

COMMITTEE AGAINST TORTURE

36th session (Geneva, 1 to 19 May 2006)

Reports of States

Togo (initial to fifth periodic reports)

Information submitted to the Committee

Togo presented its initial to fifth periodic reports¹ to the Committee against Torture on 10 and 11 May 2006. This initial report was long awaited since it was due in 1988. The report details the relevant legislative provisions and some specific examples illustrating their implementation (e.g. decisions by the National Commission on Human Rights concerning alleged acts of ill-treatment by police personnel). However the report is outdated and does not contain information on the current situation in the country. Of importance in this respect are the violent events that surrounded the presidential election in April 2005: it was reported that 400 to 500 persons were killed, many more injured and/or raped, and 30,000 persons fled the country. The report denies the existence of torture in Togo, explaining that the Constitution prohibits the practice of torture and that there have not been any case of alleged torture before Togolese courts. The Government only acknowledges that some prisoners are subjected to a form of mental torture in prisons, because of very poor detention conditions.

Several international non-governmental organisations (NGOs) submitted alternative reports (Ensemble pour le Togo, Amnesty International², Fédération Internationale des Droits de l'Homme, Organisation Mondiale Contre la Torture³ and Fédération Internationale de l'Action des Chrétiens pour l'Abolition de la Torture⁴). The situation they describe in their reports is very different to the description made in the State report. Contrary to the allegations of the government, all NGOs consider that torture is widespread in Togo. They denounce the lack of any legislative provision for the criminalisation of acts of torture; arbitrary detentions; the use of confessions obtained under torture; detention conditions amounting to cruel, inhuman and degrading treatment; the impunity of security forces with regards to the violence of April 2005; the absence of compensation for victims of torture; and specific violence against women and children.

Themes and issues⁵

An important issue in the Togolese context was the burst of violence surrounding the presidential elections in April 2005. The Committee sought further clarification on this issue and an update on the situation in the country. The delegation explained that two international missions and one national commission of inquiry have sought to establish the facts and responsibilities for these events. It asserted that there would be no impunity for whoever had perpetrated these violent acts. However, the Committee, in its concluding observations⁶, expressed concerns about "allegations of a generalised practice of torture, enforced disappearances, arbitrary detentions and incommunicado detentions, and frequent rapes of women by military personnel", and denounced the impunity of the perpetrators of these acts.

Definition of torture (articles 1 and 4 of the Convention)

The Committee was foremost concerned by the absence of any definition of torture in Togolese legislation. This lack of definition makes it difficult to prosecute acts amounting to torture since it is not explicitly prohibited in the penal code (although the delegation explained that under laws against violence acts, aggressions, etc. such acts could be punished). Committee experts insisted on the need for definition of torture and the relevant penalties in the new penal code that is to be drafted in the next months. The delegation considered this a priority objective for the recently established national commission for modernisation of the legislation, whose task is to reform the law in conformity with Togo's international obligations.

¹ [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.5.Add.33.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.5.Add.33.En?OpenDocument)

² Available in French at <http://web.amnesty.org/library/Index/FRAAFR570122005>

³ Available in French at

http://www.omct.org/pdf/procedures/2006/cat_36th/altern_reports/togo_cat_0406_violences_etatiques_fr.pdf

⁴ Available in French at http://ww2.fiacat.org/fr/IMG/pdf/FIACAT_rapport_alternatif_TOGO_FR.pdf

⁵ The summary of the meetings is available at

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/55DFE2EA6AF876D7C125716A00364DF5?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/55DFE2EA6AF876D7C125716A00364DF5?OpenDocument) and

[http://www.unog.ch/unog/website/news_media.nsf/\(httpNewsByYear_en\)/D9F20FD8DB3B2915C125716B00418E17?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/D9F20FD8DB3B2915C125716B00418E17?OpenDocument)

⁶ CAT/C/TGO/CO/1, at http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.TGO.CO.1_fr.pdf

Togo

Expulsion, refoulement or extradition (Article 3)

The Committee dealt with the issue of expulsion, refoulement or extradition of a person to State where there is a risk of that person being subjected to torture. It insisted that this practice be prohibited at all times. It expressed concern about regional agreements under which Togo has the possibility to hand over a person arrested by the Togolese police to the police of a neighbour country, without any judiciary procedure. The delegation admitted that this procedure lacks sufficient guarantees for the person being expelled. The Committee also questioned the delegation on the agreement with the United States of America (USA) prohibiting the Togolese authorities from transferring American citizens present on Togolese territory to the International Criminal Court (ICC).

Arrangements for the custody and detention of persons (Article 11)

An important part of the session was devoted to the conditions of detention and the mechanisms for inspection of detention centres. The Committee noted the poor state of detention centres; these appalling conditions amount to ill-treatment under the Convention. The Government should urgently take measures to reduce overcrowding in prisons and to guarantee the separation between female and male detainees. Committee members were particularly worried about detainees' access to medical care. They also asked for more information about the body responsible for keeping order in prisons, and the possibility for independent inspections of detention centres. The delegation stated that a convention with the International Committee of the Red Cross had been signed on 14 March 2006, allowing for visits to any place of detention. There are also possibilities of inspections by NGOs, on their request. The Committee recommended the creation of a national monitoring system of detention places, with a reinforced role of NGOs in this process.

Concerns were also raised about the length of pre-trial detention and alleged cases of secret detention and forced disappearances. In particular, one Committee member was worried that the period of custody can sometimes amount to 216 hours; the delegation acknowledged a maximum 192-hour time period that still seems far too long.

Confessions obtained under torture (article 15)

The use of such confessions is not specifically prohibited in Togolese legislation. However under the Convention such a declaration should always be considered null and void. The delegation affirmed that other provisions in law covered the situation since a judge could call for another investigation if the victim claimed his confession had been made under torture.

Prevention of cruel, inhuman or degrading treatment (article 16)

The Committee raised the issues of child trafficking, particularly prevalent in the region, customary practices amounting to ill-treatment (degrading widowhood, female genital mutilation) and corporal punishment on children. The delegation affirmed that all these practices were being reviewed and will be or have already been prohibited by law.

Other issues

Questions were brought up on the treatment of human rights defenders and journalists. NGOs informed the Committee about alleged ill-treatment of persons belonging to this category. The delegation denied these allegations. The Committee recommended that efficient measures be adopted to protect all persons reporting about human rights violations, including torture and ill-treatment.

The Committee inquired about the status of the National Human Rights Commission and its role in judicial proceedings relating to acts of torture. The Government claimed this institution is independent, although this is being challenged by NGOs. The Committee insisted that it should have competence to start proceedings, in particular to obtain compensation for the victims of torture. The Government should take adequate measures to guarantee the Commission's independence and impartiality.

Conclusions and next steps

The Committee was rather strong in its concluding observations, recommending urgent and efficient measures to combat the widespread practice of torture and impunity of the perpetrators. It was more insistent in its final recommendations than at the sessions. The Togolese delegation, though cooperative, was not always able to respond to the concerns of the experts. Some key positive elements were announced by the delegation, including its project of reviewing the Penal Code; the future recruitment of more prison guards, adequately trained on the rights of detained persons; and the signature of an agreement with the International Committee of the Red Cross on access to detention centres.

Togo

The Committee's concluding observations overall confirm the Human Rights Committee (HRC)'s observations⁷ after examining Togo under the *International Covenant on Civil and Political Rights* in October 2002. The HRC had already expressed concerns about "the many allegations that torture is common practice in Togo". Pre-trial detention, appalling detention conditions, alleged harassment of journalists and human rights defenders were worries that had already been brought up by the HRC.

As way of follow-up, the Togolese Government has to report next year on some of the issues brought up by the Committee. These issues include a monitoring system of detention centres and the role of NGOs in the inspection of such places; measures taken to protect human rights defenders, and cooperation with civil society; and the military justice system and its jurisdiction for the trial of civilians.

⁷ CCPR/CO/76/TGO