and to address other violations and abuses committed against children, including all forms of forced child labour and child prostitution. (United States);

62. That the Government and FARDC, in cooperation with the United Nations country-level task force, swiftly formulate an action plan to identify, release and ensure the reintegration of all child soldiers, as requested by Security Council resolutions. (Japan);

63. Ensure that all parties to the conflict prepare, in the framework of Security Council resolution 1612 (2005), action plans to identify, release and ensure reintegration of all child soldiers, to prevent further recruitment and to address all other grave violations against children. (Slovenia);

64. Promote the reintegration of child soldiers. (Azerbaijan);

65. Criminalize acts of violence against children accused of witchcraft and organize a national campaign of awareness-raising on this issue. (Belgium);

66. Adopt legislative measures to incriminate accusations of witchcraft against children. (Italy);

67. Promote legislative and administrative measures to prevent and punish attacks and persecution of children accused of witchcraft. (Mexico);

68. Ensure that the recently adopted Child Protection Code is duly implemented to prevent child labour. (Slovakia);