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**SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C)
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1***

Congo

The present report is a summary of five stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The report has been prepared taking into consideration the four-year periodicity of the first cycle of the review.

* The present document was not edited before being sent to the United Nations translation services.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. The Joint Submission (Contribution Conjointe) points out that the Universal Declaration of Human Rights provides considerable inspiration for the Constitution of the Congo, which has ratified many regional and international treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the African Charter on Human and Peoples' Rights.²

B. Constitutional and legislative framework

2. Action des Chrétiens pour l'Abolition de la Torture CONGO (Action by Christians for the Abolition of Torture - the Congo) (ACAT CONGO)/International Federation of ACAT (FIACAT) report that the Congolese Constitution, adopted in January 2002, recognizes the fundamental principles proclaimed and guaranteed by all national and international mechanisms for human rights protection, and that article 9 (Title II) of the Constitution provides that any act of torture and any cruel, inhuman or degrading treatment is "prohibited".³ The two organizations indicate that the Congolese Criminal Code defines torture, and contains provisions that criminalize acts of torture, make them liable to criminal sanctions, and acknowledge the seriousness of the acts committed.⁴

3. The Association AZUR Développement (AAD)/Sexual Rights Initiative (SRI) report that after the socio-economic unrest experienced by the country, the Congo drew up a Constitution, in January 2002, which proclaims the principles of equality and non-discrimination for all citizens and states that all citizens are equal before the law. Any discrimination based on a person's background, social or material status, racial, ethnic or departmental origin, sex, education, language, religion, philosophy or place of residence is prohibited.⁵

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

Implementation of international human rights obligations

1. Equality and non-discrimination

4. AAD/SRI note that the Act on the Family Code reasserts in its preamble that all Congolese citizens are equal before the law, and provides that women have the same rights as men in all areas of private, political and social life. The organizations state that, despite this equality before the law, and the fact that in many cases women have a school education and are therefore likely to know about their rights and about contraceptive methods, they continue to suffer unfair treatment, owing to the continued existence of traditional customs that consider women to be agents of reproduction rather than human beings able to express themselves freely, have protected sex, and make free use of sexual and reproductive health services. AAD/SRI add that, in this context, conjugal rape is not punished by law. These organizations recommend that a specific legal framework on sexual and reproductive rights should be established, specific education programmes implemented in order to raise people's awareness of these rights,⁶ and cooperation between health centres, associations and schools promoted, with the aim of facilitating sex education in schools.⁷

2. Right to life, liberty and security of the person

5. The International Federation for Human Rights (IFHR)/Observatoire Congolais des droits de l'Homme (Congolese human rights observatory) (OCDH) note that torture is common practice in

the Congo and that, in most cases, acts of torture result in the victim's death. The two organizations call upon the Congolese Government to: respect the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the Congo in 2003; initiate an enquiry as soon as possible into cases of torture and death in detention; ensure that perpetrators of acts of torture or ill-treatment in police stations and other lawful or unlawful places of detention are prosecuted and tried; and implement a control and monitoring programme in places of detention, in which civil society should be involved.⁸

6. The Global Initiative to End All Corporal Punishment of Children (GIEACP) notes that corporal punishment of children is lawful in the home and that children have limited protection from violence and abuse under the Criminal Code, the Family Code and the Constitution, but these are not interpreted as prohibiting corporal punishment. It adds that corporal punishment is reportedly prohibited in schools and that it has been unable to verify that this is by law rather than only by policy or guideline. The GIEACP indicates that in the penal system, corporal punishment is unlawful as a sentence for crime but is not prohibited as a disciplinary measure in penal institutions and that it is lawful in alternative care settings.⁹ The GIEACP also mentions that in 2006, the Committee on the Rights of the Child expressed concern at the lack of explicit prohibition of corporal punishment in the home, alternative care settings and penal institutions and recommended its explicit prohibition in all settings "as a matter of priority".¹⁰

7. ACAT CONGO/FIACAT note that there has been a series of arbitrary arrests recently, on fallacious grounds, and that people can be held in provisional detention in prison for up to three years without being tried, or for longer in the case of political arrests.¹¹

8. IFHR/OCDH report that, despite ratification by the Congo of several international legal instruments on human rights, a number of people are detained unlawfully, while others are held in illegal cells. According to the two organizations, although article 341 of the Criminal Code states that anyone detained in a place other than a place of detention provided for by law is a victim of unlawful restraint and that the perpetrator shall be sentenced to forced labour, a number of people are held illegally in military cells. In November 2008, three asylum-seekers arrested in March 2004 were still being held illegally in the jails of the Department of Military Intelligence and have never been heard or brought before a judge. IFHR/OCDH call upon the Government to guarantee all victims the right to challenge the lawfulness of their arrest, detention or imprisonment, and order the immediate and unconditional release of people held illegally in the jails of the Department of Military Intelligence.¹²

9. ACAT CONGO/FIACAT report that most of those currently being detained are women and children, and that over 500 people are being held in a prison designed for 150 people, living in insanitary conditions. According to the two organizations, women, men and children share the same cell blocks and are fed only once a day and sometimes not at all. ACAT CONGO/FIACAT say that family visits are subject to strict rules, and that all visitors must carry some money, which will be extorted from them.¹³

10. ACAT CONGO/FIACAT believe that the Congolese State should: adopt practices in line with the Standard Minimum Rules for the Treatment of Prisoners; take steps, as a matter of urgency, to reduce prison overpopulation by favouring alternative measures to detention, particularly for minor offences or for persons who have been in preventive detention for many years; and take the necessary steps to ensure that prisoners are able to receive visits and have access to basic medical care and are fed properly.¹⁴

11. ACAT CONGO/FIACAT report that human rights NGOs have limited access to places of detention and need to obtain prior authorization from the Department of Prison Administration, by submitting a detailed request, which is granted in most cases if gifts, supplies and medicines are given to the prisoners.¹⁵

3. Administration of justice, including impunity and the rule of law

12. IFHR/OCDH report that there is no real access to justice, because of legal costs, problems with legal aid and the length of time taken by judges to deal with cases. Similarly, although legal aid is provided for under Act No. 001/84 of 20 January 1984, litigants are not made aware of this, and the boards responsible for granting legal aid, made up of judges and finance officers, do not operate effectively.¹⁶

13. ACAT CONGO/FIACAT state that the Code of Criminal Procedure provides that, if a person is detained, a lawyer should be present and the detainee should be able to undergo a medical examination, and contains provisions on legal aid for the needy. According to the two organizations, in practice, the intervention of certain families with political connections, or human rights defenders, is required in order for a doctor and/or a lawyer to be granted access to the place of detention.¹⁷ ACAT CONGO/FIACAT believe that the Congolese State should guarantee detainees access to a doctor and legal aid, which should be free of charge where necessary for those with no means of support, and that detainees should be informed of their rights in a language they understand and should be able to contact their relatives.¹⁸

14. ACAT CONGO/FIACAT indicate that the maximum length of preventive detention is 48 hours under the Code of Criminal Procedure,¹⁹ that the court proceedings for considering a case can take from six months to a year, and that in most cases it is up to the detainee's family to complain to the public prosecutor in the event of a violation. Similarly, it is difficult to know for certain if the public prosecutor checks that registers are kept in all places of detention, and especially in police stations.²⁰

15. IFHR/OCDH stress that there are severe administrative delays, sometimes caused by the disappearance of case files from courts and tribunals. The two organizations report that corruption among judges is rife, despite judges having had a pay rise, and that some judges discontinue proceedings when senior political or military figures are directly implicated.²¹

4. Right to privacy, marriage and family life

16. In order to improve prevention and treatment of HIV/AIDS for homosexuals, AAD/SRI recommend that article 331 of the Criminal Code, which punishes "anyone committing an improper or unnatural act against an individual of the same sex" by a prison sentence and a fine, should be repealed. The organizations believe this article to be incompatible with the provisions of the International Covenant on Civil and Political Rights, ratified by the Congo.²²

5. Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

17. AAD/SRI report that freedom of association is recognized by Congolese legislation.²³ IFHR/OCDH indicate that, in May 2008, the Government banned a demonstration to announce the official establishment of the association "Marien Nguouabi et éthique" (Marien Nguouabi and ethics) and that on 6 May 2008 a member of this association was kidnapped and held at the Department of Territorial Intelligence, where he was allegedly interrogated. IFHR/OCDH report that this member was taken into custody for "illegal possession of weapons" and released on 21 May 2008 without

being charged. The two organizations add that on 17 May 2008 the general constituent assembly of this association was banned by the prefectural authorities, and the president of the association attacked at his home by armed, uniformed men, who threatened to kill him and destroyed all documents belonging to the association.²⁴

18. IFHR/OCDH report that in October 2007 they had wanted, together with the Association of Relatives and Families of the Victims of Brazzaville Beach, to commemorate the enforced disappearances of over 300 people, perpetrated by State agents in summer 1999 at the Beach port. This commemoration was banned by ministerial order on the grounds of public safety; at the same time, Government-controlled media, according to IFHR/OCDH, attacked the three associations, alleging that their work to combat impunity was politically motivated. IFHR/OCDH say that such acts are frequently carried out against the rare independent NGOs in the Congo and against any bodies challenging established authority, which are considered to be part of the opposition.²⁵

19. ACAT CONGO/FIACAT say that it is difficult for human rights NGOs to denounce certain violations, as the media, which are still controlled by the Government, are not authorized to divulge certain information, and that the journalist in charge of the programme will be punished or, in other cases, the head of the NGO, when identified, will be visited by unknown men in military uniform.²⁶

20. IFHR/OCDH report that, on 8 January 2008, OCDH published a press release entitled “Local and municipal elections: the need to establish an independent electoral commission and draw up a new polling register”, which called for local and municipal elections to be postponed, in order to establish a genuinely independent commission for organizing elections, and for new polling lists to be drawn up on the basis of a special administrative census.²⁷ IFHR/OCDH report that the Executive Director of OCDH was summoned on 11 January 2008 to the National Police Department, where he received thinly veiled threats from senior members of the national police, who accused him of politicking.²⁸ In addition, according to IFHR/OCDH, in June and October 2008 the National Police Department threatened OCDH in press articles, following complaints from the organization that the Government had violated the right to freedom of association and trade union rights.²⁹

21. IFHR/OCDH point out that the legislative elections (June to December 2007) were marked by considerable irregularities, acknowledged by all those involved, including the Government: lack of preparation, manipulated polling register, poor performance of the department in charge of organizing the elections, and lack of independence of the National Election Commission (Conel). This situation was also observed during local and municipal elections in June 2008, which were marked by a high abstention rate, according to the two organizations.³⁰ IFHR/OCDH call upon the Government to establish an independent electoral commission and conduct a special census in order to draw up a new polling register.³¹

6. Right to work and to just and favourable conditions of work

22. IFHR/OCDH report that on 11 September 2008, the Concertation pour la revalorisation de la profession d’enseignant (Association for improving the status of the teaching profession), in an extraordinary general assembly, called on all public-sector teachers to launch an open-ended strike from 1 October 2008, in order to protest against unkept promises concerning the payment of teachers’ back salaries, the integration of voluntary, unpaid teachers into the civil service, and the payment of an installation grant to teachers. IFHR/OCDH state that, in response to these demands, the Government appointed the National Police Department as spokesperson, negotiator and mediator for the crisis between the teachers and the Government. According to IFHR/OCDH, senior members of the police special branch accused the trade unionists of wanting to destabilize the

Government, in an effort to intimidate unionized teachers and to break up the movement. The two organizations say that it is not for the police to conduct negotiations on industrial disputes and workers' demands. That is an unconstitutional act.³²

7. Right to social security and to an adequate standard of living

23. The Joint Submission reports that the amount of oil produced since 1959 makes the Congo the fifth largest oil producer in Africa, and that oil production earned the country over US\$ 4 billion in 2005. However, the Joint Submission says that this has not been accompanied by the introduction of economic and social rights for the country's inhabitants, who number fewer than 4 million, or by sustainable development. On the contrary, serious human rights violations occur in the context of oil production,³³ in particular the violation of the right to an adequate standard of living,³⁴ the right to adequate food,³⁵ the right to water,³⁶ the right to housing,³⁷ the right to health and to a healthy environment,³⁸ the right to information,³⁹ the right to life,⁴⁰ and the right to freedom of expression and association.⁴¹

24. The Joint Submission reports that the Congolese State has allowed oil companies to operate in the department of Kouilou, using techniques that pollute the environment (including water and soil), have serious repercussions for the human rights and health of the population, and lead to harassment of the population.⁴² For example, the Joint Submission indicates that, in January 2000, a peaceful demonstration by rural citizens - the Ndjeno village committee - against an oil company, demanding that their human rights be respected and living conditions in the village improved, was crushed by law enforcement officers accompanying the authorities of the Pointe-Noire department. Also, in 2007 the police questioned the Commission Justice et Paix (Justice and Peace Commission) in order to find out the subject of a training session planned for the communities living in the vicinity of the oil plant. The deputy prefect of Hinda threatened to punish the inhabitants of Mengo invited to take part in the session. He went to the meeting venue, accompanied by a police officer, and while that did not result in the training session being halted, the communities perceived those acts as intimidation.⁴³ The Joint Submission also reports that the communities are not involved in the decisions made concerning the location and activities of oil companies, and have never been invited to public consultations or received information on any environmental impact studies, although these are provided for by Congolese law, and that these communities are unaware of the impact of oil production on their health, or on the environment on which their survival depends.⁴⁴ The Joint Submission calls upon the Congolese Government to suspend all oil operations that threaten the environment, health and welfare of the local communities and suggests that the culprits should be prosecuted.⁴⁵

25. On the subject of reproductive health, AAD/SRI state that, since the early 1990s, the Congo has started to improve the population's access to health services, including reproductive health services. A National Health-Care Development Plan (PNDS) was adopted in 1992, covering the period 1992-1996. The current plan (2006-2010) is geared to the Millennium Development Goals, and is aimed at improving the performance of the health system in order to reduce mortality and promote health by improving socio-health care and services. AAD/SRI report that all integrated health centres and hospitals have sex-education and family planning services.⁴⁶ However, according to AAD/SRI, these services are not widely publicized. In addition, there is a shortage of qualified staff and material and financial resources for such services, and an irregular supply of products.⁴⁷

26. AAD/SRI note that HIV/AIDS is a real problem for the Congolese population and that, according to a study carried out in 2003 by the National Anti-AIDS Council, with funding from the World Bank, the HIV prevalence rate is estimated to be 4.2 per cent for people aged between 15 and 49 in large towns, with rates varying from one town to another.⁴⁸ AAD/SRI indicate that, in

response to this situation, significant progress was made by the Government between 2003 and 2007, in terms of availability of prevention services and access to care for people living with HIV. In particular, antiretroviral drugs, HIV tests and biological monitoring tests are free of charge. However, although biological tests are free of charge, it is not always possible to carry them out, as not all laboratories have the necessary reagents. The two organizations point out that local NGOs working to combat AIDS support the National Anti-AIDS Council in its capacity as a Government body for policy and coordination work to combat AIDS. These local NGOs do not have sufficient resources to carry out their work properly.⁴⁹

27. AAD/SRI add that in its new anti-AIDS strategy (2009-2013) the National Anti-AIDS Council aims, by 2013, to increase the proportion of people undergoing syndromic management at a health facility from 55 per cent to 80 per cent; increase the proportion of adults aged between 15 and 49 who are aware of their serological status from 10 per cent to 50 per cent; reduce by 50 per cent the proportion of adults aged between 15 and 49 with high-risk sexual behaviour; and reduce to less than 15 per cent the proportion of adolescents aged between 10 and 17 who have high-risk sexual relations. AAD/SRI indicate that the National Anti-AIDS Council receives technical and financial support from the Government and other donors.

8. Minorities and indigenous peoples

28. IFHR/OCDH report that, for decades, indigenous peoples in the Congo have been living in a situation of exclusion, that their relationship with the neighbouring population is one of domination, discrimination and exploitation, and that they do not have access to justice, education, health or employment because of this marginalization. IFHR/OCDH say that in August 2004, through the Ministry of Justice, the Government initiated preliminary draft legislation on the promotion and protection of the rights of indigenous peoples, but that this initiative has not been followed up.⁵⁰

9. Migrants, refugees and asylum-seekers

29. IFHR/OCDH state that, despite the establishment in 2004 of the National Committee for Assistance to Refugees, many refugees live in precarious conditions owing to lack of access to housing, food and medical assistance. According to IFHR/OCDH, the Government is incapable of responding to the multiple requests for humanitarian aid made by poverty-stricken, malnourished refugees, and statutory refugees do not have access to the medical care to which they are entitled.⁵¹

30. IFHR/OCDH report that the Refugee Status Eligibility Commission must consider an application for asylum, or any other application, not later than three months after the application is lodged. Once this deadline has passed, the application is considered to have been granted (article 8 of Order No. 8041 of 26 December 2004 on the organization and work of the Refugee Status Eligibility Commission). However, despite the existence of this provision, many asylum-seekers have to wait several years for a decision on their application.⁵²

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

N/A.

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

N/A.

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

N/A.

Notes

¹ The stakeholders listed below have contributed information for this summary; the full texts of all original submissions are available at: www.ohchr.org. (One asterisk denotes a non-governmental organization in consultative status with the Economic and Social Council.)

Civil society

AAD/SRI	Association AZUR Développement, Brazzaville, République du Congo; Sexual Rights Initiative.
ACAT CONGO/FIACAT	Action des Chrétiens pour l'Abolition de la Torture CONGO, Pointe Noire, République du Congo; Fédération Internationale de l'Action des Chrétiens pour l'Abolition de la Torture*, Paris, France.
Contribution Conjointe	Global Rights*, Washington, D.C., United States of America; Rencontre pour la paix et les droits de l'Homme, Pointe Noire, République du Congo; Commission Justice et Paix.
IFHR/OCDH	International Federation from Human Rights*, Paris, France; Observatoire Congolais des droits de l'Homme, Brazzaville, République du Congo.
	The Global Initiative to End All Corporal Punishment of Children (GIEACP), London, United Kingdom.

² Contribution conjointe par trois ONG, p. 1, para. 1.

³ ACAT CONGO/FIACAT, p. 1.

⁴ ACAT CONGO/FIACAT, p. 2.

⁵ AAD/SRI, p. 1, para. 1.

⁶ AAD/SRI, pp. 1-2, paras. 3, 4.

⁷ AAD/SRI, pp. 1-2, para. 3.

⁸ IFHR/OCDH, p. 5.

⁹ The GIEACP, p. 2.

¹⁰ The GIEACP, p. 2.

¹¹ ACAT CONGO/FIACAT, p. 2.

¹² IFHR/OCDH, p. 5.

¹³ ACAT CONGO/FIACAT, p. 2.

¹⁴ ACAT CONGO/FIACAT, p. 3.

¹⁵ ACAT CONGO/FIACAT, p. 2.

¹⁶ IFHR/OCDH, p. 1.

¹⁷ ACAT CONGO/FIACAT, p. 2.

¹⁸ ACAT CONGO/FIACAT, p. 3.

¹⁹ ACAT CONGO/FIACAT, p. 2.

²⁰ ACAT CONGO/FIACAT, p. 3.

²¹ IFHR/OCDH, p. 1.

²² AAD/SRI, p. 6, para. 28.

²³ AAD/SRI, p. 2, para. 6.

²⁴ IFHR/OCDH, p. 2.

²⁵ IFHR/OCDH, p. 3.

- ²⁶ ACAT CONGO/FIACAT, p. 2.
- ²⁷ IFHR/OCDH, p. 3.
- ²⁸ IFHR/OCDH, p. 4.
- ²⁹ IFHR/OCDH, p. 4.
- ³⁰ IFHR/OCDH, p. 4.
- ³¹ IFHR/OCDH, p. 5.
- ³² IFHR/OCDH, p. 2-3.
- ³³ Contribution conjointe par trois ONG, p. 1, para. 1.
- ³⁴ Contribution conjointe par trois ONG, p. 4, para. 12.
- ³⁵ Contribution conjointe par trois ONG, p. 4, para. 12.
- ³⁶ Contribution conjointe par trois ONG, p. 4, para. 12.
- ³⁷ Contribution conjointe par trois ONG, p. 4, para. 12.
- ³⁸ Contribution conjointe par trois ONG, p. 4, para. 13.
- ³⁹ Contribution conjointe par trois ONG, p. 4, para. 14.
- ⁴⁰ Contribution conjointe par trois ONG, p. 4, para. 15.
- ⁴¹ Contribution conjointe par trois ONG, p. 4, para. 16.
- ⁴² Contribution conjointe par trois ONG, p. 1-2, paras. 4, 5, 6, 7, 10.
- ⁴³ Contribution conjointe par trois ONG, p. 3, para. 10.
- ⁴⁴ Contribution conjointe par trois ONG, p. 2, para. 8.
- ⁴⁵ Contribution conjointe par trois ONG, p. 5, para. 17.
- ⁴⁶ AAD/SRI, p. 2, para. 5.
- ⁴⁷ AAD/SRI, p. 2, para. 7.
- ⁴⁸ AAD/SRI, p. 4, para. 16.
- ⁴⁹ AAD/SRI, p. 4, para. 18.
- ⁵⁰ IFHR/OCDH, p. 3.
- ⁵¹ IFHR/OCDH, p. 4.
- ⁵² IFHR/OCDH, p. 4.
