



Torture in the Democratic Republic of Congo: An open secret?

Alternative report submitted pursuant to Article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

EXECUTIVE SUMMARY

66th session of the Committee against Torture (CAT)

Consideration of the report of the Democratic Republic of Congo (DRC)

April 2019

1. Since the publication in 2007 by the Committee against Torture of the List of Issues inviting the state to prepare its second report, the context in the country has evolved considerably with numerous cases of torture and an increase in arbitrary detentions and cases of ill-treatment, particularly against human rights defenders and activists. The state should have submitted its report on 16 April 2009, but did not do so until July 2017, eight years later. Offering an alternative response to the report submitted by the Congolese state, this report extends beyond the period from 2007 to 2017 to also address events and incidents that have occurred from 2017 to the present day.

2. The report reviews the security and political challenges encountered by DRC over the last 13 years. It shows how the governments have progressively distorted legal and institutional reforms introduced with a view to implementing the recommendations of the CAT and the new constitution of 2006 to build an almost informal structure of liberty deprivation and torture. The objective of those choices was to repress citizen-led and political dynamics opposed to former President Joseph Kabila, who was holding onto power in a de facto and unconstitutional manner.

3. To facilitate the commission of acts of torture, the government fostered a climate of silence and secrecy. It exploited the intercommunal conflicts occurring in several regions of the country, encouraged secret detention in cells and detention facilities outside the scope of the judiciary and established a culture of impunity. As a result, sexual violence remains widespread and is used as a weapon of war.

4. The election of a new President in January 2019 represents an opportunity to adopt measures to more effectively fight torture in the country, particularly by dismantling the structures that continues to legitimize it.

1 LEGAL AND INSTITUTIONAL PROVISIONS AGAINST TORTURE

5. Articles 16 and 61 of the Congolese constitution of 18 February 2006 enshrined the principles of the prohibition of torture and the right to life at the highest level of the national legal system. The obligations of DRC in this regard were further developed in the law of 2011 on the criminalization of torture, the laws of 2006 on sexual violence and Directive AG/0793/10 of 23 June 2010 on torture, which was signed by the Military High Court's Auditor General. In addition, law 9/001 of 10 January 2009 on child protection was adopted,

providing for the creation of a special child protection police force and a juvenile court (Article 84(1)).

6. Specifically, law 11/008 of 9 July 2011 on the criminalization of torture was adopted and bring Congolese law in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified on 18 March 1996. In this law, the definition and criminalization of torture that does not contain the death penalty comply with Article 1 of the Convention.

Poor implementation of the anti-torture law

7. However, in practice, the law criminalizing torture has not been sufficiently disseminated and, unfortunately, many judges continue to apply Article 67 of the Decree of 30 January 1940 establishing the Criminal Code and Articles 191, 192 and 194 of the Military Penal Code considering torture as an aggravating circumstance of the crime of arbitrary detention or arrest. Acts of torture are also often punished pursuant to Article 47 of Part II of the Criminal Code on assault and battery. This partly explains the low number of investigations carried out by judicial police officers and convictions by judges of the perpetrators of acts of torture. A number of cases and decisions clearly illustrate this practice. In some cases, the victims' lawyers even have to remind the judges of the existence of the anti-torture law.

Poor prevention of torture

8. Preventing torture and ill-treatment remains an important challenge in DRC, in both the legislative and institutional spheres. There are numerous legal obstacles to the prevention of torture, particularly in secret places of detention. The creation of the National Commission for Human Rights (CNDH) by Organic Law 13/011 of 21 March 2013 was a significant step forward. Its inspections of places of detention and its reports monitoring the human rights situation are important protection tools. However, the CNDH's small budget, which is only 30% of the expected amount, prevents it from having a permanent presence throughout the country.

9. Similarly, although DRC has ratified the Optional Protocol to the Convention against Torture, it has not set up a national preventive mechanism pursuant to Article 3 and no law establishing a national preventive mechanism (NPM) has been adopted.

10. Furthermore, despite repeated requests, several NGOs working for the protection of human rights have been denied authorization from the authorities to visit and monitor prisons.

2 CASES OF TORTURE AND ILL-TREATMENT AGAINST HUMAN RIGHTS DEFENDERS AND IN AREAS OF ARMED CONFLICT

11. Through a certain legal structure, the military and police intelligence agencies directly attached to the presidency of the republic have enabled numerous cases of torture, ill-treatment, forced disappearances and even extra-judicial executions. Victims of acts of torture have been detained incommunicado for prolonged periods, denied access to both their families and their legal advisers.

Citizens' movements, journalists and human rights defenders

12. Journalists denouncing or reporting cases of torture have been subjected to threats, intimidation, detentions and even killings in order to maintain silence and secrecy about cases of torture which have become emblematic in the country. The World Organisation Against Torture (OMCT) has identified numerous cases of arrests and torture against activists from citizens' movements such as Lutte pour le Changement (LUCHA), FILIMBI and Comité Laïc de Coordination (CLC)¹. The reports of the United Nations office in Kinshasa reveal that the law enforcement agencies have on several occasions used excessive force under illegitimate conditions². In addition, allegations of mass graves where 32 corpses were found in connection with the suppression of the demonstrations of 7 August 2017 in Kinshasa have yet to be confirmed or refuted.

Torture during armed conflicts

13. Since August 2016, unprecedented violence has broken out in Kasai Province with a dramatic security and humanitarian impact on the civilian population. This violence is due to clashes between members of a traditional militia called Kamuina Nsapu and the Congolese defence and security forces, supported by another local militia called Bana Mura. The scale

¹ Rép. Dém Congo: Libération de MM. Carbone Beni Wa Beya, Mino Bompomi, Grâce Tshiuza et Cédric Kalonji, Urgent Appeal - The Observatory, <http://www.omct.org/fr/human-rights-defenders/urgent-interventions/congo-dem-republic/2019/01/d25187/>, 7 January 2019; Rép. Dém. Congo: Condamnation et poursuite de la détention arbitraire de quatre membres du Mouvement Filimbi, Urgent Appeal - The Observatory, <http://www.omct.org/fr/human-rights-defenders/urgent-interventions/congo-dem-republic/2018/09/d25048/>, 26 September 2018

² https://www.ohchr.org/Documents/Countries/CD/BCNUDH-Report_March2018.pdf

and gravity of the human rights violations have reached a critical threshold, resulting in the deaths of at least 3,383 people according to the Catholic Church³ and 5,000 according to the Regional Council of Development NGOs. The United Nations stated that the violence caused an unprecedented acute humanitarian crisis. First-hand accounts refer to several cases of torture, including sexual violence, decapitation and mutilation. Around 100 mass graves have been discovered⁴. In addition, two United Nations experts and their guides were killed and mutilated.

Sexual violence against women

14. It should be remembered that in DRC rape is systematically used as a weapon of war, by both non-state armed groups and state forces. Indeed, at least 200,000 cases of sexual violence linked to the conflict have been recorded since 1996⁵. In the east of the country, the proliferation of armed groups has intensified the use of rape as a weapon of war. Clashes between armed groups and the security forces have systematically resulted in cases of rape. According to estimates from 2011, approximately 40 women are raped every day in Sud-Kivu Province alone⁶ and studies show that four women are raped every five minutes nationwide⁷.

The conflict in the Kasai region has given rise to atrocious forms of sexual violence. “Deliberate attacks against communities along ethnic fault lines have included the use of taboo practices, such as victims being raped in front of relatives, a pregnant woman having her foetus ripped out and at least one victim being forced to perform sex acts on a family member before being executed”⁸.

The issue of sexual violence continues to be a real challenge in DRC given that in 2017 “the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) verified 804 cases of conflict-related sexual violence, affecting 507 women, 265 girls, 30 men and 2 boys, representing an increase from the previous reporting period”⁹. At the same time, the United Nations Population Fund (UNFPA) reported 5,783 cases of

³ *LePotentielOnline*, No. 7052 of 22 June 2017

⁴ Report written by the Association pour le Développement Socio-économique du Kasai (ADSKA), January 2019

⁵ UN Women, Virtual Knowledge Centre to End Violence against Women and Girls, <http://www.endvawnow.org/en/articles/299-faits-en-un-coup-doeil-statistiques-sur-la-violence-a-legendes-des-femmes.html>, accessed on 14 February 2019

⁶ OHCHR, *Rape: Weapon of war*, <http://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx>, accessed on 20 March 2019

⁷ A Peterman, T Palermo, C Bredenkamp, “Estimates and Determinants of Sexual Violence Against Women in the Democratic Republic of Congo”, *American Journal of Public Health*, June 2011, Vol. 101, No. 6, pp. 1060-1067

⁸ *Idem*

⁹ *Ibid.*, para. 37

sexual violence committed in the provinces affected by the conflict, more than double the number in 2016¹⁰. The Ministry of Gender, Family and Children indicates that in 2017 there were 13,045 cases of violence against women - including 8,171 cases of rape, 847 sexual assaults, 1,386 physical assaults, 588 forced marriages and 444 cases of denial of resources and opportunities - in DRC¹¹.

Ill-treatment and acts of torture against children

15. Child protection has received particular attention over the past decade. Prison staff responsible for children in detention do not receive adequate training in the administration of juvenile justice and the treatment of prisoners (“Nelson Mandela Rules”).

16. In 2014, in a police operation called “Likofi”, young people including children were strangled to death by police officers. Their lifeless bodies were found by the Kalamu river. According to a MONUSCO report, summary and extra-judicial executions and forced disappearances were committed during this operation with the involvement of high-ranking members of Kinshasa police force and several officers from different units of the Congolese National Police, including West Kinshasa Mobile Intervention Group (GMI Kin-Ouest), East Kinshasa Mobile Intervention Group (GMI Kin-Est), a police station in Kingabwa and the National Intervention Legion (LENI)¹². Most of the executions are believed to have been committed by shooting, strangling or hanging. Human Rights Watch believes that boys aged between 15 and 17 subjected to forced disappearance, “were beaten and humiliated by the police in front of a crowd before being killed, and in some cases they were handcuffed and blindfolded”¹³.

3 TORTURE AND INCOMMUNICADO DETENTION: INVOLVEMENT OF THE INTELLIGENCE AGENCIES (Articles 12, 13 and 14)

17. The intelligence agencies constitute the framework of the freedom-depriving structure set up by the authorities. They completely elude the power of the judiciary and take advantage

¹⁰ Idem

¹¹ Database of the Ministry of Gender, Family and Children, 2017. Unpublished

¹² MONUSCO, Report of the United Nations Joint Human Rights Office on human rights violations committed by agents of the Congolese National Police during operation Likofi in Kinshasa between 15 November 2013 and 15 February 2014 https://www.ohchr.org/Documents/Countries/CD/LikofiReportOctober2014_en.pdf

¹³ Human Rights Watch, Operation Likofi. Op. Cit. <https://www.hrw.org/fr/report/2014/11/17/operation-likofi/meurtres-et-disparitions-forcees-aux-mains-de-la-police-kinshasa>, November 2014

of the prerogatives established in Decree-Law 3/2003 of 11 January 2003 on the creation and organization of the National Intelligence Agency (ANR), enabling them to detain people accused of undermining the security of the state. The country has a large number of secret places of detention, which are often houses scattered around the country that are used as interrogation facilities. Several victims have shared experiences of being detained in unknown locations. Pursuant to this decree, the ANR is a public service with administrative and financial autonomy, which is directly supervised by the presidency of the republic. It has questioning and detention powers that facilitate human rights abuses. There is no appropriate training or procedure for the selection and appointment of its agents.

18. ANR agents are not the only ones that operate in a controversial manner in the name of state security. The national armed forces (FARDC) and the military intelligence agency operate under the control of the Ministry of Defence and are primarily responsible for external security, though they also have an internal security role. Indeed, there are many detention cells in military camps around the country where large numbers of activists are held. The presidency of the republic supervises the Republican Guard, while the Minister of the Interior supervises the Directorate-General of Migration (DGM) which, together with the Congolese National Police, is responsible for border control.

In accordance with the provisions for administrative detentions contained in Decree-Law 1/61 of 25 February 1961, detainees are treated outside of the procedure imposed by the Code of Criminal Procedure. This means that the public prosecution service does not have the power to directly control the judicial police officers of the ANR¹⁴. As a result, many people are detained and tortured in military camps such as Kokolo military camp, Colonel Tshatshi military camp, ANR detention cells in most parts of the country, as well as cells of the former DEMIAP (Military Detection of Antipatriotic Activities), the National Security Council and Litho Moboti Group (GLM)¹⁵.

4 TORTURE AND THE CULTURE OF IMPUNITY

19. The climate of impunity in DRC is a major factor in the ongoing, systematic practice of

¹⁴ Emmanuel Luzolo Bambi Lessa, *Traité de droit judiciaire. La justice Congolaise et ses institutions*, Centre de recherche sur la justice transitionnelle, Presses Universitaires du Congo, Kinshasa, 2018, p. 1107

¹⁵ Accounts of five lawyers who participated in the workshop held by OMCT in Kinshasa in December 2018. This is also the case for several detainees on behalf of whom OMCT has made urgent appeals in the Observatory programme, including Palmer Kabeya in December 2017 (see p. 18)

torture, particularly rape. In the absence of tough measures against the perpetrators, men think they can commit rape and other acts of torture against women without punishment. When the perpetrators return to the places where they committed the crime, anyone who has publicly denounced them fears for their safety. Some victims who have filed complaints against their attackers have even been raped again.

Similarly, when abuses have been committed against children, particularly during Operation Likofi, the allegations of torture, abduction and summary executions have not resulted in charges being brought against the officers from elite police units who were involved¹⁶. ANR agents have near immunity since Article 25 of Decree-Law 3/2003 of 11 January 2003 prevents legal proceedings against them. Despite the role they play in acts of torture and numerous reports indicating their involvement, they have not been investigated or prosecuted.

It should nonetheless be noted that significant progress has been made in the fight against the impunity of acts of sexual violence. However, judicial action is still mostly limited to junior officers, with senior military commanders remaining largely immune. Between 2011 and 2017, the United Nations Joint Human Rights Office (UNJHRO) in DRC revealed that there were between 187 and 246 convictions of military and police officers by military tribunals for acts of sexual violence¹⁷. At this stage, it is the lack of sanctions against senior members of the forces that remains one of the main reasons for the persistence of rape as a weapon of war in DRC. Between 2013 and 2017, for example, only three convicted members of the military were high-ranking officers (lieutenant-colonels)¹⁸.

Conclusion and priority recommendations

20. On 24 January 2019, following a tense electoral and post-electoral period, the Democratic Republic of Congo underwent some major political changes. Indeed, for the first time in its history, the country had its first democratic change of government with the election of Felix Antoine Tshisékédi as President.

¹⁶ACAT France, Lutte contre le banditisme à Kinshasa : une opération de police qui tourne au massacre, <https://www.acatfrance.fr/actualite/lutte-contre-le-banditisme-a-kinshasa-une-operation-de-police-qui-tourne-au-massacre>, 12 January 2015

¹⁷ Office of the United Nations High Commissioner for Human Rights and MONUSCO, “Avancées et obstacles dans la lutte contre l'impunité pour les violences sexuelles en République démocratique du Congo”, 9 April 2014, http://www.ohchr.org/Documents/Countries/CD/UNJHROApril2014_fr.pdf, accessed on 20 March 2019; United Nations Security Council, Report of the Secretary-General on conflict-related sexual violence, S/2015/203, <https://www.refworld.org/docid/5912d5b74.html>, para. 25, 23 March 2015; Joint communiqué on sexual violence at the centre of discussions in Kinshasa, <https://monusco.unmissions.org/le-communicue-conjoint-sur-les-violences-sexuelles-au-centre-des-discussions-a-kinshasa>, 13 October 2016.

¹⁸ United Nations Security Council, Report of the Secretary-General on conflict-related sexual violence, <https://reliefweb.int/sites/reliefweb.int/files/resources/N1808326.pdf>, S/2018/250, para. 39, 23 March 2018

21. The result announced on 10 January 2019 was contested by Martin Fayulu, who claimed that an agreement had been made between former President Joseph Kabila and the new President. Since then, calm and stability have returned throughout the territory, allowing the new authorities to govern the country.

22. In order to more effectively implement the legal provisions adopted to prevent and combat torture and comply with the Convention against Torture, the new authorities must consider the following priorities:

Anti-torture legislation

- Disseminate the law on the criminalization of torture and Directive AG/0793/10 of 23 June 2010 on torture.
- Raise the awareness of the civilian and military judicial authorities regarding appropriate qualification of the facts in the event of allegations of acts of torture.

Human rights defenders and torture

- Adopt as a priority the law on the protection of human rights defenders and ensure that the law does not restrict their activities, in line with the UN Declaration on Human Rights Defenders.
- Avoid exploiting laws pertaining to national security and combating terrorism to restrict individual and collective freedoms, including those linked to civil society activities.

Prevention of torture

- Grant the prison services a sizeable budget to enable them to meet the essential needs of persons in detention.
- Respect the rights of detainees in accordance with the United Nations Standard Minimum Rules and the legal provisions in force in DRC.
- Grant annual permission to civil society organizations to visit places of detention and custody with a view to preventing torture.
- Create a national torture prevention mechanism in accordance with the Optional Protocol to the Convention against Torture.

Fight against impunity

- Take, as soon as possible, all necessary measures to fight impunity by ensuring that acts of torture and ill-treatment are thoroughly investigated in an independent and impartial manner, those responsible for such acts are prosecuted and convicted, and the victims have access to justice, reparation and rehabilitation.
- Prosecute and punish the perpetrators of torture and ill-treatment linked to public demonstrations.
- Improve the training in international standards given to all state agencies and actors involved in the prevention, perpetration and punishment of acts of torture.
- Take effective measures to prevent and punish acts of torture committed against civilians by armed forces involved in military operations.
- Take effective measures to establish the responsibility of senior officers involved in human rights violations.
- Fully cooperate with the Office of the High Commissioner for Human Rights, particularly the United Nations Joint Human Rights Office and the team of international experts, on the situation in the Kasai region.
- Investigate and punish the people involved in the torture and killing of the United Nations experts in Kasai.

Incommunicado detention and torture

- Identify all unofficial places of detention and issue a new presidential decree reaffirming their immediate and permanent closure.
- Adopt a directive on the prohibition of incommunicado detention in DRC, including on the premises of the military and civilian intelligence agencies.
- End administrative detentions and place sole responsibility for detentions and judicial proceedings with the public prosecution service.
- Repeal all legislation contrary to the Constitution, granting search, internment and surveillance powers to the ANR and other intelligence services.
- Reform the National Intelligence Agency and all the intelligence services, redefining their functions and powers in order to avoid their encroachment on the protection of individual and collective freedoms.

- Investigate and try all intelligence service agents who have been involved in acts of torture and ill-treatment in recent years.

Independence of judges

- Strengthen the anti-corruption mechanisms in order to strengthen torture victims' trust in the judicial system, including by increasing the remuneration of judicial personnel.
- Grant greater autonomy to the High Council for the Judiciary in the appointment, promotion, retirement, removal and rehabilitation of all judges.

Torture and ill-treatment of children

- Guarantee the necessary financial, material and human resources for the correct functioning of the special child protection police force in order to ensure the proper conducting of effective, quick and independent investigations into cases connected with juvenile delinquency.
- Conduct investigations to identify and punish the security forces responsible for the extra-judicial executions in Operation Likofi.

Sexual violence and impunity

- Step up efforts to combat sexual violence against women and girls by ensuring that any person affected by sexual violence has real access to justice, reparation and rehabilitation.
- Allocate sufficient, appropriate financial, human and technical resources to the competent judicial actors (judicial police, public prosecutors and courts) and increase the number of judges and magistrates hearing sexual violence and child protection cases, particularly in regions affected by the conflict.
- Increase victims' access to basic social services, and to psychosocial support and socio-economic reintegration programmes.
- Prioritize the fight against the impunity of the perpetrators of crimes of sexual violence, particularly high-ranking members of the army and police in regions affected by the conflict and remote areas.

- Create a nationwide pool of civil and military judges specialized in the prosecution of crimes of sexual violence.
- Ensure the implementation of all forms of reparation for victims of sexual violence, including restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition.
- Strengthen the Ministry of Defence's policy of zero tolerance to sexual violence and ensure that the perpetrators of crimes are brought to justice, regardless of their rank.
- Accelerate the establishment of specialized mixed chambers to prosecute the perpetrators of the most serious human rights violations, including those accused of acts of torture and ill-treatment, including magistrates, in order to ensure genuine independence between the judiciary and the executive.
- Bring into operation the National Institute of Judicial Training (INAFORJ) in Kinshasa and offer training on the mechanisms to fight and prevent torture and ill-treatment.

This alternative report has been prepared with the financial support of the European Union, the Dutch Ministry of Foreign Affairs, the Swiss Federal Department of Foreign Affairs and Irish Aid. The content of this document is the sole responsibility of OMCT and in no way expresses the opinions of the European Union, the Dutch Ministry of Foreign Affairs, the Swiss Federal Department of Foreign Affairs or Irish Aid.

