



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

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Summary record of the 1117th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 13 November 2012, at 3 p.m.

Chairperson: Ms. Belmir (Vice-Chairperson)

Contents

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

Second periodic report of Togo (continued)

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In the absence of Mr. Grossman (Chairperson), Ms. Belmir (Vice-Chairperson) took the Chair.

The meeting was called to order at 3 p.m.

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

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

1. *At the invitation of the Chairperson, the delegation of Togo took places at the Committee table.*
2. **Mr. Tchelim** (Togo) said that the definition of torture contained in article 1 of the Convention was precisely reproduced in the draft amended Criminal Code, which had been submitted to the National Assembly for adoption by the end of the year. Currently, domestic courts had no legal instrument for addressing torture and so no cases could be cited. The draft amended Code of Criminal Procedure would be submitted to the Council of Ministers for consideration in due course. Detainees' rights were guaranteed under articles 16 and 17 of the Togolese Constitution and lawyers were accorded access as of the twenty-fourth hour of police custody. Persons showing signs of ill-treatment were refused admittance to detention and sent to health facilities, accompanied by the officials who had delivered them to the detention centre. Existing regulations meant that detention centres were difficult to access; however, persons meeting the relevant requirements were admitted.
3. In line with recommendations of the National Human Rights Commission, reform of the National Intelligence Agency was under way. The Agency no longer maintained cells and no inspections could thus be conducted. Jails, for their part, were governed by military regulations.
4. The Government had embarked on a series of measures to improve conditions of detention, including acceleration of court hearings and appeals; application of alternative measures to detention; the release of 156 detainees; the imminent introduction of mobile hearings; and construction of a new prison in Kpalimé. Compensation for ill-treated detainees was under review and all officials mentioned in the report of the National Human Rights Commission had been sanctioned. The food budget for detainees had been increased and a variety of traditional dishes were now served. One solution to severe overcrowding would be to offer prisoners the option of being transferred to less crowded facilities. Normally, however, they were assigned to centres situated near their families and lawyers. Issues of lighting, ventilation and hygiene were being accorded priority attention. Partners such as the International Committee of the Red Cross (ICRC) and the Office of the High Commissioner of Human Rights (OHCHR) Country Office in Togo were being sought to assist with the establishment of a prison health service. Additional health personnel had already been appointed. The Government was currently studying reports submitted by the National Human Rights Commission and general inspectorate of the judicial and penitentiary administration on two recent visits to detention centres. The cells in the Kara camp, designed to meet military training needs, had now been enlarged. The case of Captain Lambert Adjinon was known to the health authorities and his medical condition was being monitored.
5. The National Human Rights Commission was the designated National Preventive Mechanism (NPM) to combat torture. New members and an interim director had recently been appointed, its statute was being revised and its resources increased in order to enable it to perform its mandate. The safety of Mr. Kounté and his family had been assured.

6. In response to the other questions asked, he could confirm that persons alleging a risk of torture in their country of origin could indeed apply for asylum in Togo, in accordance with Act. No. 2000-019 of 28 December 2000. The police were primarily responsible for security in urban areas, but were sometimes assisted by the gendarmerie. The 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) was not yet in use in Togo. The Government had never obstructed follow-up to recommendations made by the National Human Rights Commission. Pursuant to article 153 of the Constitution, all State bodies were obliged to help the Commission ensure its independence, dignity and effectiveness.

7. Pretrial detention for first offenders could not exceed half the length of the maximum sentence applicable. Female detainees were encouraged to alert the authorities to any abuse and female guards had been recruited. The rise in prison deaths had not been investigated since those deaths had not been deemed suspect by the doctors concerned. The “inhuman and degrading treatment” described in the report of the National Human Rights Commission could not be addressed by the courts since such treatment was not covered by the concept of wilful violence provided for in the existing Criminal Code, which was restrictive in its interpretation. Victims of the events of 2005 and 2009 had, however, been informed of the results of studies and proposals relating to compensation.

8. Copies of the amended Criminal Code and the amended Code of Criminal Procedure would be made available to the Committee once adopted. The public prosecutor was not responsible for imposing sentences on traffickers of children, but he could receive appeals. Consideration was currently being given to accession to the Optional Protocol to the Convention against Torture.

9. The armed forces were responsible for ensuring territorial integrity, the police and gendarmerie for law enforcement. Article 112 of the Code of Criminal Procedure established liberty as the principle and incarceration as the exception.

10. Lomé already possessed a juvenile court and it was planned to establish a similar court within each regional court. There was currently no specialized training in juvenile justice for judges.

11. **Mr. Hamadou** (Togo), providing further clarifications, said that the relevant bill had been submitted to the National Assembly to pave the way for ratification of the International Convention for the Protection of All Persons against Enforced Disappearance. No state of emergency had ever been proclaimed in Togo and there was only one police force, paramilitary in nature. There were no military courts in Togo. The draft amended Code of Criminal Procedure would render the constitutional guarantee of habeas corpus applicable. It would also introduce custodial judges and provide for oral hearings of accused persons prior to detention. The role of the National Intelligence Agency was to provide intelligence. Any accredited human rights entity could make unannounced visits to detention centres. The establishment of a High Commission for Repatriates and Humanitarian Action facilitated the return of Togolese refugees and the protection and repatriation of foreign refugees. The Government planned to halve the number of pretrial detentions by the end of 2012. The prohibition of corporal punishment was not restricted to schools.

12. **Ms. Wilson de Souza** (Togo) added that a workshop would be held to draft a “white paper” on implementation of the recommendations of the Truth, Justice and Reconciliation Commission and exchange experiences of transitional justice programmes with other States. Efforts had been made to raise awareness of the second periodic report of Togo, which had been translated into simplified French as well as national languages. Since torture did not constitute an offence under existing legislation, and since compensation

could only be awarded in order to remedy a judicial error, there could be no compensation for victims of torture. All women had the right to complain of abuse, whether they were imprisoned or not. The female genital mutilation rate had fallen from 12 per cent in 1996 to 2 per cent in 2012.

13. Juveniles were separated from adult detainees. Twenty-five were currently being detained in police cells, including two girls. A bill relating to the reintegration of young offenders had been drafted to guarantee their rights. Various guidance measures instead of detention could be ordered for those offenders, as could cautions and fines. Inter-prisoner violence took the same forms as violence in society as a whole and could be tackled by increasing surveillance measures and applying existing rules.

14. A bill amending the statute of the National Human Rights Commission would be submitted to the Council of Ministers and National Assembly for adoption in due course. Increased resources for the NPM were vital.

15. In order to compensate for the lack of legislation on torture, the Government conducted training and awareness-raising initiatives.

16. **Mr. Bruni** (Country Rapporteur) said that the delegation's responses left him perplexed. Most of the Committee's questions had barely been touched upon and most measures to implement the Convention remained at a theoretical stage – “under consideration” or “under review”. The situation was alarming, since the entire national mechanism for the prohibition of torture depended on a draft amended Criminal Code not yet in force and on a draft amended Code of Criminal Procedure not yet submitted to the Council of Ministers and without which the Criminal Code could not be applied. All Committee members were thus united in recommending the urgent adoption of both codes, as well as the swift implementation of concrete measures to address the total impunity for torture in Togo.

17. The fact that torture was not classified as an offence should not mean that perpetrators could not be brought to justice under some other offence encompassing torture. The Constitution appeared to have no proper force in law, since no legal instruments existed to apply the constitutional prohibition of torture. Togo had been a party to the Convention for 25 years, but had thus far failed to meet its most basic obligations thereunder. The most basic provision of the Convention — criminalization of the act of torture (art. 4) — had yet to be implemented. There was a serious flaw in the system if disciplinary sanctions were applicable to perpetrators of torture, but criminal sanctions were not.

18. Several comments required further explanation. It was not clear whether lawyers were present when detainees were first questioned and whether there was any contact beforehand. Persons presenting clear sequellae of torture should actually be accompanied to health centres by health personnel or third parties, not by the officials responsible for beating them. The reform of the National Intelligence Agency “under way” could take years. There should be regular inspections of intelligence agencies in all countries to ensure that they did not deviate from their mandates.

19. The situation with regard to prison overcrowding was extremely uneven. He could not understand why detainees would actually choose to share a cell designed for one person with three other people when they could be transferred to a less overcrowded prison elsewhere.

20. The Committee needed to know what specific steps the Government was taking to improve prison conditions. “Seeking partnerships” and “studying reports” did not suffice. The National Human Rights Commission was not satisfied with the sporadic nature of its prison visits or with the lack of follow-up accorded to its recommendations. Moreover, he

failed to understand how cells measuring 112 by 90 cm could possibly “meet military training needs”. The fact that the case of Captain Adjinon was “known to the health authorities” and that his medical condition was “being monitored” was also an unacceptable answer; Amnesty International claimed that he was being denied care despite his serious state of health.

21. When he had asked about the role of the National Human Rights Commission as a future National Preventive Mechanism, he had wanted to know about the role envisaged for it and the budget for its planned staffing, logistical, statistical and other requirements.

22. Lastly, he asked the delegation to provide details of remedies for asylum seekers with reference to article 3 of the Convention.

23. **Mr. Gaye** (Country Rapporteur) said that it would be helpful if the delegation could provide concrete information that would enable the Committee to apprehend the reality of the situation in the State party and to understand how the Convention was applied in practice. The fact that torture was not criminalized in the State party, even though it had ratified the Convention some time before, made it difficult to understand how any of the provisions of the Convention were implemented.

24. He asked whether the delegation could point to a specific law or decree governing the geographical distribution of powers of the gendarmerie and the police, since the gendarmerie by all accounts appeared to be omnipresent, both in urban areas and in the surrounding areas.

25. The State party had indicated in the report that it provided human rights training to members of the security forces and other public officials, without reference to the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). However, repeated reports of human rights violations perpetrated by those groups indicated that there was a need to evaluate that training in order to determine whether it was effective on the ground. Had the State party done so?

26. The delegation had indicated in its replies that the maximum period of pretrial detention for first-time offenders was half the maximum anticipated sentence, which seemed scarcely compatible with the principle of the presumption of innocence and was also inconsistent with the sentencing tariff. The pretrial detention arrangements would certainly contribute to prison overcrowding. What was the maximum period of pretrial detention for repeat offenders?

27. The fact that torture was not specifically classified as an offence by law and that the legal machinery was not used meant that perpetrators enjoyed impunity. In other countries where torture was not specifically classified as an offence, alternative descriptions were used to bring prosecutions and prevent impunity. In order to bring cases to court, the State party should develop its classification of offences. Was it doing so? The victims of the events of 2005 and 2009 were being denied justice and some had allegedly brought actions before the Court of Justice of the Economic Community of West African States. In that context, he again asked whether the competent authorities had done all that was needed in accordance with the Convention in that respect?

28. The Committee would like to know whether the Executive promoted a specific, punitive criminal policy through the Office of the Public Prosecutor in order to ensure that child traffickers were prosecuted, convicted and sentenced to the maximum penalties.

29. Was the public aware that the Government had taken the decision to designate the National Human Rights Commission as the NPM? What steps had been taken to put that decision into effect? The fact that the president of the Commission was abroad raised the issue of the security and protection of all members of that body, particularly since it would

become the NPM. If the members of the Commission did not feel secure and could not work with peace of mind, its action could only suffer.

30. Lastly, he endorsed the comments made by Mr. Bruni about budgetary limitations.

31. **Mr. Domah** said he would like to know whether the State party's training programmes were compatible with the provisions of the Convention against Torture as distinct from the International Covenant on Civil and Political Rights. Under the Convention, States parties were required to take not only legislative but also administrative, judicial and other measures to prevent acts of torture. The replies would appear to indicate that the delegation had not interpreted correctly what it was required to do under the Convention.

32. Although torture was classified as an offence under both the Constitution and the Convention, the delegation continued to state that there was no specific law against torture; as a result, people would continue to be subjected to torture or other degrading treatment. The replies of the delegation were not entirely convincing, given the pressing nature of the questions raised.

33. **Mr. Tugushi** said that the funds allocated to the National Human Rights Commission had been reduced at a certain point. Were there plans to increase funding? In addition, what steps had been taken to develop special mechanisms for handling complaints from children?

34. The State party had made progress in reducing female genital mutilation. What steps was it taking to eradicate the practice in the regions where it persisted?

35. Had the State party taken steps to enable the courts to develop a statistical tool to keep track of cases of violence against women? And had it developed clear policies to prioritize the elimination of all forms of violence against children, inter alia by ensuring implementation of the recommendations of the United Nations study on violence against children, with particular attention to gender? What steps were being taken to develop adequate methods of investigating cases of sexual exploitation and to rehabilitate victims, including children?

36. The imprisonment of juveniles and their separation from adults remained a problem, although numerous steps had been taken. Did those steps include training designated police officers in child rights, for example? One juvenile court had been established. Were there plans to establish more? In addition, the Committee would be pleased to hear the delegation's comments on the provision of legal counsel, to children and adults, as it appeared to be available only in the last stages of criminal proceedings, rather than at the outset.

37. **Mr. Mariño Menéndez** said that the delegation had answered some of his questions but he would appreciate further clarification of the role, status and mutual relationship of the police and the gendarmerie. The delegation had indicated that the police was a paramilitary force while the gendarmerie was a military force, but that both acted together in the role of judicial police. It was important to make the distinction, as violations of the rights of civilians by a military corps such as the gendarmerie should properly be tried in military courts. Were violations by soldiers and gendarmes subject to military or civilian justice?

38. Lastly, noting that NGOs enjoyed considerable freedom in making unannounced visits to places of deprivation of liberty, including detention centres, and in reporting on conditions there, he asked how those organizations were accredited and who authorized them to make unannounced visits?

39. **Ms. Sveaass** said she would particularly like to know more about the transitional justice mechanisms that had been mentioned. In addition, the State party's plans for redress were of interest to the Committee because of the possible impunity of military and other personnel who had violated the rights of civilians.

40. Although the courts had not issued decisions on redress because the offence of torture was yet to be classified, the Committee would like to know other ways in which redress could be provided, such as through administrative decisions on compensation or alternative forms of compensation such as health care. Could redress take different forms for persons subjected to torture, ill-treatment, police violence or violations by members of the armed forces?

41. A number of decisions had been handed down in the case of the persons who had formed the Association of Victims against Torture: some had been detained for 24 months, some held in isolation and some held under harsh conditions. Had there been a full investigation of their situations to determine what had happened and how that situation could be redressed?

42. The Committee had taken special note of the information provided on training programmes and planned training. Although the delegation had indicated that the Istanbul Protocol was not fully implemented, it was a useful tool for the effective investigation of claims of torture and ill treatment. Did police and law enforcement personnel, including in the lower ranks, receive instruction in effective investigations? And were they trained in making assessments in the context of acts of violence against women and children?

43. In connection with the report by the Special Rapporteur on torture, Mr. Manfred Nowak, to which the delegation had referred, she wished to know in more detail how investigations into prisoner violence were being dealt with and what action was being taken to prevent it. She asked the delegation to comment on the truth of allegations that measures to prevent suicide in detention included removing detainees' clothing so that they could not hang or otherwise harm themselves.

44. Lastly, she asked whether visits were made to hospitals and alternative care homes for children and persons with disabilities, and whether visiting bodies included accredited NGOs.

45. **The Chairperson**, speaking as a member of the Committee, said she wished to know how the State party intended to reduce the number of pretrial detention centres by the end of 2012. She requested further information on the separation of persons in pretrial detention and convicted prisoners. She asked how the Government ensured that prisoners were held in prisons close to where their family members lived, given that prisons were overcrowded. In addition, the Committee would like to know why the 25 juveniles in detention had been arrested. What offences had they committed?

46. The State party had obligations under the Constitution and the Convention to prohibit and punish torture. Its failure to criminalize and impose penalties for torture not only represented a denial of justice for victims but was a serious rule of law issue. The absence of legal provisions must not be allowed to continue.

47. **Mr. Hamadou** (Togo) said that it was important not to confuse the painful events of 2005 with those of 2009. The delegation had come to the Committee not to defend or apologize for torture, but to benefit from its expertise and for support in rectifying any shortcomings in Togo's implementation of the Convention.

48. The Committee had expressed concern that, as far as torture was concerned, the entire legal system rested on the "famous" draft Criminal Code. The Code was not "famous"; it was the draft amended code of a State party to the Convention, which had been adopted by his Government and would be submitted to the National Assembly. The

Government would take account of the Committee's criticisms of the Code's shortcomings in order to move forward.

49. The Committee had spoken of gaps in the delegation's responses. However, his delegation was being frank. One would not wish on an enemy the events that had taken place in his country and it was difficult to revisit them. His delegation had come to tell the Committee the truth about the situation in Togo. The Government was doing everything in its power to eradicate torture and ill-treatment and sought the Committee's support in that task. It did so in a spirit of openness and in the belief that as a party to the Convention it was a partner. Togo was not the only State party to encounter difficulties with implementation.

50. He assured the Committee that the Constitution did exist and that it dealt with a range of issues, including torture. Although there were gaps in the legislation on torture, action was being taken to fill them. The draft Criminal Code endorsed by the Government would soon be enacted by the National Assembly and every effort would be made to ensure that it would be followed by the amended Code of Criminal Procedure as soon as possible, pursuant to Togo's obligations under the Convention.

51. Lastly, he emphasized that the National Intelligence Agency no longer detained people who had been arrested.

52. **Mr. Tchelim** (Togo) said that he appreciated the Committee's frank and clear remarks. His Government was engaged in an unremitting quest to ensure that its citizens enjoyed their human rights in practice and was therefore open to objective criticisms that would enable it to make progress, bridge gaps and make up for delays. The creation of an effective infrastructure had improved living standards for citizens and the Government was taking concerted action to protect all citizens, without discrimination, including those who did not share its objectives.

53. While his Government had not yet been able to incorporate the Convention into domestic legislation, the relevant bill had been prepared and should be adopted before the end of 2012. In the meantime, every effort was being made to implement the provisions of the Convention in practice. The National Human Rights Commission had conducted an investigation into the events of 2009 and had found that acts of torture had been committed. The Government had taken several measures in that regard, including ordering compensation for the victims. It was aware of the request filed by Captain Adjinon, which was currently under consideration. All the individuals who had claimed to be victims of torture in 2009 had been given the opportunity to have a medical examination in Lomé with the doctor of their choice. Those who so wished were at liberty to seek a second expert opinion.

54. Replying to additional questions, he said that detainees had the right to consult their lawyers before they appeared in court. The draft amended Criminal Code included strict provisions concerning the treatment of victims of torture who were in detention centres. Currently, some detainees who had physical signs of torture were accompanied to medical facilities by police or gendarmerie officers. The National Intelligence Agency no longer maintained detention facilities or had any dealings with the police and preliminary investigations. The Government was aware of the need to adopt the draft amended Criminal Code and Code of Criminal Procedure as soon as possible. All the relevant provisions were ready for adoption by the Council of Ministers.

55. The Government was sometimes frustrated in its efforts to reduce prison overcrowding, particularly as lawyers, relatives and NGOs accused it of "deporting" prisoners from Lomé to the interior, where there were vacant prison places. In summer 2012, over 400 prisoners who had had 4 months or fewer of their sentences remaining had

been granted early release in order to reduce overcrowding. If necessary, a similar approach would be taken at the end of 2012.

56. Judges were being urged to find alternatives to deprivation of liberty for perpetrators of minor offences. In addition, under the draft amended Criminal Code, perpetrators of less serious offences who admitted they had committed an offence from the outset and who posted bail would not be held in pretrial detention. A duty examining judge would be available round the clock to hear such cases and decide whether it was appropriate to allow a person to post bail.

57. Measures were also being taken to expedite the judicial process in order to ensure that people did not spend excessive periods in pretrial detention. Two new prisons would be built in Lomé, one for convicted prisoners, with separate wings for women and children, and one for pretrial detainees. If possible, individual cells would be provided for all detainees. Currently, the judicial process was slow because judges often had to travel to prisons outside their jurisdictions when there was no prison in their jurisdiction. In the future, the plan was to have at least pretrial detention facilities in every jurisdiction. Judges would be provided with sufficient staff and financial resources. The judges in jurisdictions with persons in pretrial detention for more than a year would be held accountable.

58. Prison guards were expected to uphold high standards inside prisons and to treat prisoners with dignity, especially by averting violence. Corruption among prison staff was not tolerated. Staff were expected to uphold all the human rights of prisoners, including their right to adequate food, health and clean and hygienic surroundings. In cooperation with the ICRC, the Government was organizing expert visits to prisons in order to improve standards of cleanliness and hygiene and to ensure adequate health care for all prisoners. That campaign would continue nationwide in 2013. The Government had undertaken to provide two meals a day for all prisoners, prepared from local produce.

59. The Ministry of Justice planned to conduct training in all jurisdictions before the end of 2012 in order to raise awareness among judges, judicial staff, and prison and police officers about the new draft provisions of the Criminal Code and Code of Criminal Procedure, and particularly the criminalization of torture and ill-treatment. It would be made clear that all acts of torture and ill-treatment would be punishable. Once that exercise had been completed, measures would be taken to raise public awareness about the new legislation.

60. The Government would allocate sufficient funds to the National Human Rights Commission to enable it to operate and manage its resources independently. It would also be allocated funds so that it could serve as the NPM, as required by the Optional Protocol to the Convention against Torture. In February 2013, the Government would organize a workshop to facilitate the organization of the NPM within the context of the Commission.

61. The police and the gendarmerie were both law enforcement agencies. The police kept the peace in the towns and cities, while the gendarmerie was in charge of rural areas. The lack of clarity in the distinction between the mandates of the two forces would be resolved under the amended Code of Criminal Procedure. The National Human Rights Commission provided human rights training for police and gendarmerie officers, including on children's and women's rights. Togolese military personnel were engaged in peacekeeping missions in several areas, including Chad, Côte d'Ivoire, Darfur and Haiti; they received thorough human rights training before leaving on such missions.

62. Judges imposed severe penalties for trafficking in children. The Government urged them to do so, but could not interfere in the work of the judiciary, which was independent.

63. The small detention cells to which the Committee had referred were used solely for the detention of members of the armed forces who committed offences. Military personnel

were tried in military courts only for military offences. Any other offences were brought before civil courts.

64. NGOs and other bodies that wished to visit detainees in prison and report on their visit were required to request permission beforehand from the prison authorities.

65. The white paper referred to by his delegation was the Government's plan of action for implementing the recommendations of the Truth, Justice and Reconciliation Commission.

66. **Ms. Wilson de Souza** (Togo) added that the white paper had not yet been finalized. Consultations were currently under way between the Government, the members of the Truth, Justice and Reconciliation Commission and the OHCHR Country Office in Togo. The recommendations of the Truth, Justice and Reconciliation Commission could be found on the Government website, and copies were available to Committee members.

67. The February 2013 workshop to establish the NPM would be held in collaboration with the Atlas of Torture Project and the Association for the Prevention of Torture.

68. Her Government had worked hard to make amends for the previous 15 years and to incorporate the international instruments needed to strengthen democracy and create a culture of peace and respect for human rights. All technical assistance in that regard was welcome, as was cooperation with civil society. She thanked the Committee for its questions and comments.

69. **The Chairperson** thanked the delegation for participating in a fruitful and constructive dialogue.

The meeting rose at 5.55 p.m.