



## **DEMOCRATIC REPUBLIC OF THE CONGO**

### **Compliance with the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

**Submitted by The Advocates for Human Rights**

a non-governmental organization in special consultative status with ECOSOC since 1996

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**The Advocates for Human Rights** (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. A growing number of victims fleeing politically-based violence in the Democratic Republic of Congo (DRC) have requested legal assistance from The Advocates in applying for asylum in the United States. Information from asylum seekers about the human rights violations that they experienced in DRC has been used in this submission with their permission.

## EXECUTIVE SUMMARY

1. Arbitrary detention, torture, and impunity for perpetrators remain prevalent in the Democratic Republic of Congo (DRC). Clients represented by The Advocates for Human Rights (The Advocates) have reported being arrested without charges and frequent torture at the hands of security forces while in detention. Despite the widespread use of torture by members of security forces, the lack of accountability for state-sponsored violence in the DRC has resulted in very few investigations and prosecutions.<sup>1</sup>
2. Detention conditions are consistently poor across the DRC. Many prisons are severely overcrowded and most inmates lack access to basic necessities including food and potable water, instead relying on family members, NGOs, and churches.<sup>2</sup> Prisons also have inadequate sanitation as a result of overcrowding and lack of resources, including to basic medical care, and are life threatening to inmates.
3. Our clients also report that the situation in the DRC has gotten much worse for those who are actively involved with opposition parties, as well as human rights organizations. They describe threats, intimidation, arrests, detention and restrictions on their movement in violation of their rights to peaceful assembly, opinion and expression. Our clients from the DRC share stories of being accused, often arbitrarily, of supporting anti-government rhetoric and protests. While each client's case is different, their collective experiences confirm that the legal system and policies in DRC fail to provide individuals with adequate protection from politically-motivated violence.<sup>3</sup>

### **The Democratic Republic of Congo fails to uphold its obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

4. The DRC's security forces continue to detain individuals without charge or access to family members or legal counsel and commit torture with nearly total impunity for perpetrators. The impunity for perpetrators of torture violates Articles 2 and 4 of the Convention Against Torture, which require the prevention of acts of torture and that torture be considered a criminal offense respectively.<sup>4</sup> The DRC has failed to prevent acts to torture, as demonstrated by the widespread nature of torture in detention, and while torture is technically criminalized in the DRC rarely are perpetrators faced with criminal charges.
5. The DRC also violates Article 11, requiring that the State party review interrogation methods and custody arrangements and the treatment of those arrested or in detention.<sup>5</sup> Conditions of many prisons are considered life threatening. Prisoners are overcrowded and lack access to food, water, sanitation, or medical care. The state is not adequately

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<sup>1</sup> Interviews conducted by the Advocates (2014-2018)

<sup>2</sup> Interviews conducted by the Advocates (2014-2018)

<sup>3</sup> Interviews conducted by the Advocates (2014-2018)

<sup>4</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 2 and 4.

<sup>5</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 11.

monitoring or maintaining the conditions of detention in many of the DRC's detention centers.

6. The specific targeting of human rights defenders and members of the political opposition in the DRC violate Article 16, requiring the prevention of "cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."<sup>6</sup> The sState does not protect human rights defenders from threats and intimidation, rather, state security forces routinely target human rights defenders, others critical of the government, and their families with threats, intimidation, violence, and detention.

**I. Arbitrary detention, torture and ill-treatment persist with widespread impunity for perpetrators (Articles 2 and 4; LOI paragraph 3)**

7. In its 2009 List of Issues (LOI) to be considered during the examination of the second periodic report of the DRC, the Committee requested information about measures which have been taken to prevent arbitrary detention, torture, and the elimination of impunity.<sup>7</sup>
8. The State party responded in their report that they have introduced human rights training for 350 military officers as peer trainers and training in human rights and international humanitarian law at the Military Academy in Kananga and the Army Staff College in Kinshasa. They describe additional training and awareness campaigns but no programs or changes to substantively change practices and to end the use of torture.<sup>8</sup> The State party's report cites only seven convictions on charges of encouraging or committing torture and an unspecified number of pending cases.<sup>9</sup>
9. Clients represented by The Advocates confirm that arbitrary detention, torture and ill-treatment continue to be widespread in the DRC, coupled with impunity for perpetrators. Security services in the DRC have arrested and detained critics of the government without charge or communication with family members or legal counsel for extended periods of time. Most individuals detained under suspicion of being militants or involved in protest have reported being subjected to torture while detained. Police have been filmed beating injured and peaceful protesters.<sup>10</sup> Despite the prevalence of torture and arbitrary detention reported by

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<sup>6</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Art. 16.

<sup>7</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *List of issues to be considered during the examination of the second periodic report of the DEMOCRATIC REPUBLIC OF THE CONGO*, (March 9, 2009), U.N. Doc. CAT/C/DRC/Q/2, ¶ 3.

<sup>8</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure*, (Sept. 11, 2017), U.N. Doc. CAT/C/COD/2, ¶ 14.

<sup>9</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure*, (Sept. 11, 2017), U.N. Doc. CAT/C/COD/2, ¶ 88.

<sup>10</sup> U.S. Department of State, *Democratic Republic of the Congo: Country Report on Human Rights Practices for 2017*, (2017) <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=276987#wrapper> (last visited Feb 18, 2019).

10. Arbitrary detention and torture are used systemically by security forces to silence opposition.<sup>11</sup> According to reports by former detainees, different branches of the security services (police, military, and intelligence agencies) are involved in detentions at the point of arrest, official and unofficial detention sites, and in committing torture.<sup>12</sup>
11. Clients of the Advocates have reported torture while being detained by security forces. One client reported being severely beaten while in detention, leaving scars on his legs and head. He also reported police telling other prisoners to sodomize and urinate on him.<sup>13</sup> Another client of the Advocates reported that he, alongside other detainees, was whipped with a baton with wires attached while in detention.<sup>14</sup>
12. One client of the Advocates reported being detained and tortured multiple times in various contexts. The first time he was detained he was abducted by a taxi and taken to a police facility where he was held and tortured for seven days. After confronting police about human rights the client was again arrested after police officers came to his home in the middle of the night and detained, beat, and tortured him for eight days.<sup>15</sup>
13. **Suggested recommendations** relating to arbitrary detention and torture with impunity for perpetrators:
- Combat impunity by thoroughly and impartially investigating and prosecuting torture and ill-treatment committed by State actors, hold offenders accountable, and ensure appropriate compensation for victims of such crimes.
  - Establish an independent mechanism for investigating complaints of torture or ill-treatment at the hands of members of police or security forces ensuring that law enforcement officials continue to receive investigative training in accordance with the Istanbul Protocol.
  - Ensure that confessions obtained under torture are systematically rejected by the courts.
  - Take necessary steps to train judges, lawyers and prosecutors on international standards related to torture and ill-treatment.
14. **Suggested questions** for the Government of the Democratic Republic of Congo relating to arbitrary detention and torture with impunity for perpetrators:
- How is the DRC investigating and prosecuting claims of torture by security forces?

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<sup>11</sup> Freedom from Torture, *A Tool to Silence: Torture to Crush Dissent in the Democratic Republic of Congo*, (London: Freedom from Torture, Nov. 2018), 12. Also available online at:

[https://www.freedomfromtorture.org/sites/default/files/documents/a\\_tool\\_to\\_silence\\_-\\_drc\\_report\\_english\\_full\\_version.pdf](https://www.freedomfromtorture.org/sites/default/files/documents/a_tool_to_silence_-_drc_report_english_full_version.pdf)

<sup>12</sup> Freedom from Torture, *A Tool to Silence: Torture to Crush Dissent in the Democratic Republic of Congo*, (London: Freedom from Torture, Nov. 2018), 38. Also available online at:

[https://www.freedomfromtorture.org/sites/default/files/documents/a\\_tool\\_to\\_silence\\_-\\_drc\\_report\\_english\\_full\\_version.pdf](https://www.freedomfromtorture.org/sites/default/files/documents/a_tool_to_silence_-_drc_report_english_full_version.pdf)

<sup>13</sup> Interviews conducted by the Advocates (2014-2018)

<sup>14</sup> Interviews conducted by the Advocates (2014-2018)

<sup>15</sup> Interviews conducted by the Advocates (2014-2018)

- What is the DRC doing to prevent torture by members of state security forces?

## II. Conditions of detention remain “subhuman” and life-threatening (Article 11, LOI paragraph 21)

15. In its LOI, the Committee requested information efforts made to end practices which violate the United Nations Standard Minimum Rules for the Treatment of Prisoners. The Committee specifically requested information on prison overcrowding, the numbers of persons held in pretrial detention, the segregation of women and children from men and adults, and access to adequate hygiene and food.<sup>16</sup>
16. In the State party report, the DRC provided information on the material conditions of prisons, inspections, and the legal framework surrounding the prison system. The State Party Report held that Judicial Organization Order No. 029/CAB/MIN/J&DH/2013, issued in 2013 by the Minister for Justice and Human Rights, introduced substantive changes to prison management. The order established a committee charged with administration of resources for prisoner well-being. The report also noted that the DRC has “refitted and constructed” the Orientale and Makala prison, Ndolo military prison, and Angenga detention center to address overcrowding. Additionally, according to the State Party Report, the Ministry of Justice and Human Rights conducts regular monitoring of places of detention. The Report also notes that men and women and children and adults in detention are housed separately and that amnesties and presidential pardons combat overcrowding in prisons.<sup>17</sup>
17. Prisons in the DRC pose serious threats to life and health. The U.S. State Department of State has noted widespread violence, including rape and inadequate food, potable water, sanitation, ventilation, temperature control, lighting, and medical care across prisons. They noted that many inmates rely exclusively on outside sources including family members, NGOs, and church groups, to meet their basic needs.<sup>18</sup> The Makala and Ndolo prisons in Kinshasa reportedly have “subhuman” and life-threatening conditions. Both have severe overcrowding and lack of sanitary conditions.<sup>19</sup>
18. Several of The Advocates’ clients have reported their experience of the poor detention conditions in the DRC. One client was held in a small, overcrowded cell with seven others. For the first two days of his detention he was also given no food or water.<sup>20</sup>

<sup>16</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *List of issues to be considered during the examination of the second periodic report of the DEMOCRATIC REPUBLIC OF THE CONGO*, (March 9, 2009), U.N. Doc. CAT/C/DRC/Q/2, ¶ 21.

<sup>17</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure*, (Sept. 11, 2017), U.N. Doc. CAT/C/COD/2, ¶ 74-76.

<sup>18</sup> U.S. Department of State, *Democratic Republic of the Congo: Country Report on Human Rights Practices for 2017*, (2017) <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=276987#wrapper> (last visited Feb. 18, 2019).

<sup>19</sup> Canada: Immigration and Refugee Board of Canada, *Democratic Republic of the Congo: Prison conditions in Kinshasa, including the treatment of prisoners (2015–June 2017)*, 28 June 2017, COD105817.FE, available at: <http://www.refworld.org/docid/59843b394.html> (last visited Feb. 25, 2019).

<sup>20</sup> Interviews conducted by the Advocates (2014-2018)

Another client reported similarly harsh conditions including being forced to sleep on the floor.<sup>21</sup>

19. While the State party report states that both women and men and minors and adults are separated in detention, the U.S. State Department has reported that, while women and men are generally separated, minors and adults are often held together in detention.<sup>22</sup>

20. **Suggested recommendations** relating to detention conditions:

- Take immediate action to reduce overcrowding in detention, including commuting sentences and releasing all those in pretrial detention without charges.
- Ensure the separation of minors from adults in detention.
- Continue prison reform efforts and ensure conditions of all detention comply with the Nelson Mandela Rules, particularly with respect to overcrowding, access to food and water, adequate sanitation, and medical care.

21. **Suggested questions** for the Government of the Democratic Republic of Congo relating to detention conditions:

- What mechanisms does the State have in place to monitor detention conditions?
- Does a mechanism exist for receiving and responding to complaints about detention conditions?
- What plans are in place to improve detention conditions?

### **III. Security forces continue to target human rights defenders and opposition party members with threats, intimidation, and violence (Article 16, LOI paragraph 37)**

22. Paragraph 37 of the Committee's LOI requests information on measures that have been taken to "protect human rights defenders from threats and other forms of intimidation."<sup>23</sup>

23. The State party provided information on a number of legal and regulatory instruments: Organic Act No. 11/001 (2011) which regulates the High Council for Broadcasting and Communications, Act No. 13/011 (2013) establishing and organizing the National Human Rights Commission, Decree No. 09/35 (2009) establishing and organizing the Human Rights Liaison Body in the Democratic Republic of the Congo, and Ministerial Order No. 219/CAB/MIN/J&DH/2011 (2011) establishing and organizing the Protection Unit for Human Rights Defenders.<sup>24</sup>

24. Whatever official measures are in place concerning human rights defenders, human rights defenders continue to face intimidating, threats, and imprisonment. The DRC's security services have arrested and detained hundreds of human rights defenders, including holding them without formal charge or contact with families or lawyers.<sup>25</sup> Those who are or perceived to be human rights defenders, members of political opposition, and their

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<sup>21</sup> Interviews conducted by the Advocates (2014-2018)

<sup>22</sup> U.S. Department of State, *Democratic Republic of the Congo: Country Report on Human Rights Practices for 2017*, (2017) <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=276987#wrapper> (last visited Feb. 18, 2019).

family members are detained often under charges of threatening the life of the head of state, inciting tribal hatred or civil disobedience, spreading false rumors, treason, and attacking state security.<sup>26</sup>

25. The DRC limits human rights defenders and members of the political opposition the requirement for advanced permission for peaceful political protest. The government, with this permission requirement, has denied authorization for public meetings or protests organized by opposition parties or civil society groups that have been critical of the government while granting authorization for pro-government political parties and organizations.<sup>27</sup>
26. Clients of The Advocates have reported the situation has gotten much worse for those who publicly criticize or oppose the government since President Kabila has remained in office past the DRC's two-term limit and postponed elections. Clients report threats, intimidation, arrests, detention, and restrictions on their movement. They have also reported disappearances, extrajudicial executions, and threats as result of speaking publicly against the government.<sup>28</sup> The DRC's new president, President Tshisekedi, entered office January 2019 and since then Amnesty International has called on him to improve human rights in the DRC including in areas of the limits on peaceful protests and freedom to criticize the government.<sup>29</sup>
27. One of The Advocates' clients reported that after she and a colleague advocated on behalf of women and girls raped by members of the military, they received death threats. Not long after the threats her colleague was abducted by three men including a police officer and a member of the military. Another client, who was a leader of a human rights organization in the DRC, reported that he was out of the country when identified men entered the organization's office and demanded to speak to him. When the member of staff assigned to lead the organization in the client's absence identified himself the men shot and killed him.<sup>30</sup>

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<sup>23</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *List of issues to be considered during the examination of the second periodic report of the DEMOCRATIC REPUBLIC OF THE CONGO*, (March 9, 2009), U.N. Doc. CAT/C/DRC/Q/2, ¶ 37.

<sup>24</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Consideration of Reports Submitted by States Parties Under Article 19 of the Convention Pursuant to the Optional Reporting Procedure*, (Sept. 11, 2017), U.N. Doc. CAT/C/COD/2, ¶ 124.

<sup>25</sup> Human Rights Watch, *DR Congo: Opposition Under Assault*, Aug. 28, 2018, <https://www.hrw.org/news/2018/08/28/dr-congo-opposition-under-assault> (last visited Feb. 18, 2019).

<sup>26</sup> U.S. Department of State, *Democratic Republic of the Congo: Country Report on Human Rights Practices for 2017*, (2017) <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=276987#wrapper> (last visited Feb. 18, 2019).

<sup>27</sup> U.S. Department of State, *Democratic Republic of the Congo: Country Report on Human Rights Practices for 2017*, (2017) <https://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2017&dliid=276987#wrapper> (last visited Feb. 18, 2019).

<sup>28</sup> Interviews conducted by the Advocates (2014-2018)

<sup>29</sup> Amnesty International, *DRC: 10 human rights priorities for President Tshisekedi*, Feb. 24, 2019, <https://www.amnesty.org/en/latest/campaigns/2019/02/drc-10-human-rights-priorities-for-president-tshisekedi/> (last visited Mar. 1, 2019).

<sup>30</sup> Interviews conducted by the Advocates (2014-2018).

28. **Suggested recommendations** relating to systematic targeting of human rights defenders and opposition members and protections for freedom of expression, assembly and political participation

- Take immediate action to address human rights violations and serious crimes, including releasing detained political leaders, civil society activists, students, and journalists.
- Adopt a law on the protection of human rights defenders and protect, in both law and in practice, the victims and witnesses of human rights violations.
- Establish an independent mechanism to monitor human rights violations against human rights defenders and government critics.
- Take the necessary steps to ensure that legal systems and policies are in full compliance with the DRC's international obligations with respect to freedom of assembly, association and expression and ensure that journalists and human rights defenders are free to carry out their work independently and without fear of persecution or intimidation.
- Commit to a free and open political environment so that all political parties can legally campaign and participate in elections.
- Provide Congolese citizens in diaspora adequate opportunities to participate effectively in national elections in accordance with electoral and constitutional law.