

# **Strengthening the Role of National Human Rights Institutions in Development: A Critical Assessment of the Congolese Human Rights Commission**

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## **Abstract**

This paper critically examines the role of the Congolese National Human Rights Commission (CNDH) in promoting and protecting human rights, with a particular focus on its contribution to the realization of the right to development in the Democratic Republic of the Congo (DRC). Grounded in the principles of the indivisibility and interdependence of human rights, the analysis situates the right to development within the broader international and regional legal frameworks, most notably the African Charter on Human and Peoples' Rights and the United Nations Declaration on the Right to Development, and within the DRC's own constitutional and legislative order. While the CNDH has undertaken commendable efforts, including the monitoring of corporate practices, investigation of rights violations, and engagement with state and non-state actors, the paper identifies several critical weaknesses that impede its effectiveness. Chief among these are its creation by ordinary law rather than constitutional entrenchment, the non-binding nature of its findings, limited cooperation from state institutions, and a chronic lack of financial autonomy. The paper argues that integrating the CNDH into the Constitution is imperative to guarantee its independence, permanence, and legal authority. Constitutional entrenchment would subject any attempt to dissolve or undermine the Commission to heightened procedural safeguards and judicial scrutiny. Furthermore, enhancing the Commission's powers to initiate legal proceedings, ensuring the enforceability of its recommendations, and securing sustainable funding are necessary reforms to transform it into a credible and effective human rights institution. Ultimately, the paper advocates for a comprehensive institutional reform that aligns the CNDH with the Paris Principles and empowers it to serve as a key actor in the promotion of human rights, democratic accountability, and sustainable development in the DRC.

**Keywords:** National Human Rights Institutions, Human Rights Accountability, Institutional Independence, Paris Principles, Financial Autonomy.

## **1. Introduction**

This paper assesses the capacity of the National Human Rights Commission of the Democratic Republic of the Congo (DRC NHRC) to contribute meaningfully to the promotion and protection of human rights as a central component of development. In addition to this introduction and a concluding section with

recommendations, the paper is divided into two main parts. The first section explores the conceptual underpinnings of human rights, development, and particularly the right to development. The second section focuses on the legal framework, institutional structure, and operational effectiveness of the Congolese National Human Rights Commission.

In the first section, the paper defines the right to development and examines its relationship with other human rights, notably those protected under the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). The analysis is grounded in the understanding that development cannot be achieved in the absence of respect for, and realization of, fundamental human rights. The right to development is thus examined through the lens of socioeconomic rights and their implementation in the DRC's legal system.

The second section examines the institutional role of national human rights bodies, with a particular focus on the CNDH. It assesses whether the Commission's legal mandate, powers, and activities are adequate to advance human rights and the right to development, using the Paris Principles as a normative benchmark. The paper finds that despite formal guarantees of independence, the CNDH faces critical challenges, particularly the non-binding nature of its findings, its financial dependence, and its vulnerability due to its establishment by statute rather than constitutional entrenchment. As such, its effectiveness remains limited. The concluding section offers recommendations aimed at strengthening the Commission's legal status, operational independence, and institutional impact.

## **2. Human rights, development, and the right to development under the Congolese legal framework**

Article 215 of the DRC accords international treaties and agreements a superior legal status over ordinary domestic legislation. This constitutional provision reflects the DRC's adherence to a monist legal system, whereby international legal norms, once duly ratified and published in the official gazette, automatically acquire direct applicability within the national legal order without the need for implementing legislation.<sup>1</sup> Accordingly, the legal framework governing the protection of human rights and the promotion of the right to development in the DRC encompasses both international and regional treaties, such as those ratified under the auspices of the United Nations and the African Union, as well as national laws adopted by the DRC Parliament.

### **1. International and regional conceptions of the right to development**

In the international legal context, the right to development emerged in response to the demands of newly independent states in the 1960s, which sought to dismantle structures of neocolonialism in international economic relations and to promote a more equitable global order conducive to the advancement of all peoples.<sup>2</sup> These states advocated for a redefinition of development as a matter of justice and human rights. Reflecting this shift, the United Nations General Assembly affirmed that both national and international policies on economic and social development constitute essential instruments for achieving "lasting progress in the implementation of human rights."<sup>3</sup>

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<sup>1</sup> Balingene Kahombo, "The Principle of Complementarity in Practice: A Survey of Congolese Legislation Implementing the Rome Statute of the International Criminal Court", pp. 2001-239 in Beitel van der M. & Gerhard K (eds.), *International Criminal Justice in Africa*, Nairobi, Strathmore University Press, 2016.

<sup>2</sup> Pellet. A. "Le droit international du développement", 2nd ed., Paris, Presses universitaires de France, 1987, p. 3.

<sup>3</sup> UNGA, Res. 34/46, Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms, 23 November 1979, para.8.

In its Resolution 34/46 of 23 November 1979, the United Nations General Assembly affirmed that “the right to development is a human right” and emphasised that equality of opportunity for development is a prerogative not only of individuals within nations but also of nations themselves<sup>4</sup>. This position was further consolidated in the 1986 *Declaration on the Right to Development*, wherein the General Assembly recognized the right to development as “an inalienable human right under which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised.”<sup>5</sup> The Declaration also affirmed the right of peoples to self-determination and full sovereignty over their natural wealth and resources. Despite this normative evolution and the proliferation of instruments affirming the right to development, the international community has yet to reach consensus on the adoption of a legally binding treaty on this right.

In addition to its commitments under international human rights instruments, the DRC has also ratified key regional instruments, most notably the African Charter on Human and Peoples’ Rights, adopted in Banjul and in force since 1986<sup>6</sup>. The Charter, explicitly referenced in the preamble of the DRC’s 2006 Constitution, recognises the right to development as a fundamental human right. Given the DRC’s monist legal tradition, whereby ratified treaties acquire direct effect within the domestic legal order, the African Charter forms an integral part of Congolese law. This includes not only the Charter’s textual provisions but also their authoritative interpretation by the African Commission on Human and Peoples’ Rights, one of the principal regional monitoring bodies mandated to oversee its implementation.<sup>7</sup>

Article 22 of the African Charter on Human and Peoples’ Rights affirms, in its first paragraph, that “all peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity,” and, in its second paragraph, assigns to “States, individually or collectively,” the duty to ensure the realization of this right. In its jurisprudence, the African Commission on Human and Peoples’ Rights has interpreted the right to development as comprising two interrelated dimensions: the freedom to develop, and the entitlement to economic and social progress<sup>8</sup>. The former entails the removal of structural and legal barriers to development, including the full respect for all other human rights, while the latter requires proactive state intervention to implement public policies aimed at improving citizens’ living conditions. In practical terms, this implies that the state bears a positive obligation to design, fund, and execute development initiatives that serve the well-being of the population.<sup>9</sup>

Within the domestic legal framework of the DRC, Article 58 of the 2006 Constitution expressly recognizes the right of all Congolese citizens to enjoy the national wealth and imposes upon the State a corresponding obligation to guarantee the right to development. This constitutional provision affirms that national resources are the collective property of the Congolese people and must be equitably redistributed to ensure inclusive development. As a constitutionally protected human right, the right to

<sup>4</sup> Idem.

<sup>5</sup> UNGA, A/Res.41/128, Declaration on the Right to Development, 4 December 1986, article 1.

<sup>6</sup> African Charter on Human and Peoples’ Rights (OAU Doc. CAB/LEG/67/3 rev. 5). Adopted June 27, 1981, entered into force October 21, 1986.

<sup>7</sup> Balingene Kahombo, “The promises and realization of the right to development in the Democratic Republic of the Congo” in *KAS African Law Study Library - Librairie Africaine d’Etudes Juridiques*, 2020, p.397.

<sup>8</sup> African Commission on Human and Peoples’ Rights, *Sudanese Human Rights Organization & C.O.H.R.E. c. Soudan*, 27 May 2009a, communications n°279/05 et 296/05.

<sup>9</sup> Enguerrand S. « L’évolution du droit au développement devant les juridictions et quasi-juridictions régionales africaines », in *Revue Tiers Monde* N°226-227, 2016, pp. 173 – 196.

development is justiciable and may be invoked by citizens. While grounded in the principle of national solidarity, the right also encompasses individual entitlements, such as access to education, adequate food and housing, and a healthy environment, reflecting its multidimensional and interdependent character.

It may be argued that development entails multidimensional progress across political, legal, economic, social, and cultural spheres. Accordingly, the realisation of the right to development is intrinsically linked to the fulfilment of all other human rights in line with the principles of indivisibility, inalienability, equality, and the interdependence of all human rights<sup>10</sup>. In this regard, the effective implementation and monitoring of the right to development must take into account the broader human rights framework as it applies across the essential sectors of national life.<sup>11</sup>

## 2. Implementation of human rights and the right to development in the Congolese stride

Article 2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)<sup>12</sup> imposes a clear obligation on States Parties to adopt appropriate measures, legislative, administrative, budgetary, and judicial, to ensure the progressive realisation of the rights recognised therein. It further requires States to enact enabling legislation that provides effective remedies for individuals or groups whose rights are not being fully realised.<sup>13</sup>

In alignment with this obligation, Article 58 of the 2006 Constitution of the DRC affirms the right to development as a right of all Congolese. This provision places a corresponding duty on the State to ensure its fulfilment. Notably, the Constitution extends human rights obligations beyond public authorities to include all individuals and legal persons. This implies that the realisation of economic, social, and cultural rights, and by extension, the right to development, requires not only state action but also the active engagement of non-state actors<sup>14</sup> in fostering economic growth and improving the quality of life, both individually and collectively.<sup>15</sup>

With respect to the State's obligations, the realisation of the right to development requires the equitable redistribution of national wealth.<sup>16</sup> In the DRC, this principle is operationalised through a budgetary policy that allocates 60 percent of provincial revenues to the central government, while the remaining 40 percent is retained and managed by the provinces.<sup>17</sup> This mechanism is intended to promote balanced development across the national territory.

Moreover, Congolese legislation recognises that the achievement of development goals necessitates a partnership between the State and non-state actors. Accordingly, specific legal obligations are imposed on private entities. For instance, Article 69(g) of the 2002 Congolese Mining Code<sup>18</sup> requires mining companies to prepare and implement a community development plan, detailing how their operations will contribute to the development of local communities in the vicinity of mining sites.

<sup>10</sup> Channing, A. et al., "A human rights-consistent approach to multidimensional welfare measurement applied to sub-Saharan Africa" in *World Development* (108), 2018, pp. 181-196.

<sup>11</sup> Gittleman R., 'African Charter on Human and Peoples' Rights', in *Virginia journal of international law*, (22), 1982, pp. 667-713.

<sup>12</sup> International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, entered into force 3 January 1976.

<sup>13</sup> Christine Ch. "The protection of economic, social and cultural rights post-conflict" 2007, accessed at [https://www2.ohchr.org/english/issues/women/docs/Paper\\_Protection\\_ESCR.pdf](https://www2.ohchr.org/english/issues/women/docs/Paper_Protection_ESCR.pdf) on 20 July 2025, p. 28.

<sup>14</sup> *Constitution of the Democratic Republic of the Congo* (Art. 60). Promulgated February 18, 2006. (Referred to as 2006 DRC Constitution).

<sup>15</sup> Balingene Kahombo, 'The promises and realization of the right to development', op. cit, p.399.

<sup>16</sup> 2006 DRC constitution; article 58

<sup>17</sup> 2006 DRC Constitution, article 175.

<sup>18</sup> Democratic Republic of the Congo. *Mining Code* (Law No. 007/2002 of 11 July 2002).

The formulation of such development plans must be participatory in nature, involving the communities affected by mining activities, to identify their specific needs and priorities. These may include economic, social, cultural, and political dimensions, consistent with the full realisation of their human rights and fundamental freedoms.<sup>19</sup> Typically, these plans entail concrete measures aimed at fostering economic growth and improving living conditions, such as enhanced access to education, healthcare, water, electricity, sanitation services, and other infrastructures.<sup>20</sup>

To ensure the effective realisation of these rights, Congolese law assigns specific roles to various state institutions, mandating them to monitor compliance with relevant legal provisions and to contribute to the broader objective of promoting human rights and sustainable development. These institutions are charged with safeguarding the rights of the population and ensuring that development initiatives align with human rights principles. Among these, the Congolese National Commission on Human Rights (DRC NCHR) plays a central role in the promotion and protection of human rights. The following section examines the legal framework governing the establishment of the Commission, as well as its mandate and practical contributions to the advancement of human rights and development in the DRC.

### **3. The Congolese National Human Rights Commission is monitoring compliance with the right to development and human rights**

The emergence of national human rights institutions (NHRIs) is closely linked to the evolution of international human rights standards and mechanisms. Over time, global discourse has increasingly focused on the potential of NHRIs to enhance the domestic implementation of international human rights obligations.<sup>21</sup> In September 1978, the United Nations Commission on Human Rights convened a seminar on national and local institutions for the promotion and protection of human rights.<sup>22</sup> This initiative led to the development of preliminary guiding principles regarding the structure, mandate, and functioning of NHRIs. These principles were later endorsed by the United Nations General Assembly, which called upon Member States to establish such institutions where they did not already exist.<sup>23</sup>

In response to this international momentum, Congolese civil society actively advocated for the establishment of a national human rights institution dedicated to the promotion and protection of human rights within the DRC.

#### **1. Contextual and legal setting of the Congolese National Human Rights Commission**

The adoption of the law establishing the NCHR in the DRC was largely the result of sustained advocacy by civil society actors who pushed for the creation of an independent human rights oversight body.<sup>24</sup> In 2013, the Congolese Parliament responded by enacting an organic law that formalized the establishment of the Commission, thereby acknowledging the legitimacy of civil society's demands.

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<sup>19</sup> Sengupta, AK. "Conceptualizing the right to development for the twenty-first century" accessed at <https://www.ohchr.org/Documents/Issues/Development/RTDBook/PartIChapter4.pdf> on 20 June 2025.

<sup>20</sup> Kahombo Balingene, "The promises and realization of the right to development, op. cit. p. 399.

<sup>21</sup> Jeong-Woo, K. & Francisco, O., "National Incorporation of Global Human Rights: Worldwide Expansion of National Human Rights Institutions, 1966-2004", in *Social Forces* 87(3), 2009, pp. 1323

<sup>22</sup> Association francophone des commissions nationales des droits de l'Homme AFCNDH), "Mise en place et fonctionnement d'une institution nationale des droits de l'homme", 2018, p. 11 accessed at <https://www.francophonie.org/sites/default/files/2019-09/guide-indh-fevrier2019.pdf> (20 June 2025)

<sup>23</sup> Idem, p. 11.

<sup>24</sup> Rapport Alternatif de la société civile : 3ème cycle de l'examen périodique universel de la République Démocratique du Congo (September 2018) accessed [https://ccprcentre.org/files/media/rapport\\_alternatif\\_epu-rdc-droits\\_civils\\_et\\_politiques\\_libertes\\_publicques.pdf](https://ccprcentre.org/files/media/rapport_alternatif_epu-rdc-droits_civils_et_politiques_libertes_publicques.pdf) (21 June 2025)



Article 1(2) of the organic law affirms the NCHR's status as an independent legal entity, characterized by political neutrality and institutional pluralism. It explicitly provides that the Commission is not subject to the authority or control of any other body. The law designates the Commission as a consultative and technical institution tasked with the promotion and protection of human rights. Its mandate includes monitoring and evaluating human rights compliance, conducting investigations into alleged violations, producing reports, engaging in public education and research, and requiring state institutions to submit information or reports on specific human rights concerns.<sup>25</sup>

Furthermore, the organic law provides that the composition of the Commission must reflect the diversity of social forces engaged in the promotion and protection of human rights. To that end, Article 14 sets out specific criteria to ensure the representativeness of the nine members appointed to the Commission.<sup>26</sup> According to Article 16, members of the Commission are formally appointed by the President of the Republic upon the recommendation of the National Assembly. This procedure implies that the President is bound by nominations made by a body presumed to act independently and free from political influence.

However, a critical analysis of Article 30 of the same law reveals a significant institutional gap. While the provision suggests that the Commission will collaborate with other state institutions, it does not impose a corresponding legal obligation on those institutions to cooperate with the Commission. This absence of a binding duty to collaborate may seriously undermine the Commission's effectiveness, as other public entities may choose to disregard its requests or findings, thereby weakening its oversight role.

The law also outlines the procedures for the appointment of members of the Commission, as well as the conditions under which their service may be terminated. Key requirements for membership include nationality and professional qualifications<sup>27</sup>. The law emphasizes that members must demonstrate integrity, as well as knowledge, understanding, and experience in human rights. These criteria align with the standards set forth in the Paris Principles, ensuring that members are suitably qualified to engage effectively in the promotion and protection of human rights.

Following its activities, the Commission publishes annual reports, which are submitted to various state institutions, including the President of the Republic, the Parliament, and the Government. These reports are subsequently debated in the National Assembly<sup>28</sup>, fostering public and legislative scrutiny. Additionally, copies of the reports are sent to other key judicial bodies such as the Constitutional Court, the Court of Cassation, the Council of State, the High Military Court, and the Public Prosecutor's Offices attached to these jurisdictions.

As an advisory body, the Commission issues recommendations on specific human rights issues. However, its findings and recommendations are not legally binding. Rather, they serve to guide and

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<sup>25</sup> DRC, Organic Law No. 13/011 of March 21, 2013, establishing, organising, and governing the National Human Rights Commission, article 1.

<sup>26</sup> According to article 14 of the Organic Law No. 13/011 of March 21, 2013, on the establishment, organization and functioning of the National Commission for Human Rights, the commission is composed of nine members which include: a representative of non-governmental human rights organizations; a representative of the professional orders; a union representative; a representative of academics; two representatives of religious denominations; one representative of persons with disabilities; one representative of non-governmental organizations for the specific rights of women, and one representative of people living with HIV/AIDS.

<sup>27</sup> Article 15 of this Organic Law states that the members of this commission must prove their competencies as well as moral and intellectual probity to be eligible for the commission.

<sup>28</sup> Ibid, Article 7 of the Organic Law.

influence the actions of other state institutions, which are not obligated to implement the Commission's conclusions.

## **2. Engagement of the Commission to protect and promote human rights**

Although the law establishing the DRC NHRC was enacted in 2013, the Commission was only formally constituted and operationalised in 2015. Since its installation, the Commission has undertaken a range of activities aimed at promoting and protecting human rights. These include organising seminars in collaboration with civil society organisations, conducting on-site investigations into alleged human rights violations, and holding working sessions with state institutions to advance legislative harmonisation. In the course of its mandate, the Commission has actively engaged with a broad range of stakeholders, including governmental bodies, public and private enterprises, and civil society actors, in an effort to strengthen human rights compliance across various sectors.

### **a. Engagement of the DRC NHRC with public and private companies**

In 2017, the Commission regularly received complaints alleging violations of economic and social rights by both public and private companies. These complaints, along with monthly human rights monitoring reports produced by local organizations, prompted the Commission to initiate an investigation into the human rights situation within public and private enterprises operating in the city of Kinshasa. Between 16 September and 14 October 2017, Commission investigators were deployed to the field and documented several instances of violations, particularly involving abuses of the economic and social rights of women working in or affected by these companies.<sup>29</sup>

In addition, the Commission has routinely conducted investigations in response to complaints lodged by local populations against mining companies. Between August and December 2018, investigators from the CNDH visited the headquarters of 15 companies operating in four provinces, Haut Lomami, Kasai Oriental, Lualaba, and Tshopo. These included eight logging companies<sup>30</sup> and seven mining companies.

<sup>31</sup> Acting on the basis of community complaints, the Commission assessed whether these companies were complying with the applicable legal framework governing corporate responsibility to respect human rights and to contribute to the development of affected communities, as required under national legislation.

The Commission found that many of the companies under investigation had failed to develop and implement community development plans, as mandated by the Mining Code and Forestry Code. Furthermore, the majority of these companies lacked staff training and capacity-building programs and are often denied access to state inspection services. In addition, the Commission identified further violations of the right to development. These included the payment of excessively low wages to employees and the failure to invest in essential social infrastructure, such as roads, hospitals, health centers, and schools, as required by law. The investigation also revealed that, in collusion with certain politico-administrative authorities, some companies systematically evaded their tax obligations, thereby depriving the State and local communities of critical resources for development.<sup>32</sup>

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<sup>29</sup>CNDH-DRC, « Rapport d'activités de la commission nationale des droits de l'homme de septembre et Octobre » 2017, pp. 2-18

<sup>30</sup> (BEGO-Congo, Compagnie forestière de transformation, DOFEFOR, IFCO, Maniema Union, Booming Green, Kitenge Lola, FODECO), Province de la Tshopo.

<sup>31</sup>Haut-Lomami (Mining Mineral Ressources. Compagny Progrecess Congo), du Kasai oriental ( Minière de Bakwanga, Sacim) et du Lualaba (Chemical of Africa, Congo Danfeng Mining Kong. Commus SAS Zijin. KCC).

<sup>32</sup> CNDH-DRC, « Rapport annuel d'activités de la commission nationale des droits de l'homme de janvier à Décembre, 2018.

**b. Access to justice by the human rights commission**

It is known that governments may establish human rights institutions without a true commitment to human rights and attempt to nullify their work by simply ignoring the recommendations of the institution. Entrenchment in the law of legally enforceable safeguards to prevent interference is needed<sup>33</sup> to avoid unchecked human rights abuses and impunity.<sup>34</sup> Hence, it can be argued here that the powers conferred to each institution is proportional to its accountability in society, and the increase of its powers and its effectiveness affects the role of this institution in the fight against the abuses of the government and more particularly in the contribution to democratic governance and constitutional law.<sup>35</sup>

It is well recognized that governments may establish national human rights institutions (NHRIs) without a genuine commitment to human rights, using them instead as symbolic entities while effectively undermining their impact by disregarding their recommendations. In such contexts, the absence of legally enforceable safeguards exposes these institutions to political interference<sup>36</sup> and renders them ineffective in preventing human rights abuses and ensuring accountability<sup>37</sup>. Accordingly, NHRIs must be protected by robust legal provisions that guarantee its independence and operational autonomy. It may thus be argued that the legitimacy and authority of a human rights institution are directly proportional to the scope of powers it is granted and its capacity to exercise them independently. Enhancing the legal powers and effectiveness of such institutions is critical to their role in curbing governmental abuses, promoting democratic governance, and upholding constitutionalism.<sup>38</sup>

**4. Strengthening the legal and institutional framework of the DRC NHRC.**

The establishment of national human rights institutions is essential to ensuring the protection and promotion of human rights<sup>39</sup>. Such institutions play a vital role in holding governments accountable for their human rights obligations and offer a pathway for addressing systemic violations<sup>40</sup>. In recognition of their importance, the *Paris Principles*, adopted by the United Nations General Assembly, set out international standards that NHRIs must meet. These include requirements relating to their competence and responsibilities, composition and guarantees of independence and pluralism, methods of operation, and, where applicable, quasi-jurisdictional functions.

The Paris Principles further recommend that the broad mandate of an NHRI be clearly articulated in either the constitution or the founding legislation that establishes the institution and defines its scope of competence. In light of these standards, this paper advocates for the constitutional entrenchment of the

<sup>33</sup> Fombad. C.M., "Designing institutions and mechanisms for the implementation and enforcement of the constitution: changing perspectives in Africa," *African Journal of International and Comparative Law*. (25)1, 2017, p.66-90

<sup>34</sup> Pinheiro PS. & Baluarte DC. "National Strategies-Human Rights Commissions, Ombudsmen, and National Action Plans: The Role of National Human Rights Institutions in State Strategies" Human Development Report 2000: Background Paper. Accessed at <https://core.ac.uk/download/pdf/6248905.pdf> on 15 July 2025, p.14

<sup>35</sup> Fombad CM. "The Role of Emerging Hybrid Institutions of Accountability in the Separation of Powers Scheme in Africa" in Fombad, C. (ed) *The Separation of Powers in African Constitutionalism*, 2016, p.325.

<sup>36</sup> Fombad. C.M. "Designing institutions and mechanisms for the implementation and enforcement of the constitution", op. cit., p. 67

<sup>37</sup> Pinheiro, PS. & Baluarte, DC. "National Strategies-Human Rights Commissions, op. cit., p.14.

<sup>38</sup> Fombad., CM., "The Role of Emerging Hybrid Institutions of Accountability". Op. cit., p.325.

<sup>39</sup> Nguete A., "État de droit et démocratisation : Contribution à l'étude de l'évolution politique et constitutionnelle du Cameroun", Phd thesis, Université Paris I, 1995, p.1

<sup>40</sup> Kumar CR., "National Human Rights Institutions: Good Governance Perspectives on Institutionalization of Human Rights" in *American University International Law Review* (19), 2003, pp. 258-300.



key provisions governing the Congolese National Human Rights Commission.<sup>41</sup> It also calls for strengthening the legal force of the Commission's findings to enhance its authority and effectiveness.

### **1. The need to incorporate the DRC NHRC into the Constitution**

The constitutional entrenchment of the DRC NHRC is essential to ensuring the durability, independence, and effectiveness of the institution, particularly in the face of political volatility. A Commission established solely by statute remains vulnerable to legislative repeal or amendment and therefore lacks the structural safeguards that constitutional status provides.<sup>42</sup> While it is permissible for the Constitution to defer certain operational details to legislation,<sup>43</sup> the foundational principles, such as the Commission's existence, mandate, and independence, should be enshrined in the Constitution itself.

For example, the current legal framework derives from an organic law enacted under Article 222(3) of the 2006 Constitution, which allows Parliament to create institutions to support democracy. However, under this provision, such institutions are discretionary, not mandatory. The relevant text explicitly states that "Parliament may, by organic law, establish other institutions to support democracy, if necessary." This language renders the Commission's existence contingent on political will, thereby compromising its permanence and authority<sup>44</sup>. This implies that, should the Commission's activities no longer align with the interests of the governing authorities, Parliament retains the discretion to abolish it by repealing the organic law, thereby placing the institution's existence at the mercy of shifting political agendas. This institutional fragility highlights the urgency of constitutional entrenchment, beginning with its capacity to protect the Commission from arbitrary repeal or amendment.

#### **a. Resistance to arbitrary repeal or amendment**

Under Article 218 of the 2006 DRC Constitution, constitutional amendments may only be initiated by the President of the Republic, the Government after deliberation in the Council of Ministers, one of the two chambers of Parliament acting on the initiative of at least half of its members, or by a petition signed by no fewer than 100,000 Congolese citizens. Moreover, any proposed constitutional revision must be based on substantive justifications, consistent with the principle that the Constitution is intended to be a stable and rigid legal instrument, insulated from arbitrary or politically motivated amendments.<sup>45</sup>

Further reinforcing this rigidity, Article 219 prohibits any constitutional amendment during exceptional circumstances, including a state of war, a state of emergency, a state of siege, an interim presidency, or when the National Assembly and the Senate are unable to meet freely. By contrast, ordinary legislation, including the organic law establishing the National Human Rights Commission, may be amended or repealed at any time by Parliament, without the same level of procedural scrutiny or judicial oversight. Consequently, the Commission remains vulnerable to political interference and legislative rollback. In light of these distinctions, it can be argued that the constitutional entrenchment of the DRC NHRC would afford it stronger legal protection, institutional permanence, and functional independence than it currently enjoys under ordinary law.

<sup>41</sup> UNGA, *Principles relating to the status of national institutions for the promotion and protection of human rights (The Paris Principles)*, A/RES/48/134, 1993.

<sup>42</sup> Fombad CM., "The new Cameroonian Constitutional Council in a comparative perspective: progress or retrogression?" *Journal of African Law* (42) 1998, pp. 172 – 186.

<sup>43</sup> Fombad CM., "The Role of Emerging Hybrid Institutions of Accountability", op. cit, p. 326

<sup>44</sup> 2006 DRC Constitution, article 222.

<sup>45</sup> Banneux N. et al. "République Démocratique du Congo: Une constitution pour une troisième République équilibrée." In *Fédéralisme Régionalisme* (5), 2005, pp. 1- 16

### **b. Enhanced judicial protection through Constitutional review**

In a legislative system, a parliament cannot generally be accused of violating a law by enacting a new one or repealing an existing statute, as the legislative function inherently includes the authority to draft, amend, and abrogate laws to guide public policy<sup>46</sup>. Within this framework, a newer law typically supersedes a conflicting earlier law, producing abrogative effects by operation of law.

However, the legal consequences are significantly different when a provision is enshrined in the Constitution. If the DRC NHRC were constitutionally established, any subsequent law that contravened its constitutional status or mandate could be challenged and declared unconstitutional. In such a case, the Constitutional Court would be empowered to exercise its review function, assessing whether the proposed legislative revision originates from a constitutionally authorized body and whether it complies with the substantive and procedural requirements of constitutional amendment.

Thus, incorporating the Commission into the Constitution would not only elevate its institutional status but also subject any attempt to alter its structure or functions to robust constitutional scrutiny, thereby reinforcing its independence and long-term stability.

### **2. Enabling the DRC NHR to access the courts**

This paper acknowledges the distinct role of the Commission compared to judicial bodies. While the Commission's findings constitute recommendations rather than binding decisions, their purpose is to influence the promotion and protection of human rights and broader development objectives. Nonetheless, the effectiveness of the Commission's activities remains questionable. The founding legislation does not confer any legal enforceability on the Commission's findings. Consequently, various actors frequently disregard these recommendations, irrespective of their substantive value. As Professor Fombad rightly observes, "it is unnecessary to create institutions... give them the powers to spend large amounts of taxpayers' money to carry out investigations if the results of these investigations will simply be ignored."<sup>47</sup> In light of this challenge, this paper recommends that the Commission be empowered to file petitions before the courts against actors who neglect its recommendations without reasonable justification. Furthermore, it is essential to establish robust litigation mechanisms to monitor and ensure the implementation of the Commission's recommendations. Such measures would enhance the Commission's authority and contribute to strengthening human rights accountability.

### **3. Addressing the financial autonomy of the Commission**

The CNHRC's independence is further compromised by chronic underfunding. According to the Commission's reports, budget execution has consistently been undermined by low disbursement rates.<sup>48</sup> For instance, in 2017, the CNHRC did not receive the monthly operating funds allocated under its budget. Instead, it was granted irregular lump-sum payments by the exceptional public treasury, limited to specific categories such as communication, humanitarian aid, funeral expenses, and office supplies.

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<sup>46</sup> Ouimet M., et al., "Use of research evidence in legislatures: a systematic review", in *Evidence & Policy*, XX(XX) 2023, pp. 1–18

<sup>47</sup> Fombad CM., "The Role of Emerging Hybrid Institutions of Accountability, op. cit., p.336

<sup>48</sup> For instance, the 2020 annual report (DRC HRC, 2020, p.21) states that the 2020 budget of the Commission was distributed as follows:

- Operational costs: CDF 114,000,000 out of the 14,554,387,074 planned, i.e., a disbursement rate of 1.34%.
- Investments: 0 CDF out of the 1,146,545,270 CDF, i.e., 0% disbursement rate.
- Remuneration: 2,707,104,504 CDF out of the 4,907,841. CDF 804 planned, i.e., a 67.8% disbursement rate.

Read DRC NHRC, « Rapport annuel d'activités de la commission nationale des droits de l'homme de Janvier à Décembre 2020 », 2020, p. 21.

Similarly, the 2018 national budget allocated 10,451,129,973 Congolese Francs to the CNHRC.<sup>49</sup> However, only 3,472,076,592 Congolese Francs were actually disbursed, an execution rate of just 33.22%. This shortfall was partly because out of the 74 budget files submitted by the CNHRC, only 12 were approved. Moreover, the Commission received operational funds for only seven out of the twelve months. Such financial constraints severely hinder the Commission's ability to fulfil its mandate<sup>50</sup>. The lack of predictable and sufficient funding jeopardises not only its independence but also the continuity of its programs and investigations. Accordingly, this paper recommends that the CNHRC be assured of adequate, timely, and autonomous funding as a precondition for fulfilling its mission. Financial independence is a cornerstone of NHRI effectiveness, as recognized by the *Paris Principles*.

## 5. Conclusion

The right to development, as recognised in both international and regional human rights instruments, is an essential component of the broader human rights framework. In the context of the DRC, this right is not only enshrined in Article 58 of the 2006 Constitution but also operationalized through laws and policies aimed at equitable resource distribution and inclusive governance. However, the realization of this right remains hampered by structural challenges, including weak institutional mechanisms, insufficient political will, and inadequate enforcement of legal norms. The CNDH, although legally established to serve as a guardian of human rights, continues to face significant limitations that undermine its ability to influence state conduct, corporate accountability, and overall development outcomes.

The findings of this paper demonstrate that while the CNDH has taken important steps in promoting and protecting human rights, through investigations, engagement with civil society, and monitoring corporate practices, its effectiveness remains constrained by its current legal status, lack of financial autonomy, and the non-binding nature of its recommendations. The absence of a constitutional foundation makes the Commission vulnerable to political manipulation, legislative repeal, and institutional marginalization. Furthermore, the reluctance of other state institutions to cooperate with the Commission exacerbates its operational inefficiencies, thereby weakening its impact on advancing the right to development and democratic governance.

In light of these challenges, this paper strongly recommends the constitutional entrenchment of the National Human Rights Commission. Doing so would offer stronger legal guarantees for its independence, permanence, and authority. It would also allow for more effective judicial review of any legislative or executive action that undermines its mandate. Additionally, the Commission's powers should be reinforced with mechanisms that allow it to initiate legal proceedings and ensure that its recommendations carry enforceable weight. Securing adequate and autonomous funding is equally essential to ensure its free and effective functioning. These reforms are not only a matter of institutional strengthening; they are necessary steps toward making human rights and development a lived reality for all Congolese citizens.

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<sup>49</sup> CNDH-DRC, « Troisième Rapport annuel d'activités de la commission nationale des droits de l'homme de Janvier à Décembre 2018, 2018, pp.17-18.

<sup>50</sup> CNDH-DRC, « Rapport annuel d'activités de la commission nationale des droits de l'homme de Janvier à Décembre 2020 », 2020, p.21

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