



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

Distr.: General
11 December 2012
English
Original: French

Committee against Torture

Concluding observations on the second periodic report of Togo, adopted by the Committee at its forty-ninth session (29 October–23 November 2012)

1. The Committee against Torture considered the second periodic report of Togo (CAT/C/TGO/2) at its 1114th and 1117th meetings (CAT/C/SR.1114 and SR.1117), held on 12 and 13 November 2012. At its 1128th meeting (CAT/C/SR.1128), held on 21 November 2012, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the second periodic report of Togo, as well as the State party's written replies to the list of issues prior to submission of its report (CAT/C/TGO/Q/2). It regrets, however, that the report does not contain specific information on the implementation of the provisions of the Convention.

3. The Committee appreciates the frank and open dialogue with the high-level delegation sent by the State party, as well as the additional information provided during the consideration of the report.

B. Positive aspects

4. The Committee notes with satisfaction that, since its consideration of the initial report of the State party, the latter has acceded to or ratified the following international instruments:

(a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 20 July 2010;

(b) The Convention on the Rights of Persons with Disabilities, on 1 March 2011;

(c) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 1 March 2011.

5. The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Act No. 2007-017 of 6 July 2007 on the Children's Code;

(b) Act No. 2009-011 of 24 July 2009 abolishing the death penalty.

6. The Committee also takes note of the initiatives undertaken by the State party to amend its policies, programmes and administrative procedures to give effect to the Convention, including:

- (a) The adoption of the national plan of action against trafficking in persons, especially women and children, in 2007;
- (b) The signature of the tripartite agreement between Benin, Togo and the Office of the United Nations High Commissioner for Refugees on 3 April 2007;
- (c) The signature of the tripartite agreement between Ghana, Togo and the Office of the United Nations High Commissioner for Refugees on 11 April 2007;
- (d) The establishment of the Truth, Justice and Reconciliation Commission on 25 February 2009;
- (e) The publication on 2 July 2010 of the guide to good practices for the protection of minors in conflict with the law;
- (f) The publication on 27 February 2012 of the report of the National Human Rights Commission, which was commissioned by the Minister of Justice to investigate allegations of torture and ill-treatment on the premises of the National Intelligence Agency (ANR).

C. Principal subjects of concern and recommendations

Definition and criminalization of torture

7. The Committee notes with concern that, 6 years after establishing a national commission to update its legislation and 25 years after ratifying the Convention, the State party has yet to adopt criminal legislation explicitly defining and criminalizing torture (arts. 1 and 4).

The Committee recommends that the State party take the necessary measures to incorporate in the Criminal Code all the elements of the definition of torture contained in article 1 of the Convention, as well as provisions criminalizing and penalizing acts of torture with penalties commensurate with their gravity.

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.

Allegations of torture and ill-treatment

9. The Committee is concerned by the allegations of torture and ill-treatment in detention, in particular of persons held in custody who are detained on the premises of investigative units or in police stations, gendarmeries, offices of the National Intelligence Agency, barracks of the presidential guard or other places of detention, including unofficial places of detention. It is particularly concerned by the conclusion in the report of the

National Human Rights Commission that “inhuman and degrading acts of physical and mental violence have been committed against detainees” and allegedly against persons linked to the attempted coup in 2009 who were held on the premises of the National Intelligence Agency and in other places of detention. The Committee is also concerned that the new Code of Criminal Procedure, which provides for the inadmissibility of confessions obtained under torture, is still not in force (arts. 2, 11, 15 and 16).

The State party should:

(a) Give clear instructions to members of the security forces (police and gendarmerie) regarding the absolute prohibition and criminalization of torture and the fact that such acts will not be tolerated and that perpetrators will be prosecuted;

(b) Take effective measures without delay to ensure that in-depth, prompt, independent and impartial investigations are conducted into all allegations of torture and ill-treatment and that the perpetrators of such acts are brought before the courts, which should punish them with appropriate penalties under the relevant criminal legislation, and that the outcomes are publicized;

(c) Expedite the adoption by Parliament of the new Criminal Code and the new Code of Criminal Procedure and ensure that confessions obtained under torture and the subsequent proceedings are declared null and void, and raise awareness among judges of the inadmissibility of statements obtained under torture and of the obligation to initiate investigations when allegations of torture are brought to their attention.

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;

(d) Establish a procedure in the Code of Criminal Procedure allowing the victims of miscarriages of justice to receive reparation.

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;**

(c) **Implement all measures necessary to comply with its obligations under the Convention, particularly its obligation to combat impunity of perpetrators of acts of torture. The Committee reminds the State party that, in accordance with article 27 of the Vienna Convention on the Law of Treaties, "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty";**

(d) **Take measures to implement the recommendations of the National Human Rights Commission regarding the allegations of torture and ill-treatment on the premises of the National Intelligence Agency and in other places of detention;**

(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.**

Pretrial detention

12. The Committee notes with concern that more than 65 per cent of detainees are in pretrial detention, which calls into question the principle of the presumption of innocence and contributes to prison overcrowding throughout the country. It is concerned that the time limits for pretrial detention are not always respected, and that persons are kept in detention for years without being tried, including for minor offences, which reflects a major dysfunction in the judicial system. The Committee is concerned that one of the reasons for the high incidence of pretrial detention is the shortage of judges and facilities and that the delay in legislative reform is impeding the introduction of the position of liberties and detention judge, who could contribute to reducing the incidence of pretrial detention (arts. 2, 11 and 16).

The State party should:

(a) **Expedite the national programme to modernize the justice system and take measures to restrict the use of pretrial detention, as well as its duration, using non-custodial penalties and alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(b) **Transfer minor offences from the criminal justice system to the preventive justice system;**

(c) **Improve training for magistrates, judges, prosecutors, prefects, subprefects and lawyers on the principle of the presumption of innocence, which would reduce the incidence of pretrial detention;**

(d) **Ensure that, when there are compelling reasons to place the defendant in pretrial detention, all the time limits for the accused and defendants are respected;**

(e) **Release all persons for whom the maximum legal period of detention has expired;**

(f) **Consider recruiting additional judges and constructing new courtrooms in the country.**

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 Adjimon, 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:

(a) **Redouble efforts and increase funding to bring living conditions in all prisons into line with international standards and the Standard Minimum Rules for the Treatment of Prisoners;**

(b) **Implement the declaration made by the representatives of Togo to the Committee at its forty-ninth session to the effect that all pending cases will be tried in January 2013 to reduce prison overcrowding by 50 per cent;**

(c) **In order to ease overcrowding in places of detention, adopt a precise timetable for the construction of new prisons, including in Lomé and Kpalimé, and for the renovation of existing prisons and facilities, as well as increasing the number of prison officers in all such establishments; and ensure that the size of cells is in line with international standards;**

(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 Adjinon, 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;**

(g) **Carry out investigations into deaths in detention and their causes, and provide the Committee with statistical data and information on the preventive measures taken by the prison authorities in the next periodic report; and take measures to reduce violence among prisoners;**

(h) **Establish a central register on all detainees in the country, indicating whether they are remand prisoners or sentenced prisoners, their crime, the date on which they were taken into detention, the place where they are being held, and their age and sex;**

(i) **Ensure that the National Human Rights Commission and human rights organizations have free access to all places of detention, in particular for unannounced visits and private interviews with detainees.**

National Human Rights Commission and designation of a national preventive mechanism

14. The Committee notes with concern that the budget of the National Human Rights Commission has reportedly decreased by 20 per cent since 2008, preventing it from fully carrying out its functions. While noting the information that the National Intelligence Agency can no longer take in any more people, the Committee is concerned that inspections

of the Agency's premises are no longer possible. While noting that the National Human Rights Commission was to be designated as the national mechanism for the prevention of torture, the Committee is concerned that the mechanism is not yet operational. It is also concerned that the President of the Commission, Mr. Kounté, had to leave the country after publication of the report, following threats made against him in an attempt to make him alter some of the outcomes of the Commission's investigation (art. 2).

The State party should:

(a) **Provide the National Human Rights Commission with sufficient financial, human and material resources to fully carry out its functions in an independent, impartial and effective manner;**

(b) **Undertake a revision of the organic law on the remit, composition and functioning of the National Human Rights Commission to enable it to serve as the national preventive mechanism in accordance with the requirements of the Optional Protocol to the Convention, including by conducting investigations and preventing acts of torture, as well as by undertaking unannounced visits to all places of detention, including the National Intelligence Agency, and to unofficial facilities and those described as "difficult to access", as well as to psychiatric institutions and all places where people are deprived of their liberty;**

(c) **Take all necessary measures to ensure the physical and psychological integrity of the members of the national mechanism;**

(d) **Investigate the reasons that led Mr. Kounté to leave the country and take all the protection measures and provide all the guarantees that would allow the safe return to the country of Mr. Kounté and his family should he decide to come back.**

Violence against women

15. The Committee is concerned by the absence of specific legislation to punish all forms of violence against women, including domestic and sexual violence. It is also concerned by the incidence of violence against women, including marital rape, as well as female genital mutilation and sexual abuse of women in prison. The Committee is concerned by the insufficient progress made in reducing trafficking in persons, especially women and girls, in particular for the purpose of sexual exploitation (arts. 2 and 16).

The State party should:

(a) **Draft and adopt, as a matter of priority, comprehensive legislation on violence against women, making acts of sexual violence, including marital rape, and domestic violence offences in their own right in the new Criminal Code;**

(b) **Strengthen efforts to prevent violence against women, including domestic violence, female genital mutilation, violence in prison and trafficking in women and girls, particularly for the purpose of sexual exploitation, and encourage victims to press charges;**

(c) **Duly investigate, prosecute and, where applicable, punish perpetrators;**

(d) **Train judges, prosecutors and police officers on the strict application of the law prohibiting female genital mutilation and provide statistics on the number of complaints, investigations, prosecutions and convictions linked to violence against women and female genital mutilation;**

(e) **Conduct nationwide public awareness campaigns to publicize the prohibition of female genital mutilation.**

Non-refoulement

16. The Committee regrets that incomplete information was provided in the report on the procedures and measures introduced by the State party to fulfil its obligation of complying with the principle of non-refoulement pursuant to article 3 of the Convention (art. 3).

The Committee recommends that the State party should:

(a) **Respect the principle of non-refoulement in accordance with article 3 of the Convention, and in particular the obligation to check whether there are substantial grounds for believing that the asylum seeker would be in danger of being subjected to torture or ill-treatment if expelled, including by systematically conducting individual interviews to evaluate the personal risk incurred by applicants;**

(b) **Introduce in the Criminal Code the right to an appeal with suspensive effect against expulsion decisions, and respect all guarantees in the context of asylum and expulsion procedures pending the outcome of appeals.**

Training on the prohibition of torture

17. While noting the many training sessions organized for members of the security services, including in the area of human rights, the Committee is concerned by the absence of training on the Convention against Torture, and in particular the absolute prohibition of torture, for police officers, gendarmes, prefectural guards, criminal investigation police, prison guards and law enforcement personnel such as judges, prosecutors, magistrates, prefects, subprefects and lawyers. It is also concerned that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not systematically followed in investigations into cases of torture or ill-treatment (art. 10).

The Committee recommends that the State party should:

(a) **Implement training programmes and prepare modules on human rights to ensure that security personnel such as police officers, gendarmes, prefectural guards, criminal investigation police and prison guards and law enforcement personnel such as judges, prosecutors, magistrates, prefects, subprefects and lawyers are fully informed of the provisions of the Convention, particularly the absolute prohibition of torture;**

(b) **Provide regular and systematic training on the Istanbul Protocol to medical personnel, forensic doctors, judges, prosecutors and all persons involved in the custody, interrogation and treatment of any individual subjected to arrest, detention or imprisonment, as well as to anyone else involved in investigations into cases of torture;**

(c) **Draft and implement a methodology for the effective evaluation of education and training programmes on the Convention against Torture and the Istanbul Protocol and their impact on reducing the number of cases of torture and ill-treatment.**

Redress and rehabilitation of victims of torture

18. The Committee is concerned that the current criminal legislation does not contain any provisions guaranteeing redress for damage caused to victims of torture. Similarly, there is no procedure in place to request redress for damages resulting from acts of torture. The Committee is also concerned that the only request for redress to date was made by the alleged organizers of the attempted coup, for whom redress was recommended in the report

of the National Human Rights Commission published on 27 February 2012. The Commission also called for fair compensation for victims of torture. That recommendation has not yet been fully implemented, as victims and their lawyers were not consulted by the authorities about the compensation recommended by the National Human Rights Commission (arts. 2, 12, 13 and 14).

The State party should:

(a) **Take legislative and administrative measures to ensure that victims of torture and ill-treatment benefit from all forms of redress, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, and introduce them in criminal legislation;**

(b) **Provide fair and adequate compensation and redress for as full a rehabilitation as possible to all the victims of torture linked to the events of 2009 described in the National Human Rights Commission's report;**

(c) **Provide fair and adequate redress and rehabilitation to all victims of torture and to victims of violence against women and girls, victims of trafficking in persons, and victims of prison violence.**

The Committee draws the attention of the State party to its recently adopted general comment No. 3 on the implementation of article 14 (CAT/C/GC/3), which explains and clarifies the content and scope of the obligations of States parties with a view to providing full redress to victims of torture.

Corporal punishment

19. The Committee is concerned that corporal punishment of children is prohibited in schools but not in social or family situations, where it is reported to be "common and socially acceptable provided that it remains proportionate" (art. 16).

The State party should amend its criminal legislation, particularly Act No. 2007-017 of 6 July 2007 on the Children's Code, so as to prohibit and criminalize all forms of corporal punishment of children in all environments and contexts, in accordance with international standards.

Data collection

20. The Committee regrets the absence of comprehensive, disaggregated data on complaints, investigations, prosecutions and convictions related to acts of torture and ill-treatment attributed to security service agents, including gendarmes, police officers, prefectural guards and prison guards. Statistical data are also lacking with regard to trafficking in persons, violence against women, including domestic and sexual violence and female genital mutilation, and violence against children (arts. 2, 11-14 and 16).

The State party should collect statistical data, disaggregated by age and sex of the victim, that would be useful in monitoring the implementation of the Convention at the national level, particularly data on complaints, investigations, prosecutions and convictions related to acts of torture and ill-treatment attributed to security service agents, including gendarmes, police officers and prefectural guards and prison guards, and on deaths in detention. Statistical data should also be provided on trafficking in persons, violence against women, including domestic and sexual violence and female genital mutilation, and violence against children, as well as on the means of redress, particularly compensation and rehabilitation, from which victims have benefited.

21. The Committee encourages the State party to consider making the declaration under article 22 of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals.

22. The Committee invites the State party to consider ratifying the core United Nations human rights instruments to which it is not yet a party, namely: the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the International Convention for the Protection of All Persons from Enforced Disappearance.

23. The State party is requested to widely disseminate the report submitted to the Committee as well as the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

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.

25. The Committee invites the State party to present its next periodic report, which will be its third, by 23 November 2016. The Committee also invites the State party to agree, before 23 November 2013, to submit that report under the optional procedure whereby the Committee sends the State party a list of issues prior to submission of its periodic report. The replies of the State party to the list of issues would constitute its third periodic report under article 19 of the Convention.
