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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1997

Addendum

DEMOCRATIC REPUBLIC OF THE CONGO

[5 January 2005]

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Introduction

1. The Democratic Republic of the Congo ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 18 March 1996. Under article 19 of the Convention, the initial report should have been submitted to the Committee against Torture by 17 April 1997 at the latest.

2. In 1987 the Democratic Republic of the Congo established an inter-ministerial committee to prepare initial and periodic reports pursuant to the international conventions and treaties it has ratified. Unfortunately, owing to political instability and financial problems, this committee was unable to pursue its mandate. Some reports have nonetheless been submitted.

3. The Democratic Republic of the Congo is eager to honour its international commitments and has thus given new impetus to the preparation of initial and periodic reports by establishing a new inter-ministerial standing committee. Formed on 13 December 2001, it has 35 members drawn from a variety of State services. This report therefore combines the initial and second periodic reports of the Democratic Republic of the Congo.

4. The Democratic Republic of the Congo has yet to make a declaration recognizing the competence of the Committee against Torture to receive and examine communications transmitted by States or individuals under articles 21 and 22 of the Convention.

Part I

GENERAL INFORMATION

I. LAND AND PEOPLE

A. Land

5. The Democratic Republic of the Congo, a Central African country, straddles the equator. To the north lie the Central African Republic and the Sudan, to the east Uganda, Rwanda, Burundi and the United Republic of Tanzania, to the south Zambia and Angola, and to the west the Atlantic Ocean, the enclave of Kabinda and the Republic of the Congo.

6. The Democratic Republic of the Congo, a vast country (2,345,409 km^2) on a continental scale, possesses a largely flat relief. In the centre is a basin, with an average altitude of 230 metres, covered in equatorial forest and with many wetland areas. The central basin is bordered by staggered plateaux, with the exception of the east, where there are volcanic mountains with an average altitude in excess of 1,000 metres.

7. Crossed by the equator, the Democratic Republic of the Congo experiences a hot, humid climate (average temperature 25° C) and abundant, regular rainfall. Rainfall and temperatures decline towards the east. There are two seasons a year: a dry season of almost four months and a long rainy season.

8. The Democratic Republic of the Congo has an extensive network of rivers. The Congo River is 4,700 km in length, with the second largest flow in the world after the Amazon. It crosses the country from south-east to north-west before emptying into the Atlantic Ocean. The river is fed by several tributaries and is navigable over most of its length.

9. The soil and subsoil contain significant and varied agricultural and mining resources.

B. People

1. Demography

10. In 1956 the population was estimated at 12,768,705 inhabitants. By 1960 it had increased to 14,106,666; the administrative census of 1970 gave a figure of 20,700,500, and the scientific census conducted on 1 July 1984 established the population at 30,731,000. Projections by specialized agencies, in particular the United Nations Population Fund (UNFPA), put the population at 43,000,000 in 1995, at 47,500,000 in 1999, and at 52,099,000 in 2000, with a forecast of 57,589,779 for 2003.

11. The Democratic Republic of the Congo is one of the most populous African countries. The age and sex structure shows a broad-based pyramid, with concave flanks and a narrow summit, reflecting a young population. In 1997, 25.9 million inhabitants were under 18. The natural growth rate is 3.4 per cent (1990-1998), with a fertility rate of 6.4. Life expectancy at birth went from 45 years in 1970 to 51 years in 1998. A breakdown by zone indicates the following:

(a) Since 1993, 60 per cent of the population has been in rural areas and 40 per cent in urban centres with 5,000 or more inhabitants; the degree of concentration in urban centres varies considerably from province to province;

(b) In Maniema the proportion of the population in urban areas is low; in Kinshasa it is high (about one tenth of the total population);

(c) Rapid growth of the urban population (7 to 8 per cent); 28 per cent of the total urban population concentrated in Kinshasa; and a high rate of emigration from rural areas;

(d) Uneven geographical distribution of the population - the highest population densities are in the city of Kinshasa and the provinces of Bas-Congo, Nord-Kivu, Sud-Kivu, and Maniema.

2. Ethnic groups

12. The population is divided into over 450 tribes, which fall into four major groups, each firmly established in a particular territory. The largest tribe (18 per cent) is the Luba or Baluba living in Centre Sud, the next largest is the Kongo, living in Bas-Congo (16.6 per cent). The north-west region is inhabited by the Mongo (13.5 per cent), Kinyarwanda- and Kirundi-speaking groups (3.8 per cent), the Zande (6.1 per cent), the Mangbetu and a large number of other ethnic groups. The Chokwe and Lunda live along the border with Angola. The Pygmies (less than 0.5 per cent) are to be found in Equateur and Orientale provinces.

3. Languages

13. The official language of the Democratic Republic of the Congo is French. Some 250 other languages and dialects are also spoken. Of these, 90 per cent are of Bantu origin. Four of them are referred to as "national languages", namely:

(a) Swahili (40 per cent) in the east, in Nord-Kivu, Sud-Kivu, Katanga, Maniema and Orientale provinces;

(b) Lingala (27.5 per cent) in and around the capital, Kinshasa, and in Equateur and Orientale provinces;

(c) Kikongo (17.8 per cent) in Bas-Congo and Bandundu;

(d) Chiluba (15 per cent) in the provinces of Kasai-Oriental and Kasai-Occidental.

Many of the languages spoken in the north of the country belong to the Negro-Congolese family (Ubangian subgroup) and the Nilo-Saharan family (central Sudan group and Nilotic subgroup).

4. Religion

14. The Democratic Republic of the Congo is a secular State. Nevertheless five traditional religious denominations are present: Catholic, Kimbanguist, Protestant, Orthodox and Muslim. There are also several religious sects within the country, and some animists.

II. SOCIO-ECONOMIC INDICATORS

15. The economy is characterized by a structural imbalance in the output of goods and services, and economic development has been patchy. From 1983 to 1989 the situation was relatively stable. Between 1990 and 1996 the country went through a period of economic crisis when the principal economic indicators were thrown into disarray, with high inflation and rapid currency depreciation, a fall in output, widespread unemployment and extreme poverty.

16. This situation, a characteristic feature of the latter years of the Second Republic, was primarily attributable to lax financial and budgetary management, together with unplanned expenditure met by printing money.

17. From May 1997 to July 1998, with the advent of the Alliance des forces démocratiques pour la libération du Congo (AFDL) regime, there was a marked improvement in the principal economic indicators, particularly in terms of price levels, currency and public finances. This induced the Government to launch a new currency, the Congolese franc (CGF), which had an encouraging exchange rate against the major foreign currencies.

18. Unfortunately, on 2 August 1998 the principal economic equilibria were once again disrupted, by the attack launched against the country by the Rwanda-Burundi-Uganda coalition, joined by rebel forces. The war gave rise to hyperinflation, with serious repercussions for the

purchasing power of the population, which it reduced to poverty. At the same time it caused a significant fall (3.15 per cent) in gross domestic product (GDP). The rate of inflation had been 658 per cent in 1996, 13.7 per cent in 1997 and 2 per cent in July 1998.

19. In the absence of any revival of production and in a climate of war, the progress noted in 1998 has been undone. Thus, the inflation rate rose from 196.3 per cent in September 1999 to 489 per cent in December 1999. This continued until February 2001, with the accession to power of President Joseph Kabila, who took appropriate economic and monetary measures and liberalized the political situation by relaunching the political negotiations known as the Inter-Congolese Dialogue pursuant to the ceasefire of 10 July 1999 concluded in Lusaka. Of particular note among these measures are the stabilizing of public finances and the freeing of the exchange rate, which led to a resumption of cooperation with the Bretton Woods institutions.

20. The Inter-Congolese Dialogue led to the signing on 17 December 2002, in Pretoria, South Africa, of the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo. On the basis of this political agreement a constitution was adopted which was promulgated on 4 April 2003, facilitating the inauguration of a transitional Government including all the belligerent parties, the political opposition and civil society. The economic situation has improved, and at the end of 2003 was as follows.

A. Output

21. The principal indicators are:

- Money supply: CGF 491.5 million as at 23 September 1998 as against CGF 228.34 million as at 31 December 1997.

- Balance of payments in December 2001: exports: US$ 1,006 million; imports: US$ 957 million, representing a surplus of US$ 49 million.

- Investments: with the improvement in macroeconomic parameters since 2001, consolidated by the progressive return of peace, the investment sector has gradually recovered.

- External debt: debt stock as at 31 December 2003: US$ 9,935,130 million.

- Public finances as at 31 December 2003:

  - Income CGF 361,231,805,742.

  - Expenditure CGF 361,231,805,742.

- GDP: 8 per cent as at 30 June 2004.

- Rate of growth: 5.6 per cent as at 30 June 2004.

- Rate of inflation: 4.2 per cent as at 30 June 2004.

- Exchange rate: US$ 1 = CGF 380 as at 30 June 2004.

- Per capita income: generally very low, varying between US$ 82 and 90 per annum.

B. Social fabric

22. The weakening of the social fabric began at the end of the 1970s. It was aggravated by a series of unfortunate events, namely the 1973 zairianization campaign and the two outbreaks of looting in September 1991 and February 1993, in addition to the two wars of 1996-1997 and 1998-2002. The social sectors worst affected by these crises are health, education, agriculture and the road network.

C. Political situation

23. Following independence on 30 June 1960, the Democratic Republic of the Congo experienced political instability marked by secession and rebellion over much of its territory. This impelled the Congolese army to take power on 24 November 1965 under President Mobutu.

24. President Mobutu instituted a single-party regime which lasted until 24 April 1990, when a return to a multiparty system was announced. The active forces of the country met in the Sovereign National Conference to debate the future of the nation and establish democratic institutions able to guarantee enjoyment of the fundamental rights of citizens and national development. But, against all expectations, this process of democratization took until 17 May 1997, on which date the Alliance des forces démocratiques pour la libération du Congo (AFDL) took power and neutralized the institutions which had emerged from the Sovereign National Conference.

25. A new, two-year transition was announced pending the organization of elections. But the war of 2 August 1998 overturned the entire political agenda and diverted attention until the signing of the Global and All-Inclusive Agreement and the new transitional Constitution.

26. The Constitution of 4 April 2003 established a sui generis regime with the following political institutions:

- A President of the Republic, whose executive authority is shared with four Vice-Presidents;

- A transitional Government comprising the belligerents, the political opposition and civil society;

- A bicameral Parliament: the National Assembly and the Senate;

- The courts.

These institutions are to lead the country into general elections scheduled for between March and September 2005.

III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

27. The Democratic Republic of the Congo is party to a number of international human rights instruments and some of their optional protocols:

- International Covenant on Economic, Social and Cultural Rights (accession 1 November 1976);
- International Covenant on Civil and Political Rights and its first Optional Protocol (accession 1 November 1976);
- International Convention on the Elimination of All Forms of Racial Discrimination (accession 21 April 1976);
- Convention on the Elimination of All Forms of Discrimination against Women (ratification 17 October 1986);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratification 18 March 1996);
- Convention on the Rights of the Child (ratification 28 September 1990);
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (ratification 12 November 2001);
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (accession 12 November 2001).

28. In addition, the Democratic Republic of the Congo has ratified the following instruments:

- Rome Statute of the International Criminal Court (30 March 2002);
- The four 1949 Geneva Conventions on international humanitarian law and the Additional Protocols I and II of 1977 (accession 20 February 1961 and 30 March 2001, respectively), etc.

29. The Democratic Republic of the Congo has a monistic legal regime. International agreements and treaties to which the Democratic Republic of the Congo has acceded or which it has ratified take precedence over domestic laws. Article 193 of the transitional Constitution of 4 April 2003 provides that: "All duly concluded treaties and agreements shall, upon publication, take precedence over legislation subject, in the case of each treaty or agreement, to its implementation by the other party."

Part II

IMPLEMENTATION OF THE CONVENTION

Introduction

30. Following the deposit of the instruments of ratification on 18 March 1996, the text of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was published in a special edition of the *Official Gazette* on 9 April 1999 (pp. 64-74).

31. Furthermore, article 15 of the section of the transitional Constitution of 4 April 2003 dealing with public freedoms and the fundamental rights and obligations of citizens, states: "The human person is inviolable. The State has the obligation to respect and protect it. Every individual has the right to life and physical integrity. No one shall be subjected to torture or inhuman or degrading treatment. No one shall be deprived of life or liberty other than in the cases provided for and in the forms prescribed by law."

32. The Congolese Charter of Human Rights adopted pursuant to the National Conference on Human Rights held from 25 to 30 June 2001, represents an unequivocal political commitment on the part of the Democratic Republic of the Congo. Article 19 of the Charter states: "Everyone is entitled to respect for their dignity and to be recognized as a person in the eyes of the law. All forms of exploitation and debasement of the individual, such as slavery, trafficking in persons, physical or mental torture and cruel, inhuman or degrading treatment, are prohibited."

Article 1

Preliminary considerations

33. There is no definition of torture in any constitutional, legislative or regulatory instrument referring to torture. Nevertheless, Congolese jurisprudence, as reported by Professor Likulia Bolongo, views as physical torture:[1]

(a) Very serious ill-treatment and acts of cruelty or barbarity, inflicted primarily with the aim of causing suffering (Boma, 4 December 1900, National Court Judgements vol. I, p. 102; Boma, 22 July 1902, National Court Judgements vol. I, p. 205);

(b) The tightening of a victim's bonds in a painful manner (Léopoldville, 18 September 1928, *Revue Juridique du Congo Belge* 1931, p. 163);

(c) The binding of a person tightly by the wrists, arms and feet with ropes, and then placing the individual in direct sun and leaving him for several hours without food or water (Elisabethville, 23 May 1911, Congo jurisprudence, 1912, p. 174);

(d) Intentionally putting out the eye of a person under arrest.

It should be noted that these physical tortures do not constitute a specific offence, but rather an aggravating circumstance of the offence provided for in article 67, paragraph 1, of the Criminal Code and articles 191, 192 and 194 of the Military Criminal Code.

34. The 80 years of Belgian colonization institutionalized physical punishment not only of detainees, but also of employees, regardless of whether they performed manual or office work. Corporal punishment was formally abolished only after the Democratic Republic of the Congo became independent on 30 June 1960.

35. The lack of a truly democratic regime at the time of independence, followed by a long period of political instability, encouraged the systematic use of torture, particularly upon real or imagined political opponents.

36. Because there is only a very small number of judicial police officers trained in interrogation techniques and a tendency to try to extract confessions from detainees in all cases and at any price, not to mention the country's financial problems, it is difficult to apply modern methods for taking evidence. There are also few regular inspections of *amigos*, detention centres or prisons by State prosecutors.

37. Owing to lack of information about human rights, torture victims think it normal to be subjected to ill-treatment in detention centres, which explains why complaints are rare. And if the victims belong to the political opposition, they believe that the courts will take no action anyway.

38. The war that has afflicted the Democratic Republic of the Congo since 1996 has not been conducive to the development of human rights, since half of the country has been outside the central Government's control as a result of occupation by the armies of Rwanda, Burundi and Uganda and the rebel groups Rassemblement congolais pour la démocratie (RCD) and Mouvement de libération du Congo (MLC). The aforementioned States are thus answerable for any acts of torture or cruel, inhuman or degrading treatment perpetrated in wartime in the areas in question.

Article 2

1. Legislative measures

39. Article 15 of the transitional Constitution states that: "The human person is inviolable. The State has the obligation to respect and protect it. Every individual has the right to life and physical integrity. No one shall be subjected to torture or inhuman or degrading treatment. No one shall be deprived of life or liberty other than in the cases provided for and in the forms prescribed by law."

40. Article 20 of the Constitution states that every person under arrest must be informed immediately or within 24 hours at the latest of the grounds for his arrest and any charges against him in a language he understands. He must be informed of his rights immediately. He has the right to contact his family and legal counsel without delay. Article 21, paragraph 1, states that all persons deprived of their liberty by arrest or detention have the right to appeal before a court, which shall rule without delay on the legality of the detention and order their release if the detention is not lawful.

41. Article 61 of the Constitution states: "All citizens and public authorities are duty bound to respect the human rights and fundamental freedoms enshrined in this Constitution."

42. Article 134 of the transitional Constitution states that, in accordance with article 73 of the Constitution, the President of the Republic shall declare war pursuant to a decision of the Council of Ministers with the recommendation of the National Defence Council and the authorization of the National Assembly and Senate. He shall broadcast a message so informing the nation. The rights and duties of citizens in wartime or in the event of an invasion or attack on the country by foreign forces are governed by an organizational law.

43. Under article 136 of the Constitution, in a state of emergency, the Government, through the Council of Ministers, shall take the necessary emergency measures to deal with the situation. On being signed into law, the emergency measures shall be submitted to the Supreme Court of Justice, which must immediately declare whether or not the measures derogate from the Constitution. The practical aspects of imposing a state of emergency are prescribed by law.

44. Article 25 of the transitional Constitution states that no person shall be obliged to execute a manifestly unlawful order, especially one that violates the liberties and fundamental rights of the human being. The onus of proving the manifest unlawfulness of the order is on the person who refuses to carry it out.

45. Article 19 of Decree-Law No. 017-2002, setting out the code of conduct for State officials, stipulates that they must refrain from threats, insults, intimidation, sexual harassment, bullying or other forms of violence.

46. Articles 43 to 50 of the Criminal Code, where the arrest and detention are in order, nevertheless provide for the punishment of homicide and murder, simple and aggravated assault and battery with intent to harm, aggravated homicide, poisoning and administration of harmful substances.

47. Article 67, paragraph 2, of the Criminal Code punishes torture, without providing any definition, as an aggravating factor in the offence of arbitrary arrest and illegal detention.

48. Article 180 of the Criminal Code provides that: "All arbitrary acts that violate the freedoms and rights guaranteed individuals in laws, decrees, ordinances and regulations, ordered or carried out by a civil servant or public official, or by a government official or representative of authority or a law enforcement officer, shall be punished by a prison term of 15 days to one year, and/or a fine of 200 to 1,000 francs. If the act constitutes an offence punishable by more severe penalties, the offender shall be liable to those penalties." This provision is similar to the definition given in article 1 of the Convention against Torture in that it penalizes only torture committed by officials, whereas articles 43 to 50 penalize acts of torture committed by anyone.

49. Article 191 of the Military Criminal Code provides that: "Anyone who, in time of war or exceptional circumstances, is guilty of imposing collective fines, abusive or illegal commandeering, confiscation or appropriation, import to or export from the territory of the Democratic Republic of the Congo, by any means, of goods of any kind, including shares and currency, shall be punished by a term of imprisonment of 10 to 20 years. If such actions are accompanied by ill-treatment or torture or followed by a further offence, the offender shall be punished by death."

50. Article 192 of the Military Criminal Code provides that: "In time of war or exceptional circumstances, forced labour by civilians or deportation for any reason of an individual under arrest or imprisoned without the pronouncement of a regular conviction in accordance with the laws and customs of war shall be punished by a prison term of 15 to 20 years. If these acts are accompanied by ill-treatment or torture or followed by a further offence, the offender shall be punished by death."

51. Article 194 of the Military Criminal Code provides that: "Anyone who, during hostilities, wearing a false uniform, or employing a false name or false official order, arrests, illegally confines or detains an individual, or threatens an arrested, illegally confined or detained individual with death, shall be punished by life imprisonment. The death penalty shall apply when victims of arrest, detention or illegal confinement are subjected to physical torture."

2. Administrative and judicial measures

52. Ordinance No. 78-289 of 3 July 1978, on the discharge of their duties by officers and officials of the judicial police attached to ordinary law courts, stipulates that investigations must be conducted in accordance with the law and that placement under arrest and in custody must be properly conducted. Article 7 states that persons in custody have the right to be examined by a doctor on request and that should the doctor find that the person in custody has been subjected to abuse or ill-treatment, the doctor must report the fact to the State prosecutor.

53. Article 80 of the Ordinance provides: "Government law officers may lawfully visit places of custody at any time. They may satisfy themselves as to their salubriousness and the physical and psychological state of the persons held. They may view the police reports on detainees and receive any complaints they may have …".

54. Article 76 of the Ordinance states that persons in custody have the right to be examined by a doctor on request. Should the doctor find that the person in custody has been subjected to abuse or ill-treatment, the doctor must report the fact to the State prosecutor. If the doctor finds that the person in custody may not, for reasons of health, be held any longer, the detainee shall be brought before the prosecutor as quickly as possible.

55. Furthermore, article 79 of the Ordinance states that any placement under arrest or in custody of members of a suspect's family so as to guarantee the latter's appearance is prohibited. A judicial police officer responsible for such an act shall be liable to the penalties provided for in article 67 of the Criminal Code.

56. A woman filed a complaint with the Military Prosecutor's Office on 3 April 2003 against a colonel of the special police services (Kin-Mazière) who arrested her and detained her from 4 to 18 March 2003 in place of her husband.

57. Ordinance No. 344 of 17 September 1965, on prison regulations and conditional release, governs the inspection of short-stay remand centres and prisons by government law officers, doctors and regional authorities. Under article 29, if detainees have grievances, they shall be heard in private. The inspectors prepare a report to be submitted to their immediate superior and the Inspector of Prisons, who forwards it, with comments, to the Minister of Justice.

58. The President has ordered the closure of all places of detention that are not subject to the jurisdiction of the civil prosecutor's office.

59. Arrested persons are recorded in a register before being remanded in police custody. This register may be consulted at any time by the government inspector. Pursuant to article 73 of Ordinance No. 78-289, custody may last 48 hours. Once this deadline has passed, the detainee must be released or brought before a government law officer.

60. Under article 30 ff. of Ordinance No. 344, warders may admit detainees to remand centres and prisons only upon presentation of the proper documents, namely a record of the arrest of the defendant, a provisional arrest warrant, an order remanding a person in pretrial detention or a request to execute a judgement, a record of a convict's arrest, an order issued by a competent authority or a transfer decision.

Article 3

1. Legislative measures

61. Under a decree-law of 7 July 1965, the Democratic Republic of the Congo acceded to the Convention relating to the Status of Refugees of 28 July 1951. It also acceded to the Protocol relating to the Status of Refugees on the basis of Ordinance-Law No. 68-001 of 2 January 1968. Given that the Democratic Republic of the Congo has opted for a monistic legal regime, articles 31 to 33 of the Convention relating to the Status of Refugees may be applied in cases where a foreigner who unlawfully enters or stays in the country has genuine reasons to fear for his life or physical safety should he be returned or expelled to his country of origin.

62. Extradition, which is provided for by a decree of 12 April 1886, as amended by a legislative ordinance of 11 December 1959, is at the discretion of the Government.

63. Article 35 of the transitional Constitution states that the right of asylum is recognized. Subject to national security considerations, the Republic grants asylum in its territory to foreign nationals who are being pursued or persecuted on the grounds of their views, their beliefs, their race, tribal affiliation, ethnicity or language, or their work on behalf of democracy and in defence of human rights and the rights of peoples, in accordance with the laws and regulations in force. Any person lawfully benefiting from the right of asylum is prohibited from undertaking any subversive activity against his country of origin or against any other country from the territory of the Democratic Republic of the Congo. The arrangements for the exercise of this right are established by law.

64. Ordinance-Law No. 83-033 of 12 September 1983 on the Immigration Police regulates return (refoulement) and expulsion. No provision of the ordinance expressly prohibits return or expulsion in cases where the person concerned claims to have been tortured. However, insofar as the person concerned has 24 hours to appeal to the provincial administrator of the National Information Agency, as specified in article 13, paragraph 3, of the Ordinance-Law, the opportunity exists to put this claim on record and it must be taken into account by the aforesaid authority.

65. Under article 13 of the Ordinance-Law, it is the responsibility of the border immigration officer to turn back foreigners who do not hold documents entitling them to enter the country. This decision may not be appealed. The foreigner in question is immediately escorted to the other side of the border for the purposes of repatriation.

66. The expulsion of a foreigner is at the discretion of the President of the Republic. Article 16 of Ordinance-Law No. 83-033 states: "An expulsion order shall only be issued against an alien holding a resident card or a refugee after the National Immigration Commission has issued its opinion …". This Commission is chaired by the Minister of the Interior or his delegate. It has seven members representing the following ministries and services:

- Ministry of the Interior
- Ministry of Foreign Affairs
- Ministry of Justice
- Ministry of the Economy
- Ministry of Trade and Industry
- Ministry of Labour and Social Welfare
- The National Information Agency.

2. Administrative measures

67. In the case of foreigners who have entered the Democratic Republic of the Congo without proper documentation or foreigners who can offer no valid excuse for failing to leave the national territory upon expiry of their residence permit, deportation is recorded in a notice of undesirability drawn up by an immigration officer and transmitted to the person concerned. Unlike the situation that obtains in the event of return (refoulement), article 15 of the Ordinance Law entitles the foreigner affected by this measure to appeal within 24 hours to the representative of the immigration service at the seat of the relevant district court. The decision of the immigration service representative will be transmitted as soon as possible to the immigration officer, who shall notify the person concerned. The decision-making authority thus has the opportunity to review the reasons why a foreigner might not wish to return to his country of origin. Among these reasons may be the fear of being subjected to torture. It should be noted that deportation is not applicable to foreigners with refugee status.

68. To be considered a refugee, a foreigner must be in possession of an official document issued by the Ministry of the Interior in consultation with the Aliens Consultative Committee, or of documents issued pursuant to the international conventions to which the Democratic Republic of the Congo is party, for example the Convention relating to the Status of Refugees of 28 July 1951.

69. On 5 December 2002 Mr. Hussein Mohamed Issaoui, Mr. Ali Dakroub and Mr. Samer Nassara were expelled from national territory on account of their involvement in shady operations at Fransa Bank, namely black market currency dealing.

Article 4

1. Legislative measures

70. Contrary to the provisions of article 4 of the Convention, the Democratic Republic of the Congo has not made acts of torture, within the meaning of article 1 of the Convention, a specific violation.

71. The drafting of this report has allowed the authorities to provide up-to-date information on the legislative, administrative and judicial provisions relating to torture and on the difficulties encountered in gathering reliable statistics in this area. The authorities have now understood that if torture, within the meaning of article 1 of the Convention, is made a specific criminal offence it will be much simpler to implement the provisions of the Convention.

72. The following general provisions allow for the punishment of acts encompassed by the definition of torture within the meaning of article 1 of the Convention.

73. Article 43 of the Congolese Criminal Code provides that: "Homicide and injuries occasioned with intent to harm a specific individual or individual encountered by chance, even where such intent is contingent on some circumstance or condition and where the author has mistaken the identity of the victim of the assault, are considered intentional."

74. Articles 44 and 45 provide that homicide committed with intent to cause death is murder. Where there is premeditation, it is premeditated murder. Such offences are punishable by death.

75. Article 46 of the Criminal Code provides that: "Deliberate assault shall be punished by a term of imprisonment of eight days to six months and/or a fine of 25 to 200 zaires. In case of premeditation, the offender shall be sentenced to a term of imprisonment of one month to two years and a fine of 50 to 500 zaires."

76. Article 47 of the Criminal Code provides that: "Assault resulting in illness or incapacity for work or complete loss of the use of an organ or serious mutilation is punishable by a term of imprisonment of two to five years and a fine of up to 1,000 zaires."

77. Article 48 of the Criminal Code provides that: "Where deliberate assault without intent to cause death results in death, the offender shall be punished by a term of imprisonment of 5 to 20 years and a fine of up to 2,000 zaires."

78. Article 49 of the Criminal Code provides that: "Poisoning is murder by means of substances that may cause death more or less quickly, however the substances are used or administered. The penalty is death."

79. Article 50 of the Criminal Code provides that: "Anyone who deliberately administers substances which may cause death or which, without being such as to cause death, seriously affect health, is punishable by a term of imprisonment of 1 to 20 years and a fine of 100 to 2,000 zaires."

80. Article 67, paragraph 2, of the Criminal Code provides that torture is an aggravating circumstance in connection with the offences of arbitrary arrest and illegal detention.

81. Article 171 bis, paragraph 4, of the Criminal Code penalizes rape or attempted rape by public officials, ministers of religion, doctors, surgeons and birth attendants who abuse their position to commit rape on persons in their care.

82. Article 180 of the Criminal Code penalizes any arbitrary act that violate the freedoms and rights guaranteed individuals in laws, decrees, ordinances and regulations, ordered or carried out by a civil servant or public official, or by a government official or representative of authority or a law enforcement officer. If such an act constitutes an offence punishable by more severe penalties, the offender shall be liable to those penalties.

83. Articles 46, 47 and 48 of the Criminal Code penalize acts of torture committed by anyone, whereas articles 171 bis, paragraph 4, and 180 penalize only acts of torture committed by officials, that is their status as officials enters into account, hence the concordance of article 180 with the definition of torture given in article 1 of the Convention against Torture.

84. Article 191 of the Military Criminal Code provides that: "Anyone who, in time of war or exceptional circumstances, is guilty of imposing collective fines, abusive or illegal commandeering, confiscation or appropriation, import to or export from the territory of the Democratic Republic of the Congo, by any means, of goods of any kind, including shares and currency, shall be punished by a term of imprisonment of 10 to 20 years. If such actions are accompanied by ill-treatment or torture or followed by a further offence, the offender shall be punished by death."

85. Article 192 of the Military Criminal Code provides that: "In time of war or exceptional circumstances, forced labour by civilians or deportation for any reason of an individual under arrest or imprisoned without the pronouncement of a regular conviction in accordance with the laws and customs of war shall be punished by a prison term of 15 to 20 years. If these acts are accompanied by ill-treatment or torture or followed by a further offence, the offender shall be punished by death."

86. Article 194 of the Military Criminal Code provides that: "Anyone who, during hostilities, wearing a false uniform, or employing a false name or false official order, arrests, illegally confines or detains an individual, or threatens an arrested, illegally confined or detained individual with death, shall be punished by life imprisonment. The death penalty shall apply when victims of arrest, detention or illegal confinement are subjected to physical torture."

87. Article 76 of Ordinance No. 78-289 of 3 July 1978 on the discharge of their duties by officers and officials of the judicial police attached to ordinary law courts provides that: "Persons in custody have the right to be examined by a doctor on request. Should the doctor find that the person in custody has been subjected to abuse or ill-treatment, the doctor must report the

fact to the State prosecutor. If the doctor finds that the person in custody may not, for reasons of health, be held any longer, the detainee shall be brought before the prosecutor as quickly as possible."

88. Article 79 of the same Ordinance states that: "Any placement under arrest or in custody of members of a suspect's family so as to guarantee the latter's appearance is prohibited. A judicial police officer responsible for such an act shall be liable to the penalties provided for in article 67 of the Criminal Code."

89. Acts of torture, as defined in article 1 of the Convention, are punished by the courts on the basis of the ordinary and military criminal law provisions referred to above, since the court is seized not on the basis of the legal categorization of the offence but on the basis of the facts before it.

90. Legal precedent illustrates this:

(a) On 23 April 2001, at Kinshasa, Commander Albert Kifua Mukuna of the Congolese national police took Commander Bosongo's 9 mm GP weapon without his consent. On 30 April 2001, Commander Bosongo, who was very concerned to recover his weapon, was arrested and held in the Lukunga district police cells by Commander Israel Kantu, the duty officer, on the orders of District Commander Kifua Mukuna. That same night the District Commander returned with his bodyguards and ordered Commander Bosongo to be whipped, along with everyone else in the cells that night. Commander Bosongo, as reported by the doctor attending at the request of the government law officer, displayed extensive injuries, necessitating treatment by a urology unit. The Military Court, in its public hearing of 29 January 2003, sentenced Commander Kifua Mukuna to 12 months' imprisonment and officers Joël and John Betukumesu to six months' imprisonment each, and awarded the victims 250,000 francs in damages and interest (RP No. 1142/02 and RMP No. 7094/TP/02);

(b) The Military Court, in a public hearing on 29 April 2003, convicted officers Atutona, Mawa, Kokubi and Tshimanga to 23 months' imprisonment each for the arrest and rape of Ms. Sota while on foot patrol. Ms. Sota, as a matter of decency, was not able to attend the public hearing. But the accused admitted the facts they were charged with (RP No. 1149/02 and RMP No. 5976/MA/2001);

(c) The Military Court, in a public hearing on 9 April 2003, sentenced private Tambwe Kabuita to 30 months' imprisonment for having taken Ms. Mafinga hostage for five days because she would not tell him where her spouse, who had left the conjugal home, was hiding. The victim, out of shame, did not seek damages and interest and did not attend the public hearing (RP 1186/02 and RMP 6025/ODR/2001);

(d) The Military Court, in a public hearing on 29 January 2003, sentenced officer Mutuza to five years' imprisonment, Inspector Jean Pierre Ndity of the judicial police to 24 months' imprisonment, and officer Tshibamba, in absentia, to 10 years' imprisonment for having arrested and arbitrarily detained Kasongo Zoway; the court also ordered the accused to repay US$ 1,000 that they had extorted and CGF 300,000 (US$ 750) in damages and interest (RP No. 1150/02 and RMP No. 7190/ODR/MKT/01);

(e) In 1985, at Gemena, Equateur province, a naval officer mutilated the genitals of a man because the man had demanded that the officer cease having sexual relations with his wife. The garrison court martial (military court) at Gemena sentenced the officer to 20 years' imprisonment and discharged him from the service;

(f) During two tax collection rounds in Budjala territory, Equateur province, between 30 July and 30 November 1925, territorial officer Derwa (a white) was guilty of a series of violations against members of indigenous populations, including arbitrary arrest and serious ill-treatment. An investigation by the royal prosecutor resulted in Derwa being brought before the court of first instance at Coquilhatville (now Mbandaka), pursuant to a summons dated 10 October 1927, on the charges of:

(i) Illegal and arbitrary arrest and detention, during his two tax collection rounds between 30 July and 30 November 1925, of various members of the indigenous population - Zawa, Dabili, Gokow, also known as Kongodja, Barigo, Epila, Imbokwa and Gundale - with physical torture resulting in the death of the victims;

(ii) Other offences at the same time and in the same place, involving arbitrary arrest with physical torture of Akembi, Goba, Dawe, Gotsha, Guaniki, Pomada, Solow, Gamatria and Mossolo, and murder of Ciami by deliberate assault without intent to cause death.

It was fully established in a number of accounts during the preparatory investigation and public hearings in first instance that these three members of the indigenous community (Zawa, Dabili and Gokow) were whipped on the order of the accused such that their lower backs were open wounds; that Zawa and Gokow were also tightly bound to tree trunks with creepers around their necks, waists and knees, with leaves gagging their mouths, and left exposed to the sun from 7 in the morning until midday; that Gokow died during this torture; and that Zawa and Dabili died some days later following infection of their wounds.

Derwa claimed in vain that these acts of violence had been perpetrated without his knowledge by soldiers in his escort, since every witness, every indigenous person in the region and the soldiers carrying out his criminal orders testified to his direct intervention and peremptory order to whip the victims without mercy, to bind them tightly to tree trunks and to gag them to stifle their cries of pain.

It was established beyond doubt from the testimony heard during the investigations that the following indigenous people were arrested and detained illegally and arbitrarily by violent means: Gaba, to serve as a hostage for the people who had fled his village; Gotscha, because he did not immediately obey the order given by Derwa (the white) to fetch a chicken to make up the money paid in taxation, which was short one franc; and Solow, because he arrived a little late to pay his tax bill, and Gbaiki, arrested in a round-up of Banza ordered by the accused.

> It was equally certainly established that Gaba was cruelly whipped on several occasions, and for half a day was left tied to a tree trunk in a painful position as described in the preceding remarks concerning the identical torture inflicted on Zawa and Gokow, also known as Kongodja, and that the pressure of the bindings was such as to mutilate the left hand with complete loss of function.
>
> Gotscha and Solow suffered the same beatings and the same barbaric treatment, as recorded in the various investigations. Gotscha lost the use of both hands, which were completely mutilated, and Solow the use of his forearm, which was atrophied and paralysed by the pressure of the bonds.
>
> The nature of the torture inflicted on the victims, the extreme gravity of which is evident from the seriousness of the consequences, clearly shows that these indigenous people underwent physical torture of revolting barbarity.
>
> Given the horror of this cruelty, perpetrated on the orders of an evil servant of the colonial enterprise, it was appropriate, in establishing the proper penalty and taking into due account attenuation of responsibility, to sentence him under article 6 of the Criminal Code, and on the various concurrent charges brought against him, to a sufficiently severe term of imprisonment as to constitute just punishment for a shocking series of crimes perpetrated on defenceless indigenous people with unspeakable scorn for human life, and the Court of Appeal accordingly sentenced Derwa to 10 years' imprisonment and 1,000 francs in fines, with one month's imprisonment should the fine not be paid. In its ruling on the civil damages automatically awarded by the first judge, the Court annulled the contested judgement, sentencing Derwa to pay damages and interest to Epala, Imbekwa, Gundabo, Akombi, Camatia, Mossolo, Dawe and Pomeda or to their families; confirmed the civil sentence against Derwa; aggregated the costs at first instance and on appeal, the latter assessed at 4,170 francs including expert fees of 3,000 francs and sentenced Derwa to pay two thirds of these costs; ruled that the costs would be recoverable by imprisonment for debt; and established the period for payment at three months, ordering the remaining costs to be met by the colony. The judgement was handed down by the Léopoldville (now Kinshasa) Court of Appeal on 18 September 1928.

91. A military judge must question the accused within 48 hours of his incarceration, failing which the provisions of article 180 of the ordinary Criminal Code apply.

92. With regard to attempted torture, article 4 of the Criminal Code provides that: "There is a punishable attempt when the decision to commit the offence is manifested in actions which constitute the initial execution of the offence and which were interrupted or failed to achieve their aim only through circumstances independent of the will of the perpetrator. An attempt is punishable by the same penalty as a completed violation."

93. With regard to accomplices and accessories to acts of torture, article 21 of the Criminal Code provides that: "The perpetrator of an offence is anyone who executes the offence or cooperates directly in its execution; by any act provides assistance in its execution such that without that assistance the offence could not have been committed; through offers, gifts, promises, threats, abuse of authority or power, conspiracy or dishonest artifice directly encourages the offence; through pronouncements at meetings, or in public places by means of posters, drawings or emblems, directly incites commission of the offence without prejudice to the penalties that may be imposed under decrees or regulations on those guilty of incitement to commit an offence, even where such incitement fails to achieve any result."

94. Article 22 of the Criminal Code provides that: "An accessory is anyone who gives instructions to commit an offence; procures weapons, instruments or any other means of committing an offence, knowing that that was their purpose; other than in the case provided for in article 22, paragraph 3, knowingly aids or abets the perpetrator or perpetrators of the offence in the preparation, execution or completion of the acts constituting the offence; being aware of the criminal conduct of offenders engaging in robbery or violence in violation of the security of the State or in breach of the peace or against individuals or property, habitually provides them with accommodation, shelter or a meeting place."

95. Article 23 of the Criminal Code provides that: "In the absence of specific provisions to the contrary, accomplices and accessories shall be subject to the following penalties: accomplices, to the penalty established by law for perpetrators; accessories, to a penalty not exceeding half the penalty they would incur if they were themselves perpetrators; where the penalty provided for by law is death or life imprisonment, the penalty applicable to an accessory shall be 10 to 20 years' imprisonment."

96. As for disciplinary proceedings against State officials who commit acts of torture, Decree-Law No. 017-2002 of 23 November 2002, setting out the code of conduct for State officials, provides as follows:

> "Article 30. Subject to the disciplinary and/or criminal penalties provided for by law, any State official with any degree of disciplinary authority is empowered on his own initiative or at the instigation of his hierarchical superiors or of the professional code of ethics monitoring body to initiate disciplinary action against a State official under his authority or subject to his orders";
>
> "Article 32. Disciplinary action remains distinct and separate from any criminal proceedings to which the same acts of the State official may give rise. Judicial action does not have suspensive effect on disciplinary proceedings. Any State official who receives a final sentence to a term of imprisonment of three months or more shall be removed from office once the conviction is reported."

2. Administrative measures

97. Ordinance No. 81-067 of 17 July 1981 on the administrative regulations governing disciplinary measures provides as follows:

"Article 34. Any official found guilty of immoral acts in the workplace, including striptease, nudity, sexual relations, abduction of minors, rape or public drunkenness, whether as perpetrator, accomplice, instigator, organizer or accessory, shall be subject to dismissal";

"Article 35. Also subject to dismissal is any official sentenced under a final judgement to a term of imprisonment of three months or more; and any official convicted, for any period, under a judgement impugning his dignity and integrity."

Article 5

Legislative measures

98. Article 2 of the Criminal Code provides that: "An offence committed in the territory of the Republic is punishable in accordance with the law." By Congolese territory is to be understood Congolese soil, its territorial sea, which, pursuant to Act No. 74-009 of 10 July 1974 on the delimitation of the territorial sea of the Democratic Republic of the Congo, extends to 12 miles offshore, its airspace, its merchant vessels and pleasure boats in international waters and its warships in a friendly foreign country. Article 2 of the Criminal Code is reinforced by article 14 of the Civil Code, book I, which provides that: "Both criminal legislation and the laws on the police and public security forces are binding on all those within the territory of the State."

99. The principle of the territoriality of criminal legislation is subject to some exceptions, acknowledged under international law and agreements, with regard to foreign sovereign entities and members of diplomatic missions and consular posts. Officials of international organizations also generally enjoy diplomatic immunity in accordance with the Vienna Convention.

100. Congolese criminal courts are not competent to try Congolese nationals who have committed offences abroad unless they are in Congolese territory.

101. Congolese criminal courts are not competent to try offences committed against Congolese nationals abroad solely on the grounds that they are Congolese since there is no question of territoriality.

102. Article 3 of the Criminal Code provides that: "Anyone who, outside the territory of the Democratic Republic of the Congo, is guilty of an offence in respect of which Congolese law provides for a term of imprisonment of two months or more may be prosecuted and judged in the Congo, subject to application of the legal provisions on extradition. Prosecution may be initiated only at the request of the public prosecutor. Where an offence is committed against an individual and the maximum penalty provided for under Congolese law is five years' imprisonment or more, the request must be preceded by a complaint by the injured party or an official report from the authorities in the country where the violation was committed …".

103. However, no prosecution may normally take place if the accused provides evidence that he was tried abroad and, if convicted, served his sentence or was pardoned or if the penalty lapsed. Further, prosecution may normally only take place if the accused is in the Democratic Republic of the Congo.

Article 6

1. Legislative measures

104. Article 19, paragraph 2, of the transitional Constitution provides that no one may be prosecuted, arrested or held other than as provided for and in the form prescribed by law.

105. The provisions governing pretrial detention are contained in the Decree of 6 August 1959 on the Code of Criminal Procedure, as amended by Ordinance-Law No. 79-014 of 6 July 1979. Article 28 establishes that pretrial detention is an exceptional measure. The conditions governing pretrial detention are set forth in article 27, which provides that the accused may be placed in pretrial detention only if there is significant evidence of guilt and the facts appear to constitute an offence punishable by six months' imprisonment or more. Should the offence be punishable by a sentence of less than six months, pretrial detention is authorized only if there is reason to believe that the accused will flee or if his identity has not been provisionally or definitively established, or if pretrial detention is imperative in the interest of public security.

106. An initial order for pretrial detention by a judge is valid only for 15 days. At the end of that period the accused must be brought before the judge for a 30-day extension of the detention. Pretrial detention may be extended only once if the facts appear to constitute an offence for which the penalty provided for by law does not exceed two months' forced labour or imprisonment. The judge may authorize or extend pretrial detention with or without pretrial release, which may be accorded only on bail.

107. Article 6 of the decree of 6 August 1959 on the Code of Criminal Procedure provides that, in the event of a flagrant offence or offence deemed to be flagrant and punishable by a minimum of three years' imprisonment, any person may, in the absence of the judicial authority responsible for acting and of any judicial police officer, seize the alleged perpetrator and bring him immediately before the nearest authority.

108. Article 145 of Act No. 23-2002 of 18 November 2002, on the Military Judicial Code, provides that: "In the case of flagrant offences punishable by imprisonment of at least six months and without prejudice to the disciplinary authority of hierarchical superiors, any military judicial police officer is empowered by virtue of that status to arrest military personnel who perpetrate such violations or are accessories thereto."

109. Article 146 states that the duration of such custody may not exceed 48 hours.

110. Article 147 provides that: "On pain of application of the penalties provided for in articles 189 of the present Code and 108 of the Military Criminal Code, hierarchical superiors must comply with any request by a judicial police officer under ordinary law for the handing over of a serviceman when the requirements of a preliminary investigation or the investigation of a flagrant offence, or the execution of a rogatory commission so require."

111. Under article 148 of the Military Judicial Code, judicial police officers may not hold servicemen handed over to them for more than 48 hours.

112. Article 149 of the Code provides that: "On completion of the period of custody, servicemen arrested in flagrante delicto or against whom there is significant and concordant evidence of guilt must be brought before the competent judicial authority."

113. Article 150 provides that: "Hierarchical superiors must be advised of the transfer."

114. Lastly, article 156 of the Military Judicial Code states that military judicial police officers may hold persons who are not members of the army only in the manner and under the conditions established in the ordinary Code of Criminal Procedure.

2. Administrative measures

115. Article 72 of Ordinance No. 78-289 of 3 July 1978 on the discharge of their duties by officers and officials of the judicial police attached to ordinary law courts provides that: "Judicial police officers may arrest any person suspected of having committed an offence punishable by six months' imprisonment or more only if there is significant evidence of guilt. They may also, where the violation is punishable by less than six months' and more than seven days' imprisonment, arrest a person against whom there is significant evidence of guilt provided that there is a danger of flight or that his identity has not been provisionally or definitively established. The suspect shall be given an opportunity to provide explanations beforehand."

116. Article 73 provides that judicial police officers must immediately bring persons arrested pursuant to article 72 before the nearest government law officer. However, if the investigation so requires and the arrest was not made following a flagrant violation or violation deemed to be such, the judicial police officer may hold the person arrested for a period not exceeding 48 hours. On completion of this period, the person in custody must be released or brought before the government law officer, unless this is not possible for the judicial police officer owing to the distances involved.

117. Under article 74 of Ordinance No. 78-289 of 3 July 1978: "Arrest and custody must be recorded in the police report. The judicial police officer must indicate the time at which custody begins and ends as well as the justifying circumstances. The arrest report shall be read and signed by the person under arrest and in custody and by the judicial police officer on the ordinary police report forms."

Article 7

Legislative Measures

118. Under article 3 of the Criminal Code, Congolese courts are competent to try offences committed abroad only if the perpetrator is in the Congo, if there is a request from the public prosecutor, and if the offence is punishable by more than two months' imprisonment.

119. If the infraction has resulted in harm to an individual and is punishable by no more than five years' imprisonment, the request from the public prosecutor must be preceded by a complaint by the victim or a report from the authorities of the country in which the violation was committed to the authorities of the Democratic Republic of the Congo.

120. The draft legislation implementing the Rome Statute of the International Criminal Court improves the Criminal Code in that a Congolese judge will be competent to try crimes under the Statute, namely war crimes, the crime of genocide and crimes against humanity, without the need for any complaint or referral by foreign authorities. It is sufficient that at the time of initiating the investigation the author of the acts in question be present in the territory of the Democratic Republic of the Congo. It should be noted that the Democratic Republic of the Congo ratified the Rome Statute of the International Criminal Court under Decree-Law No. 3-2002 of 30 March 2002, published in the *Official Gazette* (special issue, 5 December 2002, pp. 169-243).

121. The rules of Congolese criminal procedure, set forth in the decree of 6 August 1959 and amended by Ordinance-Law No. 82-016 of 31 March 1982, do not discriminate on the basis of the offender's nationality or the place where the offence was committed, once the competence of the Congolese court is acknowledged.

122. Under article 21 of the transitional Constitution of 4 April 2003, all persons deprived of their liberty by arrest or detention have the right to appeal before a court, which shall rule without delay on the legality of the detention and order their release if the detention is not lawful. A person who is a victim of illegal arrest or detention is entitled to fair and equitable compensation for the injury caused. Every individual has the right to mount his own defence or to secure the assistance of counsel or a defence attorney of his choosing. Every person prosecuted has the right to request a hearing in the presence of counsel or a defence attorney of his choice at each stage of criminal proceedings, including police inquiries and pretrial investigation.

123. However, the rules of Congolese criminal procedure have barely changed since the country attained independence in 1960. They are thus somewhat behind the times in terms of the guarantees accorded the alleged perpetrator of the offence at the various stages of the proceedings. Nevertheless, at the pretrial investigation stage, Ordinance-Law No. 82-016 of 31 March 1982, amending article 30 of the Code of Criminal Procedure, provides that counsel for the accused may assist him with regard to pretrial detention.

124. Pursuant to article 31 of the Code of Criminal Procedure, an order authorizing pretrial detention is valid for 15 days, including the day on which it is issued. On completion of this period, pretrial detention may be extended for successive periods of one month, as long as the public interest so requires. However, pretrial detention may be extended only once if the facts appear to constitute a violation for which the penalty provided for by law is no more than two months' forced labour or imprisonment. If the penalty provided for is six months or more, pretrial detention may not be extended for more than three consecutive terms. Beyond this period, extension of detention is authorized by the competent judge ruling in a public hearing. Extension orders are issued in accordance with the forms and time frames provided for in article 30. Assistance by counsel or a defender may not be denied the accused at any time during the pretrial investigation. In the cases provided for in article 27, paragraph 2, the order authorizing or extending pretrial detention must specify the justifying circumstances.

125. With regard to the pre-hearing investigation, the traditional guarantees are provided for, namely, presumption of innocence, the hearing of both parties, assistance by counsel of the accused's choosing or appointed by the court, and right of appeal.

126. Article 83 of the Military Judicial Code provides that: "the Military High Court also hears appeals against decisions rendered in first instance by military courts. Judgements by the Military High Court are subject to objection under ordinary law. However, appeals on the grounds of violation of constitutional provisions by the Military High Court are heard by the Supreme Court, sitting as the Constitutional Court. The Military High Court may, at the request of the military prosecutor of the armed forces or the parties, rectify material errors in the decisions or interpret them, after hearing the parties."

127. Article 84, paragraph 2, of the Military Judicial Code provides that military courts shall also hear appeals against judgements delivered in first instance by garrison courts martial.

128. Under article 88, paragraph 2, "garrison courts martial shall also hear appeals against judgements delivered in first instance by military police courts".

129. Article 91 provides that judgements delivered by military police courts are subject to objection and appeal.

Article 8

Legislative measures

130. The institutional arrangements on extradition, which are set forth in the decree of 12 April 1886, as amended by the legislative ordinance of 11 December 1959, contain the following principles (art. 1):

(a) The Democratic Republic of the Congo may not extradite its own nationals;

(b) Extradition applies only on condition of reciprocity;

(c) Where an extradition treaty exists, the foreigner may be extradited only if the offences in question are mentioned in the treaty;

(d) The offences must have been committed in the territory of the requesting State.

Where no extradition treaty exists, or if the offences are not specified in the extradition treaty, the offender can be extradited only if an agreement is reached between the Governments.

131. If the acts of torture were not committed in the territory of the requesting State, then, under article 2 of the decree of 12 April 1889, the foreign offender may be handed over only if Congolese law allows prosecution of such acts when committed outside the Democratic Republic of the Congo. In this regard, under article 3, paragraph 3, of the Criminal Code, anyone found guilty outside the territory of the Democratic Republic of the Congo of an offence

in respect of which Congolese law provides for a prison sentence of more than two months may be prosecuted and tried in the Democratic Republic of the Congo unless the provisions on extradition are applied.

132. Various extradition treaties and agreements have been signed with foreign States since the founding of the Congolese State, including:

(a) Extradition treaty between the Congo Free State and Portugal, of 27 April 1888 (*Official Gazette*, No. 1, January 1889, p. 24);

(b) Extradition treaty between Belgium and Bolivia, of 24 July 1908, extended to apply to the Belgian Congo (Democratic Republic of the Congo) and Rwanda (*Official Gazette*, 5 July and 15 August 1933);

(c) Extradition treaty between Belgium and Greece, of 26 June and 9 July 1901, applicable to the Congo under the additional Convention;

(d) Convention of 8 August 1923 extending to the Belgian Congo and certain British protectorates the extradition treaty between Belgium and Great Britain, of 29 October 1901, and the conventions supplementing these treaties, of 5 March 1907 and 3 March 1911 (*Official Gazette*, 5 February 1924, pp. 100 ff.).

133. The offences specified in these agreements as giving rise to extradition include voluntary homicide, deliberate assault and bodily harm, abduction and arbitrary arrest or detention.

134. These agreements are still in force, never having been denounced by the Democratic Republic of the Congo and in accordance with the principle of the succession of States.

135. In more recent times, the Democratic Republic of the Congo signed a judicial cooperation agreement with the Republic of Cameroon on 11 March 1977.

136. There is also a judicial cooperation agreement with the Republic of the Congo in respect of 19 officials of the National Information Agency extradited by the Republic of the Congo in connection with the assassination of President M'zée Laurent Désiré Kabila on 16 January 2001.

137. There is also an extradition treaty forming part of the judicial cooperation arrangements between the members of the Economic Community of the Great Lakes Countries (CEPGL) - Democratic Republic of the Congo, Rwanda and Burundi - and Interpol.

138. Since torture is not specifically defined as an offence, it is legally impossible for it to be included in extradition treaties or be the subject of a special agreement. It is thus not subject to the principle of dual criminality, according to which the offences contained in extradition agreements must be defined and punishable in all signatory countries. However, such acts may give rise to extradition if they constitute offences that are mentioned in the extradition treaties.

Article 9

1. Legislative measures

139. Since procedural questions are without exception subject to the principle of territoriality, it is essential to obtain the cooperation of foreign judicial authorities when proceedings extend outside the national territory. When it is necessary to interview a witness in another country, for example, or to obtain evidence for ongoing criminal proceedings from a foreign jurisdiction, Congolese law requires the use of letters rogatory. Conversely, Congolese prosecutors are bound to act upon letters rogatory from other countries.

140. The Convention of 20 September 1976, establishing the Economic Community of the Great Lakes Countries (CEPGL) of Rwanda, Burundi and the Democratic Republic of the Congo, provides in article 2, paragraph 4, for judicial cooperation between the member States.

2. Administrative measures

141. Under circular No. 3/008/I.M./P.G.R./1970, of 16 May 1970, on the internal organization of prosecutors' offices, the expenses involved in executing letters rogatory in criminal matters shall be borne, on a reciprocal basis, by the Power in whose territory they are incurred, provided there is no need for drawn-out, costly procedures. This rule applies even in the absence of any specific provision in international judicial cooperation agreements.

142. Articles 1 to 8 of the judicial cooperation agreement with the Republic of Cameroon read as follows:

> "Article 1. Under the present Agreement, letters rogatory shall be addressed by one of the parties to the judicial authorities of the other party to request the carrying out of certain procedures in the latter's territory.
>
> Article 2. Letters rogatory in criminal matters to be executed in the territory of one of the two parties, shall be transmitted through diplomatic channels and executed by the judicial authorities. If the requested authority is not competent, it shall automatically transmit the letters rogatory to the competent authority.
>
> Article 3. The authority may refuse to execute letters rogatory if, under the law of that country, their execution would constitute a violation of sovereignty or a breach of security or law and order.
>
> Article 4. Individuals requested to give testimony shall be summoned by simple administrative notice; should they refuse to comply with such notice, the requested authority shall employ the coercive measures provided for in domestic law, subject to diplomatic immunity.
>
> Article 5. The requested authority shall carry out, within the limits of the law, all the procedures requested in the letters rogatory, including indictment. If so asked by the requesting authority, the requested authority shall make every effort to inform the requesting authority in timely fashion of the intended date and place of execution of the letters rogatory.

Article 6. The execution of letters rogatory shall give rise to no reimbursement of expenses save in respect of experts' fees.

Article 7.

1. Where it is necessary for a witness to appear in criminal proceedings, the Government of the State of residence of the witness shall invite the latter to respond to the summons. In such cases, travel and subsistence expenses, calculated as from the witness's place of residence, shall be at least equal to those granted under the rates and regulations in force in the State where the hearing is to take place. Upon request, the consular authorities of the requesting State shall advance all or part of the travel expenses.

2. Witnesses cited by one of the two States who voluntarily appear before a court in the other State may not be prosecuted or arrested in the other State for offences or convictions predating their departure from the territory of the requested State. Such immunity shall lapse 45 days after the date upon which the deposition procedure ends and witnesses are able to return home.

3. Witnesses who give false evidence may be subject to judicial proceedings in their country of origin.

Article 8. Requests for detainees to appear as witnesses shall be transmitted through diplomatic channels. Such requests shall in principle be granted, except where precluded by special circumstances, and on condition that detainees are returned promptly."

Article 10

1. Legislative measures

143. Under the transitional Constitution, article 47, paragraph 3: "The State has a duty to ensure the dissemination and teaching of the Constitution, the Universal Declaration of Human Rights, the African Charter on Human and People's Rights and all duly ratified regional and international human rights and humanitarian law instruments. The State has an obligation to include human rights in all training programmes for the armed forces and the police and security services. The conditions of implementation of this article shall be established by law."

2. Administrative measures

144. The training programme for both judicial police officers, civil as well as military, and the national police, basically covers criminal law and criminal procedure and provides an opportunity to stress that evidence obtained under torture is not valid. The training provided to medical personnel and ordinary government officials does not cover these points.

145. The Ministry of Human Rights organizes seminars for members of the security services, the police and the Congolese Armed Forces on the prohibition of torture and the professional ethics of their services in general, but as yet only a very small number of people have taken part.

The aim of the seminars is to bring about a real change in behaviour. The programme offers the proper specialist training required by law enforcement officials. However, the country's financial resources are very limited at present as a result of the war.

Article 11

1. Legislative measures

146. Under Congolese law, the State prosecutor of the court of major jurisdiction is responsible for the regular review of the rules, instructions, techniques and practices applicable in interviews. Indeed, under article 6 of Legislative Ordinance No. 82-020 of 31 March 1982, on the Code of Organization and Powers of the Judiciary, one of the principal functions of State prosecutors is to supervise not only all the government law officers within their jurisdiction but also the judicial police officers and members of the national police. They are also responsible for supervising police custody and detention centres.

147. Under article 148 of the Military Judicial Code: "Judicial police officers may not hold servicemen handed over to them for more than 48 hours."

148. Article 156 of the Military Judicial Code states that: "Military judicial officers may hold persons who are not members of the army only in the manner and under the conditions established in the Code of Criminal Procedure."

149. Under article 157: "The military prosecutor of the competent local military court is responsible for ensuring that these measures are taken in accordance with the law and may delegate these powers to a deputy."

2. Administrative and judicial measures

150. Under circular No. 3/008/I.M./P.G.R./1970, of 16 May 1970, on the internal organization of prosecutors' offices, the control and supervision exercised by the State prosecutor must be active rather than passive.

151. In practice, in addition to ad hoc inspections of detention centres, and in accordance with circular No. 6/008/I.M./P.G.R./1970 of 16 May 1970, on the prison regime, the State prosecutor also appoints, on a rotating basis, a team of government law officers to carry out a weekly inspection of the cells within that jurisdiction. The inspection is written up in a brief report which is sent to the State prosecutor.

152. Circular No. 6 also draws "the attention of the State prosecutors in particular to the provisions of article 28 of Ordinance No. 344 of 17 September 1965, on the prison regime and conditional release, under which State prosecutors have an obligation to visit the central and district prisons within their jurisdiction, as well as the associated remand centres and the detention camps, at the beginning of each month". The inspector makes a report, drawing particular attention to any complaints from the detainees, who will have been interviewed individually. This monthly report is sent to the provincial prison inspector, the public prosecutor, the Attorney-General and the Minister of Justice.

153. On the basis of these visits and inspections by government law officers, both civilian and military, comments and instructions are transmitted to judicial police officers and prison and custody officials concerning the proper treatment of prisoners. In particular they are reminded of the strict ban on whipping. If any incidents noted during an inspection constitute offences, proceedings are instituted through the ordinary courts.

154. In addition, the Minister for Human Rights regularly inspects detention centres throughout the country, noting any irregular situations and recommending appropriate remedial action to be taken by the Government.

Article 12

1. Legislative measures

155. The decree of 6 August 1959, on the Code of Criminal Procedure, gives government law officers and authorized judicial police officers the power to investigate any offence committed within their jurisdiction. The practice is for complaints and allegations to be addressed directly to the State prosecutor, who selects a government law officer to take charge of the inquiries, whereas judicial police officers act in criminal matters on their own initiative. Military prosecutors and judicial police officers have similar powers.

156. Under article 7 of Ordinance-Law No. 82-020 of 31 March 1982, on the Code of Organization and Powers of the Judiciary, the Public Prosecutor's Office shall investigate violations of laws or regulations committed within the Democratic Republic of the Congo. Under article 2 of the decree of 6 August 1959, on the Code of Criminal Procedure, judicial police officers shall report the offences they intend to investigate; they also receive allegations, complaints and reports relating to such offences.

157. The files relating to the investigations conducted by civil or military prosecutors are sent to the civil and military courts. In accordance with article 147 of the transitional Constitution, the judiciary is independent of the legislature and of the executive. The judiciary is the guarantor of the individual freedoms and fundamental rights of citizens. In the discharge of their duties judges are subject only to the authority of the law.

2. Administrative measures

158. Article 37 of Ordinance No. 78-289 of 3 July 1978, on the discharge of their duties by officers and officials of the judicial police attached to ordinary law courts, states that:

> "Judicial police officers are required to investigate actively and in person any offence they intend to report.
>
> ... All complaints, allegations and reports shall be investigated by judicial police officers ...".

Any police report must in all cases be transmitted to the law officer with jurisdiction for the district in question.

Article 13

1. Legislative measures

159. Under article 21, paragraph 1, of the transitional Constitution: "All persons deprived of their liberty by arrest or detention have the right to appeal before a court, which shall rule without delay on the legality of the detention and order their release if the detention is not lawful."

160. Article 22, paragraph 1, provides that: "No one may be taken against their will from the jurisdiction of the judge assigned to them by law. Everyone shall be entitled to a fair hearing by a competent tribunal and within the time frame established by law."

161. Under articles 2 and 11 of the Code of Criminal Procedure, the victims of acts of torture which constitute violations of Congolese criminal law have the right to lodge a complaint before the competent law officers or judicial police officers. According to article 38, paragraph 2, "All complaints, allegations and reports shall be investigated by judicial police officers."

162. Under article 35 of the above-mentioned ordinance, the investigation by the judicial police officers should be carried out expeditiously in order to enable the salient facts to be put before the government law officer.

163. Under articles 159 and 160 of the Criminal Code, all forms of intimidation or threat are strictly prohibited:

> "Article 159: Anyone who, in a written document, whether anonymous or signed, issues a threat to commit an offence against persons or property which is punishable by a minimum of five years' imprisonment, shall be punished by a prison term of three months to two years and/or a fine of 50 to 500 zaires.
>
> Article 160: Words, gestures or symbols conveying a threat to commit an offence against property which is punishable by a minimum prison term of five years shall be punishable by a prison term of eight days to one year and/or a fine of 25 to 200 zaires."

164. Article 180 of the Criminal Code provides that: "All arbitrary acts that violate the freedoms and rights guaranteed individuals in laws, decrees, ordinances and regulations, ordered or carried out by a civil servant or public official, or by a government official or representative of authority, or a law enforcement officer, shall be punished by a prison term of 15 days to one year, and/or a fine of 200 to 1,000 zaires."

2. Administrative measures

165. Article 38 of Ordinance No. 78-289 of 3 July 1978, on the discharge of their duties by officers and officials of the judicial police attached to ordinary law courts, states that officers "are required to receive any complaint, allegation or report concerning an offence they intend to investigate. They shall make a written report immediately. They are bound to keep secret the identity of any complainant who, upon coming forward, expresses a wish to remain anonymous, always provided said complainant has not committed any offence by bringing the complaint".

166. Nevertheless, effective protection for victims depends upon the vigilance of individual government law officers, judicial police officers and judges.

Article 14

Legislative measures

167. In the Democratic Republic of the Congo, victims of acts of torture or cruel, inhuman or degrading treatment committed by public officials may bring indemnification proceedings through the ordinary criminal courts competent *ratione materiae* to try criminal acts constituting torture, namely magistrates' courts or district courts. Where no criminal indemnification proceedings are brought, the court should award damages of its own motion. In any case, the reparation awarded should conform to the full compensation principle.

168. Under article 69 of the Code of Criminal Procedure, once criminal proceedings have been brought in the trial court, the injured party may apply for indemnification through that court. Indemnification proceedings may be brought at any time between submission of the case to the court and the closure of the hearing, by a declaration made either to the clerk of the court, or to the court itself and transmitted to the clerk of the court. Where the application is made to the clerk of the court, the latter notifies the parties involved. Article 70 of the Code of Criminal Procedure states: "An injured party who brings proceedings by direct application or who applies for indemnification after submission of the case to the trial court may withdraw at any time before the closure of the hearing, by a declaration made either to the court or to the clerk of the court. In the latter case, the clerk of the court shall notify the parties involved."

169. Where the perpetrator is a serviceman or subject to military jurisdiction, article 77 of Act No. 023-02 of 18 November 2002, on the Military Judicial Code, provides that "The injured party may bring an action for damages in respect of an offence subject to military jurisdiction by applying for indemnification at the same time and before the same court as the criminal proceedings. The same applies to any claims for damages that may be brought by the accused against the applicant for indemnification or against other co-defendants." Restitution of property is conducted in accordance with ordinary law.

170. Owing to its limited financial resources, the Democratic Republic of the Congo has made no provision in its legal system for physical or mental rehabilitation of torture victims. However, it may be held liable for acts of torture committed by its agents, under article 260, of the Civil Code, book 3, which states that individuals are responsible not only for harm caused by their own action but also for harm caused by the actions of persons under their charge or by property in their care.

Article 15

1. Legislative measures

171. Article 75 of the Code of Criminal Procedure states that, except in the case of police reports, which by law have particular evidentiary value, the evidentiary value to be attributed to written statements is determined by the court.

172. Although the Code of Criminal Procedure contains no explicit provision requiring the exclusion of evidence obtained by physical or psychological coercion, Congolese case law and doctrine have consistently held and instructed that evidence must show respect for human dignity and that efforts must be made to put a stop to the use of beatings and torture to extract confessions.[2]

2. Administrative measures

173. According to Attorney-General's circular No. 04/008/In/PGR/70, of 16 May 1970, on intervention by judicial police officers: "All forms of violence against the person by judicial police officers are strictly prohibited." The circular also states that court investigating officers and officials or officers temporarily performing judicial police functions have been known to commit or condone violent assaults, and that such behaviour is completely unacceptable. Lastly, it states that a confession obtained by coercion has no evidentiary value.

Article 16

1. Legislative measures

174. Article 15 of the Constitution states that: "The human person is inviolable. The State has the obligation and duty to respect and protect it. Every individual has the right to life and to physical integrity. No one shall be subjected to torture or inhuman, cruel or degrading treatment. No one shall be deprived of life or liberty other than in the cases provided for and in the forms prescribed by law."

175. The Democratic Republic of the Congo still retains legislation imposing the death penalty for serious crimes such as murder, homicide, high treason and certain military offences punishable under the Code of Military Justice.

176. The death penalty is administered by hanging for civilians and by firing squad for the military (decree of 9 April 1898, on capital punishment).

177. Various other provisions make it possible to avoid the use of the death penalty. The law in fact compels government law officers to lodge an appeal in all cases where the accused is sentenced to death. The applicable remedy will be an appeal to a higher court, where the death sentence was pronounced at first instance, or an appeal for clemency to the President, where the sentence was pronounced on appeal or at sole instance.

178. The exercise of this remedy by the public prosecutor is provided for under article 175 of Judicial Organization Regulation No. 299-79 of 20 August 1973, on the rules of procedure of the courts and prosecution services. The granting of clemency by the President has the effect of commuting the death penalty to imprisonment for life or a specified term.

179. Several resolutions and recommendations to abolish the death penalty have been made at various seminars: in February 2003 by the International Federation for Human Rights (FIDH), for example, and in March 2003 by the Observatoire congolais des droits de l'homme (OCDH).

180. The Standing Commission on the Reform of Congolese Law, which has recently resumed its work, will certainly bear these demands in mind and recommend reforming the Criminal Code along those lines.

2. Administrative measures

181. In order to ensure that detainees, prisoners in pretrial detention or convicted prisoners are not subjected to other inhuman or degrading treatment on the part of warders in prison, remand centres or detention centres, Ordinance No. 344 of 17 September 1965, on the prison regime and conditional release, provides for inspections of prisons, remand centres and detention centres. The inspectors check whether prisoners are receiving healthy food in sufficient quantities, and whether the sanitation is of a satisfactory standard. They draw up a report for their superiors containing any complaints from the prisoners they have interviewed.

182. Under article 32 of the same Ordinance, prisoners are searched upon admission by a person of the same sex designated by the warden. The *ratio legis* of this provision is to avoid the degrading treatment involved in subjecting prisoners to a search by a person of the opposite sex. It is in similar spirit to article 39 of the Ordinance, which stipulates that women should be separated from men and held in their own cells. In addition, article 52 prohibits the provision of degrading or humiliating dress to prisoners; the dress provided should be of an appropriate kind.

183. With the aim of protecting prisoners and avoiding inhuman treatment, article 7 of Ordinance No. 344 allows the Ministry of Justice to establish local detention camps so as to avoid overcrowding in prisons, which can result in asphyxiation and the spread of disease.

184. In the same vein, Ordinance No. 344 provides that, upon admission to prison, detainees must undergo a medical examination, chiefly for the purposes of detecting transmissible diseases; those who are sick are cared for at the prison dispensary or infirmary, or at the nearest hospital facility.

185. Doctors visit the prisons, remand centres and detention centres either daily or once or more each week, and make recommendations concerning the treatment of prisoners and their diet, and regarding sick detainees' fitness or otherwise for work. These recommendations are entered in a special log and on individual prisoners' medical records, and affect the work that prison and detention camp inmates are expected to perform, since tasks are allocated taking into account the individual's physical capacity and ability. These are important precautions and are taken to ensure that detainees and prisoners are not subjected to inhuman treatment by being assigned to inappropriately heavy tasks (articles 27-33 of Ordinance No. 344, article 16, on the prison regime).

186. Cruel, inhuman or degrading treatment is also prohibited under circular No. 04/008/JM/PHR/70, referred to above, which criticizes the conduct of judicial police officers in the following terms:

> "There exists a belief that presuming detainees guilty and beating them to extract confessions helps establish truth and punish crime. In fact, generally speaking, hostility and bias on the part of the person conducting the interview merely makes the accused more wary and robs them of any hope of mercy, thereby making it impossible to obtain a confession that might have been forthcoming under a more humane procedure ...
>
> The same applies to insults addressed to detainees or witnesses: some people are extremely sensitive to manifestations of contempt, which arouse in them deep feelings of injustice or discourtesy. From the judicial standpoint, treating detainees or witnesses as liars from the outset produces a reaction that is not conducive to establishing the truth ..."

187. The training seminars organized for security officials by the Ministry of Human Rights encourages behaviour that is respectful of human rights.

Notes

[1] *Droit pénal special zaïrois*, Paris, Librairie générale de droit et de jurisprudence, 2nd edition, 1985, p. 180.

[2] Nyabirungu Muene Songa, *Traité de droit pénal général congolais,* p. 504.
