

Flygtningenævnets baggrundsmateriale

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1. Introduction

Freedom from Torture makes this submission to the UN Committee against Torture as an alternative report to the Democratic Republic of Congo's second periodic report submitted in November 2017.

This submission focuses on the use of torture by the government of the Democratic Republic of Congo (DRC) to punish and suppress actual and perceived political opposition. It is based on a review of 83 medico-legal reports prepared by Freedom from Torture for individual Congolese victims.¹ All were detained and tortured by state authorities between 2005 and 2017 in relation to their own or a family member's actual or perceived political or human rights activity.

Medico-legal reports are detailed forensic reports documenting physical and psychological consequences of torture prepared by specialist independent clinicians, according to the standards set out in the UN Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("*Istanbul Protocol*").

We note the positive steps taken by the government of the DRC outlined in their second periodic state party report. We also note the inauguration of a new President in January 2019. Despite these changes and positive steps taken, Freedom from Torture does not believe that enough steps have been taken to tackle the systemic use of torture in the country nor to effectively put an end to impunity for torture.

Freedom from Torture urges the Committee to use our evidence below as a basis to question the state party on inconsistencies contained in its state party report and on its failure to uphold commitments made to eradicate torture and to end impunity for torture.

2. Human rights situation with regards to torture

This submission presents primary evidence of torture in the DRC between 2005 and 2017 based on a detailed analysis of 83 medico-legal reports for Congolese nationals who were detained for exercising their democratic and constitutional right to engage in political and human rights activism.

2.1 Overview of the 83 people profiled

- 56 women, 27 men;
- A third were 25 or under, five of whom were legally minors at the time of their most recent detention;
- Most were living in Kinshasa, far from the conflict affected provinces; and
- More than half were detained more than once, and over half were tortured every time.

2.2 Forensic evidence of torture

Many of the 83 survivors experienced torture and/or other ill-treatment from the point of arrest. More than half reported high levels of physical violence during their arrest and transit to detention (52%), including sexual violence (4%). Some were subjected to threats or humiliation (17%) and blindfolding or hooding (11%) .

¹ Nine of the 83 reports were completed after the publication of Freedom from Torture's November 2018 report, *A Tool To Silence: Torture to crush dissent in the Democratic Republic of Congo*, and have been added to the 74 cases in that report.

All 83 survivors experienced methods of physical and/or psychological methods of torture during their most recent detention episode. 84% were tortured on multiple occasions, some at regular intervals.²

2.2.1 Physical torture

Almost all of the 83 women and men detained and tortured attest to physical assault, including beatings and other blunt force trauma (99%). People described repeated and prolonged episodes of beatings and other assaults. Most were beaten all over the body, some on the face or head (40%) and some on the soles of the feet (*falaka*) (7%), with a variety of flexible and inflexible blunt instruments. These included metal truncheons, wooden or rubber covered-batons, leather or rubber whips and gun butts. Many women and men were beaten or otherwise assaulted concurrently with other torture, including suspension and rape, and some described being beaten more intensely if they attempted to protect themselves or to resist rape.

2.2.2 Sexual torture

Sexual torture was reported by 74 people (89%), 70 of whom were raped (52 women and 18 men), including vaginal, anal and oral rape, and penetration with an instrument. More than half of those who were raped described multiple assaults throughout their detention (61%). For some, this was a daily or nightly occurrence. Others struggled to find a pattern or quantify the rapes, using terms such as “many times”, “continuously” or “repeatedly”. More than half were gang raped (54%), during which multiple perpetrators raped the person in turn with others watching or forcibly restraining the person. Five women became pregnant as a result of rape and two suffered miscarriages following rape and other torture.

Of the five who were minors at the time of their most recent detention, four were raped.

Women and men described a high level of violence accompanying rape, including burning (by metal instruments or lighted cigarettes), beating, stabbing, biting and cutting with sharp implements. Other forms of sexual torture included molestation of breasts and genitals, forced nakedness or forced performance of sexual acts. Two women were given electric shocks to the genitals, causing them to lose consciousness.

2.2.3 Other forms of torture

Thirty-four people were tortured by burning (41%), in most cases with heated metal instruments or lighted cigarettes. Some people described being burned with scalding liquid or a caustic liquid.

Thirty-three survivors were subjected to positional torture (40%), some were suspended by their legs or arms and over half were subjected to prolonged binding, shackles or handcuffs.

Twenty-seven people were subjected to sharp force trauma (33%), which invariably took place alongside other torture, especially rape. Most were cut with a sharp object, including knives, broken glass, razor blades, barbed wire and scissors. Some people were stabbed, including with a bayonet and a screwdriver, while resisting rape and other torture.

Other methods of torture included crush injuries (17%), forced solar gazing (12%), electric shocks and asphyxiation (8% each), and environmental torture (55%) such as solitary confinement and deprivation of light, sight and time.

² To illustrate how routine torture was, survivors mention how perpetrators used terms such as "breakfast" or "morning coffee" and "taking tea".

Psychological acts of torture were also inflicted, including humiliation, death threats and witnessing violence perpetrated against others, including rape.

Expert clinicians documented forensic evidence attributed to the physical and/or psychological impacts of the torture described in all 83 cases.

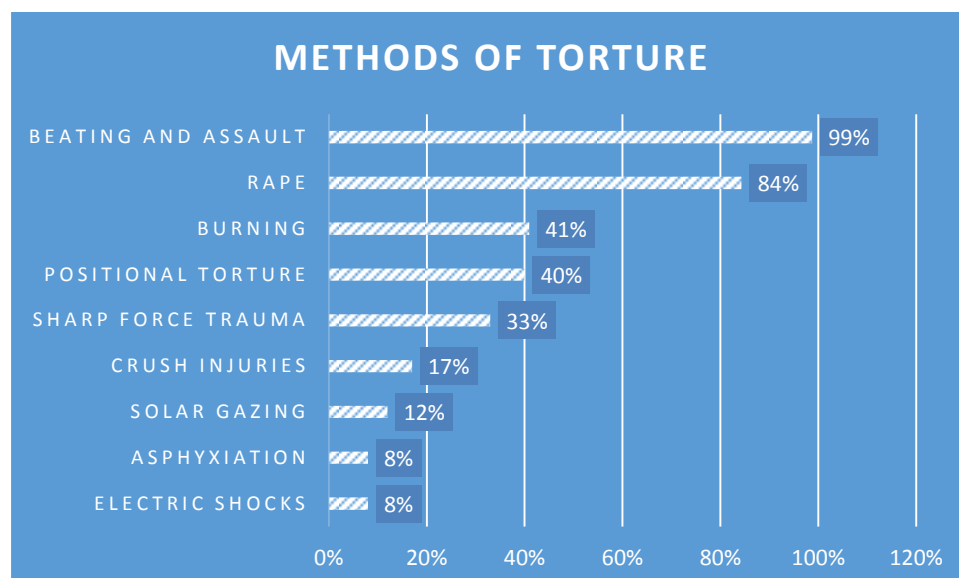


Figure 1: Incidence of rape and other physical torture

2.3 Detention conditions

Detention conditions in both official and unofficial detention sites were universally poor and breached international norms and standards that exist to safeguard detainees.

Many reported being kept in small or overcrowded cells (60%), forcing people to stay standing, sitting or squatting, making it difficult if not impossible to lie down and sleep.

Fifty-nine people described being detained in unhygienic conditions (71%). Many either had limited or no access to toilet facilities (61%), with some commenting that access was dependent on the whim of the guards. The majority of detainees were forced to urinate or defecate in their cells, which were consequently soiled. Darkness, lack of ventilation, terrible smells and overwhelming heat were commonly described.

Many reported scarce and inadequate food and water provision (63%), and in a small number of cases, it was only provided in exchange for sexual acts. The food described was of poor quality, sometimes inadequately cooked or rotten, and usually offered in small amounts and infrequently.

2.4 Violation of due process rights

All were held in arbitrary detention without full observance of legal due process. No-one among the 83 people reported any form of criminal procedure or access to a legal counsel. Almost all had no awareness of a formal charge against them or a hearing before a judicial authority. Two people were sentenced without a fair trial to a prison term. There was no indication that people had routine access to independent medical practitioners in any of the detention sites.

Most of the 83 were detained for less than six months.

The vast majority escaped (88%), often with the assistance of a guard who recognized or found an affinity with them. Some of these arranged a bribe to escape (33%). Five people were released without any explanation.

Due process	Legal frameworks applicable in the DRC	Evidence
Formal charge, access to legal counsel	Article 19 of the DRC Constitution guarantees detainees access to counsel of their choosing at all stages of a criminal procedure. ³	No one reported awareness of a formal charge against them, any form of criminal procedure or access to legal counsel.
Registration at the detention facility	Article 6 of the African Commission's Fair Trial Principles ensures that records of arrest and detention are kept, and made available to relevant persons. ⁴	Only two survivors reported awareness of any formal record of their detention, including being photographed and fingerprinted.
Hearing before a judicial authority	DRC laws specify that individuals who have been detained must be taken before a judicial authority within a specified timeframe, or released. ⁵	No one had their case heard before a judicial authority; two people were sentenced without fair trial to a prison term.
Medical attention	Article 20 of the Robben Island Guidelines states that people deprived of their liberty must have access to medical services. ⁶	Some survivors said they received some medical attention during their detention to treat injuries arising from torture, including sexual torture, beatings and burns. Ten were treated in medical facilities outside detention, most of whom were helped to escape by a sympathetic nurse or guard or family member; four were treated by a medic in detention, though no action was taken by them to prevent further torture.

Figure 2: Evidence of observance of due process

2.5 Identity of perpetrators

State agents, including the military, the police and intelligence agents, were responsible for the arrest, detention and torture of all 83 people.

³ The Constitution of the Democratic Republic of the Congo, 2005. [Online]. [Accessed 05/10/2018]. Available at: <http://www.constitutionnet.org/sites/default/files/DRC%20-%20Congo%20Constitution.pdf>

⁴ African Commission on Human Rights and Peoples' Rights. 2003. *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*. Article 6. [Online]. [Accessed 05/10/2018]. Available at: <http://www.achpr.org/instruments/principles-guidelines-right-fair-trial/>

⁵ Redress, *Legal Frameworks To Prevent Torture In Africa: Best Practices, Shortcomings and Options Going Forward*, March 2016, Chapter III.2. [Online]. [Accessed 05/10/2018]. Available at: <https://redress.org/wp-content/uploads/2017/12/1603anti-torture-legislative-frameworks-in-africa.pdf>

⁶ African Commission on Human and Peoples' Rights. *Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)*. [Online]. 2008. [Accessed 05/10/2018]. Available at: <http://www.achpr.org/instruments/robben-island-guidelines-2008/>

Fifteen people reported having been transferred to and detained in more than one facility. Nineteen people report having been detained at unofficial detention sites.

Twenty-seven people were arrested by the military authorities including the Armed Forces of the Democratic Republic of the Congo (FARDC), the Presidential Guard, and the Military Detection of Unpatriotic Activities (DEMIAP)⁷. Although detained by the military, individuals were not always detained and tortured in military facilities. Thirteen people reported being transferred to other types of facility including police facilities, prisons, and unofficial detention sites.

Twenty-five people were arrested by the police including the Congolese National Police (PNC) and the Rapid Intervention Police (PIR). The police also used a variety of different facilities in which to detain and torture people.

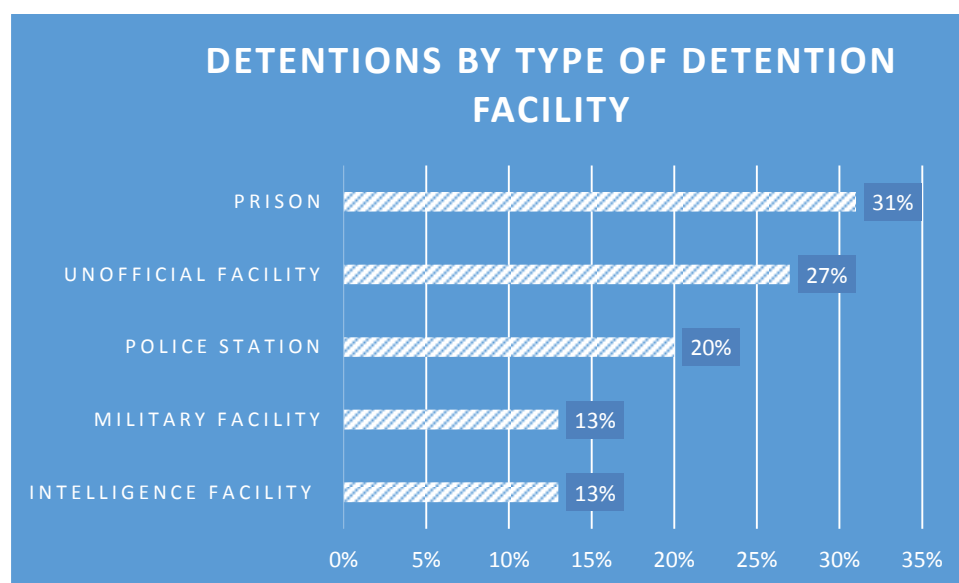
Seven people were arrested by intelligence agents, presumed to be from the National Intelligence Agency (ANR). Intelligence agents mostly used intelligence facilities, though two were taken directly to a prison and a police station, respectively, and a further two were transferred from an intelligence facility to another type of facility.

Unofficial detention sites included buildings in remote locations, described as abandoned residential houses and compounds. One of these sites was referred to by name as “Maluku” and another was the “marble palace”, referred to as the former residence of Laurent Kabila.

Military facilities cited include: Camp Kokolo, CIRCO military prison, Tshatshi Camp, the Military intelligence facility (DEMIAP).

Police facilities cited include: Police Camp Lufungula (Kinshasa), Kin-Mazière Police Headquarters (Kinshasa), Tshimbulu police station (Kasaï-Central), l'Inspection provinciale de la police de Kinshasa (IPK), Kasa-Vubu police station (Kinshasa), Police d'Intervention Rapide (Kinshasa).

Prisons cited include: Makala prison (Kinshasa), Kasapa prison (Lubumbashi), Luzumu prison (Bas-Congo), Ndolo military prison (Kinshasa) and Buluwo prison (Katanga).



⁷ The military intelligence agency formerly known as DEMIAP is now called *l'État-Major des Renseignements Militaires* (the General Staff Military Intelligence).

Figure 3: Incidence of all types of detention facility reported, including first and subsequent places of detention

2.6 Reasons for detention

All of the 83 survivors were detained and tortured by the Congolese authorities for direct or indirect involvement in political and human rights activism.⁸ People were detained and tortured in the following circumstances:

- for their expression of political opposition to the government of then President Joseph Kabila, and to the President himself, including through membership of the Union for Democracy and Social Progress (UDPS) and other political opposition groups;
- during or following demonstrations and political protests linked to elections;
- for their involvement in women's rights issues including sexual violence and rape;
- for their involvement in other human rights issues such as freedom of expression, access to justice, land rights and rights of children;
- due to a suspected involvement in a rebel group (three people who were living in conflict affected areas at the time of detention); and
- because of the actual or perceived activities of a family member, or because they were wrongly accused by the authorities to have been involved in political or human rights activity (20 people).

Forty-four had been previously detained (in some cases many times). Some of these individuals reported harassment from the authorities between arrests, including verbal warnings and pressure.

3. Significance of the evidence

Torture is expressly banned in domestic legislation yet torture, including rape, is endemic in the detention system in the DRC, irrespective of the detaining authority or type of detention facility. Most of those who are detained, men and women, are raped, on multiple occasions and by multiple perpetrators, and with absolute impunity.

Different branches of state security – police, military and intelligence agencies – are involved in the perpetration of torture and other human rights violations from the point of arrest and at both official and unofficial detention sites.

People are arbitrarily detained, and held in appalling conditions that breach all accepted norms. They are detained without charge or any other of their due process rights in official and unofficial detention sites that operate under systems of complete lawlessness.

There is no accountability or justice for survivors.

4. Conclusions

4.1 Impunity

Despite the recommendation made by the Committee in its Concluding Observations in 2006,⁹ and even though torture is criminalised in the DRC, very few perpetrators have been successfully

⁸ Indirect involvement by having family members or associates involved in political and human rights activism.

⁹ Committee Against Torture, Conclusions and recommendations of the Committee against Torture: Democratic Republic of the Congo, 1 April 2006, CAT/C/DRC/CO/1, para 6(b) [Online] [Accessed 13 March 2019] Available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/DRC/CO/1&Lang=En

prosecuted. Freedom from Torture notes that the DRC's second periodic report to the Committee reports that five members of the armed forces, one National Intelligence Agency officer and one member of an administrative authority had been convicted for having practised or encouraged torture since the law was enacted in 2011.¹⁰ These exact figures were also presented in its state party report to the UN Human Rights Committee in July 2016,¹¹ over a year earlier. It is also not clear in what context these convictions took place. We welcome the convictions obtained in these cases, and others for human rights violations more broadly as reported by the United Nations Joint Human Rights Office in its annual reports.¹² The DRC government must, however, extend its commitment to tackling impunity beyond the conflict zone to ensure that perpetrators of torture in detention sites across the country will be investigated.

4.2 Unofficial detention sites

Freedom from Torture notes the claim by the government in its state party report that “there are no longer any unauthorized detention centres”.¹³ The evidence in our submission clearly shows that this assertion is not accurate. This is further borne out by incoming President Tshisekedi’s statement on 25 January 2019 that a priority for his presidency is to close informal detention sites in the country.¹⁴ Freedom from Torture looks forward to the swift implementation of this commitment made by the President.

4.3 Due process

We also note with interest the details provided by the state on steps they have taken to increase judicial independence and guarantee due process rights.¹⁵ Again the evidence in our submission clearly shows that in the overwhelming majority of cases, no or little due process measures were followed and as such the Congolese state is in violation of its obligations.

4.4 Safeguards

Whilst acknowledging that the DRC ratified the Optional Protocol to the Convention Against Torture in 2010 and the existence of the national Human Rights Commission, the DRC has yet to formally set up a national preventive mechanism. Regular, independent monitoring visits to detention sites are a vital safeguard mechanism in the prevention of torture. The National Human Rights Commission has access to detention facilities run by the Ministry of Interior as does the International Committee of the Red Cross (ICRC) and the UN Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO). The US State Department reports, however, that these monitoring bodies are

¹⁰ Committee Against Torture, *Second periodic reports of States parties due in 2009: Democratic Republic of the Congo*, 13 July 2017, CAT/C/COD/2, para 16. [Online] [accessed 13 March 2019] Available at: https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fCOD%2f2&Lang=en (Committee Against Torture, Second Periodic State party Report: DRC, 2017)

¹¹ Human Rights Committee, *Consideration of reports submitted by states parties under article 40 of the Covenant*, 2 August 2016, CCPR/C/COD/4, para 105. [Online]. [Accessed 05/10/2018] Available at:

https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fCOD%2f4&Lang=en

¹² Bureau Conjoint des Nations Unies aux Droits de l’Homme, *Note du BCNUDH sur les Principales Tendances des Violations des Droits de l’Homme au Cours de l’Annee 2016*. [Online] [Accessed 18/03/2019] Available at: <http://cd.one.un.org/content/dam/unct/rdcongo/docs/UNCT-CD-BCNUDH-Note2016.pdf>; *Note du BCNUDH sur les Principales Tendances des Violations des Droits de l’Homme au Cours de l’Annee 2018*. [Online] [Accessed 18/03/2019] Available at: <http://cd.one.un.org/content/dam/unct/rdcongo/docs/UNCT-CD-BCNUDH-Note-Dec2018.pdf>

¹³ Committee Against Torture, Second Periodic State party Report: DRC, 2017. Paras 26

¹⁴ ACTUALITE.CD, *RDC : La fermeture des cachots de fortune sera « l’une des premières décisions » de Félix Tshisekedi*, 25 January 2019. [Online] [Accessed 18/03/2019] Available at: <https://actualite.cd/2019/01/25/rdc-la-fermeture-des-cachots-de-fortune-sera-lune-des-premieres-decisions-de-felix>

¹⁵ Committee Against Torture, Second Periodic State party Report: DRC, 2017. Paras 27-32 and 66.

“but consistently denied access to facilities run by the [Republican Guard], ANR, and the intelligence services of the military and police.”¹⁶

5. Recommendations

Freedom from Torture urges the Committee to:

1. Ask the government of the DRC to provide details of recent prosecutions of perpetrators of torture, including outside the conflict areas and once again urge the government to take vigorous steps towards combating impunity by undertaking prompt, thorough and impartial investigations into **all** allegations of such treatment by state agents, as well as ensuring that alleged perpetrators of and accomplices to torture are brought to justice.
2. Further insist that the government commit to eradicating the prevalence of sexual torture in all contexts by ensuring perpetrators are brought to justice, irrespective of rank or position, and safeguards exist in detention settings.
3. Question the government on when they intend to establish and adequately resource a national body for the prevention of torture and ill-treatment, in line with obligations under the Optional Protocol to the Convention against Torture.
4. Recommend that the government of the DRC take vigorous steps to ensure that all detainees have access to justice, including due process, and that detention conditions comply with the UN Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).
5. Insist that all victims of torture have access to remedies including compensation and rehabilitation and ask the Government what steps they intend to take to implement this requirement.

¹⁶ US Department of State, 13 March 2019, *Democratic Republic of the Congo 2018 Human Rights Report*, Section 1(c). [Online]. Available at: <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>