

TOGO

Commission on Human Rights Rapporteurs

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COMMITTEE AGAINST TORTURE

Thirty-eighth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 756th MEETING

Held at the Palais Wilson, Geneva,

on Tuesday, 1 May 2007, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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MISSION TO TOGO BY THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The CHAIRPERSON welcomed Ms. Kainz, who would present to the Committee the findings of the mission carried out in Togo from 10 to 17 April 2007 by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Nowak.

2. Ms. KAINZ (Assistant to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) passed on to the Committee Mr. Nowak's regrets that he was unable to present the findings of his mission to Togo himself. The members of the Committee would find a detailed report on the mission (including itinerary, places visited and persons met) in the press release which had been distributed to them. Overall, the Special Rapporteur had felt that the human rights situation in Togo had improved considerably since 2005 and that torture was not being practised systematically in the country. He had nevertheless noted that beating and ill-treatment were still common practices in places of detention, especially for the purposes of extorting confessions or inflicting punishment. Despite some improvement in detention conditions, inhumane treatment continued in many places of detention, owing mainly to overcrowding, lack of food and drinking water and insufficient medical care.

3. The problems noted by the Special Rapporteur as requiring urgent measures were impunity, deficiencies in the judicial system, the absence of an independent monitoring mechanism and various shortcomings with respect to public institutions. On the last point, the Special Rapporteur had expressed particular concern about the fact that, in most prisons, authority was systematically delegated to the prisoners themselves. Involvement of the armed forces in law enforcement was also a subject of concern.

4. With respect to reforms undertaken by Togo since presentation of its initial report to the Committee in May 2006, the National Human Rights Commission had been reorganized and, although its new chairman and some of its members had made a very good impression on the Special Rapporteur, it was still too early to assess the effectiveness of the new team. From the legislative point of view, no measures had been taken to make torture a criminal offence since the commission dealing with the matter was not yet operational. The Special Rapporteur had recommended filling

that gap as soon as possible, if possible immediately following the elections of 24 June 2007.

5. The elections were being awaited eagerly but not without apprehension, with some fearing a resurgence of the violence that had marked the 2005 elections. In that respect, the Special Rapporteur had deplored the fact that none of the persons who had committed those crimes had been brought to justice. That total impunity could be explained in part by the fact that even though the current Government was a coalition government, in which the majority of the opposition parties were represented, the key ministries were still in the hands of dignitaries of the old regime, who, naturally, were scarcely inclined to rake up the past. There was a certain reluctance among opposition parties to revisit the events of 2005, which could be explained in part by the fact that the European Union had pledged to grant financial aid to Togo if the elections were carried out peacefully, resulting in a desire not to revive tensions.

6. With respect to civil society, the non-governmental organizations (NGOs) with which the Special Rapporteur had cooperated before and during the visit had reported no recent allegations of torture aside from those relating to the events of 2005. NGOs were not, however, in a position to ensure effective monitoring of detainees' living conditions given that they did not have access to places of detention. The Special Rapporteur, on the other hand, had been able to see with his own eyes that conditions were often appalling and led to inhuman or degrading treatment. Problems therefore existed, the seriousness of which should not be downplayed, but the situation in Togo with respect to the practice of torture *sensu stricto* was far from being the worst among the countries that the Special Rapporteur had visited.

7. Ms. SVEAASS requested further details on the distinction made by the Special Rapporteur between ill-treatment and torture. Recalling the fact that no national NGOs had participated in the dialogue with the Committee during the consideration of Togo's initial report for fear of reprisals, she asked whether a climate of insecurity still surrounded human rights defence activities in Togo.

8. Ms. KAINZ (Assistant to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that the NGOs which had met with the Special Rapporteur during his visit had held open dialogue with him and had by no means given the impression that they were subject to pressure. As to the distinction between ill-treatment and torture, the Special Rapporteur had in fact hesitated between the two terms in relation to certain cases of persons being beaten by police officers, but he had nevertheless been categorical that torture was not being practised systematically in Togo.

9. Mr. GROSSMAN recalled that the definition of the notion of systematic practice of torture, as given in the Committee's case law, was the following: "torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government". (CAT/C/75, para. 218). Sir Nigel Rodley, Special Rapporteur on the question of torture from 1993 to 2001, had also used that definition to establish whether torture was being practised systematically. The speaker wondered what the current Special Rapporteur's position was.

10. Ms. KAINZ (Assistant to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) replied that the Special Rapporteur would be better placed to respond to that question himself. To date, the only country in which he had found that torture was being practised systematically had been Nepal, in a decision for the purpose of which he had defined systematic practice of torture as implying the connivance of the State. With respect to Jordan, the Special Rapporteur had preferred the term "routine practice" to "systematic practice". However, the notion of systematic practice of torture applied by the Special Rapporteur did not appear to contradict the Committee's definition.

11. The CHAIRPERSON suggested that the time had perhaps come to reconsider that definition, which, as it was currently worded, did not take into account the literal sense of the word "systematic", which referred to a system and could potentially give rise to different interpretations.

12. Ms. BELMIR returned to the matter of prison overcrowding and the absence of legislative measures making torture a criminal offence. During consideration of its initial report, the State party had blamed those shortcomings on a lack of resources. She wondered if that was still currently the case or whether the persistence of the problems should be seen as the result of negligence by the State.

13. Mr. MARINÑO MENÉNDEZ enquired as to whether an estimate had been made of the period of time that generally elapsed between suspects being taken into police custody and their case being heard by the courts. The problem of prison overcrowding was so acute in Togo that it might be suspected that it was the result of a deliberate State policy. Despite the State taking refuge behind the argument that the violations were committed by individuals outside their control or were due to a lack of resources, it was no less responsible. He wondered whether women detainees were victims of violence and whether preventive measures had been taken in that respect.

14. Ms. KAINZ (Assistant to the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that the main cause of overcrowding in places of detention was the inefficiency of the judicial system; three quarters of detainees in the south of the country were suspects whose pretrial detention had continued indefinitely and only one quarter were convicted prisoners actually serving sentences. As to legislative measures, Togo had planned to bring its domestic legislation into line with international standards and had created a commission to that end; but, as the reform process was likely to take several years, the Special Rapporteur had stressed that, after the elections, it was essential that priority should be given to incorporating provisions punishing torture and appropriate sanctions into the Criminal Code.

15. As regards the police custody limit, which was 48 hours, the fact was that it was almost never observed, with suspects being detained at police stations for up to 10 days or more before being released or sent to prison. In addition, the situation varied according to region, with suspects in pretrial detention making up 50 per cent of the total in the north of the country as against 75 per cent in the south.

16. With respect to violence against women, the Special Rapporteur had met with NGOs to discuss the issue of female genital mutilation. Although an act prohibiting the practice had been

adopted in 1998, only one conviction had been handed down by the courts for that offence. NGOs were not in a position to state whether female circumcision was on the decline since it was possible that it was being practised secretly or in other countries such as Mali. As the situation was unclear, the Special Rapporteur had planned in his report to the Human Rights Council to submit a recommendation urging the Togolese authorities to undertake a comprehensive survey to determine the extent to which female genital mutilation was still being practised in Togo.

17. The Special Rapporteur had received no complaints with respect to violence against women in places of detention, owing to the fact that very few women were held in custody. Generally speaking, the situation of women and children in places of detention had improved since 2005.

18. The CHAIRPERSON thanked Ms. Kainz for her presentation and replies and asked her to pass on his assurances to the Special Rapporteur that the Committee was fully prepared to cooperate with him and to exchange information on matters of mutual interest.

The public part of the meeting rose at 3.40 p.m.