



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

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**Committee against Torture**  
**Forty-ninth session**

**Summary record of the 1113th meeting**

Held at the Palais Wilson, Geneva, on Friday, 9 November 2012, at 3 p.m.

*Chairperson:* Mr. Grossman

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*The meeting was called to order at 3.05 p.m.*

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

*Initial report of Gabon (continued) (CAT/C/GAB/1)*

1. *At the invitation of the Chairperson, the delegation of Gabon took places at the Committee table.*
2. **Mr. Bounguendza** (Gabon) said that national legislation was in conformity with the definition of torture contained in article 1 of the Convention, although it contained no definition worded in identical terms. Torture was prohibited under the Constitution and under articles 228 and 253 of the Criminal Code. His delegation would transmit to the Government the Committee's recommendation that the Constitution should be reformulated to reflect the Convention. Attempts to perpetrate torture and the invocation of orders from a superior as justification for torture were prosecuted.
3. Under articles 46 and 47 of the Code of Criminal Procedure, a complaint lodged with the competent court by anyone who suffered injury as a result of an offence would be transmitted to the Office of the Public Prosecutor for action. Article 5 of the Convention could be implemented through the provisions of articles 39 and 514 et seq. of the Code. Under article 39, public prosecutors were competent to prosecute the perpetrators of torture, even where the initial arrest was not on suspicion of torture. Under articles 514 et seq., they could prosecute a Gabonese national in Gabon even when the act in question had been committed abroad. In addition, threatening violence was classified as an offence under article 242 of the Criminal Code.
4. Mental torture was a broad and diverse category that could include acts such as offences against children, forced begging and vagrancy, slander and blackmail. A body of legislation existed to protect human dignity from such acts, for which penalties were imposed, including in cases where parents had not enrolled their children in school as required by law.
5. While the Convention was not often formally invoked in the courts, it could be, as could article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights insofar as they related to torture and the Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Civil Code and the Criminal Code were being reviewed and updated in various respects to take account of a broad range of essential principles. Under the Criminal Code penalties were imposed on perpetrators, accomplices and instigators in torture cases and on persons who abused their authority by ordering torture; subordinates were authorized to disobey illegal orders. It was planned to incorporate the Palermo Protocol in the Criminal Code. A study to be conducted with UNICEF with a view to bringing national legislation into line with international law on the rights of the child was imminent. The Rome Statute of the International Criminal Court had been incorporated in the new Code of Criminal Procedure since 2010. The death penalty had been abolished by Act No. 3/2010 and had been replaced by life imprisonment.
6. Various steps were being taken to improve the functioning of the judiciary inter alia by amending and updating current legislation, training qualified staff in the Legal Service Training College and increasing the focus on human rights in criminal investigations and prosecutions. In addition, a number of structural reforms had been introduced in order to make the justice system more independent and effective. Those reforms would reduce the corruption, unwarranted granting of parole, removal of files and other shortcomings mentioned in the report.

7. Women played a significant role in the judiciary: the President of the Constitutional Court and the Public Prosecutor were both women. Besides the Association of Judges, there were trade unions for court clerks and magistrates.
8. The judiciary had been reorganized by Act No. 7/94. The separation of powers was enshrined in the Constitution, and the independence of judges was enshrined in Act No. 12/94 relating to the status of judges.
9. His Government had made enormous efforts in the area of gender equality. About 40 per cent of the country's 500 judges were women, some of whom occupied senior positions.
10. In order to address the negative impact of understaffing on the speed with which cases were processed, particularly in Libreville, new judges were being trained at the Legal Service Training College, in partnership with its French counterpart in Bordeaux.
11. Gabon had inherited its legal system from the French colonial system, which placed the Office of the Public Prosecutor under the Ministry of Justice. Judges, including investigating judges, were entirely independent. They had security of tenure, which ensured that they remained independent. Corrupt judges were a minority and were brought before the Supreme Council of Justice, which imposed penalties, including dismissal, on those who tarnished the reputation of the judiciary.
12. The Public Prosecutor's Office had complete discretion in investigations and prosecutions and was responsible for ordering arrests as appropriate. Failure to respect the 48-hour limit for police custody and pretrial detention did occur on occasion but was not common and was usually due to understaffing or liaison difficulties.
13. Torture was strictly prohibited in Gabon; confessions and evidence extracted under torture were inadmissible in court. Defendants, knowing that to be the case, commonly invoked torture even when they had freely confessed to having committed an offence.
14. Legal aid was available: the president of the court appointed a lawyer from the Bar Association list published in every court for defendants who lacked the means to appoint their own counsel. The Maison du Droit (Law Centre), established through multilateral cooperation with the United Nations and the European Union, gave citizens access to the justice system and provided vulnerable groups with advice on their rights.
15. Act No. 39 on the protection of minors had been promulgated in 2010: it established special conditions for the custody of minors, who could be detained for shorter periods than adults. Article 145 provided not only that juvenile court judges were competent to take all necessary measures concerning custody but also that a minor aged 13 could not be the subject of a detention order. Articles 56 to 60 of the Code of Criminal Procedure set out procedures to be followed in cases involving minors. The Ministry of Justice and Human Rights would bring the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) to the attention of the Government as therein lay an opportunity to introduce the various alternatives to imprisonment of young offenders set out under paragraph 8.2 of the Rules. The age of majority in Gabon was currently 18 years but was to be raised to 21.
16. Gabon was a party to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa; its national legislation was consistent with its international obligations and its tradition of hospitality. In 2010, there had been 13,000 refugees and asylum seekers of 25 different nationalities in Gabon. Congolese refugees had arrived in Gabon in 1997. In 2003, Gabon, the Republic of the Congo and UNHCR had initiated a programme of voluntary repatriation. Some 450 refugees had applied for repatriation, while 1,000 had requested residence permits to remain in Gabon. The voluntary repatriation operation had been coordinated by the UNHCR regional office

in Kinshasa, which had deemed it a success. There had never been any plan to expel Congolese refugees and asylum seekers. Those who had been repatriated had received assistance with reintegration and with rebuilding their lives. Those awaiting admission to Europe, the United States or Asia were housed in a holding centre for irregular migrants which met international human rights standards.

17. Refugees in Gabon were treated well and had access to the same facilities and conditions as Gabonese nationals in all areas of life. His Government cooperated extensively with UNHCR in that regard. The activities of the National Commission for Refugees, which operated under the aegis of the Ministry of Foreign Affairs, were coordinated by a permanent secretariat that provided administrative and logistical support and brought together all the entities involved in refugee issues in Gabon.

18. The 4,700 clandestine foreign nationals in Minkébé had been forcibly and lawfully removed in June 2011 because they had persisted in pillaging the natural animal and mineral resources of that region, which included ivory and gold, despite numerous warnings from the Government authorities.

19. Libreville central prison was the largest in the country and had been built prior to independence in 1960. As a result of the rural exodus and population increase, the prison population had doubled and with 1,600 detainees the prison was currently overcrowded. The Government had therefore begun to build new prisons that met modern standards, initially in Nkoltang (Libreville), Port-Gentil and Oyem. At the same time, planned renovations would improve conditions for detainees. Other measures, such as the annual presidential pardon, reduced pressure on prisons. Medical staff provided first aid to detainees and ambulance transport to hospital as necessary. Detainees were free to practise their religion, receive family visits and file complaints without fear of reprisal and could request investigations into allegations relating to living conditions. Male and female prisoners, minors and persons affected by HIV/AIDS were housed separately and all prisoners were properly fed. The staff in women's prisons were female. Prisons were administered by the Ministry of Justice and Human Rights, not by the Ministry of Interior as in the past.

20. In the context of implementation of the Convention, his Government conducted awareness-raising and capacity-building activities through the relevant ministries for a broad range of public officials, and indeed prisoners. Civil society supported the Government's efforts to improve conditions in prisons.

21. The Government was considering how to bring the national legislation on trafficking into line with the Convention. Gabon was a country of transit, as the Committee had noted, and the visit by the Special Rapporteur on trafficking in persons, especially in women and children, had been most helpful in combating the scourge of trafficking. Her recommendations were being considered at the highest level with a view to their implementation. Trafficking was widespread in west Africa; in addition to efforts to target trafficking operations at the national level, Gabon was party to a number of mutual judicial assistance agreements with other States including France, some African States parties to the Tananarive Convention and Mali.

22. So-called "ritual crimes" did not form part of Gabon's cultural heritage but had been imported from abroad, thereby tarnishing its image. The President had clearly criticized such crimes and called on the justice system to take firm action against perpetrators. Some 450,000 euros had been made available to the Ministry of Justice to investigate those crimes and to hold special criminal court hearings nationwide. They had been covered by the press in order to raise public awareness. Most of those convicted as perpetrators of, or accomplices in, such offences had been sentenced to life imprisonment. A further special

court hearing was scheduled before the end of 2012. Investigations were carried out and penalties imposed, contrary to ill-informed rumour.

23. The Code of Criminal Procedure promulgated in 2010 struck a balance between the constitutional requirements to ensure security and to respect freedoms. The maximum period of police custody under the new Code was 48 hours, with the possibility of extension for a further 48 hours with the written authorization of the Public Prosecutor. Custody could be extended to a maximum of 8 days in the case of crimes requiring no further collection of evidence in order to avoid abuses of authority.

24. Due process was respected in all proceedings prior to trial. The judicial police duly conducted investigations, monitored by the Public Prosecutor's Office and under the oversight of the Court of Appeal, and could detain suspects for a maximum of 48 hours. The judicial police could issue a non-renewable detention order for a period of 8 days when it was not possible to bring a detainee before a judge immediately, as could be the case in remote areas.

25. Regarding complaints, compensation and evidence, anyone in Gabon who considered that they had been directly or indirectly subjected to torture was entitled to lodge a complaint and to appeal against a judgement within 10 days. Every injured party had the right to apply for compensation. The legal requirements for evidence were established under civil law; under criminal law, all forms of evidence were admissible provided that it was obtained in accordance with the rules on the question.

26. Although it had been established in 2006, the National Commission on Human Rights did not yet have a headquarters and did not have an adequate operating budget. It had met earlier in the year with the Prime Minister to find solutions to those problems. It consisted of a president, two vice-presidents, two rapporteurs and seven members, in addition to a general secretariat. It had informed the International Coordinating Committee of National Human Rights Institutions of its existence but had not requested accreditation.

27. The indigenous community made up 1 per cent of the population of Gabon, and the Government was taking measures to protect their rights and promote their integration. Negative stereotypes were slowly disappearing, and there was a greater appreciation of indigenous communities and their knowledge. A number of persons in prominent posts in the administrative, education and health-care systems came from pygmy communities. Government policies were not discriminatory, and the majority of the indigenous community were aware of hygiene and health standards and had access to education.

28. The problem relating to birth certificates was not limited to the pygmy community and the Government was taking steps to resolve it. The problem had been the result of an inefficient, decentralized administrative system.

29. Efforts were also being made to address the issue of corporal punishment; there were measures in place to protect children and to sanction adults.

30. With regard to the incidents which had allegedly taken place in 2009 in Port-Gentil, he said that rumours abounded, sometimes started by NGOs for politically motivated reasons.

31. The legal age for marriage was being raised from 15 to 18. Steps were also being taken to officially recognize customary and religious marriages in order to put an end to judicial hypocrisy in that regard. It was intended that customary marriages would be registered by a judicial official. A special commission had been established in 2011 to consider methods for officially recognizing the status of such marriages, and a bill on the question was currently before the National Assembly. In the field of customary marriage, legislative measures were required which took into account the actual situation in Gabon

rather than just situations relating to the Romano-Germanic cultures on which the country's legal system was based.

32. Prevention and awareness-raising measures were being implemented, especially in prisons, within families, in schools and in the judicial system. For example, an awareness-raising campaign was to be launched that year in detention centres. Such efforts demonstrated the State party's commitment to tackling the problem of torture and implementing the provisions of the Convention.

33. **Ms. Belmir** (Country Rapporteur) praised the delegation's forthright responses and the legislative measures taken. She wished to raise the issue of the definition of torture, given the State party's plans to review the Criminal Code and include a definition in line with article 1 of the Convention. She requested clarification regarding the offence of attempted torture, which needed to be more clearly defined in law and sanctioned appropriately.

34. Given that domestic legislation referred to other international instruments, she wondered why no references were made to the Convention or the fact that it had been ratified by the State party. Judges needed to refer directly to the Convention. She asked whether the legislation incorporating the Convention into domestic law was self-executing or whether it required the implementation of specific legislative provisions.

35. She requested more specific information on the judiciary, including the process for appointing judges, the monitoring of their careers and the role of the executive authorities.

36. She would like to have further information on the issue she had raised earlier, namely that of the defence of unconstitutionality invoked a posteriori. She would also welcome further information on the training given to magistrates, particularly in view of the different social and judicial systems in Gabon and France.

37. With regard to the system for the protection of minors, thought should be given to solutions other than custody and detention. The aim should be to meet international standards.

38. She requested further information and statistics on Congolese refugees, the complaints process and measures taken in that regard, as well as outcomes of any complaints lodged.

39. Referring to the situation of the clandestine foreigners in Minkébé, she asked whether any related cases had come before the courts. If so, she requested information on any appeals and follow-up.

40. She requested further information on conditions in rural detention centres, any measures taken and their impact on the behaviour of detainees.

41. Welcoming the information on women detainees and the monitoring system, she asked for further information on women's access to justice and women in positions of responsibility.

42. The Committee required more specific information on the incidents reported during the elections, including allegations of murder. It was essential to establish the facts.

43. The State party had identified child-trafficking as a problem and had heeded the concerns of the Special Rapporteur. She asked for further information about the new monitoring system for interrogations and whether interview methods were child-friendly. The use of video recordings was a good approach.

44. She requested clarification regarding the "eight-day order" which the judicial police could request in order to bring a person before a judge. She wished to know the legal basis for that measure.

45. With regard to compensation and the complaints process, she asked whether redress could be obtained without filing a complaint.
46. **Mr. Domah** (Country Rapporteur), referring to the State party's obligations under article 10 of the Convention, requested further information on training measures and efforts to raise awareness of rights and responsibilities under the Convention. Article 10 obliged the State party to ensure that education and information on the prohibition of torture were included in training for medical staff, civil servants and all persons involved in supervising the custody, interrogation or care of detainees.
47. Although he welcomed the legislation adopted by the State party to combat torture, the adoption of new legislation was not an aim in itself; it was necessary to raise awareness and create a culture based on the notion of legality. Effective prevention measures were necessary, including the provision of appropriate training and the creation of a computerized database.
48. With regard to the State party's obligations under article 10, little specific reference had been made to torture. He therefore requested more information on the content and outcome of training courses.
49. Referring to the State party's obligations under article 11, he asked whether steps had been taken to update training methods and practices. It was important to have a mechanism to prevent torture, and measures to ensure systematic monitoring and the use of appropriate interrogation methods. What provisions existed in that regard?
50. Welcoming the promulgation of the Code of Criminal Procedure, he nevertheless considered that consolidating the human rights regime was merely a first step. Referring to article 12 of the Convention, he asked whether investigations were conducted in a serious and professional manner, and enquired about the outcome of complaints.
51. It was important to ensure that complaints were properly investigated, and he asked which authority had competence in that respect. What practical measures were taken to protect complainants and witnesses?
52. He would welcome further information relating to article 14, namely administrative and institutional measures to protect the rights of victims of torture.
53. He requested clarification on confessions obtained under duress and how judges and magistrates verified whether evidence had been obtained by such means.
54. **Mr. Bruni**, welcoming the State party's commitment to combating torture, requested further information on the creation of a national preventive mechanism.
55. With regard to legislation in place to combat female genital mutilation, he asked how many cases had actually been prosecuted, what sanctions had been imposed and what had been the impact of measures to combat the practice.
56. How many cases had been prosecuted under the 2002 legislation on child trafficking?
57. As to monitoring measures, he asked about the outcome of the visit by members of the judiciary to Libreville central prison, which had aimed to prevent ill-treatment of persons deprived of their liberty, and whether any complaints had been filed by prisoners or any recommendations issued.
58. He enquired whether the handbook on the effective investigation of suspected torture formed part of training programmes for staff responsible for detainees and staff who provided them with medical assistance.

59. **Mr. Gaye**, referring to the issue of the definition of torture as a criminal offence, said the State party's responses had given the impression that acts of torture could be sanctioned on a substitutional basis. However, it was vital to introduce specific legislation to criminalize and punish torture. Given the plans to reform criminal procedure, the State party should consider establishing clear definitions of torture and attempted torture and introducing the necessary legislative provisions.
60. In cases where subordinates refused to obey orders by superiors to carry out acts of torture, he asked whether there was a system to protect them.
61. There were serious concerns about the powers of the judicial police relating to the deprivation of liberty. It appeared that legal counsel was only provided once a case was brought to court. He requested additional information on that matter.
62. He would welcome further information on the guarantees in place for detainees and whether the police were obliged to notify the persons nominated by detainees.
63. He requested clear information on the maximum length of pretrial detention.
64. He asked about alternative sentencing measures, particularly for minors.
65. In cases where a torturer was a State official, could the State be held responsible, together with the official in question?
66. **Ms. Sveaass** asked for clarification of the definition of torture in the Gabonese Criminal Code. The definition in the State party's report included a reference to physical torture, whereas the delegation had mentioned a definition that made no specific reference to physical torture and appeared to focus only on torture of persons under arrest or detention.
67. She asked whether the recommendation to criminalize the physical and corporal punishment of children in the home and other care settings, as recommended following the universal periodic review of Gabon in 2008, had been accepted by the State party. Information on whether legislation to protect minors had been adopted would also be useful, as would details of whether training had been initiated to help law enforcement officials deal with victims of violence against women.
68. She wished to know whether anyone had been accused of, or sentenced for, violations of Act No. 0038/2008 on combating and preventing female genital mutilation.
69. **Mr. Mariño Menéndez** said that, given the low participation of NGOs in the Committee's consideration of the initial report of Gabon, he wished to know how civil society was represented in the National Human Rights Commission. Would NGOs receive particular support through the Commission and would they be permitted to visit places of detention?
70. **The Chairperson**, speaking as a member of the Committee, asked what the expected time frame was for completion of the prison building project. He wished to know whether there had been any cases brought for harming the reputation of the judiciary; if so, he would appreciate details.
71. Since torture was no longer punishable by death, he asked what punishment was applicable. The names of those involved in the cases referred to by the delegation would be appreciated. He requested confirmation that the birth registration process would soon be operational.
72. Referring to the attack on a Gabonese television station in 2012, he asked for an update on the investigation into the incident.

73. **Mr. Dodo Bounguendza** (Gabon), acknowledging that the definition of torture in Gabonese legislation was incomplete since it did not integrate the definition contained in the Convention, said that revision of the basic legal instruments, including the Criminal Code and the Civil Code, was under way. While judges were able to directly base their decisions on the Convention, they were not required to do so; the relevant legislation would be revised with a view to the formal integration of such a requirement.

74. Education to master's level was required in order to enter the Legal Service Training College; most students had previously trained at law faculties in Gabonese or French universities. The judicial officers' course at the Training College lasted two years, and once they began working judges attended professional development courses. Training programmes were also in place for persons who worked with the judiciary, particularly prison staff. In 2011, the mandate of the Ministry of Justice had been expanded to include a duty to uphold human rights. The delegation would ascertain whether training programmes were tackling the issue of torture.

75. In preparation for the return of Congolese refugees to the Republic of the Congo, delegations from both countries had met to determine the procedure to be followed. The involvement of UNHCR had guaranteed respect for international law throughout the process. A report by the Office had been made public following the completion of the first phase of the procedure. A number of refugees had chosen to remain in Gabon and had been granted residence permits. Although some of the refugees had requested asylum in other parts of the world, primarily Europe and North America, none of their requests had so far been granted; that group of asylum seekers had been placed in a holding centre in Libreville.

76. Prisons in rural areas were generally situated in the provincial capital. Alongside the commitment to build modern prisons, there was a programme to renovate certain existing prisons — including in rural areas — and thereby bring them into conformity with international standards.

77. The Criminal Code and the Civil Code had last been revised in the 1970s, when the infrastructure in many regions of Gabon had consisted of dirt tracks and infrequent ferry crossings and many journeys could only be made on foot. The eight-day period between a defendant's first and second appearances before a magistrate had therefore been established in view of the conditions in the regions at the time. Modern infrastructure meant that it was now uncommon for the full eight days to be applied in practice.

78. Female genital mutilation (FGM) was not traditionally practised in Gabon and was not forced on young girls. Some girls had requested excision because they thought it would help them to find a good husband; Act No. 0038/2008 on combating and preventing FGM was therefore designed to protect girls. Since the adoption of the Act, the procedure had become less common.

79. The national preventive mechanism for implementation of the Optional Protocol to the Convention, which was due to have been introduced by November 2011, was currently being set up. A person who had been arrested was entitled, under the relevant law, to inform a person of his or her choosing of the arrest. Alternatives to prison sentences were in place for minors, so logically they could be applied to adults; steps would be taken to formalize the relevant provisions.

80. Freedom of the press was respected in Gabon. The State often subsidized the privately-owned press, but that did not affect its ability to carry out its work freely. The Committee might have noted a difference in approach to the issue in Gabon, where there was no culture of defamation.

81. The television station that had been attacked was currently operating normally. It was not uncommon for any country to restrict the freedom of the media if public order was threatened, and in the case in question the station had been closed for incitement to ethnic war. As a State with over 80 different ethnic languages, Gabon was obliged to protect all its citizens.

82. The National Human Rights Commission was mandated to monitor and follow up the recommendations of human rights treaty bodies, and to draft reports on the situation of human rights in the country. The Commission reflected the whole of civil society, comprising representatives of religions, trade unions and NGOs, as well as representatives of the Ministry of Justice and other State bodies. Although civil society did not dominate the Commission, it was well represented.

*The meeting rose at 6 p.m.*