



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

Distr.
GENERAL

CAT/C/TGO/CO/1
28 July 2006

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE
Thirty-sixth session
1-19 May 2006

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

TOGO

1. The Committee considered the initial report of Togo (CAT/C/5/Add.33) at its 709th and 712th meetings (CAT/C/SR.709 and 712), held on 10 and 11 May 2006, and adopted the following conclusions and recommendations at its 716th meeting (CAT/C/SR.716), held on 15 May 2006.

A. Introduction

2. While the Committee welcomes the initial report of Togo, which complies in part with the general guidelines on the form and content of initial reports, it is concerned that the report is 16 years overdue. The Committee also regrets that the first part of the report reproduces extensively information contained in the core document forming the initial part of State party reports, submitted by Togo in 2004 (HRI/CORE/1/Add.38/Rev.2). The Committee also notes that the report provides very few specific examples of how the Convention is implemented by the State party in practice. The Committee welcomes the constructive dialogue established with the high-level delegation sent by the State party and notes with satisfaction the replies given to questions raised during the dialogue.

B. Positive aspects

3. The Committee welcomes the State party's willingness to modernize its justice system through the national programme to overhaul the justice system and the establishment of the national commission to update its legislation. The Committee also welcomes the statement made by the delegation concerning its draft revised criminal code.
4. The Committee welcomes the establishment on 10 August 2005 of a general inspectorate of security services entrusted with monitoring the conditions and length of detention.
5. The Committee also takes note of the Government's plan to recruit new prison staff who have received training in the human rights of prisoners and the prohibition against and prevention of torture.
6. The Committee welcomes the signature on 14 March 2006 of an agreement with the International Committee of the Red Cross (ICRC) giving it access to detention facilities.
7. The Committee applauds the adoption in 1998 of the law prohibiting female genital mutilation.
8. The Committee notes with satisfaction Togo's signature, on 19 September 2005, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
9. The Committee also notes with satisfaction the State party's positive approach towards refugees, which affords them greater protection.

C. Subjects of concern and recommendations

10. While noting that article 21 of the Togolese Constitution of 14 October 1992 prohibits torture, and welcoming the draft revised criminal code, the Committee is nonetheless concerned by the absence of provisions in the criminal code that explicitly define and criminalize torture, in accordance with articles 1 and 4 of the Convention. The Committee is also concerned by the fact that no sentences have been handed down relating to acts of torture, owing to the lack of a suitable definition of torture in Togolese legislation (arts. 1 and 4).

The State party should adopt urgent measures to incorporate in the Criminal Code a definition of torture in line with article 1 of the Convention, as well as provisions criminalizing acts of torture and establishing appropriate penalties for them.

11. While welcoming the extensive project to overhaul the justice system mentioned by the State party's delegation, the Committee notes with concern that the existing provisions of the Code of Criminal Procedure relating to police custody do not provide for the notification of rights or the presence of a lawyer, and that the medical examination of persons held is merely an option available only at their own request or that of a member of their family, subject to the agreement of the prosecution authorities. Moreover, the 48-hour time limit for police custody is allegedly rarely observed in practice, and some people, including children, are held without charge or awaiting trial for several years (arts. 2 and 11).

The State party should revise the provisions of the Code of Criminal Procedure relating to police custody so as to ensure that persons held in police custody are effectively protected from physical and mental harm, including by guaranteeing their rights to habeas corpus, to contact a friend or relative and to consult a lawyer and doctor of their choosing or an independent doctor.

The State party should also bring the practice of pretrial detention into line with international standards of due process and ensure the prompt administration of justice.

12. The Committee is concerned by allegations received, in particular following the April 2005 elections, of the widespread practice of torture, enforced disappearances, arbitrary arrests and secret detentions, as well as of the frequent rape of women by military personnel, often in the presence of members of their families, and the apparent impunity enjoyed by the perpetrators of such acts (arts. 2, 12 and 14).

The State party should take the necessary legislative, administrative and judicial steps to prevent all acts of torture and ill-treatment in any territory under its jurisdiction.

The State party should also ensure that military personnel are under no circumstances involved in the arrest and detention of civilians.

The State party should take steps, as a matter of urgency, to bring all detention facilities under judicial control, and to prevent its officials from carrying out arbitrary detentions and practising torture.

The State party should take vigorous steps to eliminate impunity for alleged perpetrators of acts of torture and ill-treatment, carry out prompt, impartial and exhaustive investigations, try the perpetrators of such acts and, when they are found guilty, impose sentences commensurate with the gravity of the offences, and properly compensate the victims, if necessary through a compensation fund for the victims of torture. The State party should also take effective steps to guarantee the independence of the judiciary, in conformity with the relevant international laws.

The State party should also take steps, as a matter of urgency, to ensure the peaceful return of Togolese refugees from neighbouring countries and of internally displaced persons, and to guarantee full respect for their physical and mental integrity.

13. The Committee is concerned by the absence of provisions in Togolese legislation prohibiting the expulsion, return (refoulement) or extradition of a person to another State where he or she might be tortured (art. 3).

The State party should adopt legislative measures and any other necessary measure prohibiting the expulsion, return or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, in accordance with article 3 of the Convention.

14. The Committee is also concerned by the existence of subregional agreements signed by Togo and neighbouring States on 10 December 1984, which allow for a person who has been convicted of an offence to be returned to one of the signatory States, in complete disregard of any judicial procedure, since under the agreements the return of such persons is the sole responsibility of the police officers of the States concerned (art. 3).

The State party should adopt the necessary measures to revise the subregional agreements signed by Togo and neighbouring States so as to guarantee that the return of a person who has been convicted of an offence to one of the signatory States is carried out under a judicial procedure, in accordance and in strict compliance with article 3 of the Convention.

15. The Committee regrets the way in which extraterritorial jurisdiction is dealt with in the State party's legislation, particularly where allegations of torture are concerned. The Committee is also concerned by the fact that under Togolese legislation torture does not constitute an extraditable offence, since it has not been defined in the Criminal Code (arts. 3, 5, 6 and 7).

The State party should take the necessary steps to ensure that acts of torture come under its extraterritorial jurisdiction, in conformity with article 5 of the Convention. The State party should also adopt appropriate legislative measures to ensure that torture constitutes an extraditable offence, while respecting the provisions of article 3 of the Convention.

16. The Committee is concerned by information received concerning agreements whereby the nationals of some States who are on Togolese territory cannot be brought before the International Criminal Court to be tried for war crimes or crimes against humanity (arts. 6 and 8).

The State party, in conformity with articles 6 and 8 of the Convention, should take the necessary steps to revise the agreements which prevent the nationals of certain States who are on Togolese territory from being brought before the International Criminal Court.

17. The Committee is concerned by the presence on the territory of the State party of the former president of the Central African Republic, Mr. Ange-Félix Patassé, in view of the fact that, on 13 April 2006, the Central African Court of Cassation referred his case to the International Criminal Court for crimes against humanity (arts. 6 and 8).

The State party should take the necessary steps to bring Mr. Patassé before the International Criminal Court, in keeping with articles 6 and 8 of the Convention.

18. The Committee is concerned by the inadequate training of law enforcement personnel, which does not focus on the eradication of torture. The numerous reports containing allegations of acts of torture and cruel, inhuman or degrading treatment submitted to the Committee further demonstrate the limited scope of that training (art. 10).

The State party should:

(a) Conduct regular training courses for law enforcement personnel, including members of the police force and prison staff, so as to ensure that all have a thorough knowledge of the provisions of the Convention and are well aware that breaches will not be tolerated, will be investigated and that the persons responsible are liable for prosecution. All such personnel should receive specific training on how to detect signs of torture;

(b) Draft a handbook describing interrogation techniques in keeping with the Standard Minimum Rules for the Treatment of Prisoners and prohibiting those that run counter to them;

(c) Raise awareness among law enforcement personnel of the application of legislation prohibiting sexual violence, particularly against women; and

(d) Encourage the participation of non-governmental and human rights organizations in the training of law enforcement personnel.

19. The Committee has noted the worrying detention conditions prevailing in Togo, in particular in Lomé and Kara prisons. The most widespread problems are overcrowding and a shortage of food, poor hygiene and a lack of material, human and financial resources. The treatment of prisoners remains a matter of concern to the Committee. Cases of corporal punishment for disciplinary offences have been reported. Often women and children are not held separately from men and adults, and persons awaiting trial are not separated from those serving sentence (art. 11).

The State party should put an end to practices that run counter to the Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate steps to reduce overcrowding in prisons and the number of people held in pretrial detention, and to ensure that women and children are held separately from men and adults and that persons awaiting trial are separated from those serving sentence.

20. The Committee is very concerned by the widespread sexual violence against women, including in detention facilities. The Committee is also worried by the fact that women held in detention are guarded by male prison warders (art. 11).

The State party should set up and promote an effective mechanism for dealing with complaints of sexual violence, including within the prison system, and should provide victims with protection and psychological and medical assistance. The State party should ensure that women prisoners are guarded by female prison warders only.

21. The Committee takes note of the State party's statement to the effect that three non-governmental organizations are allowed to visit detention facilities. The Committee is, however, concerned by the absence of effective and systematic monitoring of all detention facilities, namely regular but unannounced visits of the facilities by national inspectors (art. 11).

The State party should consider establishing a national system to monitor detention facilities and follow up the results of such systematic monitoring. It should also ensure the presence during those visits of forensic specialists who are trained to detect the after-effects of torture. The State party should also strengthen the role of non-governmental organizations in this process by facilitating their access to detention facilities.

22. While it takes note of the report of the national independent commission of inquiry, the Committee is concerned by the lack of impartial inquiries to establish the individual responsibility of the perpetrators of acts of torture and cruel, inhuman or degrading treatment, in particular following the April 2005 elections, which contributes to the climate of impunity prevailing in Togo (art. 12).

The State party should inform clearly and unequivocally all persons under its jurisdiction that it condemns torture and ill-treatment. It should adopt effective legislative and administrative and judicial measures so as to ensure that all allegations of torture and cruel, inhuman or degrading treatment are swiftly followed up by inquiries, prosecution and penalties. As far as allegations of torture are concerned, the suspects should be suspended from their duties, when appropriate.

23. While the Committee welcomes the establishment of the National Human Rights Commission (CNDH), it is concerned by the Commission's lack of independence, which might hinder its effectiveness, and also by the limited scope of its recommendations (art. 13).

The State party should adopt appropriate measures to guarantee the independence and impartiality of the National Human Rights Commission, to increase the Commission's human and financial resources and to ensure its ability to deal with complaints, to investigate violations of the Convention and to refer such cases to the judiciary.

24. The Committee is concerned by the absence in the Code of Criminal Procedure of provisions requiring the invalidation of statements obtained under torture. The Committee is worried by the State party's statement to the effect that the declaration of invalidity of such statements is only effective if it is not established that the act of which the defendant is accused took place, which is tantamount to allowing a statement obtained under torture to be used as evidence (art. 15).

The State party should take the necessary steps to incorporate in its Code of Criminal Procedure provisions requiring the invalidation of statements obtained under torture, irrespective of whether the acts of which the defendant is accused took place.

25. The Committee has taken note with concern of the reprisals, serious acts of intimidation and threats to which human rights defenders are subjected, especially those who report acts of torture and ill-treatment (art. 16).

The State party should adopt effective measures to ensure that all persons who report cases of torture or ill-treatment are protected against any act of intimidation and harmful effect that might result from such reports. The Committee encourages the State party to strengthen its cooperation with civil society in campaigning for the eradication and prevention of torture.

26. While noting the adoption in Togo in 2005 of legislation relating to trafficking in children, the Committee is concerned by information received that the problem persists, in particular in the north and centre of the country, and that it also affects women (art. 16).

The State party should take the necessary steps to combat trafficking in women and children effectively and to punish those responsible for such acts.

27. While it takes note of legislation prohibiting female genital mutilation, the Committee remains concerned by the persistence of this practice in certain regions of Togo (art. 16).

The State party should take the necessary steps to eradicate the practice of female genital mutilation, including through nationwide awareness-raising campaigns, and to punish the perpetrators of such acts.

28. The Committee encourages the State party to request the Office of the United Nations High Commissioner for Human Rights to provide technical cooperation assistance.

29. The Committee would like information on questions raised during the dialogue with the State party that the delegation was unable to answer, including on the current situation of a woman who has allegedly been detained since 1998, but who, according to the delegation, has been released.¹

30. The State party should provide the Committee with information on the system of military justice, its jurisdiction and whether it is empowered to try civilians.

31. The State party should provide in its next periodic report detailed statistical data, disaggregated by offence, ethnic origin and gender on complaints of cases of torture and ill-treatment as well as related investigations, prosecutions, and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims.

32. The Committee encourages the State party to consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹ The fact-finding mission to investigate allegations of violence and human rights violations in Togo, before, during and after the presidential elections of 24 April 2005 established by the High Commissioner for Human Rights questioned this woman in Lomé prison, in June 2005, and quotes her in its report of 29 August 2005 (para. 4.1.4.1).

33. The State party is encouraged to disseminate widely the reports submitted by Togo and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.
34. The Committee requests that the State party provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 21, 25, 29 and 30 above.
35. The State party is invited to submit its second periodic report, by 17 December 2008, the due date of its sixth periodic report.
