

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

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/TGO/CO/2)

TOGO

(...)

C. Principal subjects of concern and recommendations

(...)

Legislative reforms

8. While noting the adoption of the draft Criminal Code by the Council of Ministers in November 2012, the Committee remains concerned, as it noted in its previous concluding observations in 2006, that legislative reforms, in particular the adoption of the new Criminal Code and the new Code of Criminal Procedure, have not yet been completed (arts. 1, 2 and 4).

The State party should expedite the process of legislative reform and take the necessary measures to promulgate and adopt the new Criminal Code and the new Code of Criminal Procedure as soon as possible in order to remedy the present legal vacuum surrounding torture.

(...)

Fundamental legal safeguards

10. The Committee is concerned that the fundamental legal safeguards of detainees are often violated and that arbitrary arrests and detention could take place. The Committee is concerned that some periods of custody exceed the legal time limits, particularly outside the capital. It is also concerned that legislation provides for the assistance of a lawyer only as of the 25th hour of deprivation of liberty, and that lawyers have only 30 minutes to speak to their clients in private. The Committee is also concerned that the assistance of a lawyer is not systematically guaranteed for poor persons from the beginning of proceedings but only at the trial stage, and that suspects are not always given the opportunity after their arrest to immediately consult a judge and a doctor and to contact their family (arts. 2 and 11).

The State party should:

(a) Immediately take effective measures to guarantee that all persons deprived of their liberty enjoy all the fundamental legal safeguards from

the outset of their detention, namely the right to be informed of the reasons for their arrest and to have prompt access to legal counsel and, if necessary, to legal aid;

(b) Ensure that detainees can be examined by an independent doctor or a doctor of their choice, contact a member of their family, be brought before a judge without delay, and have the legality of their detention examined by a court, in accordance with international standards;

(c) Release and compensate all persons detained irregularly or arbitrarily;

(...)

Impunity and investigations

11. The Committee is deeply concerned by:

(a) The total impunity of perpetrators of acts of torture and the State party's statement that the Togolese courts currently have no legal means to punish torture, and that there are therefore no examples of judgements in this respect. The Committee is concerned by the information indicating that, to date, no court has been able to directly apply the provisions of the Convention, even where the courts have evidence of acts of torture before them, because there is no legislation criminalizing and punishing such acts. The Committee is very concerned that no criminal proceedings appear to have yet been initiated against the perpetrators of the acts of torture committed on the premises of the National Intelligence Agency in 2009, even though detainees have given details of the torture and ill-treatment to which they claim to have been subjected during their detention, as well as the names of the perpetrators;

(b) Judges' reported refusal to deal with cases of torture committed by the security forces, which contributes to impunity and represents a denial of justice for victims of torture. Furthermore, the Committee is concerned that allegations of torture and ill-treatment in detention are not systematically and thoroughly investigated, and that those responsible for acts of torture are apparently subjected only to disciplinary sanctions which are not commensurate with the severity of their acts;

(c) The fact that the 13 recommendations in the report of the National Human Rights Commission published on 27 February 2012, which was commissioned by the Government to investigate allegations of torture and ill-treatment on the premises of the National Intelligence Agency and elsewhere, have not yet been implemented and that the persons responsible for the acts of torture on those premises appear to have remained in their posts or been promoted after short suspensions of 30 to 45 days imposed as a disciplinary measure (arts. 2, 12, 13 and 14).

The State party should:

(a) In accordance with the commitment it made during the universal periodic review, end impunity of persons who have committed acts of torture by launching credible, prompt and impartial investigations into

all allegations of torture or ill-treatment committed by members of the security services or others, in particular on the premises of the National Intelligence Agency in 2009, and, where necessary, punish those responsible in accordance with the gravity of their acts;

(b) Include a provision on the non-applicability of statutory limitations to the crime of torture in the Criminal Code and remove the provision establishing a 10-year period of limitations that is reportedly included in the current draft Criminal Code;

(...)

(e) Establish a special central register for cases of torture or cruel, inhuman or degrading treatment, and provide information on the results of the investigations launched.

Conditions of detention

13. The Committee is deeply concerned by:

(a) The alarming conditions in detention centres throughout the country, particularly in Lomé, some of which are tantamount to torture given that remand prisoners awaiting trial are packed into cells measuring 7 metres by 6 metres in groups of 60 to 90, while sentenced prisoners are packed into cells of 6 metres by 5 metres in groups of 50 to 60. It is also concerned by the tiny size of the cells in the prison of Notsé and particularly those in the Kara military camp, where the detention of soldiers in punishment cells measuring 112 cm by 90 cm constitutes a violation of the Convention. Furthermore, overcrowding is currently in the region of 156 per cent on average;

(b) The lack of hygiene, ventilation, lighting and bedding, as well as the lack of food, which consists of a single meal a day, as described in the initial report, and is said to be of poor quality;

(c) The almost total lack of access to health care and medication and the fact that sick prisoners are only transferred to hospital when they are practically at death's door. The Committee is concerned in particular about the health of Captain Lambert Adjinon, who is being held in the civil prison in Lomé and apparently has a tumour for which he is not receiving treatment. This would appear to run counter to the decision of the Council of Ministers of 29 February 2012 to make medical care available to all persons in custody or in detention at any stage of proceedings, as recommended in one of the 13 measures to be implemented following the publication of the report of the National Human Rights Commission;

(d) The conditions, described by the State party itself as appalling, in the custody facilities of police stations and gendarmeries, where many detainees are kept for long periods with no legal justification;

(e) The high and increasing number of deaths in detention, in particular as a result of a lack of food and hygiene, as well as violence among prisoners (arts. 2, 11 and 16).

(...)

The State party should:

(d) Increase funding for basic services, including access to drinking water, at least two meals a day, hygienic conditions and basic necessities, and ensure that there is sufficient natural and artificial light and ventilation in cells; provide medical and psychosocial care for prisoners with a view to preventing deaths in detention;

(e) Evacuate Captain Lambert Adjion, and anyone else with similar health problems, to another country for the necessary medical treatment;

(f) Take urgent measures to improve conditions in custody facilities in police stations and gendarmeries, in accordance with international standards;

(...)

24. The Committee requests the State party to provide, by 23 November 2013, information on follow-up to the following recommendations: (a) ensure the entry into force of the new Criminal Code and the new Code of Criminal Procedure as a matter of urgency; (b) urgently improve conditions of detention; (c) strengthen or ensure respect for the legal safeguards to which detainees are entitled; and (d) prosecute and punish perpetrators of acts of torture and ill-treatment, as contained in paragraphs 8, 10 (a), (b) and (c), 11 (a), (b) and (e), and 13 (d), (e) and (f) of this document.

(...)
