



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

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

Democratic Republic of the Congo

1. The Committee considered the initial report of the Democratic Republic of the Congo (CAT/C/37/Add.6) at its 686th and 687th meetings (CAT/C/SR.686 and 687), held on 21 and 22 November 2005, and adopted, at its 691st meeting, the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the presentation of the initial report of the Democratic Republic of the Congo, which is in conformity with the Committee's guidelines for the preparation of reports, but regrets that it was submitted with an eight-year delay. It commends the report's frankness and the State party's acknowledgement of shortcomings in the implementation of the Convention. It appreciates the constructive dialogue conducted with the high-level delegation sent by the State party and notes with satisfaction the candid and full answers given to the questions raised during the dialogue.

B. Positive aspects

3. The Committee notes with satisfaction the following positive developments:

(a) The ratification by the State party of most of the core international human rights treaties;

(b) The ratification by the State party, on 30 March 2002, of the Rome Statute of the International Criminal Court;

(c) The State party's stated intention to rectify the delay in submission of its reports to the various treaty bodies, and with that end in view to transmit its reports to the United Nations Secretary-General through the new Inter-Ministerial Standing Committee set up on 13 December 2001;

(d) The existence of a bill amending and expanding the Criminal Code to ensure that the Convention is fully incorporated in the domestic legislation of the Democratic Republic of the Congo;

(e) The establishment of institutions for the promotion and protection of human rights, such as the Observatoire congolais des droits de l'homme and the Ministry of Human Rights, and the emerging cooperation between the public authorities and civil society in the promotion and protection of human rights, especially in countering torture.

C. Factors and difficulties impeding the implementation of the Convention

4. The Committee notes that the State party is still going through a period of political, economic and social transition exacerbated by an armed conflict that has had and continues to have an impact on the country. The Committee points out, however, that, as stated in article 2, paragraph 2, of the Convention, no exceptional circumstances whatsoever may be invoked as a justification of torture.

D. Subjects of concern and recommendations

5. The Committee notes with concern that the State party has neither incorporated the Convention in its domestic legislation nor adopted legal provisions to ensure its implementation, and notes in particular:

(a) That there is as yet no definition of torture in domestic law that strictly corresponds to the definition contained in article 1 of the Convention;

(b) That the law of the Democratic Republic of the Congo does not confer universal jurisdiction for acts of torture;

(c) That there are no provisions giving effect to other articles of the Convention, particularly articles 6 to 9.

The Committee recommends to the State party that it take all necessary legislative, administrative and judicial measures to prevent acts of torture and ill-treatment in its territory, and in particular that it:

(a) Adopt a definition of torture encompassing all the constituent elements contained in article 1 of the Convention and amend its domestic criminal legislation accordingly;

(b) Ensure that acts of torture constitute offences over which it has jurisdiction, in accordance with article 5 of the Convention;

(c) Provide for implementation of the Convention, especially its articles 6 to 9.

6. The Committee is also concerned about repeated allegations of widespread torture and ill-treatment by the State party's security forces and services and about the impunity allegedly enjoyed by the perpetrators of such acts.

(a) The State party should take effective measures to prevent any acts of torture or ill-treatment from occurring in any part of the territory under its jurisdiction;

(b) The State party should take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try the perpetrators of such acts and, where they are convicted, impose appropriate sentences, and properly compensate the victims.

7. The Committee takes note of the outlawing of unlawful places of detention that are beyond the control of the Public Prosecutor's Office, such as prison cells run by the security services and the Special Presidential Security Group, where persons have been subjected to torture. Nevertheless, it remains concerned that officials of the State party are still depriving people of their liberty arbitrarily, especially in secret places of detention. It is also concerned about allegations that the military and law enforcement officers commonly subject detained persons to torture and ill-treatment.

(a) The State party should take steps, as a matter of urgency, to bring all places of detention under judicial control, in accordance with the presidential decision of 8 March 2001;

(b) The State party should take effective action without delay to prevent acts of arbitrary detention and torture by its officials. All alleged cases of arbitrary detention and torture should be thoroughly investigated, the perpetrators prosecuted and the victims awarded full reparations, including fair and adequate compensation;

(c) The State party should take steps to ensure that all arrested persons are formally registered and brought before a judge and can exercise their right to have the assistance of a lawyer of their choosing, to be examined by a doctor, and to contact their families or other persons of their choosing.

8. The Committee is concerned about qualitative and quantitative shortcomings in the judiciary and the Public Prosecutor's Office, the public institutions responsible for overseeing public safety and ensuring that the State functions in a manner that guarantees respect for human rights.

(a) The State party should take effective steps to enhance the independence of the judiciary, the cornerstone of any State based on the rule of law by virtue of its role as custodian of rights and freedoms under the Constitution, especially by improving the working conditions of officials and the facilities they require for the proper performance of their duties. The Committee considers that the State should train judges to ensure more efficient investigations and bring judicial decisions into conformity with applicable international norms. It further recommends the adoption of effective measures to ensure the independence of members of the judiciary and the protection of their physical integrity;

(b) The Committee encourages the State party to seek ways and means of strengthening the judiciary, in particular through international cooperation.

9. The Committee notes with concern the existence of a system of military justice with jurisdiction to try civilians.

The State party should take the necessary steps to ensure that military courts are used solely for the purpose of trying military personnel for military offences in accordance with the relevant provisions of international law.

10. The Committee notes with concern the large number of security forces and services with powers of arrest, detention and investigation.

The State party should keep to the strict minimum the number of security forces and services with powers of arrest, detention and investigation, and ensure that the police force remains the primary law enforcement agency.

11. The Committee is concerned about the conditions of detention currently existing in the Democratic Republic of the Congo. The most common problems are overcrowding, insufficient food, poor hygiene and a shortage of material, human and financial resources. The treatment of prisoners remains a matter of concern for the Committee. Cases of corporal punishment for disciplinary offences have been reported. Solitary confinement and food deprivation are also used as disciplinary measures. In many cases, minors and women are not segregated from adults and men.

The State party should end practices that are contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate steps to reduce overcrowding in prisons and the number of persons in pretrial detention, and ensure that minors and women are segregated from adults and men.

12. The Committee is deeply concerned about the widespread sexual violence against women, including in places of detention.

The State party should establish and promote an effective mechanism for receiving complaints of sexual violence, including in custodial facilities, and investigate the complaints, providing victims with psychological and medical protection.

13. The Committee notes with concern allegations of reprisals, serious acts of intimidation and threats against human rights defenders, especially those who report acts of torture and ill-treatment.

The State party should take effective steps to ensure that all persons reporting torture or ill-treatment are protected from intimidation and from any unfavourable consequences they might suffer as a result of making such a report. The Committee encourages the State party to seek closer cooperation with civil society in preventing torture.

14. The Committee is concerned about the general vulnerability of abandoned children who are at risk of torture and other cruel, inhuman or degrading treatment, especially children used as combatants by the armed groups operating on the territory of the Democratic Republic of the Congo.

The State party should adopt and implement emergency legislative and administrative measures to protect children, especially abandoned children, from sexual violence and to facilitate their rehabilitation and reintegration. The Committee further recommends that the State party take all possible steps to demobilize child soldiers and facilitate their rehabilitation and reintegration into society.

15. The Committee notes with concern the lack of statistics, especially on cases of torture, complaints and convictions of perpetrators.

The State party should provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, and on the related investigations, prosecutions and criminal and disciplinary sanctions. Information is further requested on any measures taken to compensate and provide rehabilitation services for the victims.

16. The State party is encouraged to disseminate widely the reports submitted by the Democratic Republic of the Congo to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

17. The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations contained in paragraph 5 (a), (b) and (c) above.

18. The State party is invited to submit its next periodic report, which will be considered as its consolidated second to fourth reports, by 16 April 2009, the due date of its fourth report.