

### **Executive summary**

Joint alternative report ACAT/ CACIT/ FIACAT/OMCT  
Committee Against Torture, 49th session, 2012

This report on implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Togo is submitted jointly by the Organisation Mondiale Contre la Torture (OMCT/World Organization Against Torture), the Fédération internationale de l'Action des chrétiens pour l'abolition de la torture (FIACAT/ International Federation of Action by Christians for the Abolition of Torture) and their member organisations in Togo (ACAT Togo and CACIT).

#### **Article 1**

Togo currently does not have any legal text that defines torture. Our organisations have been able to access copies of the draft Criminal Code which defines torture in its draft new Article 194 which uses the wording of Article 1 of the Convention Against Torture.

**Our organisations ask the Committee Against Torture (CAT) to recommend that the State party adopt the draft Criminal Code as soon as possible and forward it to the Parliament for adoption.**

#### **Article 2**

The National Human Rights Commission (NHRC) is to become the national preventive mechanism (NPM) for torture in Togo. However, no official document gives the NHRC the right to fulfil the function of the NPM.

At the Council of Ministers of 29 February 2012, 13 measures were adopted to implement the January 2012 recommendations by the NHRC on allegations of torture in connection with a case concerning a plot against State security in 2009. The effective implementation of these 13 measures remains a matter of concern.

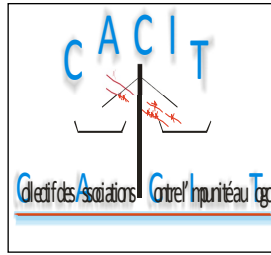
**Our organisations ask the CAT particularly to recommend that the State party:**

*With regard to establishing the NPM:*

- **Modify Organic Law N°96-12 of 11 December 1996 on the composition, organisation and functioning of the NHRC to give it a mandate and remit in line with the OPCAT;**
- **Give the NHRC an adequate budget to carry out its activities.**

*With regard to implementing the recommendations made by the NHRC:*

- **Ensure the effective implementation of all the NHRC's recommendations and the 13 measures adopted by the Government;**



- **Open an investigation into the allegations of falsification of the NHRC's final report and punish those responsible;**
- **Ensure that an immediate, exhaustive, independent and impartial investigation is held into all the acts of torture and other cruel, degrading or inhuman treatment committed on the premises of the ANR.**

#### **Article 4**

On the date of publication of this report, the Togolese law does not yet classify torture as a crime. Acts of torture and other cruel, degrading or inhuman treatment or punishment can only be prosecuted as **wilful violence**.

**Our organisations ask the CAT to recommend that the State party:**

- **Remove the ten-year prescriptive period for the crime of torture provided for by Article 12 of the draft Code of Criminal Procedure;**
- **Adopt as soon as possible the draft Criminal Code and draft Code of Criminal Procedure, including the suggested revisions.**

#### **Article 10**

In 2012, as part of the programme to modernise the justice system, the Ministry of Justice has trained police officers in the techniques of interrogating minors. The Justice modernisation programme provides for training of penitentiary staff. This measure should enable the creation of a prison warders' service independent of the Ministry of Armed Forces.

**Our organisations ask the CAT to recommend that the State party:**

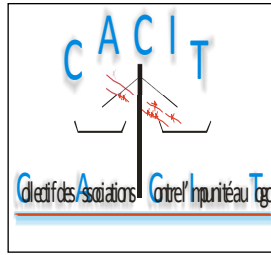
- **Increase training in human rights for lower-ranking officers, not just senior officers;**
- **Set up a prison warders' service made up of civilians, under the exclusive authority of the Ministry of Justice;**
- **incorporate in the training programme for future prison warders, at a specialised training school for this service, a module on respect for human rights and prisoners' rights.**

#### **Article 11**

Procedural guarantees concerning detention in Togo are imprecise, incomplete and rarely observed.

**Our organisations ask the CAT particularly to recommend that the State party:**

- **Adopt legislation providing for everyone who is arrested to be given information immediately on arrest and ensure effectively that anyone arrested with no legal basis can contact a judge without delay;**
- **Clarify Law 87-05 which allows the extension of police custody to eight days;**
- **Ensure that detainees have access to a lawyer from the start of the police custody and ensure that the lawyer can be present throughout the procedure;**



- **Effectively implement effectively medical examinations for people in police custody or detained, and amend Article 93 of the Code of Criminal Procedure to include the possibility for the detainee to request a medical examination by an independent doctor;**
- **Bring to justice the perpetrators of inhuman treatments committed against people in police custody or detainees;**
- **Release immediately anyone who is held in custody beyond the legal time limit;**
- **On expiry of detainees' detention certificates, release them immediately and inform the magistrate in charge of the case;**
- **Take all necessary measures to put an end to the practice of mob justice in the country;**

### **Articles 12 and 13**

In the absence of criminalization of torture, victims cannot file complaints on such grounds. Similarly, the existing Code of Criminal Procedure does not provide for appropriate measures for opening investigations into cases of torture or ill treatments. In practice, the lack of public confidence in the judicial system, the fear of reprisals and the centralisation in Lomé of specialised courts limit the right of victims to file complaints.

**Our organisations ask the CAT particularly to recommend that the State party:**

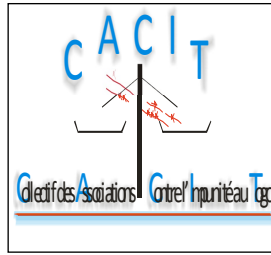
- **Take immediate and effective measures to investigate, prosecute and punish all acts of torture and ensure that torture is not practised in particular by police or court officers:**
  - **by systematically opening investigations into all cases of torture or ill-treatments;**
  - **by applying appropriate disciplinary sanctions and by forwarding cases to the Public Prosecution Office;**
- **Take all necessary measures to guarantee the protection of victims and their families and of witnesses of acts of torture or other cruel or inhuman treatment or punishment at all stages of the procedure;**
- **Establish in the near future High courts (tribunaux de grande instance) in the main towns of each region of Togo so as to bring justice closer to the people;**
- **Investigate complaints made by victims of torture, particularly complaints filed with the help of CACIT following the political violence in 2005.**

### **Article 14**

The Justice, Truth and Reconciliation Commission (CVJR) has recommended that the Government draws up a white paper setting out the actions that it will take in the short, medium and long term to compensate victims identified by the Commission.

**Our organisations ask the CAT to recommend that the State party:**

- **Take all possible measures to ensure the effective implementation of the CVJR's recommendations within a reasonable time;**
- **Make operational as soon as possible the reparation programme for victims as commended by the CVJR;**



- **Provide guarantees of non-recurrence, through specific measures aiming to combat impunity;**
- **Disseminate the CVJR's recommendations widely, involving civil society;**
- **Set up an effective and efficient programme of reparation for victims of torture.**

### **Article 15**

At present there is no law prohibiting the police and justice system from using information obtained under torture or other inhuman treatments. Adoption of the draft Criminal Code, Article 196 of which provides for statements or confessions obtained by torture to be null and void, will constitute a remarkable step forward.

**Our organisations ask the CAT to recommend that the State party:**

- **Take steps to make it possible to immediately suspend any trial during which allegations of confessions obtained under torture are made and to start an automatic investigation to identify those responsible before any further progress of the trial.**

### **Article 16**

There are currently 12 prisons in Togo. Detention conditions are appalling and can often be described as cruel, inhuman and degrading treatments. Their main features are massive overcrowding, dilapidated buildings, no separation of prisoners according to their status and very limited access to food and medical care.

**Our organisations ask the CAT to recommend that the State party:**

- **Revise the legislation on how the operation of prisons is organised and include internal rules for prisons, specifying in particular the rights of people held in all detention centres;**
- **Employ new prison staff and replace the guards who report to the Ministry of Security;**
- **Implement a programme to enable detainees' files to be managed and closely monitored;**
- **Take measures against magistrates who refuse to release detainees after their certificate of detention has expired;**
- **Take urgent steps to combat prison overcrowding by favouring alternatives to detention for people suspected of minor offences;**
- **Provide for detainees' needs, particularly with regard to health and nutrition;**
- **Prohibit the practice of detainees being responsible for guarding their fellow detainees;**
- **Improve the infrastructure of detention centres, by carrying out any necessary work and improving sanitation;**
- **Hold juvenile detainees in appropriate premises, allowing them to engage in recreational, social and cultural activities, and ensure effective separation between girls and boys;**
- **Provide separate housing for defendants and convicted prisoners.**