



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

Distr.: General
1 May 2014
English
Original: French

Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

Initial reports of States parties due in 2004

The Republic of the Congo*

[28 February 2014]

* The present document was not formally edited.

GE.14-42984 (E) 050914 071114



* 1 4 4 2 9 8 4 *

Please recycle 



Contents

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1–2	4
Part one		
General information on the Republic of the Congo	3–56	4
I. Overview	3–7	4
II. Legal framework for the exercise of human rights.....	8–11	4
A. International legal instruments.....	9	5
B. Domestic legislation	10–11	5
III. Mechanism for the promotion and protection of human rights	12–22	8
A. Judicial institutions	12–19	8
B. National institutions.....	20–22	9
IV. The realization of certain human rights.....	23–56	9
A. The principle of non-discrimination	23–24	9
B. The right to equality.....	25	10
C. The right to a fair trial.....	26	10
D. The right to respect for life and protection of the human person.....	27–28	10
E. The right to freedom of expression.....	29–31	10
F. National minorities and vulnerable social groups.....	32–56	11
Part two		
Implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.....	57–139	12
Article 1 of the Convention: Definition of torture.....	67–70	14
Article 2: Measures taken to prevent acts of torture.....	71–81	14
Article 3: Expulsion, extradition and refoulement	82–83	15
Article 4: Torture and criminal law	84–86	16
Article 5: Measures to establish territorial jurisdiction	87–91	16
Article 6: Custody and legal measures	92–101	16
Article 7: Extradition procedure.....	102–105	17
Article 8: Conclusion of extradition procedure	106–108	17
Article 9: Mutual judicial assistance	109–111	18
Article 10: Training of law enforcement personnel.....	112–116	18
Article 11: Review of interrogation rules, instructions, methods and practices (<i>refer to the contents of article 2, paragraph 1, of the Convention</i>)	117–124	19
Article 12: Impartial investigation	125–126	20
Article 13: The right to complain and protection of the complainant	127–129	20

Article 14: The right to redress and fair and adequate compensation	130–133	20
Article 15: Evidence in proceedings	134–137	21
Article 16: Prohibition of acts of torture committed by public officials	138–139	21
Part three		
Challenges and prospects	140–153	21
I. Challenges	140–150	21
II. Prospects	151–153	22
Conclusion	154–156	22

Introduction

1. The Republic of the Congo is submitting herewith its initial report to the Committee against Torture under article 19 of the Convention. A national commission composed of representatives from ministerial departments has been established to draft the report. Other stakeholders, including non-governmental organizations, were consulted.
2. Prior to drafting this report, a preliminary information-gathering exercise was carried out in the country's administrative departments. The work was then given to a drafting committee, which submitted the draft report to various experts in the ministries concerned during a review workshop.

Part one

General information on the Republic of the Congo

I. Overview

3. The Republic of the Congo became a sovereign nation on 15 August 1960. It has been a member of the United Nations since 20 September 1960. The Congo is in central Africa and covers an area of 342,000 km², with an estimated population of 4,085,422 inhabitants. It extends 1,200 km from north to south and nearly 400 km from east to west. It borders the Central African Republic and Cameroon to the north, Angola and the Democratic Republic of the Congo to the south, the Atlantic Ocean to the south-west, the Congo River and its tributary the Oubangui River to the east and Gabon to the west. Sixty per cent of the Congo, which straddles the equator, is covered by dense forest.
4. The Congo reverted to a multiparty democratic system in 1990. Congolese institutions are organized under a presidential system based on the principle of separation of powers. The Republic of the Congo is divided into 12 administrative departments: Kouilou, Niari, Bouenza, Lekoumou, Pool, Plateaux, Cuvette Centrale, Cuvette Ouest, Sangha, Likouala, Brazzaville and Pointe-Noire.
5. The Congolese economy relies primarily on the production of oil and timber but, in addition to these, the Congo abounds in other resources such as potash, iron, diamonds, gold and limestone. The country's per capita GDP has increased from US\$ 1,262 dollars in 2007 to US\$ 2,227. The current growth rate is 5.7 per cent.
6. The population growth rate is 7 per cent, according to estimates of the Bank of Central African States. Average life expectancy is 52 years. The infant mortality rate is 75 per thousand and the maternal mortality rate is 781 per hundred thousand live births. The HIV/AIDS prevalence rate is 5.3 per cent among people aged 15 to 43 years.
7. The gross school enrolment rate is 82 per cent.

II. Legal framework for the exercise of human rights

8. In order to ensure the promotion and protection of human rights, the Republic of the Congo has ratified international, regional and subregional instruments and has adopted a veritable arsenal of domestic legal instruments.

A. International legal instruments

9. The table below shows the main international human rights instruments to which the Congo is party.

1951 Convention relating to the Status of Refugees
OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
ILO Occupational Safety and Health Convention, 1981 (No. 155)
ILO Older Workers Recommendation, 1980 (No. 162)
ILO Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117) (and Protocol)
ILO Weekly Rest (Industry) Convention, 1921 (No. 14)
ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
ILO Guarding of Machinery Convention, 1963 (No. 119)
The Geneva Conventions of 1949
1967 Protocol relating to the Status of Refugees
ILO Night Work (Women) Convention (Revised), 1948 (No. 89)
Biological Weapons Convention
Convention on the Elimination of All Forms of Discrimination against Women
International Covenant on Economic, Social and Cultural Rights
International Covenant on Civil and Political Rights
Optional Protocol to the International Covenant on Civil and Political Rights
ILO Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)
ILO Nursing Personnel Convention, 1977 (No. 149)
International Convention on the Elimination of All Forms of Racial Discrimination
Convention on the Rights of the Child
ILO Labour Inspection Convention, 1947 (No. 81)
ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
ILO Equal Remuneration Convention, 1951 (No. 100)
ILO Abolition of Forced Labour Convention, 1957 (No. 105)

B. Domestic legislation

1. The Constitution

10. In its preamble, the Constitution of 20 January 2002 states:

[We] declare as an integral part of this Constitution the fundamental principles proclaimed and guaranteed by:

- The Charter of the United Nations of 24 October 1945;
- The Universal Declaration of Human Rights of 10 December 1948;
- The African Charter on Human and Peoples' Rights of 27 June 1981;
- All relevant, duly ratified international human rights instruments;
- The Charter of National Unity and Charter of Rights and Freedoms adopted by the Sovereign National Conference on 29 July 1991.

2. Legislation and regulations

11. The Congo's legal arsenal to ensure human rights includes the following legislation and regulations:

- Act No. 60-18 of 16 January 1960 on moral protection for Congolese youth;
- Act No. 35-61 of 20 June 1961 (Congolese Nationality Code);
- Order No. 62-6 of 28 July 1962 prohibiting any action that might profile an individual on the basis of ethnic origin;
- Act No. 1-63 of 13 January 1963 (Code of Criminal Procedure);
- Act No. 18/64 of 13 July 1964 on prevention of the unlawful removal from the Congo of a child born to a Congolese mother and a foreign father;
- Act No. 15/66 of 22 June 1966 amending Act No. 19/64 of 13 July 1964 on the protection of underage schoolchildren;
- Act No. 45-75 of 15 March 1975 (Labour Code of the People's Republic of the Congo);
- Act No. 51-83 of 21 April 1981 (Code of Civil, Commercial, Administrative and Financial Procedure);
- Act No. 73/84 of 17 October 1984 (Family Code);
- Act No. 1/84 of 20 January 1984 on the reorganization of legal aid;
- Act No. 4/86 of 25 February 1986 (Social Security Code of the People's Republic of the Congo);
- Act No. 9/88 of 23 March 1998 (Code of Professional Conduct for Health and Social Workers);
- Act No. 21/89 of 14 November 1989 amending the Civil Service General Statute;
- Act No. 3/91 of 23 April 1991 on environmental protection;
- Act No. 9/92 of 22 April 1992 on the status, protection and advancement of persons with disabilities;
- Act No. 2-93 of 30 September 1993 amending article 30 of Act No. 35-61 of 20 June 1961 (Congolese Nationality Code);
- Act No. 25-95 of 17 November 1995 amending Act No. 8/90 of 6 September 1990 and reorganizing the educational system in the Republic of the Congo;
- Act No. 6-96 of 6 March 1996 amending and supplementing certain provisions of Act No. 45-75 of 15 March 1975 (Labour Code of the People's Republic of the Congo);

- Act No. 8-98 of 31 October 1998 defining and punishing genocide and crimes against humanity;
- Act No. 9-98 of 31 October 1998 on the establishment, responsibilities and functioning of the Mediator (Ombudsman);
- Act No. 1-1999 of 8 January 1999 on the responsibilities, organization and functioning of the High Court of Justice;
- Act No. 12-2000 of 31 July 2000 on the establishment of a national fund for the promotion and development of physical activities and sports;
- Act No. 10-2000 of 31 July 2000 on the establishment of a youth support fund;
- Act No. 9-2000 of 31 July 2000 on youth orientation;
- Act No. 8-2001 of 12 November 2001 on freedom of information and communication;
- Act No. 4-2003 of 18 January 2003 on the missions, organization, composition and functioning of the High Council on Freedom of Communication;
- Act No. 1-2003 of 17 January 2003 on the organization and functioning of the Constitutional Court;
- Act No. 2-2003 of 17 January 2003 on the organization, composition and functioning of the Economic and Social Council;
- Act No. 5-2003 of 18 January 2003 on the responsibilities, organization and functioning of the National Human Rights Commission;
- Act No. 13-2005 of 14 September 2005 authorizing the ratification of the United Nations Convention against Corruption;
- Act No. 14-2005 of 14 September 2005 authorizing the ratification of the African Union Convention on Preventing and Combating Corruption;
- Act No. 21-2006 of 21 August 2006 on political parties;
- Act No. 22-2006 of 12 September 2006 authorizing the ratification of the Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal;
- Act No. 23-2006 of 12 September 2006 authorizing the ratification of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- Act No. 24-2006 of 12 September 2006 authorizing the ratification of the Kyoto Protocol to the United Nations Framework Convention on Climate Change;
- Act No. 25-2006 of 14 September 2006 authorizing approval of the amendment to the Basel Convention;
- Act No. 30-2006 of 5 October 2006 authorizing the ratification of the Stockholm Convention on Persistent Organic Pollutants;
- Act No. 16-2007 of 19 September 2007 on the establishment of an anti-corruption observatory;
- Act No. 4-2010 of 14 June 2010 on child protection in the Congo;
- Act No. 5-2011 of 25 February 2011 on the promotion and protection of the rights of indigenous peoples;

- Decree No. 60-93 prohibiting children under 16 years of age from frequenting or visiting public places between 8 p.m. and 5 a.m.;
- Decree No. 60-94 of 3 March 1994 regulating the admission of minors under 16 years of age to cinemas and theatres;
- Decree No. 60-95 of 3 March 1995 regulating the admission of minors under 16 years of age to dance halls and places selling alcoholic beverages;
- Decree No. 61-178 of 29 July 1961 establishing the modalities for application of the nationality code;
- Decree No. 96-221 of 13 May 1996 regulating private education;
- Decree No. 99-281 of 31 December 1999 approving Decree No. 96-221 of 13 May 1996 regulating private education;
- Decree No. 2001-529 of 31 October 2001 on the issuance free of charge of civil status certificates;
- Decree No. 2004-323 of 8 July 2004 on the establishment, responsibilities and composition of the National Commission to Combat Corruption, Extortion and Fraud;
- Decree No. 2007-155 of 13 February 2007 reorganizing the National Commission to Combat Corruption, Extortion and Fraud;
- Decree No. 2008-127 of 23 June 2008 on the establishment, responsibilities, organization and functioning of commissions for the accreditation of private educational facilities;
- Decree No. 2008-128 of 23 June 2008 instituting treatment free of charge for persons suffering from malaria or tuberculosis and persons living with HIV/AIDS;
- Decree No. 2004-8 of 2 February 2004 on the responsibilities and organization of the Department of Human Rights and Fundamental Freedoms;
- Order No. 5907/MSPAS/DAS of 30 December 1972 authorizing the opening of a centre for deaf and speech-impaired persons as part of the charitable activities of the Catholic Relief Services;
- Order No. 8281/MATD-CAB of 13 December 2007 setting minimum quotas for women candidates in local elections.

III. Mechanism for the promotion and protection of human rights

A. Judicial institutions

12. Effective protection of human rights is a constant concern of the Government of the Republic of the Congo.

13. Oversight mechanisms are being put in place in the form of judicial institutions comprising tribunals and courts on the one hand and the Constitutional Court on the other.

14. All citizens in the Republic of the Congo have equal access to justice. Article 2 of Act No. 19-99 of 15 August 1999 amending and supplementing certain provisions of Act No. 22-92 of 20 August 1992 on the organization of the judiciary states: “All Congolese citizens are equal before the law and the courts. They may act and defend themselves orally

or in writing before all the courts of law, with the exception of the Supreme Court.” The most impoverished citizens receive legal aid from the State.

15. There are regional courts of major jurisdiction in the seat of each department, four appellate courts, one Court of Audit and one Supreme Court.

16. Since 25 June 2008 additional regional courts and appellate courts have been established to bring the judicial system closer to the public. Regional courts were set up in Kindamba, Oyo and Mossaka by Acts Nos. 13, 14 and 15-2008, for example. Other such examples are Act No. 12-2008 creating the Ouesso Court of Appeal and Acts Nos. 20 and 21-2008 modifying the Brazzaville and Owando Courts of Appeal.

17. Title VIII, article 136, of the Constitution of 20 January 2002, on the judiciary, states that “the judiciary is independent of the executive and legislative branches. Judges, in exercising their functions, are to be guided solely by the authority of the law.”

18. The Constitutional Court is the highest State court in respect of constitutional matters. It rules on the constitutionality of legislation and protects fundamental human rights and civil liberties.

19. The High Court of Justice has jurisdiction to try Members of Parliament and Government officials for acts characterized as crimes or offences committed in the performance of their duties, as well as to try their accomplices in cases of treasonable conspiracy. It also has jurisdiction to try the President in the event of high treason.

B. National institutions

20. A number of State institutions work to ensure respect for human rights in the Republic of the Congo, among them:

- The Mediator (Ombudsman) of the Republic;
- The National Human Rights Commission;
- The Ministry of Justice and Human Rights;
- The Ministry for the Advancement of Women and the Integration of Women into Development;
- The High Council on Freedom of Communication;
- The Ministry of Social Affairs, Humanitarian Action and Solidarity;
- The Economic and Social Council.

21. In the Republic of the Congo, non-governmental organizations (NGOs) active in the field of human rights ensure respect for civil and political rights as well as economic, social and cultural rights.

22. Trade unions also play an important role in the Congo in terms of respect for economic, social and cultural rights.

IV. The realization of certain human rights

A. The principle of non-discrimination

23. Article 8 of the Constitution of 20 January 2002 states: “All citizens are equal before the law. Any discrimination based on origin, social or material situation, racial, ethnic or

departmental origin, gender, education, language, religion, philosophy or place of residence is prohibited, subject to the provisions of articles 58 and 96. Women have the same rights as men. The law guarantees and ensures their advancement and their representation in all political, elective and administrative functions.”

24. Article 25, paragraph 1, of the Charter of Rights and Freedoms adopted by the Sovereign National Conference on 29 July 1991 governs the particular situation of Congolese children: “Every child, without discrimination as to race, colour, gender, religion, national or social origin, wealth or birth, has the right to be protected by his family, society and the State in accordance with his needs as a child.”

B. The right to equality

25. On this subject, article 8, paragraph 1, of the Constitution of 20 January 2002 states: “All citizens are equal before the law.” The right to equality also appears in article 1 of the Charter of National Unity: “All human beings are born free and have equal rights. They have the right to the same dignity and equal protection before the law, without distinction.”

C. The right to a fair trial

26. In the Congo, this right is guaranteed by article 9 of the Constitution of 20 January 2002: “The liberty of the human person is inviolable. No one shall be arbitrarily accused, detained or imprisoned. All accused persons are presumed innocent until proven guilty following proceedings in which their right to a defence is guaranteed. All acts of torture and all cruel, inhuman, or degrading treatment are prohibited.”

D. The right to respect for life and protection of the human person

27. Article 7 of the Constitution of 20 January 2002 states: “The human person is sacred and has the right to life. The State has an absolute obligation to respect and protect the human person.”

28. On the same subject, article 2 of the Charter of Rights and Freedoms states: “Every individual has the right to life, liberty and physical and moral integrity.” Article 3 further states: “The human person is sacred. The State and individuals have the obligation to protect and preserve the human person. Abortion, other than therapeutic, is prohibited and punishable by law.” The death penalty has not been carried out since 1979.

E. The right to freedom of expression

29. Freedom of the press is guaranteed by the Constitution, article 19 of which states: “Every citizen shall have the right freely to express and diffuse his opinion by speech, by writing, by image and by all other means of communication. Freedom of the press and freedom of information shall be guaranteed. Censorship is prohibited. Access to sources of information shall be free. Every citizen shall have the right to information and communication. Activities relative to these domains shall be exercised in total independence in respect of the law.”

30. In order to facilitate the development of the press, a High Council for Freedom of Expression was established by Institutional Act No. 4-2003 of 18 January 2003.

31. No journalists have been detained for thought-crimes.

F. National minorities and vulnerable social groups

32. Gender issues are a priority for the Government of the Republic of the Congo. Women are better and better represented in public institutions in which they play an active part. For example, Electoral Act No. 5/2007 of 25 May 2007, amending and supplementing Act No. 9/2001 of 10 December 2001, establishes quotas of 15 per cent for women candidates in legislative and senatorial elections and of at least 20 per cent for local elections.

33. Violence against women is the subject of a bill, now being drafted, on the protection of victims of sexual violence.

34. The current trend is towards gender parity. In this connection, in his message to the nation before both houses of Parliament meeting jointly, the President of the Congo announced the inauguration of work on an act on parity, with a view to having Congolese women fairly represented in political, elective and administrative functions.

35. During the transition period, the High Council of the Republic promulgated Act No. 9/92 of 22 April 1992 on the status, protection and advancement of disabled persons. In article 4, it states: "Benefits and individual and/or collective assistance are accorded to disabled persons as an expression of national solidarity."

36. There are also special schools for individuals living with disabilities: such is the case of the Institute for Young Deaf People, established by Decree No. 5907/MSPAS/DAS of 30 December 1972, where vocational training is provided.

37. The same is true of the Moungali special school, in the fourth arrondissement of the capital, which takes children with mental disabilities up to 15 years of age.

38. Albinos are not discriminated against. They enjoy the same rights as all other citizens.

39. Indigenous peoples are generally victims of marginalization. They live in all the administrative departments of the Republic of the Congo. Efforts are currently being made to improve their lot.

40. At the Congo's initiative, an International Forum for Indigenous People of Central Africa (FIPAC) was held from 10 to 15 April 2007 in the administrative department of Likouala (Impfondo). The second edition of this international forum was held from 16 to 19 March 2011. During preparations for the second edition of the forum, the village that would host the headquarters of the Forum was chosen.

41. A National Action Plan to Improve the Quality of Life of Indigenous Peoples, 2009–2013, was drafted and implemented by the Government in association with development partners.

42. Since 2010, the action plan has been accompanied by decentralized action plans in administrative departments such as Likouala, Sangha, Plateaux and Lékoumou.

43. The International Day of the World's Indigenous People is celebrated throughout the country every year on 9 August.

44. Act No. 5-2001 of 25 February 2011 on the promotion and protection of the rights of indigenous peoples was adopted by the two houses of Parliament and promulgated by the President of the Republic. Provisions for implementation of the Act are currently being formulated.

45. The Government of the Congo organizes several activities for the benefit of indigenous peoples, in which it involves United Nations agencies and NGOs.

46. The current implementation of the United Nations Indigenous Peoples' Partnership (UNIPP) initiative is one of the essential links in the chain of activities designed to lead to greater commitment to a segment of the national population that has long been on the fringes of national development.

47. The objective of this initiative is to advance indigenous peoples' rights in the Republic of the Congo, not least by focusing on the awareness and implementation of the Act of 25 February 2011, as well as on the improvement of access to services in response to pressing basic needs.

48. It should be noted that the introduction of this initiative is a test of all parties' commitment to working together to guarantee the rights of indigenous populations. The UNIPP initiative is also a coordinated and joint initiative taken by the Government, United Nations agencies, indigenous communities and civil society, thus constituting a national platform for parties working on the promotion and protection of indigenous peoples' rights.

49. The Government of the Republic of the Congo is committed to dealing with both refugees and internally displaced persons with a view to preserving and guaranteeing their rights.

50. By Decree No. 99-310 of 31 December 1999, the Congo established the National Committee for Assistance to Refugees, which reports to the Ministry of Foreign Affairs and Cooperation. It is made up of two subcommittees: one on eligibility for refugee status and another on refugee appeals.

51. In the spirit of the draft African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and the protocol on the same subject prepared by the International Conference on the Great Lakes Region, the Congo has started work that will shortly lead to the adoption of national legislation on protection and assistance of displaced persons in the Republic of the Congo.

52. As part of the policy of accelerated municipal development, the Government is remodelling and building detention centres. Brazzaville Prison is open to visitors from international institutions and NGOs. The International Committee of the Red Cross makes periodic visits there.

53. The Congo has decided to humanize its prisons. As well as increasing the number of staff and providing training for officials of the General Directorate of Prison Administration, it has provided Brazzaville prison with a medico-social centre.

54. Detainees receive medical check-ups and appropriate treatment.

55. HIV/AIDS testing is done for all detainees, and antiretroviral treatment is administered free of charge to all persons who are found to be HIV-positive.

56. The Government has also opted to build three modern correctional facilities: one in Brazzaville (capacity 1,500), one in Pointe Noire and one in Owando (capacity 600 each). The land on which these facilities are to be located has already been acquired and the feasibility studies are under way.

Part two

Implementation of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

57. The Republic of the Congo ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 29 August 2003.

58. The Convention against Torture has been the subject of many information-sharing activities, for the benefit in particular, of law enforcement personnel. Both non-governmental organizations and governmental authorities have worked to reach a broader and more diversified public.

59. The courts, police stations, public security posts and non-governmental organizations for the protection of human rights have been the primary target of these efforts.

60. The preamble to the Constitution of 20 January 2002 declares that all duly ratified international human rights agreements shall be an integral part of the Congolese legislative arsenal. Article 9, paragraph 4 of the Constitution provides that “any act of torture, or cruel, inhuman or degrading treatment is forbidden”. The manifest will of a State to ratify an instrument of international scope should mean that its application is compulsory in the domestic courts.

61. Since international cooperation is grounded in respect for human rights, the Congo honours its relevant international commitments in that area.

62. In accordance with its international obligations, the Congo has undertaken the process of reforming its legal framework with respect to the protection of human rights. A commission was established, several years ago, to review discriminatory and unsuitable provisions contained in the following domestic legislation:

- The Family Code;
- The Code of Criminal Procedure;
- The Criminal Code.

63. The Congo has ratified the following international instruments related to torture:

- The Convention on the Elimination of All Forms of Discrimination against Women, on 26 July 1982;
- The International Convention on the Elimination of All Forms of Racial Discrimination, on 11 July 1988;
- The Convention on the Rights of the Child, on 14 October 1993;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 1 July 2003.

64. Following its ratification, the Ministry of Justice and Human Rights launched a series of seminars to raise awareness of the Convention against Torture throughout the country.

65. Decree No. 4994/MJDH-CAB of 14 July 2009, establishing the scope and structure of the departmental directorates for human rights and fundamental freedoms, will enable decentralized offices located in the departments to incorporate the terms of the Convention into their work, so as to better implement and improve human rights protection throughout the country.

66. Since the ratification of the Convention against Torture by the Congo, efforts have been made to implement it. The results are telling, if we consider some of the acts that occurred during the period immediately after the cessation of hostilities. Significantly, there are fewer reports that law enforcement personnel have committed acts of torture. Investigations by the Directorate-General for Human Rights and Fundamental Freedoms in the interior of the country have shown, moreover, that such acts are more often punished by the military hierarchy.

Article 1 of the Convention

Definition of torture

67. Pending the finalization of the bill on the prevention and punishment of the crime of torture (currently being drafted), the Criminal Code interprets the concept of “torture” to mean cruel, inhuman or degrading acts. Article 6 provides that any of the acts mentioned below shall be considered to be a crime against humanity when perpetrated in the context of a generalized or systematic attack against the civilian population or as the consequence of such an attack:

- Murder;
- Extermination;
- Enslavement;
- Deportation or forced transfer of people;
- Torture;
- Other analogous inhuman acts that wilfully cause great suffering or serious injury to body or health.

68. Provision is made for a definition of torture in the bill on the prevention and punishment of torture, currently at the drafting stage. The draft revision of the Criminal Code also takes into consideration this essential concern.

69. It should be noted that Act No. 4-2010 of 14 June 2010 on child protection also contains provisions related to the campaign for the eradication of torture.

70. Article 7 of Act No. 5-2011 of 25 February 2011, the promotion and protection of the rights of indigenous peoples, stipulates that acts of torture and other cruel, inhuman or degrading treatment or punishment and violations of the right to life and the right to mental and physical integrity of indigenous populations are forbidden. Acts of torture and other cruel, inhuman or degrading treatment or punishment against members of the indigenous population shall be punished under article 309 of the Criminal Code. Violations of the right to life and the right to physical and mental integrity shall be punished under the provisions of the Criminal Code that apply to murder and intentional bodily harm, with the exception of the death penalty.

Article 2

Measures to prevent acts of torture

Article 2, paragraph 1

71. The maximum length of custody is 72 hours, which may be extended by decision of the public prosecutor.

72. The Code of Criminal Procedure provides that, in urban districts with a court of major jurisdiction, if there is strong and consistent evidence that anyone is guilty as charged, the criminal investigation officers must bring them before the public prosecutor after not more than 72 hours in custody.

73. The maximum length of custody cited in the previous paragraph may be extended by 48 hours on written authorization from the public prosecutor or from the duly notified investigating judge.

74. Article 108 of the Code of Criminal Procedure provides that any person detained under a warrant who has been heard by a judge is considered to be arbitrarily detained. Any

judge or official who orders or has knowingly tolerated such arbitrary detention shall be subject to the penalties prescribed by articles 119 and 120 of the Criminal Code.

75. As for the possibility for a detained person to have access to counsel, the Code of Criminal Procedure stipulates that in the absence of counsel, a lawyer will be assigned. A decision to deny the detained person contact with counsel must be substantiated by the judge.

76. These provisions are set out in articles 55, 98 and 99 of the Code of Criminal Procedure, which specify that if the accused has not made a choice of counsel, a lawyer will be assigned by order of the presiding judge of the Criminal Court.

77. An accused person who has been detained may, immediately after the preliminary hearing, freely communicate with a lawyer (art. 98):

(a) An investigating judge may, when he believes it necessary, prohibit the accused from communicating for a period of no longer than 10 days;

(b) Under no circumstances shall the ban on communication apply to counsel.

78. An exhaustive evaluation of the effectiveness of measures to prevent torture is not possible because court orders are not held in a single centralized database, with the exception of sensational cases which have achieved notoriety.

Article 2, paragraph 2 of the Convention

79. Article 7 of the Criminal Code provides that endangering the life, health or physical or mental well-being of persons, in particular murder and cruel treatments such as torture, shall carry the death penalty.

80. Article 8 establishes that the death penalty shall also apply to deportation or enslavement, or the massive and systematic practice of summary executions or outrages to human dignity, in particular humiliating or degrading treatment.

Article 2, paragraph 3 of the Convention

81. Although the Criminal Code and the Code of Criminal Procedure have not clearly addressed this topic, the Constitution of 20 January 2002 explicitly provides, in article 10, that any citizen or agent of the State shall be relieved of the duty to obey orders when the order in question is a clear violation of respect for human rights and public freedoms. The order of a superior or of any public official shall not, under any circumstances, be invoked as a justification for such practices. Any individual, agent of the State or public official found guilty of an act of torture or cruel or inhuman treatment, whether on his or her own initiative or under orders, shall be punished in conformity with the law.

Article 3 Expulsion, extradition and refoulement

82. Act No. 05/75 of 12 March 1975, ratifying the Convention on judicial cooperation between the People's Republic of the Congo and the French Republic, covers extradition procedures.

83. Article 61 of the Act provides that extradition may be denied if the requested State considers the offence for which it is sought to be a public offence or an offence connected to such an offence.

Article 4

Torture and criminal law

84. Under the domestic law, torture is an offence that is punishable under the Criminal Code (arts. 107 and 108).

85. The law also punishes any attempt to commit a crime that is apparent from the beginning of the act or from acts unmistakably and directly leading to its commission, or if the act is halted or fails in its purpose owing to circumstances that are not within the control of the perpetrator (article 30 of the Criminal Code), or if the objective sought could not be achieved owing to a factual circumstance unknown to the perpetrator.

86. The accomplice of a crime or offence is liable to the same punishment as the perpetrator (article 44 of the Criminal Code).

Article 5

Measures to establish territorial jurisdiction

87. The Code of Criminal Procedure provides for the establishment of territorial jurisdiction over crimes and offences committed abroad by Congolese nationals.

88. However, a prosecution cannot be carried out or a judgement handed down until the criminal has returned to the Congo and has failed to demonstrate that he or she has been definitively tried abroad, and, if convicted, has served the sentence or been pardoned.

89. Under the Code of Criminal Procedure, Congolese courts have jurisdiction over crimes or offences committed at sea on ships flying the Congolese flag, whatever the nationality of the perpetrators.

90. The same applies to crimes or offences committed in a Congolese seaport on board a foreign merchant ship.

91. Although the Republic of the Congo generally does not extradite its own citizens, it undertakes to prosecute them on receipt of an official complaint from the requesting State.

Article 6

Custody and legal measures

92. If an accused person cannot provide sufficient bail, their detention will be ordered and the case will immediately be referred to the court under the flagrante delicto procedure. The case must be heard within eight days of the detention order.

93. Flagrante delicto procedure follows strict rules set out in the Code of Criminal Procedure, whose purpose is to guarantee the rights of the defence and to prevent abuse of the procedure.

94. Moreover, flagrante delicto procedure is prohibited for press offences and offences of a political nature, and is not applicable to minors under the age of 18 (articles 58–62 of the Code of Criminal Procedure).

95. For all offences that come to their attention, the criminal investigation officers conduct a preliminary investigation, on their own initiative or on the orders of the public prosecutor.

96. The procedure for the conduct of the preliminary investigation is attended by human rights guarantees (articles 44–50 and 64–65 of the Code of Criminal Procedure).

Accordingly, a home may not be searched or evidence seized without the written consent of the owner or occupier; if they do not know how to write, they may be assisted by a third person of their choice.

97. The search may only be conducted with written authorization from the public prosecutor or the investigating judge (article 48 of the Code of Criminal Procedure).

98. If, in order to carry out the investigation, the criminal investigation officer needs to keep a person in custody, he is obliged to inform the public prosecutor, and the period of custody may not exceed 72 hours. He is also required to give the person in custody every means to communicate immediately and directly with his family and to receive visits (article 51, paragraph 2 of the Code of Criminal Procedure).

99. If there is serious and consistent evidence to warrant charges against a person, the criminal investigation officer is required to present the person to the public prosecutor and may not hold the person in custody for more than 72 hours (article 51 paragraph 2 of the Code of Criminal Procedure).

100. Upon expiry of the period of custody, the persons held must undergo a medical examination if they request one themselves or if one is requested by their lawyer or family. The examination shall be carried out by a physician of the person's choice (article 51 para. 5 of the Code of Criminal Procedure).

101. Any violation of the provisions relating to periods of custody shall render the criminal investigation officer liable to the penalties applicable for arbitrary detention.

Article 7

Extradition procedure

102. All criminal offenders are entitled to the same safeguards and equal treatment regardless of the offence committed. The same holds true for persons accused of acts of torture, including with regard to their right to legal counsel, even if the act of torture has not yet been classified as an offence. In this regard, article 9, paragraph 2, of the Code of Criminal Procedure stipulates that "all accused persons are presumed innocent until proven guilty following proceedings in which the rights of the defence are guaranteed".

103. The requesting State is informed of the response given to the request. In accordance with international law on consular protection and the 1963 Vienna Convention on Consular Relations, the embassy or consulate of the country of origin of the person under arrest is notified by the Ministry of Foreign Affairs.

104. Extradition is generally provided for in bilateral agreements signed by the Congolese Government. The Ministry of Justice and Human Rights and the Ministry of Foreign Affairs and Francophonie are responsible for considering the admissibility of the request and implementing the procedure.

105. However, article 42 of the Constitution states that "foreigners in the territory of the Republic of the Congo shall enjoy the same rights and freedoms as nationals under the conditions laid down in treaties and laws, subject to reciprocity".

Article 8

Conclusion of extradition treaties

106. The Constitution of 20 January 2002 established the principle that any international convention ratified by the Congo takes precedence over national law (see the Preamble to the Constitution).

107. The revision of the various codes (the Civil Code, the Code of Criminal Procedure, the Nationality Code, the Family Code and the Commercial Code) is also part of the process of bringing national legislation into line with the various international conventions ratified by the Congo.

108. So far, no foreign State has invoked the Convention to request the cooperation of the Congolese Government in a case of extradition; nor has the Congolese Government submitted any request based on the Convention.

Article 9

Mutual judicial assistance

109. Generally speaking, the Congo has always favoured enhanced international cooperation in matters of extradition and mutual judicial assistance. The only restrictions, in conformity with the Code of Criminal Procedure, are that extradition is not granted in the following cases:

- When the subject of the extradition request is of Congolese nationality, and this status was recognized at the time of the offence for which extradition is requested;
- When the crime or offence is of a political nature or when circumstances show the extradition request to be politically motivated;
- When the crimes or offences were committed on Congolese territory; if, in accordance with the laws of the requesting State or the State of which the request is made, the period of statutory limitation has expired before the extradition request is served, or the time limit for the enforcement of the sentence has expired before the arrest of the individual whose extradition is requested and, generally, whenever the criminal proceedings in the requesting State have been completed;
- When there has been an amnesty in either the requesting State or the State of which the request is made, provided, in the latter case, that the offence is one which can be prosecuted in that State when committed outside its territory by a non-national of that State;
- When, for a single offence, extradition is simultaneously requested by several States, it shall preferably be granted to the State whose interests were targeted by the offence or the State on whose territory it was committed.

110. With regard to mutual judicial assistance, the Congo has concluded and ratified several international and regional multilateral conventions, including conventions on combating terrorism, money-laundering, combating transnational organized crime and corruption.

111. As a case in point, provisions on all these subjects are included in Act No. 05/75 of 12 March 1975 ratifying the Convention on judicial cooperation between the People's Republic of the Congo and the French Republic.

Article 10

Training of law enforcement personnel

112. In general, a special role is assigned to the teaching of human rights in the various training courses. A human rights module is taught in universities and in vocational training schools and has been updated to take account of international developments and the State's accession to other instruments.

113. The subject of human rights is a specific item on the curricula of training courses in police and gendarmerie training schools.

114. Lectures on the subject are also given by specialists, eminent international professors and human rights defenders.

115. In the field of public health, the obligation to provide training on and to inform medical staff in correctional facilities about human rights is ensured by the Ministry of Health through in-service as well as by the training code of medical ethics.

116. Medical students are given training on the code's provisions in the forensic medicine module of their course.

Article 11

Review of interrogation rules, instructions, methods and practices (*refer to the contents of article 2, paragraph 1, of the Convention*)

117. The State prosecutor supervises the criminal investigation officers and officials within his or her jurisdiction and monitors custodial measures.

118. Criminal investigation officers must notify the State prosecutor immediately of any custodial measure and submit a report on the grounds on which it is based. They are also required to provide the necessary means to enable the detainee to make contact immediately with his or her family and to receive visits.

119. The officers are also required to arrange a medical examination for the detainee, and the medical certificate must be attached to the report.

120. If he or she deems it necessary, the State prosecutor may appoint a doctor to examine the detainee, either on his or her own initiative or at the request of a member of the detainee's family or counsel for the detainee.

121. Moreover, detainees are entitled to receive medical treatment from doctors, dentists or psychologists.

122. Order No. 2772 of 18 August 1955 regulating the operation of prisons and the work of prisoners in French Equatorial Africa provides for health care for prisoners. Article 58 of the Order states as follows: "The doctor must visit all sick prisoners at least weekly, and food for sick prisoners or the special diet prescribed shall be provided by the prison authorities. Once a month the doctor shall inspect the cells, dormitories, workshops and places of punishment. He shall make any recommendations he deems necessary."

123. Article 1 of Decree No. 99-86 of 19 May 1999 on the responsibilities and organization of the Directorate-General of Prison Administration assigns the following duties to that body:

- To guarantee the enforcement of sentences;
- To ensure that sentences are served in humane conditions, in accordance with the conventions and recommendations of the United Nations and the African Union;
- To re-educate prisoners and prepare them for social reintegration, in cooperation with other ministerial departments and relevant NGOs;
- To protect and assist with the re-education of children in conflict with the law, in coordination with the competent directorate of the Secretariat-General of Justice.

124. The Congo has an excellent relationship with the International Committee of the Red Cross, whose representatives regularly visit prisons and custodial facilities throughout the country.

Article 12

Impartial investigation

125. Whenever there have been reasonable grounds for believing that an act of torture has been committed, the judicial authorities have carried out an impartial investigation to establish the facts.

126. The Congolese courts punish every case of torture in strict compliance with the law.

Article 13

The right to complain and protection of the complainant

127. When an offence is brought to their attention, the criminal investigation officers undertake preliminary inquiries, acting either on the instructions of the State prosecutor or on their own initiative (article 63 of the Criminal Code).

128. Moreover, anyone who is the victim of an act of torture may file a complaint with the appropriate courts.

129. Any person who claims to have been harmed by an offence, may, in filing a complaint, apply to the competent investigating judge for criminal indemnification (article 108 of the Criminal Code).

Article 14

The right to redress and fair and adequate compensation

130. The civil responsibility of both the perpetrator of an act of torture and the State is engaged, unless the latter files an action against the perpetrator. The victim's right to redress is therefore guaranteed.

131. Article 120 of the Criminal Code provides that "staff at remand centres, short-stay prisons, detention facilities or prisons who admit a prisoner without a warrant or judicial decision, or persons who, in the absence of a provisional government order, detain an individual or refuse to present an individual or the registers to a police officer shall be deemed to be guilty of arbitrary detention and liable to a prison term of between 6 months and 2 years and a fine of between 4,000 and 48,000 francs".

132. The preceding article of the Code states as follows: "Public officials charged with administrative or criminal investigation police functions who refuse or fail to comply with a legal request to attest to the illegality or arbitrariness of a person's detention, whether in a facility designed for the custody of detainees or elsewhere, and who fail to report the matter to a higher authority, shall be liable to loss of civic rights and payment of damages, which shall be regulated under the provisions of article 11."

133. Through a number of programmes developed by State bodies, in some cases with the support of organizations belonging to the United Nations system, solutions are offered to victims of torture and other cruel or degrading treatment with a view to restoring their dignity and right to security.

Article 15

Evidence in proceedings

134. Notwithstanding the legal guarantees to prevent the use of torture to obtain statements from persons in police custody, the judicial investigation (which is optional in the case of less serious offences) would reveal if a statement has been obtained by torture, since the investigating judge examines the evidence for the defence as well as for the prosecution.

135. Article 122 of the Criminal Code punishes the extraction of confessions through torture or parallel proceedings.

136. Article 7 of the Code stipulates that endangering the life, health, or physical or mental well-being of persons, in particular murder and cruel treatment such as torture, shall carry the death penalty.

137. Circumstantial evidence is not admissible.

Article 16

Prohibition of acts of torture committed by public officials

138. The provisions of the article referred to in article 15 of the Convention are supplemented by article 8 of the Code, which stipulates that the death penalty shall apply to deportation, enslavement or the massive and systematic practice of summary executions or outrages to human dignity, in particular humiliating or degrading treatment.

139. Article 9, paragraph 3, of the Congolese Constitution provides that all acts of torture and all forms of cruel, inhuman or degrading treatment shall be prohibited.

Part three

Challenges and prospects

I. Challenges

140. The implementation of a policy to promote and protect human rights in the Congo is hindered by a number of different types of obstacles.

1. In relation to institutions and the judiciary

141. It is important to highlight the challenges faced in the fields of justice, prisons and law enforcement in particular, as it is at these three levels that human rights instruments relating to torture are applied and implemented.

142. In general terms, it should be noted that Congolese prisons were built during the colonial era to house a small number of detainees.

143. Prison overcrowding is a major problem, as is the fact that most prisons lack any social reintegration measures and that the penitentiary system is under-equipped.

144. Most prison staff are not properly qualified to deal with specific requirements of their profession.

145. A policy to modernize the Ministry of Justice and Human Rights is currently being implemented.

146. New prisons are being built throughout the country.

2. In relation to law enforcement and citizens

147. Training and awareness-raising campaigns are conducted for law enforcement officials on a regular basis, but the results achieved have not yet met expectations.

148. Certain vestiges of the past hinder the punishment of acts of torture, in that victims often remain silent out of fear of reprisals or to preserve family or clan cohesion.

149. The lack of familiarity — among the public in general and victims of torture in particular — with victims' rights and the remedies available to them explains the low number of complaints of torture filed.

150. Surveys conducted in the various departments by staff of the Directorate-General for Human Rights and Fundamental Freedoms have shown that law enforcement officers, particularly members of the police and the gendarmerie, have only a vague notion of the content of the Convention against Torture.

II. Prospects

151. The coordinated efforts of the Government, United Nations agencies, associations and NGOs has resulted in greater coordination and consistency in the handling of issues related to the promotion and protection of human rights in the Congo.

152. The establishment of human rights directorates at the department level has paved the way for a proactive policy to popularize, spread information about and monitor respect for human rights in general and to protect citizens from acts of torture in particular. This also makes it possible to collect reliable and impartial data in order to develop a database that is permanently accessible.

153. Lastly, it should be pointed out that there is an acute need for human rights training, education, dissemination and awareness-raising targeting judges, staff of the various services and citizens.

Conclusion

154. The implementation of the Convention against Torture is fraught with challenges, the most significant of which are institutional, legal and financial, and which undermine the efforts and actions carried out, at times paralysing them.

155. These challenges require capacity-building in order to improve the response from the authorities and bodies responsible for promoting and protecting human rights.

156. The Congolese Government will continue to disseminate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in order to ensure greater awareness among citizens and public officials, particularly law enforcement and justice officials, so as to more effectively promote and protect human rights.
