

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE AGAINST TORTURE 42ND SESSION CHAD, INITIAL REPORT 29 - 30 APRIL 2009

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Key facts¹

Accession	Reservations	Recognises Committee's competency under Article 22 ²	Other core treaties ratified	Date of submission of present report
1995	None	No	ICCPR, ICESCR, CERD, CEDAW, CRC, ICPPED	Initial report, presented 4 September 2008

Opening remarks by the delegation

The delegation of Chad was led by Mr. Djasnabaille, Minister for Human Rights and the Promotion of Liberty. He was supported by a small but relatively high-level delegation consisting of Mr. Arabi of the Ministry of Human Rights and the Promotion of Liberty, Mr. Nodjigoto of the Ministry of Justice and President of the National Commission for Human Rights, Mr. Barka of the Ministry of Foreign Affairs and Mr. Annour from the Presidential Office of Human Rights.

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² Article 22 provides that a State Party to the Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention

The Minister framed the presentation of the State report in the context of the recent internal disturbances leading to the Government declaring a state of emergency, which has been imposed continually since February 2008. He reasoned that this had hampered the compilation of the report. The current political exigencies were also used to explain certain restrictions on freedoms. The Minister said that despite this the State would like to comply with all of its human rights obligations and has set about implementing a policy of decentralisation, including the creation of an ombudsman for human rights and the new Ministry for Human Rights to help ensure this. He also made clear the State's desire to seek advice from the Committee and recognised the particular need to implement the *Convention on the Rights of the Child*, which was welcomed by the Chairman and some of the other independent experts. He also made reference to the latest attempts to re-draft the Criminal Code in line with the State's international human rights obligations and welcomed any further assistance from the Committee.

The Committee did not release a list of advance issues in reply to the initial report, which was submitted in late 2008, and so the discussion focused singularly on the information contained in the report itself. The meeting was conducted solely by the Minister for Human Rights, and none of his representatives was engaged in answering questions directly.

Overview of key issues

The following overview addresses five of the Committee's concluding observations following the examination on the basis of those themes that the Committee dedicated most time to, whether they requested follow-up on implementation, and whether the final recommendation was specific and implementable within a certain timeframe. Each is assessed according to how they were addressed in the examination, including the initial views of the State, questions and comments by Committee members, and responses provided.

The Chadian Minister entered into a relatively open and constructive dialogue with the Committee. He persistently re-emphasised the enormous problems facing the Government in implementing the Convention, and had clear expectations of the kind of advice he wanted from the Committee. Sometimes this expectation was met, at other times the Committee pursued lines of questioning which the Minister failed to address or which he did so but summarily. A particularly evident impasse was the issue of child soldiers, with the Minister denying their existence in Chad and the Committee repeatedly returning to the situation. Nevertheless both parties expressed their satisfaction at the collaborative attitude that characterised the majority of the process.

Legislative implementation of the Convention

“13. L'État partie devrait réviser et adopter de toute urgence le projet de loi modifiant et complétant le Code Pénal afin d'y intégrer une définition de la torture conforme à l'article premier de la Convention, ainsi que des dispositions érigeant en infraction les actes de torture et les rendant passibles de sanctions pénales proportionnelles à la gravité des actes commis.”³

This topic provided one of the clearest examples of cooperation between Chad and the Committee. Whilst the crime of torture is prohibited by the national Constitution, it was evident from the information provided in the State report that Chad has not fully incorporated an appropriate definition of torture into its national legislation. The country rapporteur, Ms. Belmir, therefore explained the need to comply with Article 1 of the Convention. She highlighted the worrying possibility of encouraging impunity so long as the crime of torture was not defined clearly in national law. Committee member Mr. Gaye raised concerns about Article 18 of the re-drafted Criminal Code which purports to define and prohibit the act of torture. He questioned whether the article could be taken to imply that the prohibition of torture does not apply to State or Government officials

³ CAT/C/TCD/CO/1, para. 13, available at http://www2.ohchr.org/english/bodies/cat/docs/cobs/CAT.C.TCH.CO.1_fr.pdf

as it stands and thus suggested that this aspect of the Convention's definition of torture be inserted into the national legislation.

In light of this, Committee member Ms. Gaer expressed her concern at the possibility of police officers in particular escaping prosecution for alleged crimes of torture. Committee Chairperson and co-country Rapporteur Mr. Grossman raised examples of where public officials had been dismissed from their posts for committing acts of torture, and called upon the State to ensure that criminal prosecution also takes place for such officials.

The Minister responded that he acknowledged this shortcoming and approved of the suggestions made by the Committee members. He stated that this 'legal void' would be filled by a reworking of the draft legislative text. He then proceeded to read out the amended definition of torture to be inserted into the text and stated that improvement could only come about through such dialogue.

As a response to evidence emanating from the national report and dialogue in the meeting itself, the Committee also expressed concerns for the need to clarify the extent of the prohibition. The Minister had repeatedly stated that cases of torture were committed primarily in situations where the perpetrator had received an order from a superior or public authority, and this appeared to be considered an extenuating circumstance. The Committee moved quickly to assert that under the Convention, torture may not be justified in this or any other way, as it is subject to a universal prohibition. The Minister stated that there is presently a prohibition against torture for members of the police force, and that it is possible for police officers to complain about instances where they did not agree with the orders given to them, but this evidently did not address the overriding, fundamental problems; namely the lack of a full definition of torture and the incorrect interpretation of that principle. Throughout the dialogue, the Committee was at pains to emphasise that acts of torture cannot be justified by such circumstances. Thus two concluding observations specifically dealt with instances where torture had been permitted due to prevailing social and political circumstances, and called upon the State to ensure that such excuses may not be permitted, in compliance with the Convention.⁴

Follow-up inquiries and addressing impunity

“17. L'Etat partie devrait :

- a) Adopter immédiatement des mesures pour garantir dans la pratique que toutes les allégations de torture et de mauvais traitement fassent l'objet d'enquêtes promptes, impartiales et exhaustives, que les auteurs de ces actes soient jugés et, s'ils sont reconnus coupables, condamnés à des peines proportionnelles à la gravité des actes commis;
- b) Enquêter sur l'implication des agents gouvernementaux, membres des forces armées et de sécurité gouvernementales et alliés du Gouvernement dans les actes de torture, viols, disparitions forcées et autres abus commis lors des événements de février 2008;
- c) Enquêter sur les activités de la brigade chargée de la protection de l'environnement et de la brigade chargée de la fouille des armes et assurer un contrôle efficace sur leurs actions futures;
- d) Mettre en oeuvre, dans les plus brefs délais, les recommandations de la Commission d'enquête sur les événements de février 2008;
- e) Offrir pleine réparation, y compris une indemnisation équitable et adéquate, aux victimes de ces actes et leur fournir une réadaptation médicale, psychologique et sociale.”⁵

High on the Committee's agenda was the need to address the national Commission of Inquiry's investigations into the uprising of February 2008, especially in light of cases of apparent impunity which continued to hamper the State's legal development. Ms. Belmir highlighted the problem of allowing continued impunity for members of the previous regime who had been found to have committed or overseen acts of torture. Fellow Committee member Mr. Gaye suggested that identifying acts of torture committed by the secret police

⁴ Supra n. 3, at para. 14 and 15.

⁵ Supra n. 3, at para. 17.

and other actors under the last regime was important in discouraging the new regime from continuing similar acts. Ms. Belmir and Ms. Gaer suggested that a number of officials, including police officers and government representatives, remain in office despite their criminal acts, and decried the paucity of legal provisions available to remove these perpetrators. Furthermore, Ms. Belmir claimed that the laws which do currently exist are not being used actively enough to bring these people to justice and Ms. Gaer asked for statistics on the number of police officers currently working despite charges of torture being held against them and despite the findings of the recent Commission of Inquiry. Mr. Gallegos echoed these sentiments, welcoming the open nature of the report but also criticising the continued impunity for crimes of torture. He and Mr. Grossman also suggested that if the Government wants to demonstrate its policy of reconciliation, it should seriously consider establishing a more formal, fully independent truth and reconciliation commission to follow up and develop the outcomes of the Commission of Inquiry.

In response the Minister stated that the newly drafted Criminal Code establishes clear crimes and punishments relating to torture, and imposes harsher penalties for crimes committed by ‘Government people’. However, in reality it appears that there are substantial gaps in the law, both at normative and substantive levels, with the Minister asserting that when a public official uses violence ‘without a particular motive’, he or she will be punished accordingly. Such an obvious *lacuna* was not picked up on by members of the Committee, but they continued to press the delegation for clearer commitments on dealing with impunity, which Mr. Gallegos underlined as his ‘main concern’. Following the first response given by the delegation, he echoed Ms. Gaer’s earlier call to be provided with appropriate evidence of the steps taken to prevent and punish crimes of torture.

The only information provided by the Minister in this regard was the assertion that there are apparently only 3 former regime officials who continue to occupy ‘high level posts’, and he insisted that should accusations be made against any of them, they would appear before the courts in due time to have their cases heard. He failed to provide any substantial information on the level of impunity extant in the country but stated that in the current climate of political instability and security concerns, it was very difficult to get rid of ‘helpful’ generals in the military who help to secure the country, even if they have possibly contravened human rights laws in the past. The Committee unfortunately did not have the opportunity to respond to this statement in the dialogue but made tacit reference to it in their concluding observations, in paragraph 22 (c),⁶ where they call on the State to ensure the prosecution and suspension from duty of all public officials suspected of committing crimes of torture, especially those officials who wield enough power to influence the outcome of the enquiry.

The recommendations therefore reflect both the constructive dialogue held on the issue of impunity, and also on the less positive aspect of the State’s representation, that being its failure to substantively address questions regarding the outcome to the Commission of Inquiry. Mr. Djasnabaille stated that there is a bill currently being formulated to facilitate compensation claims by victims of the former regime who were identified by the Commission. Ms. Belmir then suggested that the Commission did not seem to catalyse any practical outcomes to follow up on its findings, and reiterated the calls for an independent truth and reconciliation commission.

Violence against women and children

“20. L’État partie devrait redoubler d’efforts pour prévenir, combattre et réprimer les violences et sévices sexuels perpétrés à l’encontre des femmes et des enfants. A cet effet, l’Etat partie devrait notamment, et en collaboration avec la Mission des Nations Unies en République centrafricaine et au Tchad (MINURCAT) et les agences onusiennes spécialisée sur le terrain:

⁶ Supra n. 3, para. 22.

- a) Conduire de vastes campagnes d'information afin de faire prendre conscience à la population et à toutes les parties au conflit que les violences sexuelles constituent des infractions au regard du droit pénal, et afin de faire tomber les tabous sur les crimes sexuels et éliminer la stigmatisation et l'exclusion qui frappent les victimes et les découragent de porter plainte;
- b) Poursuivre et renforcer le déploiement du Détachement Intégré de Sécurité (DIS) dans le proche environnement des sites de personnes déplacées et des camps de réfugiés afin de garantir leur protection, notamment celle des femmes et des enfants, y prévoir un mécanisme de dépôt de plainte simple et accessible à tous, assurer la transmission systématiquement et immédiatement des plaintes aux autorités compétentes ainsi que la protection des victimes;
- c) Mettre en place un système de réhabilitation et d'assistance aux victimes;
- d) Amender la loi No 06/PR/2002 portant promotion de la santé de reproduction afin d'y prévoir des sanctions pour les auteurs des crimes sexuels ou incorporer dans son Code pénal les infractions de violences sexuelles en y prévoyant des peines proportionnelles à la gravité des crimes;
- e) Veiller à ce que les pratiques et le droit coutumier ne soient pas invoqués comme motifs pour justifier une dérogation à l'interdiction absolue de la torture, ainsi que rappelé par le Comité dans son Observation générale no 2.⁷

The Committee quickly identified women and children as groups of particular vulnerability in Chadian society. Rape, corporal punishment and the practice of using child soldiers were recognised as the greatest threats to personal security, and indeed the Committee re-emphasised these issues with separate paragraphs expounding on the provisions set out in paragraph 20.⁸

Paragraph 34 in particular addresses the difficulties encountered in the examination of the State refusing to accept the existence of child soldiers in the country, but then appearing to renege on its claim. That provision recommends that the State should establish a methodology for the demilitarisation and reintegration of child soldiers into peaceful society and also calls upon the Government to create procedures to 'liberate and verify the demobilisation' of child soldiers. Mr. Grossman highlighted evidence that children had been forced to join up to militias, as well as the Chadian national army, and said that recruitment was actually on the increase. Ms. Sveaass said that the situation in internally displaced people's (IDP) camps had deteriorated to such an extent that the camps were effectively military camps, with child soldiers proliferating. The Committee's questions were initially met with surprise and indignation by the Minister, who fervently claimed that there were no child soldiers in Chad, including in IDP camps. He said that NGOs who claimed otherwise had failed to meet with the Government and he could therefore only present the information held by the Government. On a fact-finding mission to IDP camps, the Minister said that he had not come across child soldiers and claimed that the Home Office was dealing with all former child soldiers.

Paragraph 34 therefore calls on the Government to establish an all-encompassing approach to the issue of child soldiers, including preventative and rehabilitative measures.

The Committee was also concerned about child-smuggling and the common occurrence of corporal punishment for minors, especially in domestic and educational settings. Mr Grossman and Ms Sveaass paid special attention to the latter, following mention of it in paragraph 408 of the State report. They said that Muslim schools in particular seem to encourage corporal punishment - forcing children to beg for their food and chaining them up during the day - and wanted to know what legal and practical measures were being taken to redress the situation. Ms Gaer made good use of recommendations made by the Committee on the Rights of the Child by reiterating the need to outlaw corporal punishment and look into the possibility of closing these schools or reprimanding teachers responsible for the acts. The Minister did not answer the questions put to him, and thus the recommendations included in paragraph 31 of the concluding observations clearly request that the State 'combat and eradicate' the exploitation and abuse of children in this way.

⁷ Supra n. 3, para. 20.

⁸ See supra n. 3, para 30, 31, 32 and 34.

Paragraph 32 pays attention to Mr. Grossman and Ms. Sveaass's questions about domestic violence towards children, calling upon the State to strengthen and clarify legislation banning corporal punishment.

Referring to violence against women, Ms. Belmir asked the delegation about reported widespread cases of rape, forced marriage, domestic violence and female genital mutilation, and wanted to know about the Government's plans to eradicate them. She also asked whether there were any statistics to show that these practices were being reduced. The Minister responded that such practices were prohibited in the new draft legislation and in particular expressed his 'surprise' that women were claiming that they had been forced into marriages. He did not produce any evidence to support this claim, or to demonstrate the levels of violence towards women. The Committee did not follow up on their initial comments, but rather it was Mr. Grossman who inquired when the new draft laws would be enacted, pre-empting an evasive response from the delegate, who merely reiterated that the bill was still being finalised. The number of relevant concluding observations on this area does however reflect the focus the Committee placed on violence towards women and children, and specifically they recommend amending the Law No. 06/PR/2002 to reflect the severity of the crimes established therein, conducting an awareness-raising programme to help eliminate practices which violate women's rights, and strengthening the presence of the national security agency in IDP camps to counter the widespread violence problems encountered there.

Training and education

“24. Pour répondre aux dysfonctionnements de l'administration de la justice, l'État partie devrait :

- a) Mettre en oeuvre de manière urgente le Programme de réforme judiciaire approuvé en 2005 et demander l'appui de la Communauté internationale à cet effet ;
- b) Assurer une formation appropriée de l'ensemble du personnel de l'appareil judiciaire, remédier à l'insuffisance en nombre de magistrats et assurer autant que possible le déploiement de magistrats professionnels dans toutes les juridictions ;
- c) Poursuivre et intensifier les efforts de lutte contre la corruption, y compris en adoptant les mesures législatives et autres mesures opérationnelles nécessaires ;
- d) Assurer la totale indépendance de la magistrature, en conformité avec les normes internationales y afférentes.”⁹

The recommendations made by the Committee on the need to ensure human rights and procedural training for members of the judiciary and police forces marked perhaps one of the most tangible developments to come out of the examination. Committee members highlighted malpractice by State officials in many important areas, including prisons, schools and the court system. Ms Belmir pointed out that many police commanders were illiterate and committed abuses because they did not know the relevant legal provisions. She also highlighted the worrying trend for non-judicial local prefects and sub-prefects to conduct the work of magistrates in areas where there is a lack of judges. She furthermore questioned the ability of the judiciary to uphold and implement human rights standards, including the present Convention. The State report mentioned the need to hold training session for judges on the Convention against Torture, and Mr. Grossman thus asked whether this initiative was being implemented. He praised the creation of a Code of Conduct for the police force but wondered if it had been distributed widely enough and whether it was being followed up by regular re-enforcement seminars. He also wanted to know how many members of the police force and judiciary had been trained in human rights, and suggested that a renewed focus be implemented to address the serious issue of evidence obtained under duress being submitted and accepted by the courts of law. Ms. Sveaass made a very useful observation that it would perhaps be useful to train health professionals in recognising signs of torture so as to further help eliminate the use of such unlawfully obtained evidence in courts. Ms. Kleopas also asked whether it was true that judges had gone on strike to complain about interference by the Executive.

In response to these detailed questions, the Chadian Minister replied that the Government was 'taking steps' to further disseminate training materials on human rights compliance as well as its Code of Conduct for the

⁹ Supra n. 3, para. 24.

police force. He also spoke of training seminars which were being used to raise awareness of human rights, and these would be offered to both the police force and military institutions. Lastly, ignoring most of the more specific questions put to him, the Minister reassured the Committee that ‘some judges are honest’ and that he intended to bestow them with more power to address human rights abuses. In response to the queries about the military prisons, he said that the Government had recently trained prefects and military brigade leaders to be given basic legal and literacy training. Fifty generals had been retired and he stated the State’s aim to ensure that all military leaders were educated in order to produce a more professional army. He provided no concrete information on the number of lawyers and police officials who had already received human rights training and did not give any answer to the questions posed by Ms. Kleopas or Ms. Sveaass.

Conditions of detention and secret detention centres

“16. L’État partie devrait réviser le Code de procédure pénale tchadien afin d’y faire figurer les garanties juridiques fondamentales au bénéfice de tous les suspects pendant leur détention qui incluent, notamment, le droit d’avoir accès à un avocat, d’être examiné par un médecin indépendant, de contacter un proche et d’être informé de ses droits dès sa mise en détention, y compris des charges retenues contre soi ainsi que d’être présenté dans les plus brefs délais devant un juge. L’Etat partie devrait par ailleurs s’assurer de la pleine jouissance de ces droits dans la pratique, et il devrait veiller au respect strict du délai de garde à vue et de l’accès à l’aide juridictionnelle pour les personnes démunies. En outre, les autorités devraient tenir à jour de manière systématique et régulière des registres d’écrou où figurent le nom de chaque personne détenue, l’identité des fonctionnaires qui effectuent la détention, la date d’admission et de sortie du détenu ainsi que tout les autres éléments afférents à la tenue de tels registres.”¹⁰

The Committee critically analysed all major aspects of the State prison service and highlighted several major concerns, covering aspects of pre-trial detention, health provision, prison security, overcrowding, registration of prisoners and the particular problem of secret detention centres.

Ms. Belmir raised the issue of pre-trial detention, which can sometimes continue for nine months before a case is brought to trial. This occurs despite Article 221 of the Criminal Code providing that 48 hours is the maximum length of time for detention without being charged and brought to trial. Mr. Grossman followed up on this point by asking what percentage of all prisoners were being held pre-trial for periods longer than 48 hours and whether there were any initiatives to reduce this number. He also asked what penalties were in place to reprimand gendarmes who held prisoners for longer than this period without charge. Mr. Djasnabaille responded that 48 hours was indeed the maximum length of detention without being charged, and merely repeated information already provided in the report about the need to ensure this. Ms. Belmir followed up by noting that the delegate had indicated that there was some abuse of this rule and asked for more information, but none was forthcoming.

On the issue of prison conditions, the Minister attempted to assert that monitoring takes place, but this ran counter to NGO reports and the Committee’s own findings that inspections and follow-up are, for the most part, completely lacking. Mr. Grossman said that greater access to prisons should therefore be guaranteed for defence lawyers and human rights associations, and made it very clear that in order to deal with ‘anarchic’ prisons the State should also implement its plans for a professional prison gendarmerie. Mr. Grossman was worried at the delays in establishing this professional body. The Minister responded positively that he recognised the need to have dedicated prison wardens and they would therefore be recruited ‘soon’. Regarding health issues in prisons, Ms. Belmir accused the State of not providing a health system of any kind in prisons. Family members were providing prisoners with food and conditions have been made worse by severe overcrowding. This has also led to children of both sexes being held in the same prisons as adults, which was of great concern to Ms. Belmir. The Chadian Minister did not address the issue of health or overcrowding except to acknowledge that congestion was ‘a real problem’.

¹⁰ Supra n. 3, para. 16.

Questions were also directed at the apparent malpractice of not registering prisoners. Despite the national report claiming that all prisons are obliged to keep registers of all inmates, the Minister was unable to produce any such documents and ignored the issue after the first round of questioning. Thus Ms. Belmir, reflecting the views of many similarly-concerned Committee members, repeated the request to see prison registers, to which there was again no response. Ms. Belmir was extremely concerned that this omission further encouraged the practice of secret detention. Mr. Mariño asked if there were any detention centres which might have escaped inclusion in the report and said that NGOs had highlighted this as a distinct possibility. He further narrowed his questioning by asking specifically about cases of secret detention in military prisons. The Minister began his response by stating that the judicial system was capable of deciding if a detention has been illegal or not, and ceded that ‘in practice there are rare cases where people are held in secret prisons’. Ms. Belmir and Mr. Grossman therefore asked if these secret detentions had so far gone unpunished, and Mr. Mariño questioned why these ‘rare cases’ happened at all, who was doing it, and what the Government was doing to eliminate the practice. Ms. Belmir in particular produced some valuable information about certain military brigades which ran detention centres, and Mr. Grossman called for criminal investigations to be conducted. The Minister declined to comment further on the issue, instead embarking on a thirty-minute speech to re-emphasise the security problems faced by the Government. This marked the end of the dialogue, and Mr. Grossman thanked the delegation and expressed his hope that they would address all of the issues raised.

Other issues not reflected in concluding observations

The concluding observations did not omit any of the major concerns expressed by the Committee members during the meeting.

Conclusions and next steps

The Minister for Human Rights ended his responses with a lengthy plea for extra technical assistance to be provided to the State and set out some of the practical challenges facing his Ministry in combating human rights abuses. Mr Grossman then thanked the Minister for his participation and emphasised the need to listen to his opinions. He thanked the delegation for taking on board the issues which the Committee raised and assured the Minister that the Committee would continue to monitor the country situation carefully.

The concluding observations encouraged Chad to make a declaration under Articles 21 and 22 of the Convention and furthermore emphasised the need to involve NGOs more in its human rights-related activities. The Committee especially highlighted the important role that NGOs could play in monitoring prisons and reviewing national legislation.¹¹ A further outcome of the meeting was the Committee recommendation that Chad develop an effective system of record-keeping and data control, so as to enhance and illustrate its commitments and progress.¹² The Committee also asked for specific follow-up regarding paragraphs 13, 17, 22, 24, 28 and 34.

The next periodic report is due on 15 May 2013.

Last revised and updated: 7 July 2009.

¹¹ *Supra* n. 3, para. 37 and 38.

¹² *Supra* n. 3, para. 40.

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