



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

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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE 873rd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 30 April 2009, at 3 p.m.

Chairperson: Mr. GROSSMAN

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Chad (CAT/C/TCD/1) (continued)

1. At the invitation of the Chairperson, the delegation of Chad took places at the Committee table.

2. Mr. DJASNABAILLE (Chad) said that the Government of Chad was determined to take action in response to the Committee's pertinent remarks, and to honour its international commitments despite the instability that had prevailed in the country for many years.

3. Torture was not yet expressly defined as a separate offence in domestic law, but was deemed to be an aggravating circumstance. The preliminary draft law amending and supplementing the Criminal Code, which had been drawn up as part of the ongoing judicial reform programme, contained a definition almost identical to that of the Convention (draft law, art. 18) and provided for penalties that were commensurate with the offence (art. 19), which would remedy that shortcoming. In the meantime, the offence of torture was covered by different instruments: the Constitution prohibited torture and degrading or humiliating treatment and abuse (arts. 17, 18 and 20), and the Criminal Code provided for and punished other acts constituting cruel, inhuman or degrading treatment or punishment, containing provisions covering perpetrators of offences (art. 156) and the corresponding penalties (art. 143) and providing for aggravating circumstances (art. 151). Act No. 006/PR/02 on the promotion of reproductive health criminalized domestic violence and ill-treatment, such as female genital mutilation, early marriage and sexual abuse (art. 9), and Decree No. 269 of 4 April 1995 on the adoption of a police code of conduct guaranteed the protection of persons arrested by the police (art. 10).

4. Various steps had been taken to prevent acts of torture being committed in Chad. The Constitution enshrined the inviolability of the individual; the right to life, security and freedom; and the protection of a person's privacy and property. The normal 48-hour limit for police custody could be extended by a further 48 hours only with the express authorization of the Public Prosecutor's Office. If that Office was not the place of arrest, the time taken to transfer the person to the place of detention was added to the duration of custody, it being understood that the criminal investigation officer in charge of the transfer was bound by a duty of care. The judicial authorities carried out regular inspections at police stations and gendarmeries to check that the legal limits were complied with. All squad commanders and criminal investigation officers had followed an in-service training course on respect for, and protection of, people's rights and property. Despite those efforts, cases of abuse continued, mainly owing to insufficient staff and resources.

5. The necessary steps had been taken to ensure that all arrests were duly recorded and that the arrested persons were brought before the public prosecutor, who checked the lawfulness of their detention. Similar provisions ensured the lawfulness of arrests made in cases of

flagrante delicto. Places of secret detention had ceased to exist with the collapse of the Hissène Habré dictatorial regime; the few cases of secret detention that had nevertheless been reported had been systematically investigated by the authorities.

6. While not provided for expressly by legislation and regulations, in practice lawyers had access to police and gendarmerie stations, and were able to communicate with persons in custody, consult the relevant case files and be present when they were questioned before the public prosecutor and the investigating judge.

7. Similarly, while torture was not expressly defined in Chadian legislation, law enforcement officers were prohibited from, and could be prosecuted for, inflicting inhuman, cruel or degrading acts on arrested persons (1995 decree on the police code of conduct, article 10).

8. Under articles 143, 145 and 156 of the Criminal Code, which punished acts likely to infringe human rights, orders from a superior officer could not be invoked to justify torture. A subordinate wishing to contest an illegal order could either consult an official of higher rank than the official who had given the order, or refer the matter to the judicial authorities.

9. While administrative and judicial authorities were authorized to order a person's extradition, expulsion or refoulement in accordance with the relevant legislation, the person in question was able to contest the decision in court, following which the court ruled as a matter of urgency. The conditions for extradition, together with the relevant procedure, were set out in part 6, chapters 1 and 2, of the Code of Criminal Procedure. The judicial authorities could decide not to return a person to his or her country of origin if: there was a risk of that person being subjected to acts of torture; there had clearly been a mistake; or the lawfulness of the order had been contested. Human rights associations and the person's lawyer were able to present the authorities with any information showing that the person's human rights risked being violated if he or she were extradited. In the Tchanguiz Vatankhah v. Ministry of Public Safety and Immigration case, an Iranian refugee against whom an expulsion order had been served had taken the case to the Supreme Court, which had found in his favour on the ground that the expulsion order infringed his rights under the 1951 Convention relating to the Status of Refugees, which had been ratified by Chad.

10. Articles 149, 151, 152 and 156 of the Criminal Code prohibited representatives of the authorities from carrying out or attempting to carry out acts of torture, and from issuing orders to commit torture, during a person's arrest or detention. Applicable penalties were provided for which, under article 31 of the Code, could be supplemented by additional penalties. The police code of conduct provided for disciplinary sanctions to be taken against the perpetrators of such acts. No statistics on the implementation of those provisions were available. However, in one case involving allegations of acts of torture, the N'Djamena Court of First Instance had reclassified acts of torture as assault and battery, and had sentenced a gendarme to 12 months in prison and a fine of 1.5 million CFA francs. In another case, the same court had dismissed the application for the release of two gendarmes prosecuted for unlawful arrest, who had stated that they had acted on the orders of their chief, and ordered that the chief in question (the commander of the tenth corps of gendarmes) should be brought immediately before the court.

11. Chadian legislation had not yet been brought into line with articles 5 to 9 of the Convention, but the reform of the criminal instruments that had been embarked upon with the support of the United Nations Children's Fund (UNICEF) and the European Union was expected to remedy that. It should be mentioned, in connection with article 8 of the Convention, that in the Zoé's Ark affair, at the request of the French Government and in line with the bilateral agreement on judicial cooperation of 6 March 1976, Chad had extradited to France the French nationals convicted of kidnapping children and holding them against their will.

12. Training courses on all aspects of human rights were given in schools and universities and military and vocational training centres, and the Government was taking steps to improve training and teaching materials for the army. All courses at the National School of Administration and the Judiciary included a teaching module on human rights and freedoms.

13. Under the Code of Criminal Procedure, the judicial authorities were obliged to carry out regular inspections of prisons and other places of detention for which they had responsibility (arts. 221, 247 and 483). Complaints by prisoners could be received and acted upon by the public prosecutor, investigating judge or magistrate, depending on the circumstances (Code of Criminal Procedure, article 482). A prison register was kept in all detention centres.

14. Under article 176 of the Code of Criminal Procedure, prior to the judicial investigation it fell to criminal investigation officers to establish that an offence had been committed, collect evidence and look for those responsible. Their work was managed and coordinated by the public prosecutor, who ordered all the necessary steps to be taken in order to find and prosecute the perpetrators of the offence (Code, articles 177 and 202).

15. Allegations of torture, or of any other offence, were brought to the direct attention of the public prosecutor. However, as there was no system for the protection of victims and witnesses, they were often reluctant to report the facts, even though the judicial authorities did their utmost to protect persons threatened with reprisals. Victims of torture could seek reparation in court, and victims of torture during the Hissène Habré dictatorial regime had also, collectively and individually, requested the investigating judge to carry out an investigation, which had unfortunately been impossible, owing to insufficient resources. To remedy that shortcoming, draft legislation had been drawn up in order to compensate all direct or indirect victims of the Hissène Habré regime, but had not yet been finalized, for procedural reasons.

16. The Government had instructed a commission comprising representatives of civil society, judges and international observers to investigate the unrest of February 2008; the commission had recommended that victims of acts of torture and other cruel, inhuman or degrading treatment during those events should be compensated.

17. Article 71 of the Code of Criminal Procedure provided that judges must base their rulings on evidence that had been produced at a hearing and considered during adversarial proceedings. Confessions obtained using torture were inadmissible. In practice, perpetrators of acts of torture had been punished, for example in the Mariam Daoud case, where the Minister of Justice, the Director-General of the gendarmerie and the private secretary of the Head of State had been removed from office.

18. Mr. ANNOUR (Chad) said that the three senior officials of the former Documentation and Security Directorate to whom reference had been made were entitled to be presumed innocent, in the same way as everyone else.

19. Legal aid was granted whenever necessary, although there was no legislation on that matter.

20. The recent signature of a convention with the European Union, under which new prisons would be built, was expected to provide a solution to the problem of prison overcrowding.

21. Prefects had never performed legal functions, but there had been a time when, owing to a lack of magistrates, limited judicial functions had been assigned to sub-prefects in response to the real shortage of judges that existed despite the Government's efforts in the area of training.

22. In Chad, judges' salaries had always been higher than those of other public officials; currently, a judge's starting salary was twice that of a doctor. To limit the risk of corruption, the draft legislation on the new rules governing judges provided for a further salary increase. In that regard, the Inspectorate-General of the Judiciary and the High Council of the Judiciary had examined different cases of alleged corruption and ordered the dismissal of several judges.

23. Judges had been trained to act as children's judges in courts and at the Appeal Court. In order to bring justice closer to citizens, Act No. 004/PR/98 on the organization of the judiciary established magistrates' courts in each of the capital's 10 arrondissements, and in each of the sub-prefectures, to which professional magistrates were assigned.

24. Mr. HASSAN (Chad) said that a seminar on human rights had been held for the administrative authorities, judges and criminal investigation officers, and that human rights training was being given in all military training centres, including police and gendarmerie colleges. Concern had been expressed at the practice of "holding available" (*mise à disposition*) (report, paragraph 355); however, judges no longer made use of that practice, and a warrant of commitment was now required before a person could be placed in detention.

25. Draft legislation to establish an official corps of prison guards was under consideration, and was expected to be adopted shortly. Assigning monitoring and supervision work to professionals who were duly trained, including in international standards for the treatment of prisoners, was expected to remedy the shortcomings observed in certain prisons.

26. There were no military tribunals in Chad, and offences committed by members of the armed forces were dealt with by ordinary courts. A special squad of gendarmes was responsible for reporting all offences committed by members of the armed forces, to ensure that the perpetrators were brought to justice.

27. The practical difficulties that had hampered the investigation into the violations committed under the Hissène Habré regime were in the process of being resolved. The victims or their beneficiaries had requested the investigating judge to carry out an investigation, and the hearings were due to start shortly.

28. Draft legislation on the office of ombudsman was being examined by the National Assembly, and was intended to specify the ombudsman's functions and responsibilities and to

facilitate access by citizens to the ombudsman's services. In the area of protection of children, the Government of Chad had set up several programmes in cooperation with international organizations such as UNICEF. Those programmes included the national plan of action to combat violence against children and the sexual exploitation of children, and a draft global policy to promote the all-round development of children, which was aimed at particularly vulnerable children such as muhajirin, street children and child soldiers.

29. Over 500,000 refugees from the Sudan and the Central African Republic were currently located in the eastern region of Chad. A special unit comprising Chadian police and gendarmes trained by the United Nations Mission in the Central African Republic and Chad had been established in order to protect refugees and prevent the militarization of the camps.

30. The abolition of the death penalty had been one of the recommendations made at the justice summit held in 2003. A comprehensive review of relevant instruments, including the Criminal Code and the Code of Criminal Procedure, was under way, in order to bring domestic legislation into line with international instruments ratified by Chad.

31. Mr. DJASNABAILLE (Chad) said that the Government was aware of the remaining work that needed to be done to enable Chad fully to meet its obligations under the Convention. He hoped that he could count on the Committee's sound advice, and on the technical and financial assistance of the Office of the Nations High Commissioner for Human Rights (OHCHR), in order to make progress in that area.

32. Ms. BELMIR (Country Rapporteur) noted that the delegation's assertion that prefects had no judiciary power appeared to be contradicted by paragraph 52 of the report, which stated that prefects had power in several fields, including in the judicial field. That ambiguity should be clarified.

33. The many breaches of the rules governing custody and provisional detention gave the impression that the inspections carried out by the judicial authorities were insufficient. People were frequently held in custody beyond the 48-hour limit provided for by law. The delegation had stated that if prosecutors observed such breaches when they inspected police stations, they ordered the detainees in question to be released. However, the delegation should specify whether those responsible for the breaches were punished, in accordance with the relevant provisions.

34. The crackdown following the events of 2008 had resulted in numerous excesses, as described in several NGO reports. She would like to know whether investigations on that subject had been, or were to be, launched. The lack of resources assigned to the commission of inquiry into the violations committed under the Hissène Habré regime called into question the Government's determination to establish the truth and prosecute the guilty parties, and even made one wonder whether the aim might not in fact be to prevent that from happening. If the Government had cared about reconciliation, it could have set up a truth and reconciliation commission, which would at least enable victims to have the violations committed officially recognized.

35. The situation of refugees from Darfur and the Central African Republic was alarming; the Committee understood that it was difficult for the Government of Chad to cope with that inflow of people, but it was urgent to take action in order to put an end to the distress of thousands of men, women and children.

36. The CHAIRPERSON, speaking as Alternate Country Rapporteur, asked whether proceedings had been brought against those responsible for administering the places where persons had been secretly detained during the Hissène Habré regime.

37. He wished to know whether, since the proclamation of the state of emergency in 2006, the situation in Chad had been re-examined in order to ascertain whether the circumstances that had led to that decision continued to exist. As there was generally a greater risk of abuse under those conditions, it would be useful to know what preventive measures had been taken in that regard.

38. It would be useful to have more information on the schedule for implementation of the measures adopted to increase human rights education in the training given to members of the armed forces.

39. While it was excellent that public prosecutors, investigating judges and magistrates were authorized to receive and act upon complaints from detainees, they had to receive the complaints in the first place. In order to carry out its duties (ascertaining that an offence had been committed, collecting evidence and looking for the alleged offenders), the criminal investigation service required resources it did not necessarily have, but should be given. The Committee would like to know whether any action had been taken in that regard.

40. The lack of legislation guaranteeing the protection of victims and witnesses needed to be remedied. He would welcome any information on measures that were planned in that regard. The Committee deeply regretted that adoption of the draft legislation on compensation for victims of acts of torture committed under the Hissène Habré regime had been hampered by procedural issues. He asked the delegation to give an approximate idea of how long it would take to complete that procedure, and to describe what action had been taken in response to the recommendations made by the commission of inquiry established following the events of 2008.

41. Under the Convention against Torture, all acts of torture constituted a criminal offence, the perpetrators of which must be prosecuted and convicted. The mere dismissal of public officials found guilty of torture, as in the Mariam Daoud case, could not be considered sufficient punishment in respect of that requirement. Recalling that several provisions of the Criminal Code defined and punished acts that constituted cruel, inhuman or degrading treatment or punishment, he asked whether any proceedings had been initiated against public officials for acts of that nature, and whether the officials in question had been convicted.

42. Mr. GALLEGOS CHIRIBOGA commended the efforts of the Government of Chad to address the considerable challenges that had been inherited from the past or were linked to the current situation in the region. He welcomed the Government's determination to continue to improve human rights protection in Chad, with the help of technical assistance from the Committee against Torture and OHCHR. To break the vicious circle of violence, including inter-group violence, the Government of Chad must make it a priority to combat impunity. The

Government, in line with its obligation to act on the Committee's concluding observations and recommendations, should keep the Committee regularly informed of progress made in that regard.

43. Mr. MARIÑO MENÉNDEZ welcomed the delegation's frank account of the difficulties encountered in implementing the Convention, and its candid replies to questions. Noting the delegation's assertion that if a place of secret detention was discovered, the authorities immediately released the persons detained, he asked whether those responsible were militiamen, tribal chiefs, warlords, or public officials who were beyond the administration's control.

44. He would welcome an explanation of the fact that article 143 of the Criminal Code (report, paras. 225 and 226) appeared to suggest that a public official who had committed acts of torture would be exempted from liability if he had acted on the orders of his superior.

45. He would like to know whether there were any exceptions to the ban on extradition of political refugees established in article 46 of the Constitution, for example when the request for extradition concerned a refugee suspected of war crimes or crimes against humanity.

46. Lastly, it would be interesting to know whether Chad was considering ratifying the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption.

47. Ms. SVEAASS expressed alarm that victims of acts of torture or ill-treatment were reluctant to report those offences for fear of reprisals, and that it was difficult to get people to give evidence. In that climate of fear and distrust, it was necessary to take measures to combat impunity and assure the population that their rights would be respected. She enquired whether the State had taken steps to strengthen and publicize the National Human Rights Commission.

48. The Committee welcomed the action taken by the State party to provide human rights training to those in charge of implementing legislation and to health workers, and encouraged it to continue on that path.

49. She would welcome information on what the State party had done to ensure that the rights of persons with mental disabilities were respected.

50. Mr. DJASNABAILLE (Chad) acknowledged that there were shortcomings in Chad's legislation. The Committee should understand that many of the instruments in force in Chad dated from the period of accession to independence, when legislation had been deliberately drafted in very vague terms in order to guarantee impunity of perpetrators of acts of torture and other cruel, inhuman or degrading treatment. The Government had already started work on making legislation more specific, but much remained to be done to bring it into line with the international human rights commitments entered into by Chad. He therefore called once more upon the Committee and OHCHR to provide technical assistance, which would be particularly helpful for the ongoing drafting of the new Criminal Code.

51. Chad was determined to make further progress in the protection and promotion of human rights, but to date the Government had been obliged to focus on defending the territorial integrity of the State, which took up most of its resources. Almost all of the Government's work was

aimed at imposing the authority of the State, the existence of which was constantly under threat, and at forging the different communities in Chad into a single nation. Notwithstanding, the establishment of a Ministry for Human Rights and Promotion of Freedoms demonstrated the Government's determination to respect human rights and ensure that those rights were taken into account in all areas of public service.

52. The fact remained that the problems mentioned concerning judges and prefects were real. When a census of the prison population had been carried out, the Ministry of Justice had discovered that many of those who had been in detention for several months had not been brought before a judge. A commission had been instructed to examine the situation of all detainees. All persons detained unlawfully had been released, attesting to the Government's determination to ensure respect for human rights. Wherever necessary, the Ministry for Human Rights denounced human rights violations committed by public officials, including top Government officials, and criticized anyone who committed them, regardless of who they were.

53. There were gaps in the legislation in force concerning victims of human rights violations, but the Government intended to remedy that shortcoming. In the meantime, the Ministry for Human Rights continued to help victims, defend their interests and support them in enforcing their rights. It was true that the authorities had not done enough in that regard, but the Committee could rest assured that the Government was determined to improve the situation of those victims and to combat impunity. The authorities had to be discerning, however, and to consider the situation as a whole when they were considering punishing members of the army - in particular senior officers - who committed offences, since they were the defenders of territorial integrity, which could not be compromised. When members of the military were punished, other members sometimes abandoned their posts out of solidarity. Administrative sanctions were nevertheless applied and, in most cases, the authorities helped victims to bring legal proceedings. Perpetrators of offences often made numerous appeals against judicial decisions handed down against them, or colluded with judges or other officers, which complicated the Government's task even further.

54. The Ministry for Human Rights had appointed a representative in each region, who advised the governor, prefect and sub-prefect and represented the Ministry at local level. When violations were committed, those representatives did their utmost to stop them, and to ensure that the perpetrators were punished. While it was true that not all perpetrators of human rights violations were punished, it continued to be the Government's aim to put an end to impunity.

55. With regard to the Hissène Habré case, at national level, legal action had been taken and a trial was under way. The administration had been given all the necessary resources but had come up against obstacles and collusion at all levels, which prevented its decisions from being implemented. The victims themselves, grouped together into associations, did not appear to be very interested in expediting the proceedings, were not very involved and did not ask the Ministry for Human Rights for help concerning the slow pace of justice. At international level, the victims and the NGOS supporting them were very active. The case had been brought before the African Union, which had referred it to Senegal. Senegal had decided not to commence proceedings until all the funds required to hold the trial had been paid by the international community, which the Government of Chad regretted. If Senegal were to refuse the request by the African Union, Chad itself would undertake to try Mr. Habré, but was aware of the difficulties that would pose, including the fact that the death penalty remained in force. Mr. Habré could be tried in another country, for example Belgium.

56. With regard to the events of 2 February 2008, for 48 hours N'Djamena had been entirely occupied by rebels who, as they withdrew, had attacked the population. Only after the rebels' withdrawal had it become clear that people had disappeared, including civilians, some of whom had been found and some not. The authorities were unaware, in particular, of Mr. Ibini's whereabouts, but were not unconcerned about his disappearance and were determined to shed full light on the matter. The Government had no intention of covering up for people who might be involved in that disappearance, but it wished to act in accordance with the law. A fact-finding commission had been set up and had been given considerable resources and complete discretion to investigate. It had formulated conclusions and recommendations, including the recommendation that legal proceedings should be instituted, and that a monitoring committee should be established. The case had, accordingly, been taken to court, and judges of renowned integrity had been selected to hear the case. The Government had demanded cooperation from all parties and would make sure that the perpetrators were punished. That would deter other persons considering such acts in the future, and would show that nobody was above the law.

57. On the subject of child soldiers, parents had greater awareness of the fact that children should not be enlisted. The army had demobilized all child soldiers and no longer recruited minors. Minors who had fought alongside the rebels had been entrusted to UNICEF.

58. Progress had been made concerning forced marriages. That practice was being denounced by an increasing number of people and would be prohibited under the new Criminal Code.

59. The Ministry of Defence had reassigned illiterate police officers and squad commanders who had been guilty of abuse. It was now necessary for squad commanders to know how to read and write, and to have a basic knowledge of the law. Training seminars were given at all levels of the armed forces. In addition, the Government had retired approximately 50 generals, and wished to gradually remove unsuitable people from the army, while providing them with a livelihood that did not require them to take up arms again. The Government's long-term aim was to train all recruits and to instil in the army respect for the values of human rights.

60. While Chad was undertaking the task of updating and amending all legislation that was no longer adapted to current realities, and abolishing practices that violated human rights, it also attached importance to bringing about a change in attitudes. The aim was to build a modern State based on the principles of the rule of law and respect for human rights. There was still a long way to go, for Chadian society was a violent one, in which weapons did the talking. The work to be done by Chad would therefore be of a long-term nature, and would require the support of the international community. In that regard, the Government would take into account all the observations made by the Committee.

The meeting rose at 5 p.m.