

1. Freedom from Torture makes this submission in connection with the third cycle Universal Periodic Review (“UPR”) of the Democratic Republic of Congo (DRC).
2. This submission focuses on the use of torture by the government of the DRC to punish and suppress actual and perceived political opposition. It is based on a systematic review of 74 medico-legal reports prepared by Freedom from Torture for individual Congolese victims. 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. Twenty-six people were detained and tortured since the second UPR cycle in 2014.
3. For decades, Freedom from Torture has forensically documented the use of torture in the DRC, publishing findings in research reports published in 1995, 1998, 2014 and 2018. Since the second cycle UPR review in 2014, almost 300 men, women and children from the DRC have been referred to Freedom from Torture, making it one of the top 10 countries of origin for survivors in that period.
4. 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, known as the "*Istanbul Protocol*".

### **Progress made on recommendations accepted by the DRC during its second UPR cycle**

5. During the second UPR cycle in 2014, the DRC accepted most of the recommendations made to it by member states.<sup>i</sup> However, a number of important recommendations were rejected, including recommendations to free all persons arrested as a result of their political opinion and to extend a standing invitation to the UN Special Procedures.<sup>ii</sup>
6. The DRC accepted recommendations to ensure the establishment of a national preventive mechanism in line with its obligations under the Optional Protocol to the Convention against Torture,<sup>iii</sup> to prevent the use of torture,<sup>iv</sup> to investigate all cases of torture and ill-treatment in detention,<sup>v</sup> and to try all perpetrators of torture.<sup>vi</sup> These recommendations were considered by the DRC to have already been implemented or in the process of implementation. It also accepted recommendations to increase efforts to prevent and punish extrajudicial executions and illegal or arbitrary detentions,<sup>vii</sup> and investigate and prosecute all perpetrators of serious human rights abuses, especially acts of rape and sexual violence.<sup>viii</sup>
7. Some steps have been taken by the government of the DRC to implement recommendations it accepted. Since the second cycle of the UPR, the DRC has:
  - initiated a project concerning victims of torture or rape headed by the Minister of Justice and of Human Rights.<sup>ix</sup> However, a relevant law concerning these victims does not yet exist.
  - introduced a bill which is still being examined by the Senate concerning the protection of human rights defenders.<sup>x</sup> However this law is highly criticised by international organisations, including the United Nations Office of the High Commissioner for Human Rights.<sup>xi</sup>
  - made efforts to combat impunity, including judgments handed down on senior officials for war crimes and crimes against humanity and the establishment of a joint commission to

investigate alleged human rights violations committed in connection with the demonstrations of 31 December 2017 and 21 January 2018.<sup>xii</sup>

8. Despite commitments made during the second cycle of the UPR, and even though torture is criminalised in the DRC, very few perpetrators have been successfully prosecuted. In its state report to the UN Human Rights Committee in July 2016, the DRC Government reported 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.<sup>xiii</sup>
9. The DRC has also yet to formally set up a national preventive mechanism. 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 the Congo (MONUSCO). The US State Department reports, however, that these monitoring bodies are “consistently denied access to facilities run by the [intelligence services] and the [Republican Guard].”<sup>xiv</sup>

### **The national human rights framework as regards to torture**

10. The Constitution of the DRC upholds the absolute ban on torture. Article 16 (3) states that "*No one may be subject to cruel, inhumane or degrading treatment*". Torture has also been defined and prohibited by Congolese national law since 9 July 2011.<sup>xv</sup>
11. Article 18 (5) of the Constitution specifies that "*Any detainee must benefit from a treatment which preserves his/her life, physical and mental health as well as his/her dignity.*" Article 61 expressly provides that the right to life, the prohibition of torture and the right to legal defence are non-derogable rights.
12. The DRC has also ratified a number of international treaties that ban torture and protect civil and political rights. These include:
  - the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture);
  - the Optional Protocol to the Convention against Torture;
  - the International Covenant on Civil and Political Rights;
  - the Convention on the Elimination of All Forms of Discrimination Against Women;
  - the Convention on the Rights of the Child.
13. Article 215 of the DRC Constitution states that once ratified, international treaties automatically have superior status to domestic laws.
14. The definition of rape is clarified in article 170 of the Criminal Code, introduced in the law of 20 July 2006 n° 06/18.<sup>xvi</sup> This law introduced article 42 (bis) of the Criminal Code, which states that the official position of the perpetrator of sexual violence cannot be used as means of criminal exoneration or the reduction of the sanction.
15. Furthermore, the law n° 13/013 of 1 June 2013 concerning the Congolese national police force states in article 48 that in carrying out its missions, each police officer must respect and protect human dignity, human rights and the fundamental liberties of the individual, according to international and national norms. Police officers must especially protect the vulnerable,

including women and children at all times and all places. The police officer cannot inflict, provoke, tolerate or surrender to acts of torture or to cruel, inhumane and degrading treatment for any reason.<sup>xvii</sup>

16. In 2015, the DRC modified its Criminal Code. Consequently, crimes against humanity are now defined in article 222 (including torture).<sup>xviii</sup>

### **Human rights situation on the ground with regards to on-going use of torture**

17. This submission presents primary evidence of torture in the DRC between 2005 and 2017 based on a detailed analysis of 74 medico-legal reports for Congolese nationals who were detained for exercising their democratic and constitutional right to engage in political and human rights activism. Twenty-six people were detained and tortured since the second cycle of the UPR in April 2014. Key findings of our research are as follows:

18. Overview of the 74 people profiled

- 49 women, 25 men;
- More than a third were 25 or under, five of whom were legally minors when detained;
- Most were living in Kinshasa, far from the conflict affected provinces; and
- More than half were detained more than once, and most were tortured every time.

### **Forensic evidence of torture**

19. All 74 survivors experienced methods of physical and/or psychological methods of torture during their most recent detention episode. 76% were tortured on multiple occasions, some at regular intervals.<sup>xix</sup>
20. All of the 74 women and men detained and tortured attest to physical assault, including beatings and other blunt force trauma.
21. Sexual torture was reported by 65 people (88%), 63 of whom were raped (46 women and 17 men), including vaginal (in women), anal and oral rape, and penetration with an instrument. More than half were gang raped (57%). Women and men described a high level of accompanying violence, including burning (by metal instruments or lighted cigarettes), beating, biting and cutting with sharp implements. Other forms of sexual torture included molestation of breasts and genitals or forced performance of sexual acts.
22. Other methods of torture include burning (42%), positional torture (41%), sharp force trauma (34%), forced solar gazing (14%), asphyxiation and electric shock (7% each) and environmental tortures such as solitary confinement and deprivation of light, sight and time (55%).
23. Psychological acts of torture were also inflicted, including humiliation, death threats and witnessing violence perpetrated against others, including rape.
24. Expert clinicians documented forensic evidence attributed to the physical and/or psychological impacts of the torture described in all 74 cases.

### **Detention conditions**

25. Lack of sanitation, overcrowding and inadequate access to food and water featured in all detention facilities, breaching all international norms and standards that exist to safeguard detainees. Many reported to being unable to lie or sit down properly and a lack of access to toilets, forcing people to defecate and urinate in their cell. Food and water provisions were often scarce and of low quality.

### **Violation of due process rights**

26. All were held in arbitrary detention without full observance of legal due process. No-one among the 74 people reported any form of criminal procedure, access to a legal counsel, awareness of a formal charge against them or a hearing before a judicial authority.
27. There was no indication that people had routine access to independent medical practitioners in any of the detention sites.
28. Most of the 74 were detained for less than six months.
29. The vast majority escaped (67, 91%), often with the assistance of a guard who recognized or found an affinity with them. Some of these arranged a bribe to escape (25, 34%). Four people were released without any explanation.

### **Identity of perpetrators**

30. State agents, including the military, the police and intelligence agents, were responsible for the arrest detention and torture of all 74 people.
31. Thirteen people reported having been transferred to and detained in more than one facility. Nineteen people report having been detained at unofficial detention sites.
32. Twenty-six 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). Although detained by the military, individuals were not always detained and tortured in military facilities. Six people reported being transferred to other types of facility including police facilities, prisons, and unofficial detention sites.
33. Twenty-two 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.
34. Seven people were arrested by intelligence agents, presumed to be from the National Intelligence Agency. 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.
35. 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".

36. Military facilities cited include: Camp Kokolo, CIRCO military prison, Tshatshi Camp, the Military intelligence facility (DEMIAP).
37. 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).
38. Prisons cited include: Makala prison (Kinshasa), Kasapa prison (Lubumbashi), Luzumu prison (Bas-Congo), Ndolo military prison (Kinshasa) and Buluwo prison (Katanga).

### **Reasons for detention**

39. All of the 74 survivors were detained and tortured by the Congolese authorities for direct or indirect involvement in political and human rights activism. <sup>xx</sup> People were detained and tortured in the following circumstances:
  - for their expression of political opposition to the government of 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 (19 people).
40. Thirty-nine 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.

### **Significance of the evidence**

41. Women and men who exercise their democratic and constitutional right to engage in political and human rights activism are routinely detained and tortured by DRC state authorities, in a context of political repression that is not related to the conflict. Torture is used predominately as a form of punishment for political and human rights activism, but also as a deterrent against future involvement.
42. 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.

43. 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.
44. 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.
45. There is no accountability or justice for survivors.

## **Recommendations**

46. With regard to its obligations under international human rights standards and domestic legislation and in light of commitments made during previous cycles of the UPR, Freedom from Torture calls on the government of the Democratic Republic of Congo to:
  - 43.1. Immediately end the practice of torture and ill-treatment and undertake prompt, thorough and impartial investigations into all allegations of such treatment by security forces, as well as ensuring that alleged perpetrators of and accomplices to torture are brought to justice.
  - 43.2. 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.
  - 43.3. Ensure that its legal system enables survivors of torture to obtain redress, including compensation and rehabilitation.
  - 43.4. Establish and adequately resource a national body for the prevention of torture and ill-treatment to undertake regular visits to detention facilities and publish recommendations for improving the protection of detainees, in line with obligations under the Optional Protocol to the Convention against Torture.
  - 43.5. Ensure that detention conditions comply with the revised 2015 UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), including adequate accommodation arrangements, and access to adequate sanitary facilities, food, water and medical services.
  - 43.6. Close all unofficial detention sites immediately. The use of such sites should be absolutely prohibited and persons suspected of operating such facilities should be investigated and prosecuted.
  - 43.7. Receive a monitoring visit by the UN Subcommittee on Prevention of Torture as soon as possible and implement any recommendations made for improving detention conditions and torture prevention initiatives in the DRC.
  - 43.8. Allow citizens freedom of expression and peaceful assembly by refraining from violence and arbitrary arrest against protesters, in line with its obligations under the International Covenant on Civil and Political Rights and the 2005 Constitution.
  - 43.9. Ensure no child is tortured or ill-treated in line with its obligations under the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child.

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- <sup>i</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Democratic Republic of Congo*, 7 July 2014, A/HRC/27/5 [Online] Available at <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx> (A/HRC/27/5, 2014); and Human Rights Council, *Report of the Human Rights Council on its twenty-seventh session*, 22 December 2014, A/HRC/27/2. [Online] Available at <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx>. The DRC initially accepted 190 recommendations, noted 38 and one was left pending. At the twenty-seventh session of the UN Human Rights Council in September 2014, DRC stated it could not accept the pending recommendation.
- <sup>ii</sup> A/HRC/27/5, 2014, recommendations 136.29 [Portugal]; 136.30 [Uruguay]; 136.31 [Guatemala]; 136.32 [Latvia]; 136.33 [Montenegro]
- <sup>iii</sup> A/HRC/27/5, 2014, recommendations 134.27 [Czech Republic], 134.28 [Guatemala], 134.29 [Sudan], 134.30 [Uruguay],
- <sup>iv</sup> A/HRC/27/5, 2014, recommendation 134.49 [Spain],
- <sup>v</sup> A/HRC/27/5, 2014, recommendation 134.50 [Austria]
- <sup>vi</sup> A/HRC/27/5, 2014, recommendation 134.51 [Australia]
- <sup>vii</sup> A/HRC/27/5, 2014, recommendation 133.15 [Italy]
- <sup>viii</sup> A/HRC/27/5, 2014, recommendation 134.71 [Croatia]
- <sup>ix</sup> Committee Against Torture, *Examen des rapports soumis par les Etats Parties en application de l'article 19 de la Convention*, 13 July 2017, para 96-98. Available at [https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/COD/CAT\\_C\\_DRC\\_2\\_101\\_F.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/COD/CAT_C_DRC_2_101_F.pdf) (French). (Committee Against Torture, *Examen des rapports soumis par les Etats Parties en application de l'article 19 de la Convention*, 2017)
- <sup>x</sup> Committee Against Torture, *Examen des rapports soumis par les Etats Parties en application de l'article 19 de la Convention*, 2017, para 128.
- <sup>xi</sup> Committee Against Torture, *Examen des rapports soumis par les Etats Parties en application de l'article 19 de la Convention*, 2017, para 51.
- <sup>xii</sup> Human Rights Council, *Human rights situation and the activities of the United Nations Joint Human Rights Office in the Democratic Republic of the Congo: Report of the United Nations High Commissioner for Human Rights*, 13 August 2018, A/HRC/39/42, para 7. [Online] Available at: <http://undocs.org/A/HRC/39/42>
- <sup>xiii</sup> 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]. Available at: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCOD%2F4&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FCOD%2F4&Lang=en)
- <sup>xiv</sup> US Department of State, 20 April 2018, *Democratic Republic of the Congo 2017 Human Rights Report*, Section 1(c). [Online]. Available at: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dclid=276987>
- <sup>xv</sup> DRC, Loi n° 11/008 du 9 juillet 2011 portant criminalisation de la torture. [Online] Available at <https://leganet.cd/Legislation/DroitPenal/Loi.11.008.09.07.2011.htm> (French).
- <sup>xvi</sup> DRC, Loi n° 06/018 du 20 juillet 2006 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais. [Online] Available at <http://www.droit-afrique.com/upload/doc/rdc/RDC-Code-1940-penal-modif-2006.pdf> (French).
- <sup>xvii</sup> DRC, Loi n° 13/013 du 1er juin 2013 portant statut du personnel de carrière de police nationale, article 48. [Online] Available at <https://www.leganet.cd/Legislation/Droit%20Public/Divers/loi.13.013.01.06.2013.htm> (French).
- <sup>xviii</sup> DRC, Loi n° 15/022 du 31 décembre 2015 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal congolais. [Online] Available at <https://www.leganet.cd/Legislation/DroitPenal/Loi.15.022.31.12.2015.html> (French).
- <sup>xix</sup> To illustrate how routine torture was in some cases, survivors mention how perpetrators used terms such as "breakfast" or "morning coffee" and "taking tea".
- <sup>xx</sup> Indirect involvement by having family members or associates involved in political and human rights activism.