



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

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Held at the Palais des Nations, Geneva,
on Wednesday, 10 May 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 10 a.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)

1. At the invitation of the Chairperson, the members of the delegation of Togo took places at the Committee table.
2. The CHAIRPERSON invited the delegation to introduce the initial report of Togo (CAT/C/Add.33).
3. Ms. ACOUETEY (Togo) said her delegation was privileged to introduce Togo's initial report, which comprised, in a single document, the initial, second, third, fourth and fifth periodic reports. Since its ratification of the Convention against Torture in 1987, her Government had been unable to submit a report earlier owing to the lack of relevant, recent data, and of adequate material and financial resources.
4. The first part of the report contained information on the geography of her country, and socio-economic, demographic, financial and development indicators, together with an overview of political and administrative developments up to 2002. Since then the presidential elections of 2005 had been marred by violence, which had led to significant population movements within and outside the country. The new Government was intent on upholding human rights and fundamental freedoms, and on promoting values and practices to build democracy and strengthen the rule of law. More specifically, the Head of State had expressed his firm commitment to end wrongful detention and gratuitous acts of violence, to ensure compliance with time limits on detention, to ensure satisfactory conditions of detention, and to oversee the proper functioning of the administrative tribunals and the return of refugees. As to the general legal framework, significant progress had been achieved in the context of the national programme to modernize the justice system (2005-2010). In the area of human rights, a number of major legal instruments and newly established authorities had contributed to action to combat torture. They were backed up by the numerous private media which participated energetically in information, education and communication activities. The recent decriminalization of press offences had strengthened freedom of expression.
5. The second part of the report reviewed progress achieved thus far, and areas where further progress was needed, in combating torture and other cruel, inhuman and degrading treatment. Addressing questions 1, 2, 3 and 24 of the list which had been sent to her delegation, she said that the Criminal Code did not define torture as such within the meaning of article 1 of the Convention. Acts amounting to torture were covered by the Code, which established penalties in accordance with the gravity of the offence. The offences included wilful violence, assault, sequestration, abduction and grievous insult. Her Government was aware of the need to sanction torture effectively, and assured the Committee that the definition of torture would be enshrined in the new draft criminal code, in pursuance of the Convention and other binding international instruments. The scope of the offence of torture would also be expanded to cover not only public officials, but also private individuals.

6. With reference to questions 4, 16, 18 and 19, contrary to the widespread belief that law enforcement officials enjoyed impunity, national legislation laid down the principle of personal responsibility on the part of each official for offences committed in the exercise of his duties. Training in international humanitarian law, with special focus on the prohibition of torture, was provided to law enforcement officials and forensic experts. Recent unrest had revealed the limitations of existing training programmes and the subsequent need for ongoing training and refresher courses. In that light, training seminars had been organized, as well as special days when law enforcement officials and members of civil society could meet informally.

7. In reply to questions 5, 6, 7, 17, 25, 26 and 30, she said that incommunicado detention had been prohibited. Public prosecutors and investigating magistrates had been instructed to carry out periodic visits to detention centres and to report back to the Ministry of Justice. As a result, more than 400 detainees had been released on the grounds that their detention had been insufficiently justified. Another 700 detainees, who had served more than half their sentence, had been released, either in view of their favourable social reintegration prospects, or because they had not yet been brought before a judge. The right of detainees to be assisted by lawyers within 24 hours of their arrest had been implemented. Her Government intended to introduce legislation establishing the procedures for legal assistance throughout the pretrial period. It was also working on the establishment of the office of visiting magistrate to inspect places of detention. Under the modernization programme, a new Director of Prosecutors' Offices would also be responsible for monitoring conditions of detention. Disciplinary sanctions could be imposed on officials who kept individuals in custody beyond legal time limits, and on those who committed acts of torture. Under the new legislation, confessions obtained through torture would be considered inadmissible. Additional prison warders would be hired and given training in the rights of detainees and the prohibition of torture. Female officers would be recruited specifically for female detainees. The number of detention facilities for minors had already been increased.

8. While the State endeavoured to improve catering in prisons, that was difficult in the context of limited financial resources and the increasing number of detainees. It looked to the adoption of the law on work in the community as a way of reducing that number. Agreements had recently been signed to allow the International Committee of the Red Cross (ICRC) and other NGOs to conduct random visits to detention centres.

9. Referring to questions 8, 9, 13, 14 and 15, extradition, refoulement and expulsion were only ordered if they were in conformity with domestic law and international treaties ratified by Togo, including the Convention against Torture. It would thus not permit extradition of a person to a State in which he might be subjected to torture. In contrast, extradition to a State would be ordered if the person concerned had committed an act of torture.

10. Questions 10 and 11 demonstrated the limitations of domestic law, which did not establish the universal competence of Togolese courts. Any act of torture committed abroad by a foreigner who had sought refuge in Togo could not therefore be prosecuted by the national authorities. For that reason, the State often responded favourably to extradition requests, provided that the offence committed was not of a political nature and that there was nothing to suggest that the individual might suffer torture. When the offence was committed by a Togolese national abroad, the Togolese authorities were competent.

11. In order to ensure the independence of the judiciary and consideration towards victims of torture, the judiciary regulations stipulated that judges could not be removed or transferred from their posts without their consent. In practice, however, that principle was undermined by the shortage of judges, which meant that such actions could be taken when necessary without a judge's consent, on the instructions of the Higher Judicial Council. No prosecutor or judge could be prosecuted for any decision he had reached in all honesty or on the grounds of his interpretation of an enactment or regulation. The aim of the programme to modernize the justice system was to strengthen the independence of the judiciary. As to the power of the judiciary over the activities of the police, it was not effective in spite of the legal provisions concerning machinery and sanctions. Supervision was complicated by the fact that judicial police officers were answerable to two authorities, military and judicial.

12. She reiterated her Government's firm commitment to the full and continuous implementation of all instruments to combat torture, and would welcome support from all development partners in assisting Togo in its efforts to achieve further progress in promoting democracy and strengthening the rule of law.

13. Mr. CAMARA, Country Rapporteur, stressed that it was the role of the Committee to assist States parties in their efforts to comply with the Convention and related international instruments. He had noted that provision had been made for international instruments to become an integral part of the Togolese Constitution, and that, upon their publication, duly ratified treaties took precedence, over domestic laws. He requested clarification of the approach that would be adopted if an international instrument was inconsistent with the Constitution.

14. The absence of a definition of torture in the Constitution could not be justified by the fact that it was covered by other legal provisions dealing with related offences. Compliance with the terms of the Convention involved, first and foremost, accepting the definition of torture as it stood. Beyond the notion of an offence committed with the aim of obtaining evidence, torture was also a means of intentionally inflicting punishment on an individual, sometimes on the basis of discrimination. It must be emphasized that imposing penalties for a torture-related offence did not equate to imposing penalties for torture, in view of the seriousness of torture itself. Failure to adopt the approach laid down in the Convention necessarily resulted in impunity.

15. With regard to article 3 of the Convention, he expressed concern about subregional extradition treaties which allowed the Togolese police force to hand over a person accused of a criminal offence to the police force of the requesting State. That was not compatible with the provisions of the Convention or the Togolese Constitution, whereby a person could not be deprived of his liberty without a judicial decision.

16. He sought further details on the agreement between the United States of America and Togo under which a United States citizen on Togolese territory could not be brought before the International Criminal Court to be tried for war crimes or crimes against humanity. Since torture constituted a crime against humanity, Togo had the obligation to prosecute or extradite persons accused thereof. He questioned the compatibility of that agreement with the provisions of the Convention.

17. The Court of Cassation of the Central African Republic had decided that the former President of the Republic, Ange-Félix Patassé should be brought before the International Criminal Court. He was currently in exile in Togo. How could the Togolese Government reconcile that situation with its obligations under article 3?
18. In conclusion, he said that numerous reports had been received, including from the United Nations mission to Togo, of the unlawful conduct of law enforcement officials during the unrest in the country in 2005. He asked how the State party intended to deal with the situation.
19. Mr. MARIÑO MENÉNDEZ, Alternate Country Rapporteur, said that the introductory statement had provided information on recent institutional and legislative developments, such as the draft criminal code, which should incorporate a definition of the offence of torture in line with that of the Convention. When would it be enacted? Other noteworthy developments showing the Government's political will to ensure compliance with the Convention included draft legislation relating to access to legal counsel for detainees and the reform of the judiciary.
20. With regard to article 10, he said that the report contained information on a wide variety of training courses and events, but he had the impression that they concerned human rights in general. He stressed the need for specific training on the prevention of torture. For instance, prison guards should receive special training on the treatment of female detainees, covering the fact that rape constituted torture. Similarly, special training on children was required. He asked whether a national plan of action to combat trafficking in persons had been implemented and with what results, in the light of the reported trafficking problem in the Gulf of Guinea.
21. In connection with article 11, he understood that persons held in detention were entitled to receive medical treatment, but only upon request. He asked whether there were any statistics available on the subject. As to legal assistance, he sought clarification regarding the statement that for the most part defence lawyers preferred the examining magistrate, on conclusion of the pretrial proceedings, to dismiss the case (para. 319).
22. Concerning articles 12 and 13, he said several NGOs had reported that the torture and killings of many people by law enforcement officials following the 2005 elections had not been properly investigated. He also sought clarification concerning the circular that had reportedly been issued by the Prime Minister in March 2006 instructing the police and prosecution services to halt investigations into persons accused of such offences. Was that a form of amnesty?
23. Although inspections of detention facilities had been introduced, cases of prolonged detention continued, including detention of minors. What was the time limit for pretrial detention, and by what authority and under what circumstances could it be extended?
24. At one time NGOs had been allowed to visit detention facilities. What was the current situation? Was it government policy to involve NGOs more closely in its efforts to uphold human rights?
25. He presumed that since there had been virtually no convictions for cases of torture, there would have been very few claims for compensation by victims. Nonetheless, he would welcome

more information on how injuries that might have resulted from torture or ill-treatment were assessed. He understood that was done by experts recruited on a contractual basis. Were there no forensic experts employed in the civil service for that purpose?

26. Were prosecutors empowered to halt criminal proceedings brought by the victims of torture, thereby making the institution of civil proceedings very difficult? Had the State party envisaged the establishment of a fund for the victims of torture?

27. According to the report, there was no legal provision requiring the invalidation of statements obtained as a result of torture (para. 313). The declaration of invalidity was only effective if it was not established that the offence took place (para. 316). That was not in line with the provisions of article 15 of the Convention, and he enquired whether there were any plans to remedy the situation?

28. Turning to article 16, he asked whether the corporal punishment of children was prohibited under Togolese law.

29. According to the report, particular attention was paid to protecting the physical and mental integrity of women, which had included the prohibition of female genital mutilation as of 1998. He would welcome more information on reports that in the north of the country certain customs harmful to women were prevalent.

30. Who was responsible for maintaining law and order in prisons - the police, or civilian or military authorities? If it was the latter, that could give rise to problems. Was there a system of military justice and how did it work?

31. The Government had acknowledged that prison conditions left much to be desired, with overcrowding posing a serious problem. What steps were being taken to remedy the situation, particularly in Lomé civil prison, where conditions fell far short of international standards.

32. He would welcome more information on the so-called "pro-governmental militaries". Were any paramilitary groups tolerated by the authorities?

33. He commended the Government on its generous policy towards refugees, of whom there were large numbers in the country. Nevertheless, Togo had its own refugees - those who had fled the country in the wake of the violence in 2005. Had any effort been made to ensure their safe return to Togo?

34. Mr. GROSSMAN said that the treatment of human rights defenders was often a reflection of the human rights situation in a country. Had the State party envisaged making a public declaration on the useful role played by human rights defenders, especially in action to combat torture?

35. He asked what the procedures were for the establishment of NGOs, and whether they had access to prisons and hospitals. He stressed the importance of adequate resources so that they could do their work effectively. He sought clarification regarding reports of the attack against the Togolese League of Human Rights and harassment of its staff in connection with the publication of a report on the human rights situation in the country. Had any investigation been conducted into the incident, or any claims for damages filed by the persons concerned?

36. He asked whether the Government envisaged inviting the Special Rapporteur on the question of torture to Togo to help combat torture and with related training activities.
37. Journalists also played an important role in defending human rights. Allegations had been made concerning the harassment and ill-treatment of journalists, including Dimas Dzikodo. He would welcome clarification of that point.
38. The establishment of the National Human Rights Commission was a positive development. What was its budget? Did its members have the right to visit detention facilities?
39. In the United Nations treaty monitoring system and pursuant to the Rome Statute of the International Criminal Court, disappearance was considered tantamount to the offence of torture for both the victims and their relatives. Were cases of disappearances recorded in Togo, and what was the Government's attitudes to them in general?
40. Secret detention facilities were also a serious problem since conditions there could not be properly monitored. He had received a long list of persons held in secret facilities in Togo. What was the Government's position on the matter? Could the Special Rapporteur on torture possibly play a role in that connection? Highlighting the importance of combating impunity, he asked whether there had been any convictions in connection with allegations of torture or ill-treatment in secret facilities.
41. Ms. SVEAASS noted that the report contained detailed information on a wide range of human rights training activities in the State party (paras. 174-211). How was the impact of those activities assessed? In its introductory statement the delegation had referred to training programmes in cooperation with NGOs. That was a positive development on which she would welcome more information, particularly since the Committee had received reports of difficulties encountered by NGOs in conducting human rights activities in Togo.
42. Voicing concern about excessive pretrial detention, she referred to a case highlighted by the United Nations mission to Togo in 2005 of a woman who had been in prison awaiting trial since 1998. Could the delegation provide an update on her situation?
43. Concerning the ill-treatment of women, she asked whether there had been any prosecutions under the Individuals and Family Code of 1980 and legislation prohibiting genital mutilation. In the affirmative, what type of psychosocial measures had been taken vis-à-vis the victims and offenders?
44. Ms. BELMIR commended the report and, noting the provisions of the Criminal Code on pretrial detention periods, expressed concern at reports of those limits being exceeded, and of children being held by the police for four to eight days before being transferred to Lomé prison and subsequently detained for up to one month, together with adults. No access to a lawyer had been granted, and there had been allegations of ill-treatment. She asked the delegation to provide an explanation of such instances of non-compliance with the provisions of the Criminal Code.

45. She asked whether law enforcement officials were not prohibited by law from breaking into private homes to question young people about their political activities, sometimes using violence, and whether the armed forces continued to be involved in arrest and detention operations. Noting the delegation's comment that Togo's obligation under the Convention not to extradite an individual to another State where that person would be in danger of being subjected to torture did not apply to persons who had committed torture themselves, she said that surely those persons too were at risk of being subjected to torture.

46. Ms. GAER, after commending the report, welcomed the fact that members of the National Human Rights Commission and NGOs had been involved in the drafting process. She asked how government officials had found the experience of drafting the report in conjunction with those experts, and how the work had been apportioned. Given the questions that had been raised about the independence of the National Human Rights Commission, she asked whether its decisions and recommendations were enforceable, and to what extent it could act on its own. For example, could it bring cases to the judicial authorities for prosecution?

47. She expressed concern at the assertion in paragraph 46 of the report that there had been no cases of torture in the annals of Togolese justice, but many cases of "wilful violence". The paragraph should be rectified to reflect examples of what had amounted to acts of torture.

48. She sought clarification of the wording of paragraph 66, asking whether individuals had the right to proactively request a medical examination by a doctor, and if so, at what point. She welcomed the fact that women had the right to refuse to submit to rites of widowhood, but asked what action had been taken by the Government to actually prohibit such rites, which could amount to cruel and inhuman treatment.

49. While the delegation was to be congratulated on the examples it had provided in the report, there was insufficient information on follow-up to some of the cases of alleged acts of torture and ill-treatment described in relation to articles 12 and 13, where punishment often consisted of eight days' imprisonment, and a "request that a much higher penalty be imposed". What follow-up, for example, had there been to that request in the case of Madohona Vitondji? Had the more severe penalties actually been imposed? And were the suspensions from office temporary or permanent? She asked whether, in the delegation's view, the sanctions described were adequate, in view of the severity of the offences.

50. Concerning prison conditions, she asked whether any measures had been taken, or were planned, to correct practices in which men and women, children, pretrial detainees and convicted prisoners were reportedly all detained together. As the Committee's Rapporteur on gender issues, she asked whether sexual violence in prisons was monitored. If so, what were the results, and what protection was given to women who wanted to lodge official complaints. If none was given, what measures were planned to change that situation? She asked to what extent women were represented in policing and the judiciary, and what access they had to detainees.

51. She would welcome information on the situation concerning police commissioner Emile Kodjovi Dadji who, according to the United States Department of State Country Report on Human Rights Practices 2005, was being detained in an unknown location. If that was true, did

the delegation know where he was, and whether he had been charged or released? The same report referred to the systematic rape of women by military personnel, often in front of their families. Had any attempts been made to bring the perpetrators to account, and if so, with what results? On the subject of trafficking, she understood that Togo was often a point of origin, but more often a point of transit for children who were victims of trafficking, including girls for the purposes of prostitution. She would be interested to know what efforts the Government was making in that area.

52. The CHAIRPERSON praised the report. Areas where information was lacking corresponded to lacunae in Togo's legislation relating to its obligations under the Convention. He suggested that a comparative study could be of help in enacting the relevant new provisions. While the report was to all intents and purposes an initial report, if certain conditions were fulfilled the Committee could nevertheless decide, in accordance with its rules of procedure, to inform the country of the date on which the next periodic report must be submitted. He did not accept economic difficulties as a reason for not incorporating the definition of torture into domestic legislation, which must be amended to fulfil the country's obligation to prosecute or extradite any individual in that country - whether a Togolese citizen or not - if there was credible evidence that he or she had committed an act of torture anywhere in the world.

53. He endorsed the comments made about NGOs and the National Human Rights Commission, and hoped the latter would be given greater powers, including the right to prosecute rather than simply pay out compensation. In that connection, he asked who was responsible for payment - the Government, the culprit, or both? In his view, in cases where officials were acting in the course of duty, the last option was the most appropriate. To strengthen the Commission's independence, its members should include human rights activists, including human rights defenders, and not individuals close to the Government.

54. He strongly suggested the inclusion of training on the Convention as part of the curriculum for cadets in military and police academies, to supplement the human rights training given to those already in office. He also recommended the compilation of a manual describing acceptable interrogation practices. Much had been done, but he hoped still more could be done to ensure the greater protection of human rights and fundamental freedoms.

55. The Togolese delegation withdrew.

The meeting was suspended at noon and resumed at 12.10 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

56. The CHAIRPERSON proposed that the Committee should be represented by Mr. Camara at the working group meeting on reservations on 8 and 9 June 2006; by Mr. Grossman and Ms. Gaer at the Liechtenstein meeting from 14 to 16 July; and by Ms. Sveaass and Ms. Belmir at the fifth inter-committee meeting. He would also attend the inter-committee meeting, as well as the eighteenth meeting of chairpersons of the human rights treaty bodies.

57. It was so decided.

58. The CHAIRPERSON, referring to the problem of the Committee's backlog of work, said that there was a need to balance the requirement of dealing as expeditiously as possible with State party reports and communications. The list of issues was creating more and more difficulties and had not in any way reduced the time allocated to additional questions. Furthermore, the written replies were not reflected anywhere in the records, and confusion could be generated if the Committee's conclusions were based on information not contained in the summary records. After much discussion it had been decided to request States parties to send their written replies to the Committee at least 12 weeks in advance. The list of issues could contain approximately 30 questions, with roughly one page per reply. It would be explained to them that their written replies, if sent in advance, would be reflected in the records. He suggested that the new practice might be tried out immediately.

59. Mr. GROSSMAN endorsed the suggestion that the Committee should try to limit the list of issues to 30 questions, provided it was recognized that every question was liable to include sub-questions.

60. The CHAIRPERSON agreed that the questions should continue to contain sub-questions, so long as they proceeded from the main question and did not raise new issues. With the Committee's consent, he would ask the secretariat to inform States parties of the new arrangements. He would also explore with the Petitions Unit the possibility of sending in advance to members of the Committee completed individual communications, together with the names of the rapporteurs who had dealt with the question previously. In that way, members would arrive at Committee sessions able to start work immediately.

61. Ms. MORALES (Secretary of the Committee) noted that the new arrangements would require the Committee to agree at the previous session on the names of the rapporteurs. The secretariat and the rapporteurs could then work together in the intersessional period so that the rapporteurs' comments on the complaints to be considered could be included in the information sent to members of the Committee.

62. The CHAIRPERSON suggested that time might be found in the course of the session for brief preliminary discussions between rapporteurs and members of the Committee on the content of the concluding observations on country reports. Such a return to an earlier practice might help to abbreviate the often protracted discussions on drafting and other questions under the adoption of concluding observations.

63. Ms. GAER, endorsing the Chairperson's suggestion, said she had always found it useful as rapporteur to hear the views of other members prior to drafting the concluding observations in response to country reports. She noted that the hour allotted to NGOs at the end of the day prior to consideration of the relevant country report the following day was not always fully taken up. If NGOs were required to indicate in advance whether they intended to participate in the discussions with the Committee, it should then be possible to schedule a number of short meetings in accordance with the Chairperson's suggestion.

64. Mr. MARIÑO MENÉNDEZ, supporting the previous speaker's suggestion, said that a deadline of one to two weeks could be set for NGOs to notify their intention to attend the formal meeting with the Committee, failing which they would have to consult with Committee members on an informal basis.

65. The CHAIRPERSON noted the support for Ms. Gaer's proposal that NGOs should be asked to give notice of their intention to be present at the meeting with the Committee so as to free up time for the Committee's preliminary discussions on its concluding observations and recommendations in response to country reports. He suggested that the Committee's morning meetings to consider initial reports should be scheduled to last two hours, on the understanding that they could go on longer if necessary, to allow other business to be scheduled for the third hour, which was currently not always used efficiently.

66. In response to a question by Mr. Camara concerning the possibility of requesting the Democratic Republic of Congo (DRC) to look into and report back on the case of the assassination in that country of a senior appeal court judge, he suggested that Mr. Camara should explore with Ms. Gaer, Country Rapporteur for the DRC, ways in which the request might be made in the context of the follow-up to the Committee's concluding observations on the DRC's recent periodic report.

67. Finally, he confirmed that Mr. Mariño Menéndez would serve as rapporteur on follow-up to communications.

The meeting rose at 1 p.m.