



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

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Committee against Torture

List of issues to be considered in connection with the consideration of the second periodic report of Togo (CAT/C/TGO/2) adopted by the Committee at its forty-eighth session, 7 May–1 June 2012

Articles 1 and 4

1. Taking account of the Committee's previous concluding observations (para. 10)¹ and paragraphs 22–28 and 45 of the State party's periodic report, which suggest that reforms of the Criminal Code that would explicitly define and criminalize torture are still at the preliminary draft stage,² please provide information on progress made towards and the planned date for the adoption of this bill and on measures taken to ensure that, when criminal legislation is revised, it then contains a definition of torture that encompasses all the elements contained in article 1 of the Convention, including provisions establishing acts of torture as an offence and appropriate penalties that take into account the serious nature of such acts.

2. The Committee has received information from a non-government source regarding plans for a criminal law reform in Togo. Please indicate what progress has been made by the two panels of legal experts working on the reform of the Criminal Code and the Code of Criminal Procedure, whose findings were supposed to be approved in March 2012 before their submission to the Government, given that the National Justice System Modernization Programme, of which the reforms are a part, is due to be finalized in April 2012.

3. In view of the fact that paragraphs 8 and 9 of the State party's periodic report state that articles 50 and 140 of the Constitution give precedence to international human rights instruments over domestic law,³ please explain paragraph 11 of the report concerning the application of ratified conventions in the case of provisions that stipulate that a given act constitutes an offence. Taking account of paragraph 188 of the periodic report, please provide specific examples of measures taken to incorporate the Convention's provisions into domestic law, as well as of legal proceedings in which provisions of the Convention have been directly cited by one of the parties and of cases in which domestic courts have directly applied the Convention.

¹ Paragraph numbers in parentheses refer to the previous concluding observations of the Committee, published in document CAT/C/TGO/CO/1.

² CCPR/C/TGO/CO/4, para. 15.

³ CCPR/C/TGO/CO/4, para. 7.

Article 2⁴

4. Taking account of the Committee's previous concluding observations (para. 11) and in connection with paragraphs 29–32 of the periodic report, please clarify what measures have been taken and what procedures have been put in place in order to safeguard the rights of detained persons from the commencement of police custody, in particular their right to be heard by a judge as soon as possible, to be informed of the charges laid against them, to contact family members or a person of their choice and to inform them of the situation, to have access to a lawyer, including officially assigned counsel, and to a doctor of their choice or an independent doctor⁵ without the prior consent of the public prosecutor's office, and to be registered from the commencement of deprivation of liberty. Please indicate whether lawyers may interview detainees in private⁶ and whether free legal aid is provided at all times, not just at the trial stage, to persons accused of serious offences and, taking account of paragraph 84 of the periodic report, to persons of limited financial means.⁷

5. In the light of the Committee's previous concluding observations (para. 11) and taking account of paragraphs 30 and 40–44 of the periodic report, please describe the new rules, guidelines or provisions on police custody and the frequency with which they are reviewed. Given that the maximum duration of police or gendarmerie custody is 48 hours (or 96 hours when authorized by the public prosecutor's office),⁸ please explain why a large percentage of detainees is kept in custody, often in appalling conditions, without any legal basis,⁹ beyond the legal maximum of 96 hours. Taking account of paragraph 35 of the periodic report, please provide up-to-date information on the duties of the judges responsible for the application of procedural safeguards and enforcement judges, as provided for in the draft amended Code of Criminal Procedure.

6. Taking account of paragraphs 30, 40–44, 76, 82, 83, 86, 130 and 131 of the periodic report and given that between 50 and 75 per cent of the prisoners seen by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2007 were being held in pretrial detention,¹⁰ please explain why people are held in pretrial detention for years, often for minor offences.¹¹

7. Please provide information on the measures taken to curtail the use of pretrial detention, which flouts the principle of the presumption of innocence¹² and leads to prison overcrowding, and whether the State party employs alternatives to detention.¹³ Taking account of paragraphs 66, 76, 83 and 130 of the periodic report, please indicate whether the number of people in pretrial detention has fallen as a result of the inquiry into irregular and arbitrary pretrial detention conducted by the National Human Rights Commission in 2008

⁴ The points raised under article 2 could also be addressed under other articles, including, but not only, article 16. As general comment No. 2, paragraph 3, states: "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also section V of the same general comment.

⁵ A/HRC/13/39/Add.6, paras. 99–101.

⁶ A/HRC/7/3/Add.5, para. 67.

⁷ CCPR/C/TGO/CO/4, para. 19.

⁸ CAT/C/TGO/2, para. 30.

⁹ A/HRC/7/3/Add.5, para. 44.

¹⁰ A/HRC/7/3/Add.5, para. 63.

¹¹ A/HRC/7/3/Add.5, para. 78.

¹² CCPR/C/TGO/CO/4, para. 19.

¹³ A/HRC/7/3/Add.5, para. 69.

in the civil prisons of Lomé, Aného, Kara and Sokodé and in the wake of training provided by French instructors.¹⁴

8. Please explain the division of responsibility between the police force (a paramilitary corps) and the gendarmerie (a military corps) to which reference is made in paragraph 47 of the report and why the gendarmerie simultaneously is responsible to the Ministry of Security and the Ministry of Defence.¹⁵ In addition, taking account of paragraph 70 of the periodic report, please explain how it is that, whereas almost all detainees are recorded in one register, the “*Cahier de garde*”, the other register, the “*Cahier de garde à vue*” often does not reflect who was in detention and at what times. Also, there are sometimes disparities between the two registers, with the *Cahier de garde* reflecting the correct period of detention and the *Cahier de garde à vue* indicating shorter periods.

9. Please provide information on the measures taken to ensure the full implementation of juvenile justice standards, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

10. According to information in the Committee’s possession, including that provided by the National Human Rights Commission in its January 2012 report (published on 23 February 2012), acts of torture and physical and psychological ill-treatment, described as inhuman and degrading acts of physical and mental violence, were inflicted as punishment in the premises of the National Intelligence Agency and other places of detention on persons allegedly involved in the attempted coup d’état in 2009.¹⁶ Please explain whether steps have been taken to investigate allegations in the report, which include: various cases of beatings, including of handcuffed persons; the torture in a standing position of persons handcuffed by both hands to the beam of the cell window; the simulation of being escorted to the firing squad; death threats; the use of solitary confinement; the prohibition of family visits; the withholding of food and water to the point where detainees faint; the general lack of food; sleep deprivation and the lack of hygiene, bedding, clothes and medical care; degrading body searches including detainees’ private parts; constant confinement in poorly ventilated areas and other practices that have done lasting harm to some of the persons concerned. How will the recommendations of the National Human Rights Commission be implemented?

11. Taking account of paragraphs 34–38, 77, and 125–129 of the periodic report and allegations received by the Special Rapporteur on the question of torture regarding ill-treatment inflicted by law enforcement officers, in most cases during questioning aimed at extracting confessions, and allegations regarding several cases of beatings carried out by prison warders or other detainees as a form of punishment or hazing,¹⁷ please provide up-to-date information on inquiries made into those allegations, including any conducted since the establishment of the general security services inspection unit mentioned in paragraph 36 of the periodic report, and any resulting prosecutions and convictions.¹⁸ Taking account of paragraphs 37, 98, 100, 102, 124, 125 and 180 of the periodic report, please say what measures have been taken to facilitate access to all places of detention, including National Intelligence Agency cells and places of detention, or “*tole*” (jug), used as a disciplinary measure to punish military service personnel.

¹⁴ CAT/C/TGO/2, paras. 130 and 131.

¹⁵ A/HRC/7/3/Add.5, para. 64.

¹⁶ National Human Rights Commission: *Report of the National Human Rights Commission on allegations of torture made by persons detained in the context of the proceedings on the attempted coup d’état*, January 2012.

¹⁷ A/HRC/7/3/Add.5, paras. 46–59, 82, 94; and appendix, paras. 24, 49, 57, 61, 63, 65 and 66.

¹⁸ CAT/C/TGO/2, para. 39.

12. Taking account of the Committee's previous concluding observations (para. 23) and taking account of paragraphs 115–121 of the periodic report, please provide information on how the independence and functioning of the National Human Rights Commission is ensured, given that, according to paragraph 122, the level of State funding for the Commission has fallen by 20 per cent since 2008.¹⁹ Please clarify whether the Commission is mandated to receive and consider individual complaints and how many complaints, including those regarding torture and ill-treatment, were filed with it between 2007 and 2012. What action was taken on those complaints and on the findings of the visits mentioned in paragraphs 125–138 and, in particular, in paragraph 129 of the report?

13. Taking account of paragraphs 87–94 of the periodic report, please provide information on any measures taken and planned to introduce provisions in the Criminal Code to criminalize various types of domestic violence, including marital rape and all other forms of sexual violence against women, including in prison. Given the Committee's concluding observations (para. 27) and paragraphs 156–164 of the report, please provide details of the impact that the Act prohibiting female genital mutilation has had and of the specific measures taken to implement the Act. Please say also whether there has been any ensuing fall in the incidence of female genital mutilation.²⁰ Please provide details of the results of the study on female genital mutilation carried out in July 2008 by the Ministry for Social Action and National Solidarity, mentioned in paragraph 163.

Article 3

14. Taking account of paragraphs 24 and 61–62 of the periodic report, please provide up-to-date information on current and planned legislation prohibiting the expulsion, refoulement or extradition of a person to another State where there are grounds for believing that he/she would be in danger of being subjected to torture, and on the number of such cases, if any. Please also specify the measures taken to align domestic legislation with the Convention and international law on refugees. Please specify which authorities and competent bodies are responsible for extradition, expulsion and refoulement measures, taking into account the provisions of article 3 of the Convention, and provide information on available appeal procedures against extradition, refoulement or expulsion orders (and, in general, against all decisions denying requests for asylum or refugee status).

15. Taking account of paragraphs 61–65 of the periodic report and the previous concluding observations (para. 14), please furnish information on measures adopted to review the terms of the subregional agreements signed with neighbouring States on 10 December 1984 in order to guarantee that the return of a convicted person to a signatory State is carried out in the framework of a judicial procedure, in conformity with article 3 of the Convention.

Articles 5, 6, 7, 8 and 9

16. Taking account of paragraphs 61–65 of the periodic report and the Committee's previous concluding observations (para. 15), please specify the measures taken by the State party to establish and exercise its jurisdiction over acts of torture when the alleged author of the offence is in Togo, for the purpose of either extraditing or prosecuting him or her, in accordance with the provisions of the Convention. Please also specify what steps have been taken to review the terms of agreements whereby the nationals of some States who are in

¹⁹ CAT/C/TGO/2, paras. 122 and 123.

²⁰ A/HRC/13/39/Add.6, para. 97; CCPR/C/TGO/4, para. 62; and CRC/C/15/Add.255, paras. 56–57.

Togolese territory cannot be brought before the International Criminal Court to be tried for war crimes or crimes against humanity (paragraph 16 of the previous concluding observations). Please also provide information on whether Togo has cooperation and mutual judicial assistance agreements with neighbouring States and, if so, on extradition cases dealt with thereunder.

Article 10

17. Taking account of paragraphs 18 and 66–72 of the periodic report, please provide details of training on the Convention, especially on the total ban on torture, received by members of the security forces (gendarmerie, police, prefectural guards) and prison administration officials. Please indicate whether the training provided to law enforcement officers has become less militarized, as it previously emphasized military aptitude and did little to prepare recipients for tasks relating to criminal investigations or the maintenance of law and order.²¹ Taking account of paragraphs 68 and 69 of the report, please provide information on the content of the 2011 training programme run by the European Union for prison warders and directors and all other staff of detention centres, its outcome and assessments made of it.

18. With regard to paragraph 76 of the periodic report, please provide information about the training programmes organized by the State party for law enforcement personnel, especially judges, law officers, prefects, sub-prefects and lawyers and, in particular, about measures to give law officers more instruction in the importance of the presumption of innocence, something which would reduce the incidence of pretrial detention. What results were achieved by the technical workshop providing an opportunity for an exchange of views and the provision of training in judicial practice as it relates to articles 112 et seq. of the Code of Criminal Procedure, which deal with pretrial detention, which was organized for judges and law officers by the National Human Rights Commission in October 2008?²² Please say whether judges and law officers receive specialized training in dealing with juvenile cases. Is the telephone helpline “Allo 111” accessible in all six regions of the State party?²³

19. With regard to paragraph 34 of the periodic report, please provide detailed information about training programmes for prosecutors, judges, forensic doctors and medical personnel dealing with detained persons, enabling them to detect and document physical and psychological sequelae of torture and to determine whether torture has actually occurred. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)?

20. With reference to paragraphs 87–88 of the periodic report, please furnish information about the training programmes and awareness-raising campaigns intended for members of parliament, the judiciary, law enforcement personnel and health-service providers so as to ensure that they are alerted to all forms of violence against women.²⁴ With regard to paragraph 156 of the report, please say what specific measures have been adopted to make sure that judges, prosecutors and members of the police receive training in the strict enforcement of the Act on the prohibition of female genital mutilation. Please provide statistics on the number of complaints, investigations, prosecutions and convictions

²¹ A/HRC/7/3/Add.5, para. 76.

²² CAT/C/TGO/2, para. 76.

²³ CRC/C/TGO/CO/3-4, para. 73.

²⁴ CEDAW/C/TGO/CO/5, para. 19.

related to female genital mutilation. With reference to paragraphs 157–164 of the report, please give a detailed account of the process of developing and implementing information programmes and awareness-raising campaigns to combat and eliminate female genital mutilation, which are aimed at women who perform excision, traditional chiefs and the communities and children in question. Please say what measures have been taken to assist women who perform excision to find alternative sources of income.²⁵

Article 11

21. Taking account of the previous concluding observations (para. 21) and having regard to paragraphs 98, 100 and 102–103 of the periodic report, please say what measures have been taken to ensure the effective and independent supervision of detention facilities and if there are any rules which prohibit investigations, visits by international bodies or mechanisms, or other forms of human rights scrutiny. Please supply precise information about the public entity responsible for inspecting places of detention and ensuring that torture and other forms of ill-treatment contrary to the Convention do not occur and about its membership, terms of reference and powers. Please supply recent examples of inspections of places of detention and describe their findings and the action taken on any recommendations made by the body which conducted the inspections. In respect of paragraphs 104–108 of the report, please provide up-to-date information about the national protection mechanism which should have been set up by 20 July 2011 at the latest.

22. Bearing in mind the Committee's previous concluding observations (para. 19) and paragraphs 36–38, 79–81, 95 and 96 of the periodic report, please give a detailed account of the measures taken by the State party to end practices that run counter to the Standard Minimum Rules for the Treatment of Prisoners and say what has been done to ensure that persons awaiting trial are held separately from convicted prisoners, that women and children are kept separate from men and adults and that female detainees are guarded by warders of the same sex. Please provide up-to-date statistics on the prison population by prison, indicating sex, age and ethnic origin, in respect of convicted prisoners and persons in pretrial detention.

23. With reference to paragraphs 37–38, 78–81, 86 and 96 of the periodic report, please provide details of the specific measures taken to improve the alarming conditions in Togolese detention centres in terms of overcrowding, sanitation, access to health care and food.²⁶ Does Togolese criminal law make any provision for alternative sentences to imprisonment? Please provide figures showing the occupation rate of detention centres during the period 2007–2012, overcrowding levels and the capacity of prisons. How many additional prisons were built, including that of Kpalimé? How many prisons have been refurbished?²⁷ Please provide a detailed description of detention conditions in the paratroopers' military camp in Kara, where detention in cells measuring 112 x 90 cm constitutes inhuman treatment.²⁸

24. In view of the previous concluding observations (para. 20) and having regard to paragraphs 90–94 of the periodic report, please say what specific measures have been taken by the State party to investigate allegations of acts of sexual violence against women in detention. Are there any women's cells in police detention facilities? Bearing in mind paragraphs 95 and 96 of the periodic report, please supply information about the time limit

²⁵ CRC/C/TGO/CO/3-4, para. 58 (c).

²⁶ A/HRC/7/3/Add.5, paras. 85 and 103.

²⁷ A/HRC/7/3/Add.5, para. 33.

²⁸ A/HRC/7/3/Add.5, para. 45.

for ensuring the automatic separation of male and female detainees and about the outcome of the competition to recruit prison warders which was held on 15 June 2010. Can women join the territorial security guards? Please say what progress has been made in setting up a civilian prison warders' service that includes women as part of the National Justice System Modernization Programme.

Articles 12 and 13

25. Please provide information on the following:

(a) The number of alleged cases of torture or of other cruel, inhuman or degrading treatment, having regard to the previous concluding observations (paras. 22 and 31) and to paragraphs 92–93 and, in particular, to paragraphs 125–126, 128–130 and 132–138 of the periodic report. Please say how many of these cases involved the police, the army or prison officers and specify the facilities in question, the place where the acts were committed and the victims' sex, age and ethnic or national origin. Please say how many police or army officers or prison warders have been suspended from duty as a preventive or disciplinary measure, or subsequently dismissed, for having committed acts of torture or engaged in other forms of cruel, inhuman or degrading treatment. Please indicate the progress made and the outcome of each investigation of acts of torture or other cruel, inhuman or degrading treatment which have formed the subject of a criminal complaint, the kind of court (ordinary or military) hearing the case and what sentences were handed down. Please also say how many cases ended with an acquittal as well as how much compensation and what rehabilitation services were offered to victims;

(b) The latest measures taken in respect of the serious human rights violations committed during and after the presidential election on 24 April 2005 on the premises of the National Intelligence Agency, the perpetrators of which have not been prosecuted or convicted and for which no compensation has been awarded to the victims,²⁹ and also the measures taken in response to the events in 2009 which are described in detail in the National Human Rights Commission report of January 2012;

(c) Statistics on prison deaths disaggregated by place of detention, the victims' sex, age, ethnic or national origin and the cause of death. Please provide detailed information about the findings of inquiries into these deaths and about the measures adopted to prevent this kind of situation reoccurring. In particular, please supply detailed information about the deaths in detention due to illness and starvation in 2005 and 2006, which were brought to the attention of the Special Rapporteur on torture during his visit;³⁰

(d) The development of a statistical tool for keeping track of complaints of violence committed against women.³¹

26. In view of the previous concluding observations (paras. 18 and 20) and bearing in mind paragraphs 87–88, 90–92 and 126–128 of the periodic report, please supply statistics for the period 2007–2012 on the number of complaints, investigations, prosecutions and convictions related to various forms of violence against women, including domestic violence, marital rape and female genital mutilation, and on sexual violence against women in detention centres.³² Has victim assistance been improved? Do victims have access to justice with full knowledge of their rights and existing remedies? Please describe in detail

²⁹ CCPR/C/TGO/CO/4, para. 10.

³⁰ A/HRC/7/3/Add.5, para. 37.

³¹ CCPR/C/TGO/CO/4, para. 11.

³² CAT/C/TGO/2, para. 90.

the specific measures taken by the State party to eliminate violence against prisoners, including women, perpetrated by prison officers and violence against detainees held in any other place of detention such as the civil prisons of Kanté, Mango or Kara.

Article 14

27. Does the necessary legislation exist to give effect in practice to the right to compensation for miscarriage of justice?³³ Please supply statistics on the remedies and compensation ordered by the courts, from which victims of acts of torture or their families have actually benefited during the period 2007–2012. Please say how many applications were submitted, how many were granted and what remedial measures were taken, how much compensation was awarded and how much was actually paid in each case.

Article 15

28. Taking account of the previous concluding observations (para. 24) and with reference to paragraphs 33 and 139 of the periodic report, in view of the fact that the reforms of the Code of Criminal Procedure have remained at the stage of a preliminary draft, please supply up-to-date information about urgent measures to incorporate into the Code of Criminal Procedure specific provisions concerning the inadmissibility of evidence obtained by torture. This is particularly important in the light of contentions in the report of the Special Rapporteur on torture that ill-treatment is used to extract confessions in most custody facilities, including police and gendarmerie stations, and that it stops once a confession has been signed.³⁴

Article 16

29. In view of the previous concluding observations (para. 26) and of paragraphs 140–144 of the periodic report, please say what steps have been taken to combat and penalize trafficking in persons in general and trafficking in women and children for the purpose of forced labour and sexual exploitation, and to assist victims. Please describe any practical measures adopted to implement the 2005 Act on trafficking in children and any measures in relation to the establishment by the Council of Ministers of the national commission for combating trafficking in children, to which reference is made in paragraph 143 of the report. Have special measures been adopted to prevent the trafficking in particularly vulnerable children from poor and rural areas?³⁵ Having regard to paragraphs 145–150 of the report, please provide statistics on the number of complaints, investigations, prosecutions, convictions and sentences handed down by the courts against perpetrators of these acts in the period 2007–2012.

30. In its previous concluding observations (para. 25), the Committee noted with concern information on reprisals, serious acts of intimidation and threats to which human rights defenders were subjected, especially those who reported acts of torture and ill-treatment. For this reason, please describe the measures adopted to give legitimacy to human rights defenders and their work and to guarantee their safety. Please comment on information to the effect that the Chairman of the National Human Rights Commission has fled the country following threats against him and that he has maintained that the Togolese

³³ CCPR/C/TGO/CO/4, para. 19.

³⁴ A/HRC/7/3/Add.5, para. 48.

³⁵ CRC/C/TGO/CO/3-4, para. 71 (a).

Government published a falsified version of the Commission's report on the events of 2009.

31. Bearing in mind paragraphs 126–128 of the periodic report, please describe the measures taken by the State party to ban corporal punishment in practice and to ensure that this ban is respected in all contexts, in accordance with the Convention, especially in detention centres, including those holding minors,³⁶ schools and in the home.³⁷

Other issues

32. Further to the State party's ratification of the Optional Protocol to the Convention in July 2010, please say what steps have been taken by the follow-up committee³⁸ to set up a national mechanism to conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment or punishment.

33. Please provide up-to-date information on measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these antiterrorism measures have affected human rights safeguards in law and practice. Please describe the relevant training given to law enforcement officers. Please give the number and say what types of sentences have been passed under such legislation and what safeguards and remedies are available to persons subjected to antiterrorist measures in law and in practice. Please state whether any complaints have been made of non-observance of international standards and what the outcome of these complaints has been.

³⁶ A/HRC/7/3/Add.5, para. 59 and A/HRC/13/39/Add.6, paras. 95–96.

³⁷ CRC/C/TGO/CO/3-4, para. 43.

³⁸ CAT/C/TGO/2, paras. 13, 20, 46 and 103–108.