



Executive summary

FIACAT and ACAT Congo's report for the 3rd UPR of the Republic of Congo

I. Right to life

A. The death penalty

Congo abolished the death penalty at article 8 para 4 of the Constitution of 6th November 2015. However, the adoption of this new Constitution was highly criticised on other issues which led to the discussion on the abolition being occulted. Congo should carry out awareness raising activities on this issue and transpose this abolition into the Codes being revised. Finally, Congo has still not ratified the OP2.

Recommendations:

- Introduce a bill on the abolition of the death penalty in Congo to the National Assembly and pursue awareness raising activities among the Congolese population;
- Ratify the Second Optional Protocol to the ICCPR and support the project of African Protocol on the abolition of the death penalty.

B. Extrajudicial executions

Few improvements have been noted since the last UPR of Congo even though extrajudicial executions are still a reality, in particular in the context of the political protests of 2015 and 2016, and that no serious investigations are carried out on those cases. In most cases, strong allegations are made against law enforcement officers and the rebel group of Pastor NTUMI in the Pool regions as a result of an expeditious justice.

Recommendation:

- Carry out serious investigations on all allegations of extrajudicial executions and prosecute the authors of such acts despite their affiliation and status.

C. Enforced disappearances

Since the visit of the working group on enforced disappearances in 2011 on the cases of the Disappeared of Beach, no important improvements occurred on this issue. However, allegations of enforced disappearances are confirmed in particular during times of political protests (referendum of 2015 and elections of 2016), some cases have been documented by ACAT Congo and other human rights NGO. However, there never were any investigations by the authorities to bring light to those cases. Finally, the Convention for the Protection of all Persons from Enforced Disappearance has still not been ratified.

Recommendations:

- Ensure that the Criminal Code under revision criminalized enforced disappearances autonomously;
- Ratify the Convention for the Protection of all Persons from Enforced Disappearance.

II. Right to liberty and security of the person

A. Custody

No major improvements occurred to ensure that time limits of custody (72 hours) and the right of the person in custody are respected in practice. The time limit for custody is not respected in most cases. It depends more on the financial means of the person in custody rather than the alleged offence. The people in custody are often moved from one place to another to keep them into custody and their names are not in the register of those places which leads to overcrowding in those places. Often police stations and gendarmerie brigades are beyond the control of the Public Prosecutor who only goes there occasionally. Finally, access to a lawyer is not guaranteed in practice.

Recommendations:

- Train police and gendarmerie officers on the provisions on custody and ensure in practice the respect of the rights of the person in custody.

B. Pre-trial detention

Pre-trial detention has become the rule, pre-trial detainees account for nearly 75% of the detainees in Pointe Noire and Brazzaville prisons and the time limits set out in the law are not respected. It should however be noted that the Ministry of Justice adopted in 2017 a circular on the strict respect of the provisions on pre-trial detention. Moreover, over a hundred detainees held in detention after the legal time limits were temporarily released following the adoption of an ordinance by the Ministry of justice. The situation is still worrying, and efforts should be pursued and intensified.

Recommendation:

- Reduce the number of pre-trial detainees by ensuring the respect of legal time limits, accelerating legal procedures and prioritizing alternatives to detention.

C. Detention

1. Detention conditions

Prison establishments are usually dilapidated and date back from the colonial period and face important overcrowding issues. For example, Brazzaville's prison, built to host 150 detainees hosted 972 detainees. Moreover, prison staff is not always adequately trained. Despite the government announcement of measures designed to improve this situation (building of new prison, code of prison administration, specific status for prison staff and revision of the codes), few have been implemented. However, the centre of social rehabilitation of the Brazzaville prison which had not been operational since 1997 was rehabilitated on 4th August 2017.

2. Detention monitoring

Congo acceded to the Optional Protocol to the Convention against torture in 2008 and adopted a law authorising its ratification on 25th April 2016. However, the ratification instrument has still not been deposited. Despite the existence of two Decrees from 2011 that set out the right for NGO to visit prison establishments, Congolese NGOs, and event international institutions, faced many difficulties to obtain the visit authorisation. Exceptionally, ACAT Congo was granted such authorisation in July 2018 to visit the prisons in Pointe Noire and Brazzaville.

Recommendations:

- Facilitate access to all detention facilities to specialized NGOs in conformity with existing legal provisions;

- Deposit without delay the instrument of ratification of the Optional Protocol to the Convention against Torture and create swiftly the creation of an independent National Preventive Mechanism with sufficient resources.

III. Administration of justice

Judges were provided with training through the PAREDA and by civil society. However, issues persisted due to the interference of the Executive, especially since the President of the Republic is also with the president of the High Judiciary Council. The justice is selective. It is particularly active against political opponents in order to intimidate them or to silence them. On the contrary it is quite passive when faced with allegations of torture, arbitrary arrest or detention and corruption. Finally, the permanent technical committee on the dissemination of humanitarian and human rights law in the army and the police, created by the decree n°16283 of 22nd December 2011 by the Ministry of Defense and Ministry of Interior is still inactive or even inexistent.

Recommendation:

- Ensure the effective independence of justice.

IV. National Human Rights Institution

In 2016, the government initiated a Bill amending and completing some provision of the 2003 Law creating the National Human Rights Commission in order to comply with the Paris Principles. This Bill was shared with the Supreme court for its opinion. Its opinion was on 6 of the 32 articles of the Bill. Civil society also gathered in January 2018 to analyse this Bill on the basis of the Supreme Court's opinion, the Paris Principles and the law of other NHRIs. After analysing it, they deplored the fact that the Bill and the Opinion of the Supreme Court did not rely enough on the Paris Principles in particular regarding the designation of members with deliberative or consultative status. They also noted that the Bill focused more on the promotion rather than protection of human rights. Finally, they wished for the number of members to be reduced from 60 to 25.

Recommendation:

- Take all necessary measures to ensure that the new provisions of the Law on the National Human Rights Commission are in line with the Paris Principles.