



Fédération internationale de l'Action des chrétiens pour l'abolition de la  
torture

FIACAT

Action des Chrétiens pour l'Abolition de la Torture au Congo

ACAT Congo



## Joint alternative report FIACAT and ACAT CI

Committee against Torture, 54<sup>th</sup> session, April 2015

### Executive Summary

This report is an assessment of the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the Republic of the Congo presented jointly by the International Federation of Action by Christians for the Abolition of Torture (FIACAT) and Action by Christians for the Abolition of Torture in Congo (ACAT Congo).

#### Article 1

The Republic of the Congo does not currently have any legal or regulatory provision which defines torture. It is proving difficult to complete the process of revision of the Criminal Code and the Code of Criminal Procedure initiated in 2008, during which provisions relating to the definition, prevention and criminalisation of torture are to be inserted.

**FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State Party:**

- *Expedites the revision of the Criminal Code and the Code of Criminal Procedure and the adoption of the draft Law on the prevention and punishment of torture and ensures that a definition of torture consistent with the Convention against Torture is included.*

#### Article 2 § 1

The National Human Rights Commission (NHRC) has been set up, but it is not fulfilling its duties and does not present the guarantees of independence necessary to its proper functioning. Furthermore, no implementing text has been adopted in order to guarantee the application and effectiveness of Law No 001/84 concerning the reorganisation of judicial assistance. Moreover, the judiciary does not receive the trust of the population, calling into question its independence owing to the pressure from the Executive.

**FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State Party:**

- *Renews the mandate of the NHRC and its organisation and allocates an adequate budget for the performance of its functions in order to comply with the Paris Principles;*
- *Updates and strengthens Law No 001/84 of 20 January 1984 instituting judicial assistance and expedites implementing legislation to ensure its effectiveness;*
- *Takes the necessary measures to ensure the independence of the judiciary.*

### **Articles 2(2) and 2(3)**

There are no exceptional circumstances to justify torture in Congo. Frequently, the senior officers are aware of acts of torture by lower- ranking officers but act with total impunity.

**FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State Party:**

- *Takes steps to ensure the responsibility of senior officers for acts of torture or ill-treatment perpetrated by lower- ranking officers.*

### **Article 3**

The security forces regularly violate the provisions of the Convention which require States Parties not to expel, return or extradite persons to another State where there are substantial grounds for believing that they might be subjected to torture. In particular, numerous violations of the Convention were committed during operation 'Mbata ya bakolo' at the beginning of April 2014 during which some political and military refugees former Armed Forces of Zaire (former FAZ) were returned to the Democratic Republic of the Congo (DRC).

**FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State Party:**

- *Assesses the proportion of and keeps track of former FAZ political or military refugees recklessly returned to the DRC at the risk of their lives.*

### **Article 4**

Despite the initiatives taken to incorporate the provisions of the Convention against Torture into domestic law since 2008, the Congo still has no legal or regulatory provision for the criminalisation or prevention of acts of torture and other cruel, inhuman or degrading treatment or punishment. Such acts are in fact simply prosecuted as assault and battery.

**FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State party:**

- *Adopts as soon as possible the draft Law on the prevention and punishment of torture;*
- *Expedites the revision of the Criminal Code and the Code of Criminal Procedure, ensures the criminalisation of torture , and guarantees the non-applicability of statutory limitations to the crime of torture;*
- *Ensures that the sentence for acts of torture is proportionate to the gravity of the act.*

## Article 10

The Permanent Technical Committee for the Dissemination of International Humanitarian Law and Human Rights set up in 2011 is not currently operational, and there are no ongoing training programmes for law enforcement officers.

FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State party:

- *Updates, revitalizes and strengthens the Permanent Technical Committee, in particular by allocating an adequate budget to perform its duties, and ensures that it operates effectively with the armed forces.*
- *Provides ongoing human rights training for prison staff, law enforcement officers, members of the judiciary, medical staff and any other person involved in the custody, interrogation or treatment of persons placed under the control of the State.*

## Article 11

In Congo, law enforcement officers have little knowledge of the procedural guarantees related to the arrest, police interrogation, custody and detention, and these guarantees are rarely respected. The custody regime is frequently violated, in particular the right of access to a lawyer from the outset of police custody and the legal time limits. Moreover, there is no National Preventive Mechanisms for the prevention of torture in Congo. The National Human Rights Commission (NHRC), to which constitutional provisions have assigned this power, has not availed itself thereof. The delayed ratification by the Government of the Optional Protocol to the Convention against Torture does not contribute to the establishment of a National Preventive Mechanism (NPM) in Congo, or to entrusting these tasks to the NHRC.

FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State party:

- *Ratifies the Optional Protocol to the Convention against Torture;*
- *Sets up an independent National Preventive Mechanisms with the adequate resources to perform its duties;*
- *Takes the necessary measures to ensure that this mechanism has access to all places of detention, including all premises of the DGST;*
- *Takes the necessary measures to ensure in practice respect for the national laws on custody, including ensuring respect of the time limit of police custody, the right to access to a lawyer from the outset of custody and throughout the procedure and the right to be quickly heard by a judge;*
- *Ensures the prohibition, in law and in practice, of torture and other cruel, inhuman and degrading treatment or punishment during custody and interrogation;*
- *Ensures administrative or judicial investigation following allegations of torture during custody and in detention, in order to identify and punish perpetrators.*

## Articles 12 and 13

The absence of criminalization of torture and ill-treatment in the legislation and regulations in force in the Congo constitutes an obstacle to the right of victims to lodge complaints.

The deterioration of the procedures, the fear of reprisals and the lack of resources to initiate a judicial procedure reinforce the lack of confidence of the people in the judiciary.

**FIACAT and ACAT Congo invites the Committee against Torture to recommend that the State party:**

- *Takes the necessary measures to guarantee in practice the right of every individual victim of torture or cruel, inhuman or degrading treatment or punishment to lodge complaints;*
- *Takes all necessary measures to ensure the protection of victims, victims' families and witnesses of acts of torture or other cruel, inhuman or degrading treatment at all stages of the procedure.*

## Article 14

In practice, the Congolese provisions relating to the right of the victim to obtain compensation are not respected in cases of torture and other cruel, inhuman or degrading treatment or punishment. Very few victims receive compensation for the harm they have suffered. Moreover, these victims do not receive any assistance from the Government.

**FIACAT and ACAT Congo invite the Committee against torture to recommend that the State party:**

- *Establishes a clear procedure leading to the enjoyment by victims or families of victims of their right to compensation and puts in place an effective and efficient support and assistance programme for victims of torture.*

## Article 15

There is currently no legal or regulatory provision prohibiting the use of information obtained as a result of torture. Consequently, confessions obtained by torture are frequently used as evidence in court.

**FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State party:**

- *Incorporates provisions in the Revised Code of Criminal Procedure making statements obtained by torture null and void;*
- *Suspends all investigation procedures where allegations of torture are made and automatically carries out an investigation into these allegations.*

## Article 16

Prison overcrowding is a reality in Congo. The capacity is largely exceeded in the prisons in cities such as the Brazzaville detention centre where the occupancy rate is 725. Moreover, Congolese prisons are old and the conditions of detention are very bad. In particular, health services are rarely provided, food rations

are inadequate and not sufficiently diversified. In response to this, the Government has undertaken, together with some partners, to rehabilitate and modernize certain prisons in the country and has decided to build new ones. Finally, minors are not separated from detainees in places of detention, and the provisions relating to juvenile justice are not respected in practice.

FIACAT and ACAT Congo invite the Committee against Torture to recommend that the State party:

- *Revises the legal framework concerning the organisation and operation of prisons;*
- *Establishes rules of procedure and a clear disciplinary framework applicable to all Congolese prisons, and in particular incorporates the rights of detainees;*
- *Develops the implementation of regular programmes of maintenance and hygiene of places of detention, and improves access to care;*
- *Ensures the effective separation of sentenced prisoners and prisoners in pre-trial detention;*
- *Improves the diet of prisoners in quantity and quality in all the prisons in Congo;*
- *Builds in the main towns of the country, rehabilitation and reintegration centres for minors and ensures effective separation between adults and minors in places of detention;*
- *Ensures the effective implementation of the provisions relating to the juvenile justice system;*
- *Expedites the rehabilitation of the Poto-Poto Juvenile Court and establishes such courts in all the departments of Congo and guarantees ongoing specific training for juvenile court judges.*