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Universal Periodic Review

Written statement* submitted by the International Federation of ACAT (Action by Christians for the Abolition of Torture), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

First-ever Universal Periodic Review examines the situation in Togo**

FIACAT and ACAT Togo welcome Togo's presentation of its national review and its replies to the questions raised during the interactive dialogue.

Our associations were also pleased to learn that Togo will shortly ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming to abolish the death penalty, and the Convention for the Protection of All Persons from Enforced Disappearance, although they would welcome details of the timetable for these ratifications.

FIACAT and ACAT Togo are concerned about frequent cases of torture and other cruel, inhuman or degrading treatment or punishment in Togo. In many cases, international provisions are simply copied into the Constitution without being transposed into national legislation and hence even police officers, magistrates and prison officers, not to mention the general population, are unaware of their existence.

Our associations would urge Togo to accept the numerous recommendations inviting it to extend an open, standing invitation to special procedures.

Definition and ban on torture in national law

Article 212 of the Constitution of 14 October 1992 bans torture, but there is no provision in the Penal Code in force which explicitly defines torture or makes it a criminal offence.

Thus the many instances of torture and ill-treatment can be prosecuted only under the heading "wilful violence", which makes it impossible to penalise the particularly serious nature of torture and prevent its happening. Despite the frequency with which acts of torture are committed, especially by law enforcement officers, none has been punished on this basis. Although certain cases have been prosecuted and judged as "wilful violence", such prosecutions are extremely rare and sentences are often inappropriate. For example: in January 2011 punitive expeditions against the local population were organised by elements of the defence forces of the Témédja¹ military camp. With the exception of a few disciplinary proceedings, there has as yet been no judicial prosecution resulting from this violence.

FIACAT and ACAT Togo welcome the planned revision of the Penal Code. However, contrary to the Government's frequent assurances, the drafting work was, in fact, halted. The consultant in charge of the project, Professor D'Almeida, died in 2010. In December 2011, two teams were appointed to continue the work and their drafts will be validated in technical workshops in March 2012.

Our associations endorse the recommendations made by various delegations that Togo adopt as soon as possible the Bill revising the Penal Code and include a definition of torture in line with Article 1 of the Convention, along with appropriate sanctions.

** ACAT Togo, an NGO without consultative status, also shares the views expressed in this statement.

¹ 180 km north-west of Lomé.

Respect for the rights of the defence

Police officers and other state servants are not well enough trained as regards respect for the rights of the defence. Torture and other cruel, inhuman or degrading treatment or punishment are frequent during interrogations.

Assistance by a lawyer right from the preliminary inquiry stage remains a constitutional provision for which the practical arrangements have never been laid down by the 1983 Penal Procedure Code. A circular of 17 May 2004 from the Ministry of Security represents the only, and very clumsy, attempt to regulate the exercise of this right. Assistance by a lawyer is mandatory only in criminal cases. Duty lawyers are often not assigned to the case until it comes to court. During the investigatory stage, the suspected criminal very rarely has access to a lawyer, although this is when he is at his most vulnerable.

Access to the courts remains expensive, and while legal aid machinery does exist, it does not work.

FIACAT and ACAT Togo are concerned that the current provisions on police custody in the Penal Procedure Code do not require those held to be informed of their rights or stipulate that a lawyer must be present.

Under the Code, a person may be held for no more than 48 hours before being brought before a judicial authority. The public prosecutor may extend this period once only. In practice, police officers are very corrupt and failure to comply with the legal time restrictions is very common. People, including children, may thus be held for several years without being charged or while awaiting judgment.

Police reports always state that the time limits have been respected. It is generally during questioning that the magistrate realises that this is not the case. If time limits for custody have not been complied with, in theory the person concerned has a right to bring an action against the state for maladministration. However, although there is provision for them in law, there are no effective administrative courts in Togo, and such redress is therefore unavailable at present.

A medical examination of a person held in custody is optional and can be carried out only at the request of that person or a member of his family and with the agreement of the Prosecutor Office. The law does not provide for the person held in custody to choose the doctor to ensure that there is no cover-up.

FIACAT and ACAT Togo propose that these aspects of the Penal Procedure Code be amended, as recommended by Chile.

Prison conditions in Togo

The prison population increased spectacularly in 2010, to 4219 from 3178 in 2009. It seems to have levelled out in 2011 with a total of 4167 persons detained in Togolese prisons.

However, this number remains out of all proportion to the actual capacity of these institutions.

Under Togolese law, every person charged or detained has a right to food, bedding, hygiene and medical care. In reality, however, the living conditions of those deprived of their liberty are very different.

Prison conditions in Togo are deplorable, especially in the civilian prisons of Lomé, Sokodé and Dapaong, where there is severe overcrowding and an erratic and inadequate supply of food.

Overcrowding and lack of hygiene in prisons are urgent problems. Prisoners often sleep on their sides because there is so little room in the cells. To have more comfort they have to bribe the person in charge of the cell.

FIACAT and ACAT Togo endorse Norway's recommendation that Togo take the necessary steps to ensure that all persons in detention centres or prisons are treated in accordance with Togolese law and Togo's international commitments.

FIACAT and ACAT Togo do not accept that the pertinent recommendations from Benin, Canada, Norway and Germany can be classed as "already implemented or in the process of being implemented".

Women prisoners

Although there are no separate institutions for women, female prisoners have always been separated from male prisoners. However, there are no separate cells for women held in police custody. In police stations, women are often kept in a separate part of the premises under the supervision of a police officer.

There are no female prison officers. The *Garde de la sécurité du territoire (GST)* is a corps with very wide-ranging functions, which include prison security. The GST does not include any women.

As part of its National Programme for Modernisation of Justice, Togo intends to set up a civilian prison service, which is to include women. The recruitment competition was held in 2010, but the results have not yet been announced. The service has not yet been set up and is therefore not yet operational.

Supervision of places of detention

On 4 March 2011, the national OPCAT Follow-up Committee endorsed a bill on the establishment of an Observatory of places of detention, which was to act as a national prevention mechanism. This mechanism was to be operational one year after Togo's ratification of the OPCAT, i.e. no later than 20 July 2011. It has not yet finalised.

For some time, NGOs have had free access to places of detention and prisons: they simply have to apply. The authorisation is valid for one year and is renewable on submission of an activity report. But there is no access to certain places of detention where "special" prisoners are kept, such as the *Agence Nationale de Renseignement*.

Moreover, record-keeping in detention facilities is irregular, and this impedes the work of civil society organisations.
