



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

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Committee against Torture

List of issues prior to submission of the third periodic report of Togo, due in 2016*

The Committee against Torture, at its thirty-eighth session (A/62/44, paras. 23 and 24), established an optional procedure which consists in the preparation and adoption of a list of issues to be transmitted to the State party concerned prior to the submission of its periodic report. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

Specific information on the implementation of articles 1 to 16 of the Convention, including with regard to the Committee's previous recommendations

Articles 1 and 4

1. With reference to the Committee's previous concluding observations (paras. 7 and 8),¹ please provide up-to-date information on progress made with regard to the adoption of the new Criminal Code. Please also indicate whether the bill to amend the Criminal Code contains a definition of torture that incorporates all the elements contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment² and characterizes all acts of torture as offences punishable by penalties commensurate with the gravity of the acts committed. In this connection, when submitting the State party's report, please transmit to the Committee the bill to amend the Criminal Code and the preliminary bill to amend the Code of Criminal Procedure. Please also indicate whether a deadline has been set for the consideration of these bills.

2. In the light of the Committee's previous concluding observations (para. 11), please indicate whether the 10-year statutory limitation provided for in article 12 of the

* Adopted by the Committee at its fifty-third session (3–28 November 2014).

¹ The paragraph numbers in brackets refer to the Committee's previous concluding observations, adopted on 21 November 2012 (CAT/C/TGO/CO/2).

² See CAT/C/SR.1114.



preliminary bill on the Code of Criminal Procedure has been removed and whether a provision on the non-applicability of statutory limitations to the crime of torture has been included in the preliminary bill. If this is not the case, please state the reasons.

Article 2

3. Please provide up-to-date information on the measures taken by the State party to incorporate in the Constitution, or in any other law, the principle of the absolute prohibition of torture, according to which no exceptional circumstances of any kind, including a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify derogating from this principle. Please indicate whether any complaints of torture have been lodged. If so, please provide information on the number of complaints received, the number of investigations and prosecutions to which they have given rise, the number of convictions handed down and the nature of the penalties imposed.

4. In the light of the Committee's previous recommendation (para. 10) and the reports received by the Committee of numerous violations of fundamental guarantees during arrest and deprivation of liberty,³ please supply information on measures and procedures adopted in order to guarantee, in practice, the right of all persons deprived of their liberty to be informed promptly of the reason for their arrest and the charges brought against them in a language that they understand; to consult a lawyer of their choice; to obtain legal aid; to communicate with a family member or relative; to be examined promptly by a doctor of their choice; and to be brought, as soon as possible, before an independent and impartial tribunal in order to obtain a ruling on the legality of their detention. Please indicate whether all these fundamental guarantees have been embodied in the preliminary bill to amend the Code of Criminal Procedure;⁴ clarify whether these rights are subject to restriction and, if so, on what grounds; and describe the obstacles accounting for the delay in adopting this preliminary bill.

5. Please indicate whether the State party has taken concrete measures to provide for the implementation of the Act of 24 May 2013 on legal aid, in particular through the adoption of a decree setting forth the mandate, terms of reference and composition of the National Legal Aid Council.

6. Taking into account the previous concluding observations of the Committee (para. 15) and reports received by the Committee concerning a recurring problem of violence against women and girls, please provide information on the measures taken by the State party to prevent and punish all forms of violence against women and girls. In that connection, please indicate whether a comprehensive national action plan has been developed. Please also indicate whether the bill to amend the Criminal Code characterizes violence against women as "crimes against the person" rather than as "crimes against morality", which is the wording used in the current Criminal Code. Have provisions relating to the criminalization of domestic violence, including marital rape, been included in the preliminary bill to amend the Criminal Code?

7. As a follow-up to the Committee's previous concluding observations (para. 15) and in the light of the continuing high prevalence of female genital mutilation and the ineffectiveness of national legislation in this area, and taking into account the awareness-raising campaigns organized by the Ministry for the Advancement of Women, please

³ A/HRC/WG.6/12/TGO/2, para. 31.

⁴ CAT/C/TGO/CO/2/Add.1, para. 4.

provide information on the measures taken by the State party to end this practice. Please indicate whether any nationwide awareness-raising programmes on the harmful effects of female genital mutilation have been organized; whether special shelters have been set up for women and girls who have fled their homes in order to escape genital mutilation; and, lastly, whether rehabilitation programmes have been organized to offer alternative sources of income to persons for whom the practice of female genital mutilation constitutes a means of subsistence. Where appropriate, please indicate the criteria used by the State party to evaluate the effectiveness of the measures it has implemented. Finally, please indicate whether an obligation to provide redress to the victims of such practices has been included in the preliminary bill to amend the Code of Criminal Procedure.

8. In the light of the Committee's previous recommendation (para. 20), please provide statistical data, broken down by age and nationality or ethnic origin, on the number of complaints, investigations, formal charges and convictions, and on the sentences handed down, in cases of physical or sexual violence against women and girls since the Committee's most recent recommendations.

9. On the basis of reports received by the Committee of a widespread problem of internal and cross-border trafficking of men, women and children for the purposes of sexual exploitation, forced labour or domestic slavery, please provide up-to-date statistics, broken down by the victims' sex, age and nationality or ethnic origin, on the number of complaints, investigations, formal charges and convictions, and on the sentences handed down in such cases, since the consideration of the previous periodic report. Please indicate whether the bill to amend the Criminal Code contains provisions that prevent and criminalize all forms of trafficking in persons and that bring the Code into line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, which was ratified by the State party on 8 May 2009.

10. Please provide information on specific measures taken by the State party to effectively combat trafficking in children, in accordance with the previous recommendations of the Committee on the Rights of the Child (CRC/C/TGO/CO/3-4). Please indicate whether the State party intends to amend the Togolese Children's Code and Act No. 2005-009 on child trafficking, in order to bring them into conformity with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which was ratified by the State party on 2 July 2004, and to increase the length of the sentences prescribed for such crimes. Please also indicate when the National Commission for Combating Child Trafficking, as established pursuant to Act No. 2005-009 on child trafficking in Togo, will become operational, and give details of the powers included in its mandate — in particular, whether it can initiate investigations — and the annual budget that will be allocated to it.

11. Lastly, please indicate the measures taken by the State party to develop a policy of mutual legal assistance with other originating, receiving and transit States for cross-border trafficking in persons.

12. In the light of reports received by the Committee of a recurring problem of excessive use of force by law enforcement officers, please provide information on action taken by the State party to implement effective measures to prevent all acts of torture and other forms of ill-treatment by such officers — including the excessive use of force — in particular through criminal penalties and effective disciplinary mechanisms, in accordance with the State party's obligations under the Convention. Please also include information on the training imparted to law enforcement officers on this subject. Moreover, please provide

information on the results of investigations conducted, proceedings initiated and convictions and sentences handed down in cases of political repression involving the excessive use of force, such as those of Anselme Sinadare Gouyano, Douti Sinanlengue, Mohamed Loum, Jean Eklou, Ouro Akpo, Athiirey Apollinaire and Etienne Yakanou.

13. In the light of the Committee's most recent concluding observations (para. 14), the Committee notes with satisfaction the finalization of the preliminary bill to amend and supplement Organic Acts No. 2005-04 and No. 96-12 on the composition, organization and functioning of the National Human Rights Commission, but requests that the State party supply more detailed information on the specific provisions included in the bill in order to ensure that the Commission fulfils the role of national preventive mechanism in an independent and impartial manner, in accordance with the requirements of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Paris Principles.⁵ In particular, please indicate whether its new mandate will enable it to conduct investigations into allegations of torture or ill-treatment and to undertake unannounced visits to all places of detention, including unofficial facilities. Please also specify the annual budget allocated to the Commission, the allocating agency and the periodicity of disbursements.

14. Please also provide explanations for the information contained in the report of the Special Rapporteur on the situation of human rights defenders,⁶ which indicates a decrease in the financial resources allocated to the National Human Rights Commission since the publication of the Commission's report on allegations of torture made by prisoners in connection with proceedings brought for endangering State security. Lastly, please indicate whether an investigation was initiated in order to shed light on the reasons that led Koffi Kounté, former president of the National Human Rights Commission, and his family to leave Togo following the publication of the Commission's report and, if so, indicate the status of the investigation, its results and whether the necessary guarantees have been extended in order to ensure his safe return to Togo.

Article 3

15. With regard to the Committee's previous concluding observations (para. 16), please provide detailed information on relevant developments both at the institutional and legislative levels and in practice that have taken place since the Committee's previous concluding observations, as they relate to the principle of non-refoulement and the obligations arising from article 3 of the Convention. Please indicate whether the bill to amend the Criminal Code includes provisions guaranteeing that a person may not be expelled if there is an acknowledged risk that he or she would be subjected to torture if returned to a third State.

16. What procedure is followed in the event of a request for asylum or expulsion? Are individuals awaiting expulsion, return or extradition informed of their right to seek asylum and to lodge an appeal? Is there a requirement for these procedures to include a personal interview in order to assess the risk faced by each applicant individually? In the event that an appeal is lodged following an expulsion, return or extradition order, does such an appeal have suspensive effect? Does the preliminary bill to amend the Criminal Code contain specific provisions guaranteeing the right to an appeal with suspensive effect in such

⁵ Principles relating to the status of national institutions for the promotion and protection of human rights, adopted in General Assembly resolution 48/134 of 20 December 1993.

⁶ A/HRC/25/55/Add.2.

procedures, as well as all the fundamental guarantees arising from the Convention and international instruments, pending the outcome of the remedies sought?

17. Please indicate the number of asylum applications received during the period under review and the number of applications that were granted because there were substantial grounds for believing that there was an acknowledged risk that the persons in question would be tortured if they were returned to their country of origin or to a third State. Please include data, broken down by sex, age and country of origin, on the number of persons who have been returned, extradited or expelled since the consideration of the State party's previous report.

18. Please indicate the number of cases of refoulement, extradition and expulsion in which the State party accepted diplomatic assurances or similar guarantees and the number of cases in which it provided such assurances or guarantees. What are the minimum terms of such assurances, whether given or received, and what type of follow-up actions do they entail? Please also indicate whether there have been any cases of extraordinary rendition and, if so, provide explanations in that regard.

Articles 5 to 9

19. Please indicate what legislative or other measures have been taken to give effect to article 5 of the Convention. Please clarify whether, under national law, acts of torture are considered to be offences for which the State party is required to exercise universal jurisdiction, irrespective of the place in which the acts were committed and of the nationality of the perpetrators or victims of such offences. Please give specific examples of decisions handed down in this regard. Please also indicate whether the State party plans to ratify the Rome Statute of the International Criminal Court.

20. Please indicate whether the State party has concluded bilateral or multilateral extradition agreements with other States, whether, under those agreements, the offences described in article 4 of the Convention are recognized as extraditable offences and whether, even in the case of an extradition agreement with a third country, the obligations under article 3 of the Convention are met. Lastly, please describe the legislative and administrative measures taken by the State party to ensure that the Convention may be invoked as a legal basis for extradition in respect of the offences referred to in article 4 of the Convention when it receives an extradition request from a State with which it has no extradition agreement or treaty, in accordance with article 3 of the Convention.

Article 10

21. With reference to the previous recommendation of the Committee (para. 17), please provide information on whether or not the following have been developed:

(a) Training courses on the absolute prohibition of the crime of torture in order to ensure that all law enforcement personnel and members of the armed forces are aware of their obligations under the Convention and know that any omissions will not be tolerated, that any violation of the Convention will be investigated and that those who commit offences will be prosecuted;

(b) Training courses for judges and law enforcement personnel, as part of the national programme to modernize the justice system, on the non-applicability of statutory limitations to the offence of torture, the inadmissibility of statements obtained under torture

and the positive obligation to conduct an investigation when an allegation of torture is brought to their attention;

(c) Training courses for medical personnel, and for all other persons involved in the supervision, interrogation, investigation or treatment of prisoners, on the detection and documentation of the physical and psychological after-effects of torture. Please indicate whether such courses include specific training in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);

(d) A method for evaluating the effectiveness of these training programmes and their impact in terms of reducing the number of cases of torture and ill-treatment. Please give details of the content and application of this method and the results of the measures taken.

Article 11

22. In the light of the Committee's previous concluding observations (paras. 12 and 13), please provide up-to-date statistics, broken down by sex, age and nationality or ethnic origin, on the number of accused and convicted persons, and on the occupancy rate, in all places of detention in the country, including detention facilities, police stations, gendarmeries, offices of the National Intelligence Agency and facilities for minors. Has a central register been set up to collect information on all detainees and their offence, date of admission to detention, place of detention, age and sex?

23. Given the previous recommendation of the Committee (para. 13) and the reports received by the Committee to the effect that conditions of detention are still very poor, please indicate:

(a) What measures the State party has taken to ensure that detainees are treated in accordance with the Standard Minimum Rules for the Treatment of Prisoners and to ensure the separation between remand prisoners and sentenced prisoners, and between men, on the one hand, and women and children, on the other;⁷

(b) What steps have been taken to make greater use of non-custodial measures and to transfer minor offences from the criminal justice system to the preventive justice system;

(c) Whether the Order of 9 May 2001 concerning debt collection by financial institutions, which authorizes imprisonment for debt and for the non-fulfilment of contractual obligations,⁸ has been rescinded and, if not, when it will be rescinded;

(d) What percentage of additional funds has been allocated to prison facilities, aside from sanitation and disinfection operations in the country's detention centres⁹ and the deployment of additional prison officers trained in human rights, in order to ensure the financing of basic services such as access to clean water, food, hygiene and the provision of medical care for prisoners;

⁷ CAT/C/TGO/CO/2/Add.1, para. 7; A/HRC/WG.6/12/TGO/2.

⁸ International Covenant on Civil and Political Rights, article 11.

⁹ CAT/C/TGO/CO/2/Add.1, para. 5.

(e) What the status of the prison construction project is;

(f) Whether the small cells in the Notsé prison and in the Kara military camp have been done away with.

24. Please provide statistical data on the number of deaths in detention reported during the period under review, broken down by place of detention, sex, age, nationality or ethnic origin of the deceased and cause of death. Please elaborate on the outcome of investigations, including any investigations into the 14 deaths alleged to have occurred in the Cabano Service¹⁰ since January 2013, on the penalties imposed and on the measures taken to prevent the recurrence of such violations. Please indicate whether, in any of the cases, the victim's relatives received redress or compensation.

25. With reference to its previous recommendations (paras. 11 and 13), the Committee welcomes the release of Captain Lambert Adjinnon by presidential pardon but remains very concerned about other individuals in similar situations. Accordingly, please specify which individuals remain in prison and which have been released and describe the results of investigations into allegations of torture and ill-treatment, the proceedings that have been initiated and the convictions and sentences that have been handed down. Please indicate in each case whether adequate redress has been provided.

Articles 12 and 13

26. Taking into account the previous concluding observations of the Committee (para. 11) and the facts reported during the dialogue between the Togolese delegation and the Committee concerning the refusal of judges to deal with cases of torture committed by law enforcement officers, please provide information on investigations into allegations of torture or ill-treatment in which members of the security services or others are implicated and prosecutions launched. Please indicate whether members of the security forces who have been found guilty of such acts have been relieved of their duties.

27. In view of the Committee's previous recommendation (para. 9), please provide data, broken down by the victims' age, sex and ethnic origin or nationality, on the number of complaints, investigations, formal charges and convictions, and on the sentences handed down, in cases of torture or ill-treatment suffered by detainees since the consideration of the State party's previous periodic report. Has a central, dedicated register been set up to record acts of torture or ill-treatment?

Article 14

28. In the light of the Committee's previous concluding observations (para. 18), and in accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14 by States parties, please provide detailed information on the measures taken by the State party since the consideration of the previous report to ensure that all victims of torture or ill-treatment and their families benefit from all possible forms of redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Does the preliminary bill to amend the Criminal Code contain provisions to guarantee all these forms of redress?

¹⁰ Secure ward for sick prisoners, located in the Sylvanus Olympio University Hospital Centre in Lomé.

29. Please indicate how many claims for reparation in connection with cases of torture or ill-treatment have been submitted since the Committee's previous recommendations and how many have been granted, specifying the amounts ordered and the amounts actually disbursed in each case.

30. Please provide detailed information on reparation and rehabilitation programmes set up by the State party for all women and girl victims of violence, victims of human trafficking and victims of prison violence.

Article 15

31. Taking into account the previous concluding observations of the Committee (para. 9) and the allegations of acts of torture for the purpose of extracting confessions that have been brought to the attention of the Committee, please confirm that the bill to amend the Criminal Code guarantees that any confession obtained under torture cannot be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. Have there already been cases in which such evidence has been either rejected or admitted?

Article 16

32. In the light of the Committee's previous concluding observations (para. 19), please indicate whether the State party has amended Act No. 2007-017 of 6 July 2007 on the Togolese Children's Code so as to include provisions criminalizing the corporal punishment of children in all environments and contexts, in accordance with international standards in this area.

33. Please provide detailed information on the entry into force of the law on the abolition of the death penalty in Togo, which was adopted on 23 June 2009.

General information on the human rights situation in the State party, including information on new measures and developments relating to the implementation of the Convention

34. Please provide detailed information on any other legislative, administrative, judicial or other measures taken since the consideration of the previous periodic report to give effect to the Committee's recommendations. Such information may also include institutional changes and plans or programmes. Please specify the resources allocated and provide statistical data or any other information that the State party considers useful.
