

Eliminating discrimination against women in the DRC: the CEDAW Committee should issue strong recommendations on the impact of mining on women's rights and their political and public participation

The Democratic Republic of the Congo (DRC)'s 8th report on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) will be under review by the CEDAW Committee on 9 July 2019.

This review takes place in an encouraging context. On many occasions, the new president Felix Tshisekedi publicly took a position on women empowerment and gender equality, with regular contacts and exchanges between the new regime and women activists. **This review is therefore a crucial opportunity to raise strong recommendations towards the DRC to ensure that gender rhetoric leads to effective practices to put an end to discrimination against women in the country.**

This policy brief is not exhaustive and rather underlines the main priority recommendations related to **the impact of mining on women's rights as well as women political and public participation**, which the European Network for Central Africa (EurAc) calls on the Committee to issue during the upcoming review of the DRC.

Women's participation in political and public life

Legislative framework: The Parity Act's shortcomings and challenges¹

The awaited adoption on 1 August 2015 of the Act N° 15/013 on means of giving effect to women's rights and gender parity, known as the Parity Act, is a welcome step to ensure an empowering legislative framework for promoting women's rights. But this law has various shortcomings: it is too approximative in its formulation, it does not contain any constraining mechanisms, and its implementation is still not effective.²

The Parity Act covers a wide range of fields (political and administrative, economic, socio-cultural, health, security, etc.) which are addressed in a very summarised way (3 articles for each issue on average). This illustrates **its first weakness: imprecision**. While the Act does take into account the DRC's regional and international commitments regarding women's rights, it often and paradoxically remains vague where the national legislation should specify international legal instruments.

As a matter of fact, the Parity Act uses very general wording and lacks timetable, means, mechanisms and actors dedicated to its effective implementation and monitoring. The only two mechanisms mentioned, **the Inter-ministerial Committee and the National Gender Equality Council**, have very unclear mandates, and have still not been established and budgeted.

Additionally, **sanctions mechanisms mentioned in the Parity Act are neither dissuasive nor clearly established**: the facts to be sanctioned (constituent element of sanctions) as well as relevant jurisdictions are not or vaguely defined and do not constitute a clear incentive. For instance, Art. 33 stipulates that political parties which did not respect "gender parity" are not eligible to public funding. The uncertainty surrounding the definition of "gender parity" as well as the

¹ [De la parité de droit à la parité de fait : rapport d'analyses participatives et inclusives de la loi no15/013 du 1^{er} août 2015 portant modalités d'application des droits de la femme et de la parité en République Démocratique du Congo](#), Rien Sans les Femmes, March 2017.

fact that public funding is in practice not paid to political parties, in any circumstance, illustrates the weakness of such a “sanctions” mechanism.

Finally, this is also regrettable that the **Parity Act directly refers to the electoral law** regarding women political participation, which does not contain any temporary special measure to promote equal participation of women.

The electoral law: a missed opportunity to take temporary special measures

The DRC has not taken any temporary special measures to accelerate the equal participation of women in political and public life. The DRC relies on formal and protective equality which strengthens male and female stereotypes without leading to transformation.³

On the contrary, this is also important to underline that, **the DRC has taken position against temporary special measures**. For instance, the first version of the Parity Act did refer to the establishment of quota in public administration but was considered discriminatory by the Constitutional Court on January 2014 and consequently rejected as unconstitutional.⁴

The DRC also missed the opportunity to take temporary special measures when recently modifying its electoral law.⁵ In fact, despite intense advocacy efforts from various Congolese civil society organisations (CSOs),⁶ **the recent electoral law still does not contain quotas or specific constraining measures to promote equal participation of women and men in political life**. For example, Art. 13 mentions the respect for women’s representation during the establishment of lists by political parties, but in the same time, specifies that the inobservance of women’s representation does not constitute a motive for inadmissibility of such lists.

In addition, **the electoral law contains eligibility criteria which are particularly discriminatory for women**. For instance, the important amount of the deposit to be paid by candidates⁷ in a country where economic inequalities between men and women are well documented.

This heavily hinders women’s representation and effective participation to political life in the country. As a matter of fact, during the elections of December 2018, female candidates only constituted 11% of all candidates for provincial legislatures, 14% for national legislatures, and there was only one female candidate (4%) for the presidential election.⁸

Specific risks and discrimination faced by women human rights defenders

The shrinking of the democratic space in the DRC affects women human rights defenders, activists and journalist differently. Obstacles and risks that women face in their activism take the form of various modus operandi limiting women’s participation. This includes not inviting them to important meetings, scheduling gatherings at night to make it difficult for women to attend, gender-based violence (often disguised as “common” domestic violence), threats and slander. In addition, increased restriction on civil society reportedly leads to an increasing emphasis on their traditional role as caretakers, rather than political actors and to decreasing possibilities for women’s organisations to receive funding.⁹ A recent study carried out in North and South Kivu illustrates how **female human rights defenders face**

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³ [Rapport parallèle au 8^{ème} rapport de la RDC relatif à la mise en œuvre de la CEDEF](#), Synergie CEDEF – GADF/ Rien Sans les Femmes, June 2019.

⁴ [Rapport parallèle- Comité pour l’élimination de la discrimination à l’égard des femmes](#) 73^e session du Groupe de travail pour la considération des points à traiter, WILPF, October 2018.

⁵ [Law on the organization of presidential, legislative, provincial, urban, municipal and local elections - Act No. 17/013 of 24 December 2017 amending and supplementing Act No. 06/006 of 9 March 2006](#), DRC.

⁶ For instance: <http://riensanslesfemmes.org/rslf/nos-actions/>

⁷ [De la parité de droit à la parité de fait. Rapport d’analyses participatives et inclusives de la loi no15/013 du 1^{er} août 2015 portant modalités d’application des droits de la femme et de la parité en République Démocratique du Congo](#), Rien Sans les Femmes, March 2017.

⁸ [DR Congo new presidency and Universal Periodic Review: urging the EU and its member states to issue strong recommendations on the human rights situation in the country](#), EurAc & CCPR, 25 March 2019.

⁹ [Suffocating the movement – Shrinking space for women’s rights](#), Kvinna till Kvinna, 2018.

specific threats, especially because of discriminatory gender stereotypes and a shrinking civic space. Consequently, women are less numerous in CSOs, especially human rights organisations.¹⁰

This trend is particularly alarming while the bill to protect human rights defenders, which is currently pending in Congolese Parliament, does not include a gender perspective and contains several provisions that transgress the international standards of human rights protection and promotion.¹¹

Recommendations

In this context, EurAc calls on the CEDAW Committee, as part of the DRC's review, to issue the following recommendations to the Congolese State:

- To operationalise the Inter-ministerial Committee and the National Gender Equality Council stipulated in the Parity Act while clarifying their mandate and budget allocation.
- To re-examine the electoral law to ensure that parity is constraining and the inadmissibility of political parties' list which do not respect it.
- To make the necessary amendments to ensure the law on the protection of human rights defenders is fully gender sensitive and aligned with international and regional human rights standards.
- To investigate, prosecute and convict individuals responsible for harassment, threats or intimidation against human rights defenders, especially women human rights defenders.

The impact of mining on women's rights

The lack of women participation in political and public life is also observable within the mining sector which seriously hampers the enjoyment of their full rights. Mining also has specific prejudicial impacts with regard to their health and employment.

Women's participation in decision making processes

Women within mining communities are marginalised from decision-making processes, and their voice is rarely heard when decisions affecting their lives are being taken. This is particularly the case when communities are consulted by state or private investors who are interested in mineral deposits in parcels they are occupying. In fact, according to the Congolese law,¹² communities have a right to give free, prior and informed consent when their land is seized for investments. Communities also have a right to be consulted regarding the projected investment, to gather information, to participate directly or indirectly in the implementation of the project and to receive compensation when they are expropriated.

Such rights are rarely respected. Even when they are, and communities are consulted in case of an impending investment, women are often left out of such consultations. In a 2015 study conducted by Cordaid, women reported having been under-represented during consultations with mining companies, while others reported having to ask for their husbands' permission to participate.¹³ Similarly, Afrewatch¹⁴ reports low women participation to consultation with mining companies. For example, only 6 out of 60 persons who took part in the consultations organised in a mining project in Luilu were women.

The exclusion of women from decision-making processes is disquieting, given that mining activities and the change of land use that goes with it have a direct impact on the livelihoods of women and their families. In fact, in the DRC,

¹⁰ [Etude de base sur les besoins de protection des femmes défenseuses des droits humains au Nord et au Sud Kivu, Protection International](#), December 2018.

¹¹ [DR Congo new presidency and Universal Periodic Review: urging the EU and its member states to issue strong recommendations on the human rights situation in the country](#), EurAc & CCPR, 25 March 2019.

¹² See presidential decree n 038/2003 of March 20th 2003 and accompanying legislation).

¹³ [L'exploitation minière au cœur des zones rurales : quel développement pour les communautés locales ? Comprendre pleinement la perception, les attentes et les priorités des communautés locales ainsi que l'impact de l'exploitation minière au sud Katanga, République démocratique du Congo \(RDC\)](#), Cordaid, December 2015

¹⁴ [Rapport d'Observation des Consultations de KCC](#), Afrewatch, June-July 2017.

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underground minerals belong to the State, who can give them in concessions to private actors. As the mining code always takes precedence over the land law, local communities may be asked to vacate their land to make space for new mining concessions. It is not uncommon for communities to be displaced without prior consultation, without compensation or the provision of alternative land to settle. As most agricultural work is performed by women, it is on them that falls the burden of finding new means of livelihood for their families. The same is true for access to water sources, often polluted by mining activities, which are used by women and their families.

The 2018 mining code, in its XVIII annex, sets the modalities for the compensation and replacement of communities affected so to avoid their impoverishment and to safeguard their economic independence.¹⁵ The code also sets out the principles to ensure the free, prior and informed consent of concerned communities and makes it clear that the latter should be consulted and included in all phases of the project. Notwithstanding, the 2018 mining code is yet to be implemented.

Employment

Women play an important role in the artisanal small-scale mining (ASM) sector in the Democratic Republic of the Congo (DRC). For example, only in the gold production chain, women are estimated to constitute between 40 and 50% of the workforce.¹⁶ *Although they are present almost at all points at the production chain, women work most commonly on artisanal mining sites.* As in other sectors of society, they are often faced with gender-bases stereotypes, and are usually involved with transporting the minerals extracted, with selecting and washing them. In the absence of virtually any form of protective equipment, the washing phase particularly exposes women to dangerous chemicals.

Women also experience the lack of formalisation and on-the-site job protection that is a staple of the ASM sector more generally. Legal protection and social security are completely inexistent for women within the mining sector. Additionally, compared to their male counterparts, women report being remunerated significantly less per day of work¹⁷.

Women are also often involved in informal economic activities around the mining sites, such as restaurants and the trade of small goods and services. Prostitution is also common around mining sites, which puts women in a particularly vulnerable condition, given the widespread poverty and lack of sanitation.

Health

Soil and water pollution are common in mining areas. The disposal of waste from the mining sites is often handled poorly, with much of the waste ending up directly in the environment and neighbouring agricultural lands. *Pollution affects women disproportionately*, as it often is their role to work in the fields to gather food for their families, or who need to supply water to their households. Moreover, the washing of the minerals, an activity often reserved for women, is often performed in large ponds of water and without protective equipment, thus directly putting female workers in contact with hazardous chemicals.¹⁸

As a consequence, *women in ASM have been reporting negative consequences for their health.* Breathing problems are common amongst artisanal miners, but mining poses additional risks for reproductive and maternal health.

¹⁵ Idem.

¹⁶ [Women in the artisanal and small-scale mining sector of the Democratic Republic of the Congo](#), Karen Hayes and Rachel Perks, June 2012. [Gender and Artisanal and Small-Scale Mining in Central and East Africa: Barriers and Benefits](#), ISID, February 2017. [Les femmes dans l'exploitation minière artisanale et à petite échelle](#), July 2017.

¹⁷ [Life at the Bottom of the Chain: Women in Artisanal Mines in the DRC](#), Women's International League for Peace and Freedom, October 2016.

¹⁸ [L'exploitation minière au cœur des zones rurales : quel développement pour les communautés locales ? Comprendre pleinement la perception, les attentes et les priorités des communautés locales ainsi que l'impact de l'exploitation minière au sud Katanga, République démocratique du Congo \(RDC\)](#), Cordaid, December 2015.

Irregularities in the menstrual cycle, complications during pregnancies, malformation in the children and urinary infections are all common conditions for women in ASM.

Nonetheless, access to healthcare for women in ASM is nearly non-existent, and few sites are equipped with a health centre and personnel.

Recommendations

In this context, EurAc calls on the CEDAW Committee, as part of the DRC's review, to issue the following recommendations to the Congolese State:

- To deliberate on the concrete ways in which affected communities should be consulted prior to any mining project, ensuring the participation of women, children and other marginalised groups. This should include the provision of sanctions against operators who fail to consult with relevant communities.
- To adopt a land use plan clearly defining the delimitation of mining and agro-pastoral areas, and to take all necessary measures to ensure the respect of the rights of rural women.
- To ensure that all economic actors in the mining sector take into account and apply the directive on the resettlement and compensation of communities displaced in reason of mining investments, with a particular attention to women's needs.
- To guarantee the right of local communities to be informed on the environmental impact of mining projects especially but not exclusively, in case of accidents.
- To ensure the due implementation of current legislation on the protection of the environment and constantly monitor the environmental impact of mining activities, putting in place regular checks and issuing sanctions when necessary. The impact of pollution on the livelihoods of women should be taken into account.
- To ensure the prompt implementation of the 2018 mining code.

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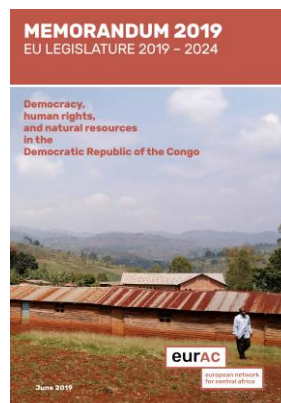
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“Democracy, human rights and natural resources in the Democratic Republic of the Congo”