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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the second periodic report of the Democratic Republic of the Congo*

1. The Committee against Torture considered the second periodic report of the Democratic Republic of the Congo (CAT/C/COD/2) at its 1722nd and 1725th meetings (see CAT/C/SR.1722 and CAT/C/SR.1725), held on 24 and 25 April 2019, and adopted the present concluding observations at its 1745th meeting, held on 9 May 2019.

A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party but finds it regrettable that the report was submitted eight years late.
3. The Committee appreciates the constructive dialogue held with the State party's delegation, which it thanks for the replies and additional information provided.

B. Positive aspects

4. The Committee notes with satisfaction that, since the issuance of its previous concluding observations (CAT/C/DRC/CO/1), the State party has ratified or acceded to the following international instruments:
 - (a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2010;
 - (b) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, in 2015.
5. The Committee also welcomes the adoption by the State party of the following legislative, administrative and institutional measures in areas of relevance to the Convention:
 - (a) The Constitution of 18 February 2006, as amended and supplemented by Act No. 11/002 of 20 January 2011;
 - (b) Act No. 09/001 of 10 January 2009 on child protection;
 - (c) Act No. 11/008 of 9 July 2011 criminalizing torture;
 - (d) Organic Act No. 13/011 of 21 March 2013 on the establishment, organization and functioning of the National Human Rights Commission;

* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).



(e) Organic Act No. 13/011-B of 11 April 2013 on the organization, functioning and jurisdiction of the ordinary court system, which assigns to the civilian courts jurisdiction over offences falling within the remit of the International Criminal Court;

(f) The National Strategy to Combat Gender-based Violence, in 2009, and the related action plan.

6. The Committee further welcomes the State party's cooperation with the special procedures mandate holders of the Human Rights Council.

C. Principal subjects of concern and recommendations

Follow-up of previous recommendations

7. The Committee finds it regrettable that information on the implementation of the recommendations made in its previous concluding observations (para. 5), concerning the incorporation of the Convention into national law, was not transmitted to it for review as part of the follow-up procedure.

Definition and criminalization of torture

8. While the Committee welcomes the adoption of Act No. 11/008, whereby the Criminal Code was amended so that it includes a definition of torture that is in conformity with article 1 of the Convention, establishes torture as a separate offence, in article 48 bis, and states that the offence should not be subject to any statute of limitations, in article 48 quater, it finds it regrettable that, under this law, superior officers are not held criminally responsible when they are aware of acts of torture or ill-treatment committed by their subordinates. It also finds it regrettable that the Act does not explicitly provide that no exceptional circumstances may justify torture. In addition, the Committee remains concerned about the weak enforcement of the Act, notably because of a lack of awareness of it among judges, who continue to consider acts of torture as factors aggravating offences of arbitrary arrest or detention, in line with the previous criminal code. Lastly, the Committee expresses regret at the lack of information concerning the number of investigations conducted and convictions handed down since the Act entered into force (arts. 1, 2, 4, 10, 12, 13 and 14).

9. **The Committee recommends that the State party:**

(a) **Amend Act No. 11/008 so that it provides for superior officers to be held criminally responsible, whether acts are committed at their instigation or with their consent or acquiescence;**

(b) **State explicitly in Act No. 11/008 that no exceptional circumstances may be invoked as a justification of torture;**

(c) **Take the necessary measures for the wide dissemination of Act No. 11/008 and the familiarization of judges and prosecutors with it, so as to ensure, in practice, the effective criminalization of acts of torture and handing down of sentences commensurate with the seriousness of such acts;**

(d) **Provide, in its next periodic report, precise data on the number of investigations conducted and convictions handed down under Act No. 11/008, the courts responsible and the amount of compensation awarded to victims.**

Confessions obtained under torture

10. The Committee notes with concern that, despite the adoption of Act No. 11/008, there is no legislative provision expressly prohibiting the extraction of confessions under duress, which means that article 15 of the Convention has not been incorporated into the State party's domestic legal order (art. 15).

11. **The State party should take the necessary measures to guarantee that confessions obtained through torture or ill-treatment are systematically declared null and void.**

Fundamental legal safeguards

12. Noting the constitutional and legislative provisions regulating police custody, which provide that such custody may not exceed 48 hours, after which the suspect must be released or brought before the public prosecutor, the Committee is concerned that, in practice, suspects are often held without having any contact with their families or with a lawyer, for periods greatly exceeding the legal limits, without being brought before a judicial authority. The Committee is of the view that such practices leave suspects vulnerable to a high risk of torture or ill-treatment. The Committee is also concerned about the state of the National Police punishment cells, the vast majority of which are described as overcrowded, insalubrious and lacking ventilation, sanitary facilities and bedding (arts. 10, 11, 14 and 16).

13. **The Committee reiterates the recommendation made in its previous concluding observations (para. 7 (c)) and urges the State party to:**

(a) **Ensure that police custody never exceeds 48 hours, after which all suspects must either be brought before an independent and impartial judge or be released;**

(b) **Guarantee that all detainees, whatever the charges brought against them, enjoy all fundamental legal safeguards from the outset of their deprivation of liberty, including the rights to: (i) be promptly informed of the grounds for their arrest, the charges against them and their rights in a language they understand; (ii) have prompt and confidential access to an independent lawyer, in particular during police questioning and throughout the proceedings, or receive legal aid; (iii) request and receive a medical examination without conditions and in full confidentiality, carried out by qualified medical personnel, immediately on their arrival at a police station or detention centre, and have access to an independent doctor of their choosing, on request; (iv) inform a family member or any other person of their choosing about their detention; and (v) have their arrest recorded immediately in a register located at the place of detention and made available to any competent authority, and in a computerized, central register;**

(c) **Systematically verify that State officials respect, in practice, all legal guarantees and scrupulously keep registers, and punish any failure to do so;**

(d) **Improve physical conditions for those held in police custody by ensuring that cells provide a reasonable amount of space, are equipped with bedding and sanitary facilities and afford appropriate hygiene conditions.**

Incommunicado detention

14. Recalling the recommendation made in its previous concluding observations (para. 7 (a)), the Committee remains seriously concerned about consistent and credible reports that numerous people are being placed in police custody or pretrial detention by the civilian intelligence service (the National Intelligence Agency) and its military counterpart (military intelligence headquarters) in secret locations, including numerous National Intelligence Agency punishment cells, in Kinshasa and other provinces. The Committee is also concerned that article 5 of Decree-Law No. 1/61 of 25 February 1961, concerning State security measures, allows the Agency's criminal investigation officers to arrest a person and place him or her in administrative detention merely on the basis of a decision of the Minister of the Interior, without judicial oversight of the lawfulness of such detention.

15. **The State party should:**

(a) **Provide the Committee, when it submits its next periodic report, with a comprehensive list of all its places of detention;**

(b) **Close all unofficial places of detention;**

(c) **Revise its legislative framework and practice to ensure that all arrests and detentions, including those for which officers of the National Intelligence Agency are responsible, are subject to oversight by the judicial authorities.**

Excessive use of pretrial detention

16. Notwithstanding the conditions set out in article 27 of the Code of Criminal Procedure, the Committee notes with concern the excessive use, in practice, of pretrial detention, with pretrial detainees accounting for 59 per cent of inmates in certain prisons and often being held for longer than the periods provided for in the Code (arts. 11 and 16).

17. The State party should:

(a) **Ensure that the regulations governing pretrial detention are scrupulously respected and that such detention is resorted to only in exceptional circumstances and for limited periods, taking into account the principles of necessity and proportionality;**

(b) **Promote alternatives to pretrial detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(c) **Ensure systematic oversight of the lawfulness of pretrial detention by the public prosecutor's office.**

National Human Rights Commission

18. While noting with satisfaction the establishment, pursuant to Act No. 13/011, of the National Human Rights Commission, which has been granted A status in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and the Commission's mandate, notably its role in conducting visits to places of detention, formulating opinions and proposals addressed to Parliament and issuing inquiry reports, the Committee observes that limited resources have been allocated to this institution, which is unable to perform all its functions effectively (art. 2 (1)).

19. The State party should, without delay, take the necessary measures to ensure the Commission's functional independence by guaranteeing it an adequate budget that allows it to recruit staff, set up regional offices and fulfil the mandate entrusted to it.

Conditions of detention

20. The Committee is very concerned about conditions of detention in the majority of institutions in the country, which have led to numerous deaths in custody. In particular, the Committee is concerned about: (a) prison overcrowding, especially at the Makala prison in Kinshasa, which had an occupancy rate of 526 per cent in February 2019; (b) the insalubrity of the majority of prisons, the inadequate hygiene, lack of ventilation, poor quality and insufficient quantity of food, and the limited recreational and training activities to foster rehabilitation; (c) the limited access to quality health care in most places of detention; and (d) the lack of qualified prison staff, which means that inmates themselves are responsible for supervision, resulting in violence and corruption. The Committee is also concerned about allegations that international organizations and civil society visitors have been denied access to certain places of detention, notably those within the remit of the National Intelligence Agency (arts. 2, 11 and 16).

21. The State party should swiftly take all necessary measures to bring conditions of detention into line with the Standard Minimum Rules for the Treatment of Prisoners; in particular, it should:

(a) **Improve physical conditions in all places of deprivation of liberty by ensuring that prisoners receive, in a timely fashion and free of charge, the medical treatment and medicines required by their state of health, have access to nutritious and sufficient food, and enjoy appropriate sanitary conditions and adequate ventilation in cells, given the climatic conditions in the country;**

(b) **Reduce prison overcrowding by making greater use of alternatives to detention;**

(c) **Ensure that all cases of death in custody are promptly and impartially investigated by an independent investigation unit with no institutional or hierarchical link with the custodial authority, and that investigations have a forensic component, including an autopsy where necessary;**

(d) **Allow the International Committee of the Red Cross, the United Nations Joint Human Rights Office and non-governmental organizations with a mandate to visit places of deprivation of liberty, among other bodies, to gain access to and inspect such places without hindrance, and to speak confidentially to all inmates;**

(e) **Provide prisons with sufficient qualified and trained staff.**

Allegations of torture and impunity

22. The Committee is seriously concerned about reports of the very widespread use of torture in many places of detention in the country, particularly against individuals suspected of belonging to the political opposition, by members of the Armed Forces of the Democratic Republic of the Congo, the National Police and the National Intelligence Agency. The Committee deplores the limited number of reported convictions and is concerned that members of the National Intelligence Agency are benefiting from sweeping immunity from prosecution pursuant to Decree-Law No. 1/61. The Committee is of the view that the cumulative effect of the lack of judicial oversight of the Agency's actions, the immunity granted to its officers and the effective lack of investigations and prosecutions in connection with acts of torture is helping to create and maintain a situation of generalized impunity (arts. 2, 12 and 13).

23. **Reiterating the recommendations made in its previous concluding observations (paras. 6 (a) and (b)), the Committee urges the State party to clearly reaffirm the absolute prohibition on torture by publicly condemning the practice of torture and raising awareness and disseminating the content of Act No. 11/008. The State party should in addition:**

(a) **Revise its legislation, ensure that the competent authorities routinely launch an investigation whenever there are reasonable grounds to believe that an act of torture has been committed and see to it that suspects are duly brought to justice and, if they are found guilty, receive sentences commensurate with the seriousness of their acts;**

(b) **Put in place an independent, effective, confidential and accessible complaints mechanism in all police custody facilities and prisons, and ensure that complainants, victims and members of their families are not at risk of reprisals;**

(c) **Compile and disseminate up-to-date statistics on the complaints filed, investigations conducted, prosecutions initiated and convictions handed down in cases of torture.**

National mechanism for the prevention of torture

24. The Committee is concerned about the delay in establishing a national preventive mechanism, an obligation incumbent on the State party following its ratification, in 2010, of the Optional Protocol to the Convention (art. 11).

25. **The State party should initiate, without delay, a participatory and inclusive process to establish an independent and effective national preventive mechanism, in accordance with the guidance of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party should allocate the human and financial resources needed to enable the mechanism to function effectively and independently.**

Jurisdiction of the military courts

26. While taking note of article 156 of the 2006 Constitution, and notwithstanding the adoption of Organic Act No. 13/011-B, which assigns to the civilian courts jurisdiction over offences falling within the remit of the International Criminal Court, the Committee is

concerned that the military courts continue to have jurisdiction to try civilians in several situations, in particular when they commit crimes using weapons of war, or to try crimes committed by military personnel against civilians, even if they are offences under ordinary law (arts. 2 and 12).

27. The State party should make the necessary legislative amendments to remove the jurisdiction of the military courts to try civilians and ensure that the ordinary courts alone have jurisdiction to hear cases involving serious violations of human rights committed against civilians.

Political violence: arbitrary arrest and detention, and excessive use of force

28. The Committee is deeply concerned about the many consistent reports of repeated attacks on political opponents and human rights defenders seeking to exercise their right to freedom of association or expression. The Committee is also concerned that many members of civil society have experienced judicial harassment, have sometimes been subjected to acts of torture or ill-treatment and have been arbitrarily arrested and detained. While welcoming the recent release of several political prisoners, the Committee remains seriously concerned about the many ongoing cases of arbitrary detention. The Committee is also concerned about the manifestly excessive and disproportionate use of force by officers of the National Police and the armed forces, who used live ammunition during the demonstrations that took place across the country between December 2017 and February 2018, in which 19 people reportedly lost their lives and 251 were injured. While noting with satisfaction the establishment of a joint commission of inquiry to examine the violations committed during those demonstrations, the Committee finds it regrettable that the commission's recommendations have not been implemented, notably the recommendation regarding the launching of investigations (arts. 2, 12, 13 and 16).

29. The Committee urges the State party to:

(a) Immediately release all persons who remain in custody for having defended their opinions or demonstrated peacefully, and guarantee the payment of compensation to victims of arbitrary detention;

(b) Ensure that political opponents, human rights defenders and other representatives of civil society are protected from acts of intimidation and violence to which they may be exposed because of their activities;

(c) Implement the recommendations of the joint commission of inquiry and undertake prompt judicial investigations into the demonstrations that took place in December 2017 and January 2018;

(d) See to it that the Protection Unit for Human Rights Defenders quickly becomes operational by providing it with the necessary human and financial resources;

(e) Ensure that impartial and thorough investigations are conducted without delay into any allegation of excessive use of force, torture, ill-treatment or extrajudicial executions targeting political opponents, human rights defenders and members of civil society organizations, and bring proceedings as necessary;

(f) Develop and implement clear guidelines on the use of force and weapons, incorporating the principles of lawfulness, necessity and proportionality, and the precautionary principle, and bring the laws and regulations governing the use of force into line with international standards, in particular the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted in 1990.

Protection of the civilian population in the context of the armed conflict

30. The Committee is deeply concerned about the serious, mass violations of human rights and international humanitarian law that have been and continue to be committed in several parts of the country, including the provinces of North Kivu, South Kivu and Kasai, where summary executions, deliberate – sometimes ethnically motivated – attacks on civilian populations, the large-scale recruitment and use of children, indiscriminate attacks, large-scale sexual violence and the destruction of civilian property by the armed forces and

non-State armed militias have caused an unprecedented humanitarian crisis. The Committee deplores the inadequacy of the investigations and proceedings aimed at identifying those responsible for the serious violations committed in the context of the armed conflict, including the instigators of such acts and senior officers involved, certain recent convictions for war crimes and crimes against humanity notwithstanding (arts. 2, 12 and 16).

31. **The Committee urges the State party to:**

(a) **Ensure that all persons suspected of war crimes and crimes against humanity, or of complicity in such acts, are swiftly brought to justice, including those occupying senior positions in the armed forces;**

(b) **Cooperate fully with the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, the United Nations Joint Human Rights Office and the Special Representative of the Secretary-General on Sexual Violence in Conflict and continue to cooperate with the International Criminal Court in order to combat impunity.**

Sexual violence

32. The Committee is deeply concerned about reports that the practice of rape in custody is endemic, particularly where women have been detained on account of their participation, direct or indirect, in some form of political opposition or human rights defence activities. While taking note of the legislative, institutional and judicial measures taken by the State party in its efforts to combat this scourge, and the appointment of a personal representative of the Head of State on sexual violence, the Committee remains alarmed at the endemic nature of such violence, which continues to be used – in its most brutal forms – as a weapon of war against an extremely worrying and, it appears, growing number of women, young girls, men and children, by both government forces (the Armed Forces of the Democratic Republic of the Congo and the Congolese National Police) and non-State armed groups, acting in a climate of total impunity. It is also concerned about the lack of access to justice for victims, who must initiate a complex, drawn-out and costly procedure in order to secure the enforcement of remediation orders against the State, in a process that is distinct from the criminal prosecution and that, even if it is pursued, does not result in reparation being made. The Committee also notes with concern that the military courts are exercising jurisdiction over numerous cases of sexual violence linked to the armed conflict raging in the eastern part of the country, which, given the judges' lack of independence, is reportedly giving rise to a situation of generalized impunity for perpetrators who are agents of the State party, with the instigators of such acts escaping prosecution and punishment. The Committee deplores the fact that, as a result, very few victims have access to effective remedies, reparation or rehabilitation and reintegration services (arts. 2, 12, 13, 14 and 16).

33. **The Committee urges the State party to:**

(a) **Ensure that all cases of sexual violence automatically give rise to effective and impartial ex officio investigations and proceedings in the ordinary courts and that perpetrators, including instigators and accomplices, are prosecuted and receive punishments commensurate with the seriousness of the acts committed;**

(b) **Assess the needs of victims of acts of sexual violence and establish compensation funds that are operational, along with specialized medical and psychological rehabilitation services;**

(c) **Increase the number of judges specializing in sexual violence in areas where the issue is present and strengthen their capacity;**

(d) **Facilitate access to justice for victims, including in remote areas, by educating the public, protecting witnesses and establishing mobile courts as necessary.**

Violence against children

34. While taking note of the few measures taken by the State party with respect to the demobilization and reintegration of child soldiers, the Committee remains deeply concerned about the scale of the violence affecting children, in particular: (a) sexual exploitation in

conflict zones; (b) accusations of desertion made against them even though they are forcibly recruited into armed groups; (c) their detention in adult prisons; and (d) the persistence of harmful practices such as female genital mutilation in certain regions of the country, accusations of witchcraft, and forced and early marriage. The Committee is also deeply concerned about reports of police operations during which children suspected of having committed serious offences are alleged to have been arbitrarily arrested and, in some cases, summarily executed, without any proceedings having been initiated. More generally, the Committee is concerned about the inadequacy of the institutional and financial resources allocated for the protection of children, notwithstanding the adoption of Act No. 09/001. In this regard, the Committee expresses regret that the National Council for Children, which is provided for in the Act, has yet to become operational, and that there is no comprehensive mechanism for reporting cases of abuse, sexual violence or ill-treatment of children (arts. 2, 11, 12, 13, 14 and 16).

35. **The Committee urges the State party to:**

(a) **Automatically launch investigations and proceedings when child abuse, including sexual violence, is suspected, so that perpetrators are punished and victims receive reparation, including rehabilitation measures and health care that encompasses psychological support;**

(b) **Adopt legislation criminalizing the practice of genital mutilation and bring the perpetrators to justice;**

(c) **Ensure that children are not held alongside adults and that their conditions of detention are appropriate to their status as minors;**

(d) **Provide the special police units for the protection of women and children with the necessary human and financial resources to conduct effective and independent investigations into juvenile crime;**

(e) **Establish the National Council for Children.**

Death penalty

36. While noting with satisfaction the de facto moratorium applied by the State party, which has not carried out any executions since 2003, the Committee remains very concerned about: (a) the lack of data on death sentences; (b) the fact that such sentences are still handed down, including against minors, notwithstanding article 9 of Act No. 09/001, which explicitly prohibits the death penalty for children; (c) the lack of information provided to condemned prisoners regarding their situation and rights; and (d) the fact that such persons, who are held under the regular prison regime, face conditions of detention that, in and of themselves, amount to ill-treatment (art. 16).

37. **The Committee urges the State party to:**

(a) **Commute all death sentences already handed down to prison sentences and initiate a process to formally abolish the death penalty in law;**

(b) **Ensure that Act No. 09/001 is scrupulously applied and that no person under 18 years old is sentenced to death;**

(c) **Ensure that conditions of detention for condemned prisoners do not constitute cruel, inhuman or degrading punishment or treatment by taking immediate steps to strengthen legal safeguards, in particular guaranteeing such persons and their defence counsel full access to all evidence in their case files and providing condemned prisoners with all available information on their situation and rights;**

(d) **Provide the Committee, in its next periodic report, with information on the precise number of death sentences passed, the courts responsible and the crimes for which those sentences were handed down.**

Training

38. While taking note of the efforts made by the State party to provide general human rights training for members of the police, the armed forces and prison staff, among others,

the Committee finds it regrettable that there is a lack of training on the content of the Convention, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and Act No. 11/008 (art. 10).

39. **The State party should:**

(a) **Provide systematic and regular training on the absolute prohibition on torture and on the provisions of the Convention and Act No. 11/008;**

(b) **Ensure that all relevant actors, including medical personnel, receive specific training on how to identify and document cases of torture and ill-treatment, in accordance with the Istanbul Protocol;**

(c) **Institute regular and mandatory training for police officers, prosecutors, judges and lawyers on sexual and gender-based violence, ex officio prosecution of cases and child protection;**

(d) **Develop and apply a method for evaluating the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol;**

(e) **Systematically provide training to all law enforcement officials on the use of force, especially in the context of controlling demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

Redress

40. While taking note of the information provided by the State party concerning certain cases in which victims of sexual violence were provided with psychosocial care and compensation, the Committee remains concerned about the lack of information on the relevant legislative provisions and the inadequacy of the reparation measures ordered in favour of victims of torture and of rehabilitation programmes (art. 14).

41. **The Committee, recalling its general comment No. 3 (2012) on the implementation of article 14 by States parties, urges the State party to take all necessary measures to enable victims of acts of torture and ill-treatment, including victims of sexual violence, to exercise their right to redress. The State party should, in particular, take both legislative and administrative measures to:**

(a) **Ensure that victims of acts of torture and ill-treatment have access to effective remedies and redress, including in cases where the perpetrator has not been identified;**

(b) **Fully assess the needs of victims of acts of torture and ensure that compensation funds are operational and that specialized rehabilitation services are readily available.**

Follow-up procedure

42. **The Committee requests the State party to provide, by 17 May 2020, information on follow-up to the Committee's recommendations contained in paragraphs 13 (c), 25, 33 (a) and (b), and 35 (a) and (c). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

43. **The Committee invites the State party to consider making the declaration under article 22 of the Convention recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.**

44. **The Committee invites the State party to consider ratifying the core United Nations human rights instruments to which it is not yet a party, namely the Second**

Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and the International Convention for the Protection of All Persons from Enforced Disappearance.

45. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about the activities it undertakes in that regard.

46. The Committee invites the State party to submit its next periodic report, which will be its third, by 17 May 2023. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its third periodic report under article 19 of the Convention.
