



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

Distr.
GENERAL

CAT/C/DRC/Q/2
9 March 2009

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE
Thirty-ninth session
Geneva, 5-23 November 2007

**LIST OF ISSUES TO BE CONSIDERED DURING THE
EXAMINATION OF THE SECOND PERIODIC REPORT
OF THE DEMOCRATIC REPUBLIC OF THE CONGO**

Articles 2 and 4

1. Please indicate what measures the Government of the Democratic Republic of the Congo has taken to include in its domestic legislation a definition of torture that is consistent with article 1 of the Convention, and to criminalize acts of torture. In particular, please provide information on the current status of the draft law to make torture a criminal offence that was submitted to Parliament in 2004, and on any bill that has been tabled since 2005.
2. Please provide updated information on cooperation between the government authorities and civil society in the promotion and protection of human rights, in particular with regard to the suppression of torture.
3. Please indicate the measures taken to prevent arbitrary detention, torture and cruel, inhuman or degrading treatment and to eliminate impunity for alleged perpetrators of such acts, including through thorough investigations, the prosecution of perpetrators and the compensation of victims.
4. In the light of the deteriorating human rights situation throughout the Democratic Republic of the Congo (allegations of arbitrary and mass arrests, torture, rape and ill-treatment), please indicate how the State party intends to formulate a coherent plan to guarantee security in its territory, particularly in the east of the country, and to prevent these acts from occurring.

5. Please indicate the measures taken to ensure that every place of detention is subject to judicial control, in conformity with the presidential decision of 8 March 2001. Please indicate whether the following places of detention, inter alia, are already subject to judicial supervision:

- (a) The Republican Guard punishment cell (*cachot*) in La Botte;
- (b) The Camp Saïo punishment cell;
- (c) The punishment cell of the tenth Military District of South Kivu;
- (d) The punishment cell of the National Intelligence Agency (ANR) in Bukavu.

6. Please provide information on the measures taken to close down unauthorized holding centres.

7. Please indicate the measures taken to enhance the independence of the judiciary and to train judges in order to improve the efficiency of investigations and bring judicial decisions into line with the applicable international norms. In this regard, please indicate whether the bills on the “status of judges” and the “Higher Council of the Judiciary” have been adopted. If this is not the case, please explain why.

8. Is there a bill on the establishment of an independent national institution for the promotion and protection of human rights to replace the National Human Rights Observatory?

9. Please indicate the measures taken to ensure that military courts are used solely to try military personnel for military offences, in conformity with the applicable laws. In this regard, please provide clarifications regarding information which the Committee has received about trials of civilians before military courts.

10. What administrative or legislative measures have been taken to educate State officials and members of the security forces (the Armed Forces of the Democratic Republic of the Congo (FARDC), the Congolese National Police (PNC), the intelligence services, etc.) about the prohibition on the use of torture and cruel, inhuman and degrading treatment, particularly during interrogation and detention?

11. Please provide information on the legislative and administrative measures taken to provide protection for civilian populations in combat zones, in particular to protect women and children against sexual violence and rape. Does the State party have a strategy for tackling the systematic use of rape as a weapon of war, and therefore as a form of torture, and to provide for the rehabilitation of the victims of such acts?

12. What practical measures have been put in place to counter, in cases of sexual violence, the use of amicable settlements mediated by the family, traditional leaders, local government authorities, the police or even the prosecution/judge advocate’s department and to ensure that perpetrators receive penalties that are commensurate with the gravity of the acts committed?

13. Please indicate the number of security forces and services with arrest, detention and investigatory powers and the measures taken to ensure that the police remain the principal institution responsible for law enforcement.

14. Please indicate:

(a) The average number of cases brought before a judge at different levels of the judicial system that involve complaints about torture or cruel, inhuman or degrading treatment;

(b) The number of police and security officers for every 100,000 inhabitants, and their distribution in the territory of the State party;

(c) The number of public prosecutors and judges for every 100,000 inhabitants, and their distribution in the territory of the State party; and

(d) The proportion of accused persons and detainees who apply for and actually receive free legal aid.

15. Please indicate the measures taken to expedite the process of disarmament of militias and armed groups, including, inter alia, the Forces démocratiques de libération du Rwanda, the Interahamwe, the “Rastas” and the Mai-Mai, pursuant to the recommendation made by the independent expert on the situation of human rights in the Democratic Republic of the Congo, in his report dated 21 February 2007 (A/HRC/4/7, p. 2) to the Human Rights Council.

Article 3

16. Please provide information on the legislation in force in the State party concerning the expulsion, return (refoulement) or extradition of foreigners to other States, including in cases where there are serious grounds to believe that these persons would be in danger of being subjected to torture.

Articles 5, 6, 7 and 8

17. Please provide information about the measures taken to establish the State party’s jurisdiction over acts of torture in cases where the alleged offender is present in any territory under its jurisdiction, with a view to ensuring either extradition or prosecution.

Article 11

18. Please provide detailed information on the measures taken to guarantee that every detainee is formally registered and is brought before a judge within 48 hours, in conformity with article 28 of the Code of Criminal Procedure, and to guarantee the right of such persons to have the assistance of legal counsel of their choosing, to be examined by a doctor and to contact their next of kin or a person of their choice from the beginning of police custody.

19. What measures have been taken to facilitate access to places of detention for judges from the prosecution/judge advocate’s department, human rights organizations and staff members of the Office of the United Nations High Commissioner for Human Rights?

20. Please provide information on any emergency or anti-terrorist legislation that may limit the guarantees provided to detainees, particularly the right to be heard by a judge as soon as possible, the right to contact family members and to inform them of the situation, and the right to have access to a lawyer and a doctor from the outset of deprivation of liberty.

21. Please indicate the measures taken to halt practices that are contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners, in particular to reduce prison overcrowding and the number of persons in pretrial detention, while guaranteeing that women and children are segregated from adults and men, and to address the problems of poor hygiene and insufficient food, especially in South Kivu.

22. Please provide information on the measures taken to eradicate the use of corporal punishment, solitary confinement and food deprivation as disciplinary measures.

23. Please indicate:

(a) The number of complaints, investigations, indictments, proceedings, convictions and decisions aimed at providing redress and compensation for victims of acts of torture and other cruel, inhuman or degrading punishment or treatment;

(b) The names and locations of all places of detention;

(c) The maximum and the average length of pretrial detention;

(d) The prison population, disaggregated by offence and length of sentence; and

(e) The number of deaths that have occurred in each penal establishment.

Articles 12 and 13

24. Please indicate the measures taken to conduct prompt and impartial investigations into allegations of torture and ill-treatment and to ensure that the alleged perpetrators of such acts are tried and, if found guilty, are given appropriate sentences, and that the victims are properly compensated. Is there a draft law on the protection of victims and witnesses? If so, please provide information on its content and any impediments to its adoption.

25. Please indicate whether all the follow-up committees which the Ministries of the Interior and Defence were to establish to investigate alleged human rights violations committed by the PNC and FARDC are currently operational.

26. Please indicate the number of cases in which law enforcement officials were subjected to judicial or administrative sanctions for ill-treatment of detainees in 2007 and 2008. Please indicate the nature of the sanctions and the length of the sentences imposed. Please indicate whether, in cases of allegations of torture or cruel, inhuman or degrading treatment, civil servants implicated in such cases are suspended from duty as a precautionary measure for the duration of the investigation. Please provide detailed statistics in this regard and references for the judgements that were rendered.

27. Please provide information regarding the fact that, according to information received by the Committee, some members of FARDC who have allegedly committed acts of torture have not been punished, but have been maintained in their posts or promoted.

28. Please indicate whether persons placed in detention have the option, in cases where their complaints of torture and ill-treatment are dismissed, to submit their cases to the competent judicial authorities by means of a private prosecution.

29. Please specify which independent body (bodies) is (are) responsible for visiting prison establishments and other places of detention. Please indicate the frequency of visits since 2005, the recommendations put forward by this body (these bodies) following such visits and how the recommendations were implemented. If the recommendations have not been implemented, please explain why not.

30. Please indicate the measures taken to establish and promote an effective mechanism to receive complaints of sexual violence, including within the prison system, and to investigate the complaints.

31. What measures are taken to encourage prosecution/judge advocate's departments to take up, of their own motion, and to prosecute, cases of torture and cruel, inhuman or degrading treatment which they discover while making inspection visits to detention facilities, or which are brought to their attention?

32. Please provide information on the measures taken to expedite investigations into any disappearance or arbitrary execution reported to the State party and to prosecute and punish the perpetrators of such acts. In this connection, please indicate the measures taken to investigate the discovery, on 21 November 2006, by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the judge advocate's department of Bunia garrison, of three mass graves in a FARDC military camp reportedly containing the bodies of some 30 men, women and children who had been missing since August 2006, according to information provided to the independent expert on the situation of human rights in the Democratic Republic of the Congo (A/HRC/4/7, para. 27).

33. The independent expert, in his report dated 21 February 2007 to the Human Rights Council (A/HRC/4/7, paras. 20-43), mentions a large number of massive violations of human rights, including cases of torture, cruel, inhuman or degrading treatment, disappearance, arbitrary detention, gang rapes and summary executions. Please indicate the measures taken to investigate the cases mentioned in his report, as well as actions taken to prosecute and punish the perpetrators. Please provide information on the action being taken to shed light on the disappearance of Dr. Soso Gesevene on 20 August 2006.

Article 14

34. Please indicate the measures taken to grant effective reparations, including adequate compensation and appropriate medical and psychological support, to victims of torture, including victims of rape and other forms of sexual violence. Please indicate how many persons have been compensated following a case of torture or ill-treatment and describe the nature of the violence to which they had been subjected.

35. Please indicate the measures taken to adopt emergency legislative and administrative measures to protect child victims of torture, and of sexual violence in particular, and to ensure their rehabilitation and reintegration. Please also provide information on the measures taken to demobilize all child soldiers and provide for their rehabilitation and reintegration, particularly in Ituri, North and South Kivu and Katanga.

Article 15

36. Please clarify whether the Code of Criminal Procedure explicitly stipulates that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings. If this is not the case, please explain why not. Please indicate the remedies available in cases where a conviction is based on statements obtained under torture or as a result of cruel, inhuman or degrading treatment.

Article 16

37. Please indicate the legislative or administrative measures taken to protect human rights defenders from threats and other forms of intimidation, in particular members of non-governmental organizations such as Action contre l'impunité pour les droits humains (Action against Impunity for Human Rights) (ACIDH), La Voix des Sans Voix pour les droits de l'homme (Voice of the Voiceless for Human Rights), and Le Comité des Observateurs des Droits de l'Homme (The Observers' Committee for Human Rights) (CODHO), to which the Special Representative of the Secretary-General on the situation of human rights defenders refers in his report dated 27 March 2007 to the Human Rights Council (A/HRC/4/37/Add.1, paras. 225, 228 and 230).

38. Please indicate whether the State party has adopted the bill prohibiting and punishing domestic and sexual violence. If not, please explain why not.

39. Please provide information on the measures taken to eradicate child trafficking, especially for the purposes of sexual or economic exploitation, and to prosecute the perpetrators of such acts.

Other

40. The Committee notes that it has still not received a reply from the State party to the letter dated 5 April 2007 to the Democratic Republic of the Congo from the Rapporteur for follow-up to the Committee's observations and recommendations (CAT/C/DRC/CO/1). Please provide the information requested.

41. Please provide detailed information on any relevant changes in the legislative or institutional framework for the protection and promotion of human rights at the national level that have taken place since the presentation of the initial report, including any relevant recent jurisprudence. Please also indicate any difficulty which would prevent the State party from fully meeting its obligations under the Convention.

42. Please provide detailed information on any new political, administrative or other measure aimed at protecting and promoting human rights at the national level since the presentation of the initial report, including any human rights plan or programme, and on the resources allocated to them, the means of action, the objectives and the results achieved.

43. Please provide any other information on recent measures and changes aimed at implementing the Convention and the Committee's recommendations since the consideration of the initial report in 2005, including relevant statistical data, and on any events in the State party that are of relevance to the implementation of the Convention.

44. Please provide information on legislative, administrative or other measures taken by the Government in response to terrorist threats, and please indicate the extent to which such threats have affected fundamental human rights guarantees, in law and in practice.

45. Please indicate the concrete steps taken to ensure broad dissemination of the Convention and of the Committee's concluding observations in all the languages of the State party. What actions and programmes have been undertaken in cooperation with non-governmental organizations? In what circumstances do human rights defenders have access to places of detention and to information and statistics relating to Government policies?

46. Does the State party plan to make the declaration under articles 21 and 22 of the Convention? Does the Democratic Republic of the Congo envisage ratifying the Optional Protocol to the Convention against Torture? If so, has it established or designated a national mechanism to conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment?
