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Summary record of the 3782nd meeting

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Chair: Ms. Pazartzis

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant
(*continued*)

Fifth periodic report of Togo (continued)

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The meeting was called to order at 12.30 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fifth periodic report of Togo (continued) (CCPR/C/TGO/5; CCPR/C/TGO/QPR/5)

1. *At the invitation of the Chair, the delegation of Togo joined the meeting.*
2. **The Chair** invited the delegation to respond to the follow-up questions posed by Committee members at the end of the preceding meeting.
3. **Mr. Agbetomey** (Togo) said that in criminal cases where the prosecution service initiated legal action, the case was initially assigned to an investigating judge who subsequently transferred the case to another court, if appropriate. Such procedures involved no fees. However, the Code of Criminal Procedure also allowed criminal cases to be brought directly before investigating judges by members of the public, in which case a deposit had to be paid to the court before legal action could be initiated.
4. **Ms. Apedoh** (Togo) said that the Criminal Code defined the offences of assault on the physical integrity of women, incest, paedophilia and female genital mutilation.
5. **Mr. Trimua** (Togo) said that, under Togolese law, any organization, including civil society organizations, had the right to claim damages in criminal proceedings, including in cases where they represented or were assisting victims of human rights violations. The National Human Rights Commission thus also benefited from that right and, thanks to the recent reform of the Constitution, it also had the right to bring cases directly before the Constitutional Court, either to challenge the constitutionality of a bill or law or to request the Court's opinion about the constitutionality of specific provisions. However, the Commission's legal right to bring cases was subordinate to the question of the advisability of its actually taking such action. The Commission had to maintain its impartiality in order to perform its role as a body monitoring the work of the justice system. As there were hundreds of civil society organizations defending human rights in Togo, the Commission, as an autonomous body, had considered it preferable to restrict its activities to its main functions.
6. **Ms. Tigroudja**, emphasizing that transitional justice was dependent on the three pillars of truth, justice and reparation, said that it was important for the Committee to know how the State intended to allow victims of the serious human rights violations that had occurred in connection with the presidential elections of 2005 and their families to learn the truth about those crimes and how it intended to provide them with a measure of justice. More specifically, she would appreciate it if the delegation would update the Committee on the status of criminal investigations related to those events and describe the disciplinary and criminal penalties that had been handed down. The Committee would like to know what steps the State party planned to take to ensure that all victims – including the child victims of some of those violations but not limited to victims classified as “vulnerable” – would receive reparation, including compensation.
7. **Mr. Santos Pais** said that the Committee continued to receive disturbing reports of widespread torture perpetrated by security forces and law enforcement personnel while people were being held in police custody and pretrial detention, sometimes with the apparent aim of extracting confessions. In 2014, the Subcommittee on Prevention of Torture had reported that its visiting delegation had found instruments of torture and had determined that torture and ill-treatment were widespread. The Subcommittee had observed that contributing factors to that situation included structural problems, poor conditions of detention, insufficient medical services, tolerance for impunity and a lack of respect for fundamental guarantees. He wished to know whether criminal investigations could be opened while disciplinary procedures in a given case were still ongoing, whether collusion in torture and attempted torture were punished and whether the State party could provide statistics on investigations, convictions and sentencing in cases over the past three years in which law enforcement officers had engaged in torture or the excessive use of force resulting in death.
8. The Committee would like to hear the Government's response to allegations of interference in the work of the National Human Rights Commission related to the case of

Kpatcha Gnassingbé and others and of threats made against the Commission's president, who had fled the country. After the Community Court of Justice of the Economic Community of West African States had issued a decision that had found that Kpatcha Gnassingbé and six others had been subjected to torture, some of the complainants had been released, but three were still incarcerated. He asked when the State party would release them, what measures it had taken to proceed with a criminal investigation into the torture of the seven complainants and of others mentioned in the report of the National Human Rights Commission, what convictions had been issued and what penalties had been imposed on the perpetrators. The Committee would also like to know whether members of the military accused of torture were to be tried in civilian or military courts under the new Code of Military Justice of 2016.

9. Despite the adoption of some measures to improve the treatment of persons deprived of their liberty, there was still no provision for bringing cases before a court to rule on the legality of a person's arrest and detention, to remedy abusive, arbitrary or excessive detention or to arrange for a visit by a physician at the beginning and end of police custody. Both police custody and pretrial detention were reportedly used abusively against children in conflict with the law and political activists. The Committee would like to know whether persons in police custody or pretrial detention had the right to inform a relative or other person of their choice of their situation, to have immediate access to a lawyer and to be brought promptly before a judge. He would also appreciate information on how people deprived of their liberty were able to challenge their arrest and to report ill-treatment and torture, on the frequency of visits to places of detention by prison service inspectors, the police, the gendarmerie and prosecutors, and on investigations into arbitrary or excessive detention, ill-treatment and torture, and the penalties imposed on the perpetrators. The delegation was also invited to inform the Committee about the prospects for the long-awaited adoption of a new code of criminal procedure and to clarify whether the new code would create the position of a liberties and detention judge to monitor investigations of criminal cases.

10. He wished to know whether juveniles were detained only as a last resort, whether the ages of children in detention were verified and whether the limits on the duration of police custody were respected. He would also like to know if the specific situation of pregnant women and women with infants was taken into consideration when they were deprived of their liberty and when the State party planned to establish sentence enforcement courts. According to the Subcommittee on Prevention of Torture, during its visit it had observed that many administrative tasks in places of detention were being performed by the inmates themselves. Was that still the case? The Committee would be interested to learn what steps were being taken to ensure the separation of persons held in pretrial detention from those who had been convicted, when the 2001 Ordinance concerning debt collection by financial institutions would be repealed and what measures had been taken to address prison overcrowding.

11. As the delegation had referred to plans to amend the law adopted in 2013 on legal aid, he would be interested to hear when the new provisions would take effect, what steps the Government planned to take to ensure that all persons, including children in conflict with the law, had access to a lawyer from the time of arrest and during investigations and what measures had been taken to raise public awareness of the availability of legal aid.

12. **Mr. Furuya** said that the Committee would like to hear the delegation's views about the underlying reasons for the tendency of members of the public to resort to mob justice in Togo. The State party had reported a decrease in such incidents in 2016, but the Committee would like to receive updated information on their prevalence over the past five years and on specific measures taken to put a stop to that kind of mob violence. The Committee was concerned by reports of extremely poor prison conditions involving serious overcrowding, poor sanitation, lack of ventilation and the unsatisfactory quality of the food provided. It was also reported that those factors, among others, had resulted in a high death rate among inmates. He invited the State party to provide the Committee with updated information on prison populations and the number of inmates who had died while incarcerated over the past five years. Information would also be appreciated on efforts to improve sanitation and reduce overcrowding in prisons, including steps to protect prisoners against the coronavirus disease (COVID-19), and on the number of prisoners' complaints received by the authorities and their response to them.

13. He was aware that certain measures had been taken to combat child labour in specific settings. However, the Special Rapporteur on contemporary forms of slavery had visited Togo in 2019 and had expressed concern that the resources given to labour inspectors were insufficient to enable them to stop the practice. The Committee would appreciate more detailed information on specific measures to support community organizations working to put an end to child labour, on the effectiveness of the monitoring and inspection system and on the practical effectiveness of the law passed in 2020 that prohibited the worst forms of child labour and made penalties for the use of child labour more stringent. He invited the delegation to provide updated statistics on reports of human trafficking, information on legislation currently under consideration to establish a national committee on trafficking in persons and the Government's position regarding the possibility of adopting a new national action plan or strategy to combat trafficking, as the existing one had not been updated since 2008.

The meeting was suspended at 1.05 p.m. and resumed at 1.20 p.m.

14. **Mr. Idrissou** (Togo) said that all detainees were informed of their rights and were given the opportunity to contact their family, to consult a lawyer and to be examined by the prison doctor or a private doctor. Foreign detainees were given the opportunity to contact a diplomatic representative of their country of origin.

15. There had been 46 deaths in custody in 2020, 23 in 2019 and 34 in 2018. The main causes of death included malaria, respiratory infections and HIV/AIDS. The prison population totalled approximately 4,800 persons. Pretrial detainees accounted for around 40 per cent of all prisoners. There were two pregnant women currently in prison, and efforts were being made to ensure that their cases were handled promptly. Children in conflict with the law were held in appropriate conditions and their cases were dealt with as quickly as possible.

16. Following the outbreak of the COVID-19 pandemic, prisoners had been informed of the situation and had been given instructions as to how to minimize their risk of infection. Medical and cleaning supplies had been distributed, and all prisoners had been required to undergo a polymerase chain reaction (PCR) test. So far, 75 per cent of prisoners had been vaccinated against the virus.

17. Prisoners could report violations of their rights to the director of the prison authorities, the prosecutor or the investigating judge in charge of their case. Any complaints requiring further investigation were dealt with by the relevant investigating judge. The draft revised Code of Criminal Procedure provided for the appointment of a liberties and detention judge and a judge responsible for the execution of sentences; the work undertaken by those judges should lead to a reduction in the prison population.

18. **Mr. Meleou** (Togo) said that the opening of a disciplinary investigation into allegations of torture or ill-treatment of persons held in police custody did not preclude the initiation of criminal proceedings in connection with the same allegations. Although there was no information available on the number of police officers convicted of acts of torture in recent years, he could confirm that some officers had faced disciplinary sanctions for other kinds of misconduct. The inspectorates of the national police and the gendarmerie had been strengthened. Their work was overseen by the Inspectorate General of the Security Services. There were several toll-free helplines for reporting threatening behaviour on the part of law enforcement officers. Awareness-raising campaigns had been conducted to encourage the public to make use of those helplines. The heads of the various security services met on a weekly basis, and representatives of civil society organizations were sometimes invited to those meetings and encouraged to express their concerns. Press briefings were held regularly to inform the public of any sanctions imposed on law enforcement officers for human rights violations, with the aim being to deter other officers from engaging in misconduct.

19. All arrested persons were notified of the charges against them before they were brought before the courts. They were shown a police report setting out the facts of the case and could refuse to sign it if they disagreed with the content. If they did not speak French, the police report was translated into a language that they could understand.

20. A total of 20 cases of mob justice had been recorded in 2020, compared with 26 in 2019 and 31 in 2018. The authorities were tackling the issue of mob justice through a combination of preventive and repressive measures. The security forces had been instructed to invest time and effort in the difficult task of investigating acts of mob justice and identifying the perpetrators. The Minister of Security and Civil Protection had conducted visits to several areas of the country to encourage people to trust the security forces and to report offences instead of taking it upon themselves to punish the perpetrators.

21. **Ms. Apedoh** (Togo) said that, between 2016 and 2020, a total of 252 children had been identified as victims of cross-border trafficking and had been provided with assistance. The Ministry for Social Welfare and the Advancement of Women had allocated a portion of its budget to dealing with trafficking in children. The new Criminal Code established trafficking in persons as a criminal offence and the involvement of children as an aggravating circumstance. Awareness-raising campaigns on the issue of trafficking in children had been conducted throughout the country. A bilateral agreement on the subject had been signed with Gabon in 2018, and a tripartite agreement on the protection of child migrants had been signed with Benin and Burkina Faso in 2019. A decree on the establishment of a commission to combat trafficking in persons had been drafted and was being considered by the Council of Ministers. Between 2016 and 2018, a total of 164 cases of trafficking in persons had been reported; of those, 129 had been investigated and 46 had led to a conviction.

22. The hazardous child labour list had been expanded to include new forms of labour, such as scrap metal collection. Labour inspectors received training on the issue of child labour and monitored compliance with the relevant legislation. An action plan on combating the worst forms of child labour had been adopted and disseminated through an awareness-raising campaign that had reached around 10,000 people.

23. **Mr. Trimua** (Togo) said that some of the Committee's concerns had become less topical since it had considered the previous report a decade earlier. For example, the reconciliation process launched by the Truth, Justice and Reconciliation Commission had advanced considerably during that time. For three years, the Commission had listened to the testimony of victims and alleged perpetrators and had issued a report and a list of victims. The "truth" component of the process was therefore complete. The "justice" pillar, on the other hand, entailed recourse to both restorative justice and criminal justice. Taking into account the country's history and the goal of national reconciliation, the Government had opted to prioritize the former and had decided not to set up an extensive criminal justice apparatus to hear cases relating to the period under consideration. That did not mean that it ruled out criminal prosecutions. Victims who were dissatisfied with the reconciliation process were entitled to institute criminal proceedings before the ordinary courts, and indeed several complaints had been filed since 2012. However, complainants faced a significant obstacle inasmuch as, in most instances, the perpetrators of the violations had not been identified. The Government had assisted certain associations in their efforts to identify perpetrators but had met with little success. Consequently, it had decided to focus its strategy on ensuring non-repetition.

24. Regarding the case of Mr. Kpatcha Gnassingbé and the plot to undermine State security, he recalled that most of the detainees in that case had been released and that three persons, including Mr. Gnassingbé, remained in detention. It was clear that a media campaign – timed to coincide with the State party's dialogue with the Committee – had been launched with the goal of securing Mr. Gnassingbé's release. The detainees were legally entitled to apply for parole or presidential pardon, and any such applications would be duly considered by the relevant authorities.

25. The Code of Criminal Procedure dated from the 1980s and might therefore be out of step with the Constitution of 1992, which enshrined the rights and freedoms set forth in the Covenant. Even in the absence of a liberties and detention judge, there was nothing to prevent persons who believed that they had been unlawfully detained, or organizations representing them, from challenging their detention before the courts. A reform of the Code of Criminal Procedure had been launched in 2015 but had been delayed by complications arising from changes in the organization of the judiciary. The Government would be willing to share the preliminary draft of the new code with the Committee so that it might provide input that

would help to ensure that the legislation was in conformity with the international obligations of Togo.

26. **Mr. Furuya** said that he would be grateful for details of any measures taken to improve sanitation and food quality in the country's prisons, given that several detainees had died from malaria or other preventable diseases. Moreover, as the Committee had been informed that the Government had suspended prison monitoring visits by non-governmental organizations (NGOs) in order to help prevent the spread of COVID-19, he wished to know what measures were currently being taken by domestic and international organizations to monitor prison conditions and what the prospects were for the resumption of their prison visits. Lastly, he wished to know what specific measures the State party had taken to grant residence permits to child and adult victims of trafficking.

27. **Ms. Tigroudja** said that she was concerned that no criminal proceedings had been brought against persons responsible for the serious human rights violations committed during and after the presidential elections of 2005. She recalled that, under the Covenant, compensation alone was insufficient and must be accompanied by investigations aimed at identifying the perpetrators. According to the Committee's jurisprudence, such investigations should be opened at the initiative of the State, rather than of the victims' families.

28. **Mr. Santos Pais** said that the Committee had received reports indicating that torture and ill-treatment continued to be a problem in Togo. He was concerned, therefore, that the State party had failed to provide statistics on prosecutions and convictions. He wished to stress that the Committee was interested, not in the names of those responsible, but in the number of persons who had been brought before disciplinary panels or criminal courts, the nature of the charges against them and the penalties applied.

29. Concerning the reconciliation process, he was perplexed by the argument that it was difficult to bring criminal proceedings in cases where the perpetrator had not been identified. In most jurisdictions, prosecutions were brought against persons unknown precisely in order to find out who was responsible for the criminal acts in question.

30. The Committee would welcome further information on the Code of Military Justice of 2016, including whether military personnel accused of torture were tried before the military or the civilian courts. It would also appreciate learning of examples, which might be submitted in writing, of investigations conducted into allegations of arbitrary detention and their outcomes.

31. In view of the fact that the Subcommittee on Prevention of Torture had observed in its 2014 visit report ([CAT/OP/TGO/1](#)) that discipline and disciplinary sanctions were meted out by the prisoners themselves, he wished to know whether prison officials had since assumed responsibility for disciplinary matters. Lastly, he would like to know whether children in conflict with the law had access to a lawyer from the outset of their detention.

32. **Mr. Trimua** (Togo) said that the Government's decision to give priority to restorative justice did not mean that it had turned its back on criminal investigations. The decision not to set up an extensive criminal justice apparatus reflected, above all, a desire to repair the country's social fabric. Criminal complaints brought by victims and associations continued to be investigated, even if those investigations were complex and protracted due to the context in which the acts had been committed and the difficulty of obtaining evidence.

33. Cases of torture reported since 2015 were dealt with under the Criminal Code adopted in that year, which defined the offence and the penalties it carried. Cases preceding 2015 were treated as other offences under the laws in force at the time. Article 15 of the Covenant provided that persons could not be charged retroactively for acts or omissions that did not constitute a criminal offence at the time they were committed. The delegation did not have statistics on prosecutions and convictions for torture and ill-treatment at its disposal, but the State party would transmit that information to the Committee once it had been collected.

34. The Code of Military Justice of 2016, which had been published online, established the jurisdiction of the military courts and set out specific offences applying to military personnel. The Code had yet to be fully implemented, as problems had emerged in relation to the training and appointment of military justice officials. Until those problems had been resolved, the civilian courts remained competent, on a temporary basis, to hear cases

involving offences committed by security and law enforcement officers in the exercise of their functions.

35. **Mr. Meleou** (Togo) said that children in conflict with the law indeed had access to a lawyer from the outset of their detention. Sanitary conditions in the country's prisons had recently improved thanks to the adoption of various measures, including the establishment of hygiene and sanitation committees led by the prisoners themselves. Since 2020, detainees were provided with two meals a day, and the quality of the food had much improved. Monitoring visits to prisons by NGOs and other stakeholders had been suspended since April 2020 on account of the public health crisis. Those organizations understood the reasons for the suspension and had not complained about denial of access.

36. Regarding the question of discipline, prison authorities were aware that prisoners had organized themselves according to a hierarchy, and it was possible that prisoners might subject each other to different kinds of violence without the authorities' knowledge. However, it was not appropriate for associations or NGOs to equate such violence with the disciplinary sanctions that were imposed on detainees.

37. **Ms. Apedoh** (Togo) said that child victims of trafficking were placed in reception centres while the country's social services took steps to return them to their countries of origin, including by facilitating their access to travel documents. Adult victims could also be repatriated if they so wished. If they preferred to remain in Togo, the social service agencies helped them to obtain residence documents.

38. **Mr. Trimua** (Togo) said that organizations that conducted prison monitoring visits had been given the opportunity to participate in the country's COVID-19 vaccination programme. As a result, it should be safe for them to resume their visits soon, provided that their staff had been vaccinated and issued with a vaccination certificate.

The meeting rose at 2.30 p.m.