



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

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COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 712th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 May 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.712/Add.1.

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 7) (*continued*)

Initial report of Togo (CAT/C/5/Add.33) (*continued*)

1. *At the invitation of the Chairperson, the members of the delegation of Togo took places at the Committee table.*

2. Ms. ACQUETÉY (Togo) thanked the Committee for its remarks, encouragements and questions to the delegation during the examination of her country's report and hoped that a lasting dialogue would be established between the Committee and Togo so as to enable it to combat torture and inhuman and degrading treatment more effectively. Reverting to the question put by Mr. Camara on the attitude adopted in cases of conflict between the provisions of a treaty to which Togo was party and those of its Constitution, she said that, when an international instrument contained a clause contrary to the Constitution, article 139 of the latter, under which the international instrument in question could be ratified or approved only after revision of the Constitution, applied. As for the need to define torture in domestic positive law, it had already been noted that the provisions of the Convention against Torture, in particular those relating to the definition and punishment of torture, would be incorporated into the country's domestic positive law by the National Commission for the Modernization of Legislation set up under the national programme to modernize the justice system. With regard to the procedure of handing over an extradited person from one police force to another, outside any judicial procedure, she acknowledged that that practice did not offer sufficient safeguards to the person to be extradited. However, article 23 of the 1992 Constitution, which stipulated that the person to be extradited must be able to appear before a judicial body in order to plead his or her cause, prevailed over the 1984 agreements under which the aforementioned practice had been established.

3. A written response would be provided subsequently to the Committee's concerns regarding the agreement signed by Togo with the United States of America and the case of former President Patassé. On the subject of the events that had occurred in the wake of the April 2005 elections, the Government, wishing to establish the true facts, had set up a special independent national commission of inquiry, which had handed in its report. The Government had also received the first report of two international fact-finding missions and was awaiting the second. A review of the conclusions of those reports had been placed on the agenda of the ongoing national political dialogue in the country, which should help to lay out the line of action to be followed to solve the problems linked to that phase in the history of Togo.

4. With regard to the length of time required to redraft the texts of domestic positive law, the National Commission for the Modernization of Legislation, established on 5 May 2006, had been assigned the task, through its subcommission on human rights, of bringing domestic law into line with the international instruments to which Togo was party. Togo hoped that the reform would be completed within a reasonable time frame with the support of its development partners.

5. Responding to the question on the measures adopted to eradicate torture in places of detention, she said that the Government had signed, on 14 March 2006, a convention with the International Committee of the Red Cross (ICRC) under which ICRC could make unannounced visits to places of detention in Togo in order to

monitor the conditions under which persons were held there. In addition, the Ministry of Justice ensured that access to prisons and other detention facilities was arranged for associations and NGOs. As for the training programme for prison staff, it focused on human rights and, more specifically, on custodial rules for detainees, as well as on the prohibition of torture. That programme, just recently put in place, was carried out by experts under the emergency programme to support the prison sector (PAUSEP).

6. Concerning the national plan to combat child trafficking, the Act of 3 August 2005 on the definition, prevention and punishment of trafficking in children contained provisions for the establishment of a commission to combat that scourge. In order to step up efforts to that end, the Government was currently considering a preliminary bill establishing a national commission to combat trafficking in persons.

7. On the question of the right of detainees to receive medical care, a distinction needed to be made between the right to medical examination, which was exercised when a person was placed in temporary detention, and the right to medical care during pretrial detention or pending execution of sentence. In the former case, the person in temporary detention or a member of that person's family could request a medical examination. In the latter case, medical care could be provided without the detainee requesting it. However, it was true that problems arose in both cases, to which the National Commission for the Modernization of Legislation was seeking solutions.

8. With regard to the passive approach adopted by the defence lawyers of suspects, mentioned in paragraph 319 of the report, she explained that owing to the absence of lawyers during the judicial examination, evidence for the defence was not presented and the procedure, instead of leading to a dismissal of the case, ended with an order of committal for trial.

9. The investigations into the April 2005 events had been entrusted to an independent special commission which had already delivered its report. The Prime Minister's circular on the halting of prosecutions was aimed mainly at procedures instituted or to be instituted against persons who had taken refuge in neighbouring countries. It had been adopted at the request of the Office of the High Commissioner for Refugees, who had made it a *sine qua non* condition for the signing of the tripartite agreement to allow refugees to return to the country.

10. As for the measures of prolonged pretrial detention, she noted that pretrial detention was governed by articles 112 to 115 of the Code of Criminal Procedure and constituted an exceptional measure. When it was demanded, it must not exceed 10 days for offenders subject to under two years' imprisonment and must not be more than half the maximum penalty if that penalty was more than two years' imprisonment. In the case of juveniles, articles 455, 456 and 475 of the Code of Criminal Procedure applied; however, the prescribed time limits were not always observed in practice. In order to remedy that problem, the Government was considering the possibility of appointing a visiting magistrate who would be responsible for monitoring the lawfulness of detention measures. Furthermore, juveniles to be placed in detention were henceforth transferred to the juvenile quarters or to the brigade for juveniles and vulnerable persons. In accordance with the commitments it had given to the European Union, Togo placed no restriction on freedom to visit places of detention. NGOs that so requested were consequently completely free to visit the detention facility of their choice.

11. Concerning decisions on compensation for injury caused by acts of torture, no related case law existed in Togo. However, such decisions would be able to be taken upon the incorporation in the near future in domestic law of the definition of torture in accordance with article 1 of the Convention and provisions for its criminalization. As for the invalidity of statements made under torture, the new texts would contain explicit provisions on the conditions governing the validity of statements made by arrested persons. Accordingly, any statement made under torture would be declared void.

12. With regard to the suppression of corporal punishment, violence, ill-treatment and corporal punishment inflicted on children were punishable under the Criminal Code by up to five years' imprisonment. In addition, the order of 7 May 1975 on the reform of formal education prohibited corporal punishment in schools. On the question of the maintenance of certain customs, it was true that degrading rites of widowhood continued to exist in some parts of the country. The interministerial committee set up to review and reformulate certain provisions of the Individuals and Family Code had recommended that such practices should be abolished. Concerning the supervision of prisons, the main problem was the lack of women warders. The duties of warders were currently assumed by paramilitary personnel. The emergency programme to support the prison sector, carried out with the assistance of the United Nations Development Programme, provided for the establishment of a civil prison warder service under the authority of the Ministry of Justice which would include women. Training on respect for the rights of detained and convicted persons and on the prohibition of torture also formed part of the programme, which had already made it possible to renovate 12 civil prisons and increase the intake capacity of Lomé prison. Other initiatives included the establishment of juvenile quarters in Sekode prison.

13. Military justice, provided for by Act No. 81-5 of 30 March 1981, had never been operational. The Government did not have nor would it tolerate a pro-governmental militia. However, some political parties used their activists as a security service for their leaders. On the question of measures taken to facilitate the return of refugees, an Office of High Commissioner for Refugees and Humanitarian Action had been established on 7 June 2005 with the primary task of gathering information on the situation of Togolese refugees and displaced persons within the country, determine the causes of their displacement, propose to the authorities durable solutions to ensure their repatriation and safety, and help repatriated persons to be reintegrated into Togolese society. A plan of action for the return of refugees and displaced persons had subsequently been set up, with inputs from an international specialist, so as to ensure the best possible safety conditions for returning refugees; it had been officially launched on 2 December 2005. On 2 February 2006, the Governments of Benin and Togo had met with the regional representative of the Office of the United Nations High Commissioner for Refugees in Benin to assess the measures taken by the Togolese authorities and negotiate agreements between the three parties with a view to the rapid repatriation of refugees. Reception committees had been established and would soon be fielded to areas where large numbers of the population had left the country. On 10 March 2006, the Prime Minister had signed a circular letter instructing law-enforcement services, public prosecutors and judicial police officials to cease all prosecutions against refugees who had committed offences closely linked to the 2005 election. In the previous month, advertisements had been regularly broadcast

on the steps taken by the Togolese authorities to encourage refugees to return. The refugees issue had also been included in the agenda of the ongoing political dialogue in Lomé.

14. On the question of the freedom of action of human rights defenders, the State guaranteed the free exercise of activities by NGOs and associations for the defence and protection of human rights throughout the territory. NGOs and associations were set up and organized freely and could, on request, have access to detention facilities of their choice. Contrary to what had been suggested, the headquarters of the Togolese League of Human Rights (LTDH) had never been attacked by any militia group. An argument had simply broken out in May 2005 when the League had presented its report in public. As for a possible visit to Togo by the Special Rapporteur on the situation of human rights defenders, Ms. Hina Jilani, she had been invited by the Togolese Government on 15 March 2005 but had not yet responded to the invitation. With regard to the journalists detained in Togo in 2003, no legal action had been taken against the alleged perpetrators of the acts of torture committed during their detention and, consequently, no penalty had been applied.

15. The National Human Rights Commission was an independent institution that was not subjected to any influence from the Government, in respect either of its membership or of its operation. It was composed of judges, lawyers, representatives of human rights associations, women's associations and children's rights associations, trade unionists, professors of law and representatives of religions. It had its own independent budget and the right both to bring a case before the courts and to visit detention facilities.

16. The information requested by the Committee on the Djikosoko case would be sent to it upon the delegation's return to Togo. Reverting to the question of incommunicado detention, she reaffirmed that, in accordance with the Government's prohibition of that practice, it was no longer applied in any detention facility in Togo. Detention facilities were all open to human rights organizations and associations. As for facts relating to the April 2005 elections, they were on the agenda of the national political dialogue.

17. The training programmes assessment was based on a review of the conduct of law-enforcement and security officials on the ground during law and order operations or judicial interrogation procedures, and on temporary detention conditions and the reduction in the number of complaints by detainees. NGOs involved in the training included LTDH, Women in Law and Development in Africa (WILDAF), the World Association for Orphans (WAO Africa) and the Togo Plan, which had trained respectively prison staff, judges and police officers. As for the woman held in detention since 1998, she had been released. On the question of time limits on temporary detention, she pointed out that the period of temporary detention could not legally exceed eight days. The office of visiting magistrate had been established to prevent any abuses in that area, particularly in the case of juveniles. Concerning the extradition of a person guilty of an act of torture who would be in danger of being subjected to torture in the country of return, Togo, being a party to the Convention against Torture, would never accede to a request for extradition in such circumstances, even if the person concerned had himself committed acts of torture. However, in order for that person not to go unpunished, Togo could, failing prosecution, extradite the person to a third country whose courts had universal jurisdiction.

18. Mr. CAMARA, Country Rapporteur, thanked the delegation for the care given to its replies; he looked forward to examining the additional information that it would be sending to the Committee at a later date. In its concluding observations, the Committee would express its concerns and make recommendations to enable the State party to discharge more fully its obligations under the Convention.

19. Mr. MARIÑO MENÉNDEZ, Alternate Country Rapporteur, reverting to the question of access by human rights defenders to detention facilities, said that he had been told by Togolese non-governmental organizations that they had not been very involved in the Government's activities aimed at improving the human rights situation in detention facilities. It would be interesting to know whether the plan of action mentioned by the delegation provided for the participation of Togolese NGOs such as the Togolese League of Human Rights in visits to places of detention. Furthermore, the delegation had suggested that medical care was not provided automatically to detainees but only on their request. Fuller information would be appreciated. He was also concerned about the fact that statements obtained through torture were not automatically declared void but only if the offence alleged to have been committed was not proved. The delegation might clarify those points in the written replies that it would be submitting subsequently to the Committee.

20. Ms. GAER, supported by the Chairperson, encouraged the Delegation to respond directly to the largest possible number of questions so that the Committee's conclusions and recommendations could be to the point and reflect the information provided to it. In accordance with established procedure, the Committee would send its conclusions and recommendations to the State party with the request that it inform the Committee within a year of the steps taken to implement some of them. As Rapporteur for follow-up to conclusions and recommendations, she considered that follow-up should focus on the small number of specific points chosen by the Committee without the addition of replies to the many questions that had not been able to be resolved during the examination of the report.

21. Regarding NGOs' contribution to the preparation of the report, further information would be appreciated about the modes of participation of the NGOs mentioned at the end of the report. On the matter of the access of detained persons to a doctor or lawyer, the English version of the report seemed to suggest that such access was not guaranteed; however, that might be a problem of translation. It would therefore be desirable for the delegation to make it clear whether such access was subject to time limits or dependent on particular circumstances. Lastly, concerning the maintenance of certain rites, including those of widowhood, it would be useful to know whether the Government had taken steps to prohibit them.

22. Ms. BELMIR, reverting to the question of juvenile justice and time limits on temporary detention, noted that the gaps noted in those regards, although particularly in evidence during the 2005 events, were not however the product of circumstances. They reflected real dysfunctions in the justice system which must be remedied.

23. Ms. SVEAASS, alluding to the case of the woman detained since 1998 who had recently been released, asked whether there had been an investigation into the circumstances leading to that detention and whether measures had been taken to guard against the recurrence of such cases. On the refugee issue, she inquired about the present situation and the steps taken to register asylum-seekers and ensure the safety of vulnerable persons, particularly women and children.

24. Mr. GROSSMAN, drawing attention to the symbolic aspect of compensation, asked whether the State party planned budget appropriations to compensate victims. The fight against impunity had a key role in prevention, which was itself an obligation under the Convention, and a mechanism for compensation would have an important function in that regard.

25. The CHAIRPERSON, taking up the questions of Ms. Sveaass regarding the woman detained since 1998, asked whether the culprits had been punished.

26. Ms. ACOUETEY (Togo), referring to the use of torture in interrogations, said that a confession obtained by such means had no legal value.

27. Mr. KODJO (Togo) explained that, even though there was no explicit formal provision to that effect, as a general principle, any judge who found a statement to have been obtained under torture must declare it invalid. However, the State party realized that it would be useful to codify that principle and was planning to do so.

28. Regarding the action of non-governmental organizations, he said that, as the person who had just recently been placed in charge of prisons, he had granted several NGOs access to detention facilities and that he welcomed their recommendations for the improvement of prison conditions. He stressed that detention centres were governed by regulations and regretted the mistrust still affecting relations between NGOs and the Government; he stood ready to issue further authorizations.

29. With regard to medical care, detained persons or their family could request a medical examination, following which a doctor was sent for by the prosecutor. He recognized the importance of a systematic medical examination in the context of torture prevention and believed that the Government would be taking legislative measures to that end. As for persons in pretrial detention, they were under the responsibility of the prison doctor, who intervened on request.

30. Shortcomings in the management of temporary detention facilities were due to institutional weaknesses. The office of visiting magistrate, for instance, had only just recently been established. As for the woman detained since 1998, in view of the importance attached to that matter by the Committee, he preferred not to offer it incomplete information; he would forward to it the entire file upon his return to his country.

31. Ms. ACOUETEY (Togo), commenting on the persistence of degrading customs, said that the interministerial committee on the redrafting of the Individuals and Family Code had actually been set up to review such practices and that it had recommended their abolition. Female genital mutilation was already prohibited and that would also soon be true of rites of widowhood. In any case, many women were already refusing to submit to rites of widowhood, in particular for religious reasons.

32. Ms. PABOZI (Togo), addressing the question of the role of NGOs in the preparation of the report, said the State party had benefited from the assistance of the Togolese League of Human Rights, the National Human Rights Commission and the experts mentioned in the report. They had not been directly involved in the drafting but had provided a god deal of documentation and taken part in numerous consultations. In addition, the experts had reviewed the report and proposed improvements.

33. Ms. ACOUETÉY (Togo), responding to a question on human rights defenders, said that the Togolese League of Human Rights worked in partnership with her ministry. It was officially recognized and its representatives had been received by the Prime Minister. It could now carry out awareness-raising activities throughout the territory and it was expected to contribute to the training of security officials. It visited detention facilities and notified the Ministry of Justice of cases of human rights violations. Moreover, the League and the Ministry had decided to carry out a joint plan of action.

34. Mr. AWA (Togo), responding to a question on asylum-seekers, said that the National Refugee Commission, an interministerial body which he chaired, examined applications for asylum. Most asylum-seekers were concerned less about protection than obtaining a status. However, charitable institutions helped them to become integrated, in particular by providing them where necessary with legal assistance and ensuring the enrolment of their children in school. The situation was satisfactory overall, marked recently by the establishment of an advisory committee on refugees, which received complaints from refugees and transmitted them to the Cotonou office of the United Nations High Commissioner for Refugees.

35. Mr. ESSO (Togo) recalled that Togo was now driven by a political will to undertake reform in order to strengthen democracy and consolidate institutions and that it had to that end initiated a process of national political dialogue. The presence of a member of the opposition at the head of the office responsible for dialogue attested to the positive new mood in the country. The purpose of national dialogue was to strengthen democracy, promote reconciliation and restore trust. As for the compensation of victims of violence, as soon as a decision had been taken on the subject, the authorities would make the necessary budgetary arrangements.

36. Ms. ACOUETÉY (Togo) stressed that the current Government had undertaken to fight impunity. The United Nations and the independent national commission of inquiry had determined responsibilities and defined measures against impunity. However, the two parties in place in Togo saw the responsibilities as being shared and sometimes collective. Before taking concrete measures, the State party needed to conduct a criminal investigation and determine individual responsibilities. However, it could only do following the national dialogue. The culture of impunity would no longer be accepted in Togo; such was the will of the authorities and of the entire population.

37. Mr. AWAW (Togo), responding to a question about a police superintendent, said that Ms. Acouetey could confirm that the person in question had been suspended for six months and that his request to be reinstated had recently been approved by the Minister of Security.

38. The CHAIRPERSON thanked the delegation of Togo. He commended the quality of the dialogue initiated with the State party and assured it of the Committee's support for the reforms undertaken. He recommended that the State party should seek the assistance of the Office of the United Nations Higher Commissioner for Human Rights, which regarded Togo as a priority and was envisaging the establishment of an office there.

39. *The delegation of Togo withdrew.*

The first part (public) of the meeting rose at 4.25 p.m.