



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Summary record of the first part (public)* of the 1114th meeting

Held at the Palais Wilson, Geneva, on Monday, 12 November 2012, at 10 a.m.

Chairperson: Ms. Belmir (Vice-Chairperson)

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1114/Add.1.

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention (*continued*)

Second periodic report of Togo (CAT/C/TGO/2; CAT/C/TGO/Q/2/Add.1; CAT/C/TGO/Q/2/Add.2; HRI/CORE/1/Add.38/Rev.1)

1. *At the invitation of the Chairperson, the delegation of Togo took places at the Committee table.*
2. **Ms. Wilson de Souza** (Togo) said that due to a lack of material resources the second periodic report of Togo, due in December 2008, had been delayed until October 2010. Turning to the main concerns raised by the Committee in its list of issues, she said that the draft criminal code, adopted by the Government in the Council of Ministers, contained a definition of torture in line with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and laid down penalties applicable to acts of torture. Article 16 of the Constitution and articles 93 et seq. of the draft code of criminal procedure protected the rights of detainees and guaranteed respect for their dignity and physical and mental integrity. Any person under arrest had the right to be assisted by counsel and to be examined by a physician of his or her choice. Article 52 of the amended code of criminal procedure limited the period of time during which a person could be held in police custody to 48 hours, with the possibility of a further 48-hour extension subject to the authorization of the State prosecutor. In particularly complex cases or those relating to drug trafficking, the duration of police custody could be extended to 8 days. The Inspectorate-General of Security Services (IGSS) ensured that those time limits were respected by paying unannounced visits to police and gendarmerie stations. Efforts had been made, in partnership with the Office of the United Nations High Commissioner for Human Rights in Togo, to reduce the proportion of persons held in pretrial detention, which had decreased from 75 per cent in May 2012 to 65 per cent in September 2012. The Government hoped to halve that figure by the end of 2012.
3. The independence of the National Human Rights Commission (CNDH) was enshrined in article 152 of the Constitution. The Commission carried out its activities without any interference from the Government or Parliament. It was financially independent and its members were elected on the basis of a transparent procedure. The Commission had been recognized as conforming to the Paris Principles, as evidenced by its A status accreditation as a national human rights institution.
4. Thanks to the national strategy to combat violence against women adopted in 2008, to enforcement of the law on female genital mutilation and to targeted awareness-raising campaigns, the rate of female genital mutilation had significantly declined, from 12 per cent in 1996 to 2 per cent in 2012. Togo was at the moment unable to establish statistics on complaints relating to violence against women.
5. Torture was recognized as grounds for extradition in Togo. However, in accordance with the principle of non-refoulement contained in the Convention, no person could be expelled or extradited to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture. The draft criminal code recognized the jurisdiction of the Togolese courts to try the perpetrators of torture in cases where they could not be extradited. The training of judges, criminal police officers and prison staff included courses on international human rights standards. The National Human Rights Commission, the International Committee of the Red Cross and civil society organizations all had access to places of detention. Major renovation work had been carried out at Lomé prison to improve conditions of detention and similar work was due to be undertaken at other prisons. In terms of creating a civil prison monitoring body, it should be noted that

484 officers recruited through competitive examination, including 111 women, had recently completed their training.

6. The Government had implemented most of the recommendations contained in the National Human Rights Commission's report of February 2012. Among other measures, disciplinary sanctions, in the form of periods of detention ranging from 30 to 45 days, had been applied to officials accused of inhuman and degrading treatment; the National Intelligence Agency (ANR) had been prohibited from detaining individuals; a project aimed at replacing the Agency with a new body had been developed; and the capacity of the judicial police had been strengthened. The number of medical staff in overcrowded detention centres had been increased but much remained to be done to improve access to health care in prisons.

7. Article 19 of the Constitution stipulated that legal compensation could be claimed for damages arising from a malfunction of the justice system or a miscarriage of justice. No procedure had yet been provided for victims seeking redress, pending the introduction of a new clause should be in the draft code of criminal procedure, which would also establish the inadmissibility of evidence obtained by torture. Freedom of association was a human right guaranteed by the Constitution and many fully independent civil society organizations operated in the country. The Children's Code prohibited corporal punishment and all other forms of violence against or ill-treatment of children in schools, vocational training establishments and other childcare institutions. An extensive awareness-raising campaign had been launched on the subject and a module on non-violence in schools had been incorporated into teacher training courses. Specific programmes had been developed to prevent the trafficking and exploitation of children and child labour and to facilitate the resettlement of victims. Child trafficking was punishable by imprisonment. Between 2007 and 2011, 378 cases of child trafficking had been brought before the courts, of which 242 had resulted in a conviction.

8. The National Human Rights Commission had been appointed as the national preventive mechanism under the Optional Protocol to the Convention against Torture. A reform of the Organic Law of the Commission had been undertaken in order to provide the Commission with the mandate and powers required for its new duties. Togo was resolutely committed to the fight against torture and other cruel, inhuman or degrading treatment or punishment, and had joined the "Atlas of Torture" project, in the course of which two missions had been conducted in the country under the supervision of Mr. Manfred Nowak, former Special Rapporteur on torture. Togo hoped to continue to benefit from the support of the international community in its efforts to consolidate democracy and the rule of law.

9. **Mr. Bruni** (Country Rapporteur) said that the Committee would like to consult the articles of the draft code of criminal procedure defining torture in order to ensure that no part of the definition contained in article 1 of the Convention was missing. He would like to know whether a timetable had been set for the adoption of the text and which legal provisions in the meantime could be invoked by the courts to punish those who perpetrated torture. If the delegation had examples of decisions relating to cases of torture, the Committee would like to be informed.

10. In his opening statement, the head of the delegation had indicated that the basic rights of detainees, including the right to be informed of the reasons for their arrest, the right to be assisted by counsel, the right to be examined by a physician and the right to inform a close relation, were guaranteed by the draft code of criminal procedure, but since the code was not yet in effect, he wondered how such rights were guaranteed for the time being. If, as provided for in the draft code of criminal procedure, detention centres refused to admit persons who presented signs of having been ill-treated during questioning, it was important to ascertain where such persons would be taken, whether they would be assured

of receiving appropriate care and whether their case would be investigated with a view to punishing those responsible.

11. The State party's report indicated that access to certain places of detention, notably where military detainees facing disciplinary sanctions were being held, was difficult. He requested further clarification as to why that was the case and what measures the Government intended to implement to guarantee unrestricted access to all places of detention. If, as indicated by the head of the delegation, the National Intelligence Agency no longer had the right to detain people, what steps had been taken officially to close its detention facilities? The State party said that the abnormally high proportion of pretrial detainees was due to the inefficiency of the courts and prison system but the measures taken to remedy the situation were inadequate. The draft criminal code and draft code of criminal procedure should be promulgated as a matter of urgency so that justice could function properly; what steps were being considered to speed up the process? According to non-governmental organizations, compensation had been offered to persons found to have been tortured during their detention by ANR in order to induce them to abandon criminal proceedings. It would be interesting to hear the delegation's views on the matter.

12. While noting the efforts made by the State party to address overcrowding in prisons despite the shortage of material, financial and human resources, in view of the dire conditions prevailing in certain places of detention, including in police holding facilities, he asked the delegation to reassure the Committee that urgent measures would be taken to improve the conditions of detention, notably in terms of food, hygiene and access to medical care. In that respect, the delegation were invited to comment on reports that Captain Lambert Adjinon, imprisoned in Lomé prison following the 2009 events, had been deprived for years of the care required by his poor state of health. He also asked the delegation to provide the findings of the National Human Rights Commission and other organizations concerned following their visits to places of detention and to indicate how those findings had been followed up. In the report of his mission to Togo (A/HRC/7/3/Add.5), the Special Rapporteur on torture had mentioned that the extremely cramped cells at the Kara military camp and at Notsé prison constituted inhumane treatment. He wished to know why such cells had been built and in which circumstances they were used.

13. He invited the delegation to indicate what measures would be taken to provide the National Human Rights Commission with the means it needed to perform as a national preventive mechanism effectively, and how it would be made up. He would also like to know what the authorities intended to do in order to enable the President of the National Human Rights Commission, Mr. Koffi Kounté, who had been forced to leave the country in order to escape the pressure brought to bear as a result of the publication of his report implicating the security forces in torture cases, to return to Togo in safety. With regard to the principle of non-refoulement, the State party had not replied to the Committee's questions regarding whether any appeal was available to rejected asylum seekers in danger of being subjected to torture if extradited and which body was responsible for handling such cases. The delegation might provide the answers. Lastly, cases had been quoted in the report of the National Human Rights Commission of officials suspected of torture, who had been suspended for 30 to 45 days as a disciplinary measure. Such penalties did not match the gravity of the facts involved. He would therefore like to know whether criminal proceedings had also been brought.

14. **Mr. Gaye** (Country Rapporteur) wished to know whether Togo was party to the international conventions relating to the status of refugees and whether any provisions in domestic legislation provided asylum seekers seeking international protection with the appropriate guarantees. He would also like further details on the division of powers between the police and the gendarmerie and on the legislative or administrative texts on

which such a division was founded. Regarding article 10 of the Convention, he asked whether training to detect the physical and physiological effects of torture had been provided to judicial and medical staff, whether the effectiveness of such training had been evaluated and whether the armed forces, including paramilitary commandos, received training on the prohibition of torture.

15. Regarding the prison system, he wished to know how, according to the report, it had been possible for the Prison Service to prepare investigation files on 121 defendants and organize criminal court hearings, when such tasks lay within the jurisdiction of the courts. According to information from NGOs, the National Human Rights Commission paid only occasional visits to places of detention and was unable to supervise the implementation of its own recommendations, which called for a comment from the delegation. What measures did the State party intend to take to improve matters and to put an end to practices prohibited by the Standard Minimum Rules for the Treatment of Prisoners, particularly in the case of Captain Lambert Adjinon? He asked the delegation to clarify whether Togolese legislation imposed a limit on the length of pretrial detention. He also invited the delegation to comment on the figures provided by the State party in its replies to the list of issues, which showed a steady increase in the number of deaths in prison since 2009. Insofar as the main causes of death mentioned were malnutrition and the deplorable sanitary conditions in places of detention, the question arose as to the State's share of responsibility in such deaths.

16. He understood that the new members of the National Human Rights Commission had already been sworn in, and asked the delegation to confirm whether that was so. He would also like the delegation to comment on the fact that the President of the Commission, Mr. Kounté, was unable to return to Togo for fear of reprisals, due to the fact that the persons mentioned in the Commission's report as being involved in the atrocities committed during the attempted coup in 2009 had not been prosecuted and were therefore still at large. Lastly, he asked the delegation to provide a copy of the draft amendment to the Criminal Code establishing that all evidence obtained through torture and ill-treatment was inadmissible.

17. Concerning article 16 of the Convention, he noted that the State party had made commendable efforts on its legislation to combat child trafficking but that, according to reports received by the Committee, the Togolese courts had been reluctant to impose dissuasive penalties. He asked whether the prosecutors could be ordered to impose harsher penalties. Lastly, he wished to know whether the State party intended to make the declarations referred to in articles 21 and 22 of the Convention.

18. **Mr. Domah** said that the prohibition of torture was an "obligation not to do" and that a lack of financial, logistical or other resources could not be invoked to excuse the failings of the judiciary and the persistent violations of the Convention within the State party. Much progress could be achieved in terms of the application of the Convention without the need for additional resources. He welcomed any comment on the matter. He also invited the delegation to indicate why the Togolese authorities had been waiting for the reform of the judicial system to be completed before establishing a juvenile justice system, and to provide details on the training provided to judges to enable them to specialize in juvenile cases.

19. **Mr. Mariño Menéndez** welcomed the fact that the death penalty had been abolished in Togo in 2009. He wished to know whether the State party intended to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and whether enforced disappearance was an offence in its own right under the country's criminal law. Given that the state of emergency declared in 2005 and 2009 had been accompanied by restrictions on political rights, he asked whether such measures were still in force. Any explanations concerning paragraph 47 of the report would be welcome since

it gave the impression that the judicial police acted like a third police force. He wished to know which bodies victims of violations of the Convention could approach to lodge a complaint and whether Togolese legislation guaranteed the right of habeas corpus. He also asked for clarification on the role of the liberties and detention judge.

20. It would also be interesting to know whether ANR facilities continued to be used to detain and interrogate suspects, whether military tribunals had jurisdiction to try civilians in certain cases and whether, conversely, the civil courts could deal with violations perpetrated by the armed forces against civilians. Lastly, he would like clarification on the conditions under which NGOs were allowed to visit places of detention as well as the status of the bill on refugees, and would like to know whether the Istanbul Protocol was used in the investigation of cases of torture and ill-treatment.

21. **Mr. Wang Xuexian** asked whether practical steps had been taken to reduce the percentage of detainees awaiting trial compared to the total number of inmates, whether targets and a timetable had been established, and whether alternative sanctions were planned to alleviate prison overcrowding. He asked the delegation to cite examples of cases in which a suspected torturer, who could not be extradited to another country, had been tried in Togo. He also wished to know whether corporal punishment had been prohibited not only in schools but in all circumstances.

22. **Ms. Sveaass**, in view of the fact that the Justice, Truth and Reconciliation Commission had submitted its report in April 2012, asked what measures had since been taken to award compensation to victims of violations of the Convention committed during the period covered by the report. She wished to know whether the alleged violations of the Convention contained in the report published by the Association of Victims of Torture in Togo (ASVITO) in 2011 would be investigated and whether victims would be able to seek redress and receive rehabilitation assistance. She requested further information on the training provided to health-care professionals to enable them to detect the physical and psychological effects of torture and to provide rehabilitation therapies. Statistics on the number of torture victims who had received reparations would be welcome.

23. She would also like to know whether the complaint mechanisms for sexual violence, described in paragraphs 87 and 88 of the report, applied solely to detainees who had been victims of such offences, or to all women, including victims of domestic violence. She asked the delegation to provide an estimate on the number of juveniles held in police stations and of the cases of ill-treatment inflicted by police officers on minors in such places. Lastly, she wished to receive further information on the measures taken to combat violence among detainees.

24. **Mr. Tugushi** enquired about the measures taken to separate minors from adults in places of detention and, more specifically, to improve the allegedly highly deplorable conditions of detention at Lomé prison, which were said to constitute a health risk for detainees. He wished to know whether the State party intended to build new detention centres and to refurbish the most insalubrious cells, and whether the national preventive mechanism put in place by the State party would meet the requirements laid down in the Optional Protocol to the Convention against Torture.

25. **The Chairperson**, speaking as a member of the Committee, said that the State party should consider short- and medium-term strategies instead of postponing the application of the Convention to a later date because it did not yet have sufficient means to implement it.

26. **Mr. Bruni** (Country Rapporteur) invited the delegation to comment on the information recently submitted to the Committee by the National Human Rights Commission, according to which torture victims were not only unable to obtain reparations from the Commission but also to stop such acts occurring. He could not see how such a body could one day take on the role of a national preventive mechanism since, on its own

admission, all it could do was record cases of torture it had uncovered or been informed of and carry out occasional visits to places of detention, without actually being able to monitor the implementation of its own recommendations.

27. **Mr. Gaye** (Country Rapporteur) asked why statistics had not been compiled on female genital mutilation.

The first part (public) of the meeting rose at 11.55 a.m.