



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

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COMMITTEE AGAINST TORTURE

Thirty-fifth session

SUMMARY RECORD (PARTIAL)\* OF THE 687th MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 22 November 2005, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

CONTENTS

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

Initial report of the Democratic Republic of the Congo (continued)

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\* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Initial report of the Democratic Republic of the Congo (continued) (CAT/C/37/Add.6)

1. At the invitation of the Chairperson, the members of the delegation of the Democratic Republic of the Congo resumed their places at the Committee table.
2. The CHAIRPERSON invited the members of the delegation of the Democratic Republic of the Congo to reply to the questions put by Committee members at the 686th meeting.
3. Ms. KALALA (Democratic Republic of the Congo) said that torture and other cruel, inhuman and degrading treatment and punishment were prohibited under article 15 (4) of the Constitution and articles 191, 192 and 194 of the Military Criminal Code. Moreover, article 73 of the transitional Constitution stipulated that the right not to be tortured was maintained when military jurisdiction replaced civilian jurisdiction, including during exceptional circumstances and states of emergency. The definition of torture in article 2 of the transitional Constitution was in accordance with that contained in the Convention.
4. The Government was determined to eliminate torture and to punish all persons guilty of such acts. The Observatoire congolais des droits de l'homme was responsible for implementing the policies developed by the Ministry of Human Rights, which were based on the international instruments ratified by her country. The Ministry had been operational in the west of the country during the previous two years. Efforts were under way to establish similar structures in the eastern provinces, particularly in the territories formerly occupied by rebel forces. Given that the Government's current priority was reconstruction, it was only in the initial stages of implementing human rights policies. Gathering statistics had not yet been possible, but would be a priority in future.
5. Article 147 of the Constitution clearly stated that the judiciary was independent. It was, however, true that many individual magistrates were not sufficiently independent, since they received modest salaries and worked under inadequate conditions. Draft legislation designed to improve the status of magistrates was currently before Parliament. The European Union had financed significant improvements to the judicial infrastructure, for which her Government was grateful. There remained, however, an urgent need to increase recruitment as there were not enough magistrates in some parts of the country to implement the law.
6. Mr. BASELEBA BIN MATETO (Democratic Republic of the Congo) said that the broad jurisdiction of the military justice system had been criticized by several international bodies. There were four levels of military judicial bodies; the lowest was the military police court and the highest, the Military High Court. If an individual wished to appeal a decision, he could take his case to the next higher court in the hierarchy. Defendants had the right to appoint their own counsel, and those who did not have a lawyer were provided with one by the military authorities. Civilians appeared before military courts in one of four circumstances: individuals of any nationality who incited a member of the military to commit an act that ran counter to military

discipline; those who damaged the property, the image or the honour of the military; anyone who committed an offence whilst on military property; and any person who committed an offence while accompanying military operations. Civilians enjoyed the same rights as members of the military when being tried under the military justice system. There was significant cooperation between the military and the civilian justice systems, and civilians received equal treatment under both jurisdictions.

7. Ms. KALALA (Democratic Republic of the Congo) said that the decree granting amnesty to former rebels had been introduced to protect those who had joined the peace process. The amnesty had covered all crimes except war crimes, crimes against humanity and genocide.

8. Her Government attached great importance to the protection of human rights defenders and strongly condemned the recent assassination of a human rights defender, whose alleged assassins were currently being prosecuted in the city of Bukavu. An investigation into the case continued under the close supervision of the Ministry of Human Rights. Although no laws were in place to protect human rights defenders as such, steps were being taken to make it easier for them to inform the Ministry of their concerns, and to ensure that timely and efficient measures were taken to protect them.

9. She stressed the need to reform the country's institutions, which had been inherited from a dictatorial regime. Efforts were under way to restructure the judicial system, the army, the police and the security service and to provide proper professional and human rights training. An information campaign on the Military Criminal Code had been launched for the whole army. Although, owing to the poor living conditions of the army and the lack of financial resources, human rights violations were sometimes inevitable, every effort was made to combat impunity and identify and bring to justice the persons responsible for poor governance. International assistance was vital in ensuring that the army staff would be adequately paid and trained. Such assistance was required both with regard to troops that had already been restructured and to soldiers who were yet to be integrated into the unified army.

10. Mr. BASELEBA BIN MATETO (Democratic Republic of the Congo) said that the practice of torture had been condemned in his country since the colonial period. Every step was being taken to bring perpetrators of torture to justice, regardless of whether they were army personnel or civilians.

11. Ms. KALALA (Democratic Republic of the Congo) said that no specific training was provided to detect the marks of torture on a victim. The task of identifying such marks was assigned to forensic doctors.

12. Despite the limited resources, every effort was made to provide human rights training for doctors, magistrates and prison guards. Interrogation of suspects had to be in conformity with the Constitution. Under the Code of Criminal Procedure, the interviews had to be recorded and the written records submitted to a judge. Confessions extracted under torture were not accepted.

13. The country's prisons were so rundown and overcrowded that demolishing them and building new ones would be the only real solution to the problem. Several prisons had already been repaired with the assistance of the European Union. Although more money would be allocated to that end in the State budget, continued efforts were needed to find the necessary funding.

14. Mr. BASELEBA BIN MATETO (Democratic Republic of the Congo) said that no law authorized the ill-treatment of prisoners. There were several disciplinary sanctions that could be imposed by prison directors on prisoners who failed to respect prison rules, including deprivation, for a maximum period of two months, of the right to receive visits or to engage in correspondence, excluding the right to contact a lawyer or other legal or administrative authorities. Beating prisoners was not permitted under any circumstances. If a doctor certified that a prisoner's death had resulted from torture or ill-treatment, the perpetrators would be held responsible, regardless of whether they were prison directors, guards or other prison staff.

15. Ms. KALALA (Democratic Republic of the Congo) said that, although Congolese legislation provided for the separation of minors from adult prisoners, those rules were not always applied in practice. Also, persons, including children, were sometimes arbitrarily deprived of their liberty. While the Ministry of Human Rights carried out regular prison inspections to identify such problems and make recommendations, the sheer size of the country and the inaccessibility of certain regions hampered progress. Statistics on prison populations would be provided in written form.

16. The President had ordered the closure of all places of detention that were not subject to the jurisdiction of the civil prosecutor's office. Yet, the possibility that underground cells were still used in certain parts of the country could not be ruled out. The Ministry of Human Rights based its work in that area mainly on information provided by NGOs, especially in the eastern regions. No reports of illegal detention centres had been received recently, which suggested that the situation had improved since the country's reunification. The security services had proceeded to detaining arrested persons in police cells, which were inspected regularly. Reportedly, detainees in police custody were sometimes chained. Although no evidence for such practices had been found during inspections, the Ministry had called on the competent authorities to ensure that perpetrators of such acts were punished.

17. The review of sentences handed down by the Court of Military Order was currently being discussed; persons sentenced by the Court had demanded to benefit from the amnesty decree. There was a broad consensus on the need for such a review, including within the Government, but the practicalities of the process required further consideration. The judiciary was firmly committed to combating impunity, as illustrated by the fact that the former President of the Court of Military Order had been convicted of murder and placed in detention pending his appeal against the decision.

18. The Military Judicial Code and the transitional Constitution prohibited the recruitment of minors into the armed forces; the National Commission on Disarmament, Demobilization and Reintegration (CONADER) monitored formal recruitment to ensure respect for those provisions. The Commission had also established rehabilitation centres for former child combatants, where they received vocational training to facilitate their reintegration into society. However, illegal

armed groups continued to recruit and use child soldiers. The Government, with the support of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), had launched several military operations to flush out armed groups; some had laid down their arms as a result.

19. In order to enhance the protection of children, the relevant ministries were currently formulating an appropriate code, which would be submitted to the Standing Commission on the Reform of Congolese Law and, subsequently, to Parliament for approval. Its provisions were in conformity with pertinent international instruments.

20. The monitoring of detention conditions fell within the remit of the Ministry of Justice. The Ministry of Human Rights supported such efforts by undertaking prison inspections and preparing reports, which noted irregular situations and recommended appropriate remedial measures, for submission to all institutions concerned. One of the main problems was overcrowding; measures taken to address the problem included increased recourse to conditional release. A growing number of prisoners used the Ministry of Human Rights as a complaints mechanism; regular inspections had had a positive impact on detainees' confidence in the institution.

21. The Government cooperated closely with the International Criminal Court and the President had referred to the Court's Prosecutor all crimes that fell within the Court's jurisdiction. A draft bill to incorporate the Rome Statute in domestic legislation was currently before Parliament.

22. Mr. TSHIBANGU MPINGA (Democratic Republic of the Congo) said that the Prosecutor of the International Criminal Court had repeatedly visited the Democratic Republic of the Congo and had announced the commencement of investigations of crimes against humanity and war crimes, including torture. One of the leaders of armed groups responsible for such crimes in Ituri had been arrested.

23. Mr. BASELEBA BIN MATETO (Democratic Republic of the Congo) said that, while torture was not specifically defined as an offence in Congolese legislation, perpetrators of crimes against humanity, including torture, could not benefit from the amnesty decree. Furthermore, the Democratic Republic of the Congo had ratified the Rome Statute and its provisions would be incorporated into domestic legislation shortly, which would facilitate the prosecution of acts of torture. The Military Judicial Code contained provisions on war crimes and crimes against humanity committed by military personnel; a draft bill currently before Parliament included provisions on the establishment of torture as a separate punishable offence. No decision had been taken on the imposable penalty for such crimes. The debate on the abolition of the death penalty was ongoing. While the Rome Statute did not provide for that type of punishment, the majority of the population in the Democratic Republic of the Congo was in favour of maintaining the death penalty. His delegation would welcome suggestions on ways to change public opinion in that regard.

24. Ms. KALALA (Democratic Republic of the Congo) said that the Office of the United Nations High Commissioner for Human Rights (OHCHR) had provided support for the training of officials in the preparation of periodic reports. As a result, her country was now in a position to fulfil its reporting obligations.

25. On the question of appropriate penalties for rape, she said that one of the Government's major concerns was combating impunity for acts of sexual violence committed by the armed forces and other armed groups. During the armed conflicts that had occurred in the country rape had been used by them as a weapon, and the practice had not yet been eliminated. The Government was doing its utmost to punish the perpetrators. An example was the recent trial and conviction of those responsible for rape and pillage in December 2004, during clashes between the national armed forces and mutineers. Thirteen persons had also been arrested for the rape of some 100 women in the north of the country in 2003. That figure might seem low in proportion to the incidence of the crime; however, there had been considerable problems in conducting the investigation into the incident owing to the inaccessibility of the region concerned and the fact that the perpetrators were constantly on the move and thus difficult to track down.

26. In cooperation with various partners, the Government had also launched an initiative to respond to the medical, social and judicial needs of victims. With regard to the latter, the Ministry of Human Rights was looking into ways of dealing with complaints and providing legal assistance.

27. A related question was that of the ostracizing of rape victims, who were often shunned by society, particularly in rural areas. Efforts were made to explain to them the importance of overcoming feelings of shame and to report the offence so that the perpetrators could be punished. The Government had also requested the Ministry of Justice to remind all judges of their duty to uphold the law and impose severe penalties pending the adoption of new legislation dealing specifically with sexual violence. The draft Constitution that would soon be subject to a referendum also contained a specific provision on sexual violence. It could thus be seen that the political will to stamp out such conduct existed.

28. A serious consequence of the problem of sexual violence was the prevalence of AIDS, which was as high as 30 per cent in the regions occupied by foreign troops. National efforts to combat AIDS included awareness-raising among army officers of the serious repercussions of the disease on the future of the nation.

29. Concerns had been expressed that amnesty might lead to impunity. The delegation had already provided detailed information to show that the Government was striving to combat impunity. It was cooperating with the International Criminal Court and maintained that none of the crimes under the Rome Statute of the Court should be subject to the statute of limitations. However, the Committee must be aware of the particularly difficult circumstances facing the country during the current period of transition that called for the establishment of certain priorities. They were the holding of general elections before June 2006, the restructuring of the army and the establishment of peace. In view of the limited resources available, the Government could not do everything at once.

30. A bill relating to amnesty was currently being examined by the National Assembly. The Assembly had a heavy agenda, which included the organization of elections and the adoption of the draft budget and other relevant legislation. It was to be hoped that with the promulgation of such legislation before 2006 the human rights situation in the country would improve.

31. Any questions that had not been answered would be dealt with in additional written information to be submitted to the Committee in due course.
32. Mr. CAMARA (Country Rapporteur) welcomed the frankness of the delegation. The head of delegation's efforts to reconcile government obligations and the principles upheld in civil society were indeed laudable and should be pursued.
33. Nonetheless, there was one matter on which the Committee had firm views and which would be taken up in the concluding observations - military justice. The delegation had given detailed information on the subject. However, he would stress that military courts were only competent to deal with cases involving military personnel for infringements of military regulations and not military personnel or civilians for other types of offences.
34. In conclusion, he commended the delegation for its efforts to answer the questions raised as fully as possible given the particularly difficult circumstances of its mission to Geneva.
35. Mr. GROSSMAN endorsed Mr. Camara's comments. The delegation had mentioned that military courts could try civilians for offences against military honour and dignity, which was not in conformity with international law. He sought clarification concerning the scope of such offences and examples of cases taken to court.
36. Mr. MAVROMMATIS thanked the delegation for its replies, which showed that after years of dictatorship and war the country was on the right track. He was somewhat surprised that the Government's priority was restructuring of the armed forces and not strengthening of the judiciary and other institutions that protected human rights. Although some questions had remained unanswered, all in all the dialogue with the Committee had been very productive.
37. Ms. GAER, noting the delegation's comments concerning the overcrowding of prisons and the need to build new ones, asked whether there had been any response from the donor community in that connection. Other countries in transition often expressed similar needs, but it was usually the last type of assistance to be provided.
38. Ms. KALALA (Democratic Republic of the Congo) recalled that the European Union was providing assistance with the repair of prisons. However, no offers to help build new ones had thus far been forthcoming. The Government would nevertheless continue its efforts to mobilize support, and she suggested that the Committee might be of assistance in that regard.
39. Responding to Mr. Mavrommatis' comments, she said that restructuring the armed forces was but one of the Government's priorities; however, it was accorded very high importance given the human rights violations committed by the military. The three foundations on which the country must be rebuilt that would ensure the better enjoyment of human rights were the judiciary, the army and the police.
40. The CHAIRPERSON, speaking in a personal capacity and referring to the delegation's comments on prison deaths, said that according to NGO sources, on 24 September 2004, Alain Mondonga had been beaten to death by the narcotics squad in a Kinshasa prison but no investigation into the incident had yet been conducted. Some clarification in that connection would be welcome.

41. Ms. KALALA (Democratic Republic of the Congo) said that an investigation into the incident would be carried out and the Committee would be informed of its progress and outcome.

42. Providing further clarifications on the statement by Mr. Baseleba Bin Mateto, she said that capital punishment was the subject of ongoing debate in Congolese society. The scale of violence was such that many were in favour of its application, although the Government had imposed a moratorium on it and was promoting its abolition.

43. The CHAIRPERSON thanked the delegation of the Democratic Republic of the Congo for endeavouring to reply to the various questions raised in the limited time available.

The discussion covered in the summary record ended at 12.25 p.m.