

**CCIG**  
INTERNATIONAL  
CATHOLIC  
CENTER  
OF GENEVA



# FROM MOB JUSTICE TO PRISON OVERCROWDING: THE IMPORTANCE OF A GOOD ADMINISTRATION OF JUSTICE IN TOGO

A side event during the 36<sup>th</sup> session of the Human Rights Council

## EXECUTIVE SUMMARY

Wednesday 13 September 2017

1:30 pm — 3:00 pm

Salle XXIII, Palais des Nations, Geneva

With the support of:



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## INTRODUCTION

Organised by the International Catholic Center of Geneva (CCIG) in collaboration with the International Federation of Action by Christians for the Abolition of Torture (FIACAT) and Action by Christians for the Abolition of Torture in Togo (ACAT Togo), the side event ‘From mob justice to prison overcrowding: the importance of a good administration of justice in Togo’ took place on 13 September 2017, during the 36<sup>th</sup> session of the Human Rights Council. This event was organised with the support of the City of Geneva and the Republic and Canton of Geneva, and was co-sponsored by the Centre for Civil and Political Rights (CCPR Centre) and by the World Organisation against Torture (OMCT).



## BACKGROUND

This event formed part of a larger scale project organised by the CCIG, the FIACAT and ACAT Togo that aimed at strengthening the capacity of human rights defenders in Togo who work with victims of torture, ill-treatment, arbitrary detention, arbitrary execution and enforced disappearance.

In October 2016, Togo was reviewed during the 27<sup>th</sup> session of the second cycle of the Universal Periodic Review. During this review, civil society in Togo became very active in expressing their concerns to the Permanent Missions based in Geneva and Embassies based in Togo. The report of the UPR working group was adopted by the Human Rights Council during its 34<sup>th</sup> session in March 2017. Nearly twenty of the recommendations made in the UPR related to the issue of torture and cruel, inhuman or degrading treatment or punishment and most of them were accepted by Togo.

It was within this context that the CCIG, the FIACAT and ACAT Togo decided to set up a project with the aim of ensuring a monitoring for the implementation of these recommendations by providing Togolese civil society with adequate monitoring tools and to make them more familiar with the various mechanisms for the promotion of human rights.

A two-part training was first delivered to representatives of Togolese civil society during a mission to Lomé in April 2017. The first part consisted of a three-day training course, given to twenty-five participants, representing 13 non-governmental organisations in Togo, on the UN instruments for the protection of human rights, in particular the Universal Periodic Review (UPR) and the Convention against Torture (CAT). The second part concerned advocacy to local and international institutions to make them aware of the situation in Togo.



The three days of training consisted of several modules introducing the United Nations system, including the Human Rights Council, the Universal Periodic Review and the Treaty bodies system, in particular the Convention against Torture. A parallel was also drawn with mechanisms and instruments of the African Commission on Human and People's Rights (ACHPR). Finally, various tools for advocacy were presented to the workshop participants. Following the presentation of these modules, the participants drew up an action plan for civil society to monitor the recommendations addressed to Togo on the occasion of its second UPR.



A representative of the State Secretariat for Human Rights (SEDH) was present during the three days of training and was able to follow the drawing up of this action plan. Following these three training days, two press conferences were organised by ACAT, with the participation of Ms Nakpa Polo, State Secretary for Human Rights, to make the general public aware of the need to respect the commitments made by Togo at international level.

The second part of the training, focussing on advocacy, enabled meetings to be organised between the participants, the organisers and representatives of various national and international institutions to share various concerns related to the fight against torture and other cruel, inhuman or degrading treatment or punishment in Togo. The mission ended with a visit to the prison in Lomé by a delegation of the FIACAT and ACAT Togo.





Among the topics spotlighted during the training, the good administration of justice was identified as a priority by local human rights defenders. It was indeed noted that this was at the origin of a certain number of issues such as arbitrary detention and prison overcrowding, which themselves constitute violations of human rights. Indeed, the administration of justice in Togo lacks human, material and financial resources, making the processing of cases very slow. As a consequence, a large number of people find themselves in detention, sometimes for several years, in violation of the provisions of the law, before they come to court. Pre-trial detention and arbitrary detention are two of the most important causes of prison overcrowding.

Another challenge for the government of Togo, still on the subject of the administration of justice, is the lack of trust in the legal system among the population, as shown from the increase in private justice, or mob justice.

The presentations by the speakers, Mr Franck Gafan, Ms Marie Salphati, and Mr Alessio Bruni, focussed on the challenges faced by the system of justice in Togo as well as the efforts already made by both the government and by civil society to improve access to justice in Togo. The participation of a representative of the Permanent Mission of Togo to the United Nations in Geneva made it possible to create space for dialogue between the government and the representatives of civil society to improve justice and to implement the recommendations of the UPR.

The aim of this report is to present a summary of the discussions which took place during the side event.

## PANEL

### MR FRANCK GAFAN

Director of Programmes, YMCA Togo

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### MS MARIE SALPHATI

Representative to the United Nations, FIACAT

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### MR ALESSIO BRUNI

Member of the UN Committee against Torture

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### MODERATOR

### MS MARIA D'ONOFRIO

Secretary General, CCIG

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We also wish to thank Ms Akossiwa Sewonou Adossi and Mr Bruno Haden whose valuable collaboration helped ensure the success of the event.







## EXECUTIVE SUMMARY

In her opening remarks, **Ms Maria D’Onofrio** (Secretary General, CCIG) began by thanking all the organisations which co-sponsored and helped coordinate the event, together with the donors. She was sorry to announce that two partners from Togo, Ms Akossiwa Sewonou Adossi (WARN Programme Human Rights Assistant, WANEP Togo) and Mr Bruno Haden (Secretary General, ACAT Togo) were unable to be present due to unforeseen circumstances.



Ms D’Onofrio then went on to describe the event as the continuation of a wider project aimed at monitoring the recommendations on the conditions of detention and cases of torture and ill-treatment addressed to Togo during its latest Universal Periodic Review in October 2016. The objectives of the event were to discuss how the State is implementing the relevant recommendations of the Universal Periodic Review as well as to identify concrete actions and possible areas of collaboration between the government and members of civil society.




The first speaker to take the floor was **Mr Franck Gafan** (Director of Programmes, YMCA Togo) who began with a brief presentation of his organisation whose purpose is to promote access to justice for everyone in Togo. He continued by explaining the functioning of the administration of justice in Togo, its signs of progress as well as its dysfunctional aspects. He also took the time to clarify the current

situation in places of detention in Togo, emphasising in particular the health issues related to access to food and healthcare.

Some progress has been seen in the administration of justice, especially through the national programme to modernise the justice system which is planning new buildings for courts and tribunals, better working conditions and capacity building for judges.

«Despite the efforts of the relevant authorities, these conditions [of detention] have not been improved as expected to humanise prisons»



«In the medium term, any epidemic may prove disastrous»

A new Criminal Code was also adopted and came into force in 2015.

However, Togolese justice struggles to respect the principles of independence and of the segregation of duties. It was also noted that effective access to the

courts is not in practice guaranteed to be available to all litigants, mainly because of the distance separating some of the population from the jurisdictions and because of the high costs of justice. The results of the recent survey by Afro Baromètre therefore show that 63% of the Togolese do not trust their justice system.

Mr Gafan then explained that these failings had numerous consequences, especially on the high level of pre-trial detention (almost 50 to 75.27% of detentions) and on the resultant prison overcrowding. Therefore, occupation levels in Tsevie prison reached 379% in December 2016 while the new prison at Kpalimé, with a capacity of 161, already had 195% occupancy in December 2016, only three months after it opened<sup>1</sup>. This overcrowding, coupled with inadequate infrastructure mostly dating from the colonial era (despite the construction of new prisons), poses particular challenges to hygiene, sanitation, and detainees' access to healthcare and food.

In accordance with article 10 of the International Covenant on Civil and Political Rights and articles 15 and 16 of the Constitution of Togo, all persons deprived of liberty must be treated with humanity and the respect for dignity inherent to any human being. According to the Nelson Mandela Rules, the prison administration must provide prisoners with adequate accommodation and food. Nevertheless, Mr Gafan reported that the average budget allocated to food per detainee per day had been reduced from 220 CFA francs in 2012 to 191 CFA francs in 2016. The food provided to prisoners is seriously inadequate.

Concerning the right to health, the almost non-existent hygiene of the prisoners favours the development of skin diseases and other illnesses, which, if not managed correctly, lead to deaths, especially in the hot season. Furthermore, we note the inexistence and/or ineffectiveness of the systems for medical treatment: the late evacuation of patients has in recent years caused an increased number of deaths following the transfer of detainees to medical centres.

Many States therefore returned to the matter of detention and of the administration of justice during the latest UPR of Togo, with over ten recommendations, including recommendation 128.75 made by Switzerland: "To improve the prison conditions in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders"<sup>2</sup>.

«I believe our partners CCIG and FIACAT have provided us with a higher degree of knowledge to exercise our commitment to defending human rights»



1. Source: Direction de l'Administration Pénitentiaire et de la réinsertion (Management of prison and rehabilitation administration), December 2016  
2. See also recommendations 128.78 and 128.92, Report of the Working Group on the Universal Periodic Report, Togo (A/HRC/34/4)<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/444/23/PDF/G1644423.pdf?OpenElement>

Mr Gafan's presentation concluded with some proposals for action aimed in particular at improving the physical conditions of detention by giving prisons infirmaries that were sufficiently well equipped, favouring alternative measures to pre-trial detention, putting a judge on execution of sentences in place, inserting legal guarantees for people deprived of their liberty into the Code of Criminal Procedure (including setting up a maximum timeframe for an investigation) and pursuing and strengthening collaboration between the government and civil society organisations.

Next to take the floor, **Ms Marie Salphati** (Representative to the United Nations, FIACAT) expressed the concerns of Ms Nadia Adossi (WARN Programme Human Rights Assistant, WANEP Togo) relating to mob justice. This phenomenon was originally described as a 'public vengeance by the victims of a wrong, or an offence, against the person supposed to have committed it'. This practice still persists in Togo, especially in the city of Lomé and its surrounding area. This recourse to private, alternative justice is increasing and becoming commonplace. In 2016, ACAT Togo documented 10 cases of mob justice and 8 cases between January and April 2017. Among these cases was cited that of the suspected thief of a motorbike who was arrested, tied up and burned alive by a crowd on the 25 March 2017.



The most worrying aspect of mob justice is that it seems to extend to conflicts in the community or among groups of people who have no link with discouraging the suspected thieves or robbers. This can be seen in the case of a court clerk who was ambushed and then lynched by a group of young people who accused him of having lodged a complaint about one of them because of the romantic relationship in which that person was involved with the underage niece of the victim.

«Mob justice is illegal and contrary to the Rule of Law [...] This movement of private resolution of conflicts concerning thefts and robberies is taking on alarming proportions. [Nevertheless] actions to deal with these acts of violence can be proposed»

The presentation then went on to describe the principal reasons for this phenomenon, that is: ignorance of the law by the people so they are tempted to take the law into their own hands, the popular belief that the law enforcement officers are incapable of or ineffective in guaranteeing protection for the people, as well as believing that the legal system is failing and that the local police will be slow to act. Once mob justice and its causes had been described, it became

clear that it represented a violation of the right to life, consecrated by the Constitution of Togo as well as in the Universal Declaration of Human Rights, and a violation of the principle of the presumption of innocence. Among the consequences of this phenomenon we may note the preponderance of the settling of scores and the creation of a climate of fear and insecurity among the people as they see cruel punishments inflicted collectively, solely on the basis of rumours.



While recognising the efforts to raise awareness already undertaken, both by the government and members of civil society, as well as the setting up of a local police presence, Ms Salphati discussed ways in which this issue could be tackled through various channels: the Ministry of Justice, the Ministry of Security and Civil Protection, the media and civil society. The first must ensure that those suspected of committing crimes and offences are apprehended and must initiate investigations. They must also prosecute via the Public Prosecutor those carrying out lynching or any act of mob justice. The second should deploy the local police to protect the suspected offenders effectively. The media and civil society should strive to make sure the people are aware of and understand this phenomenon and its illegal nature. In conclusion, Ms Salphati stated that mob justice was illegal and contrary to the Rule of Law, and reaffirmed the need to counteract it by ensuring greater protection for the people and convincing them that they could trust the legal system.



After thanking the organisers of the event, the third speaker **Mr Alessio Bruni** (Expert, United Nations Committee against Torture) discussed how to monitor the recommendations of the United Nations Committee against Torture following the review of Togo in November 2012. He first emphasised the serious nature of the commitment the Togolese State made in their dialogue with the Committee.

Mr Bruni stated, however, that although a new Criminal Code had indeed come into force in 2015, the new Code of Criminal Procedure did not seem to have advanced beyond the planning stage. The Code

of Criminal Procedure constitutes an essential tool to ensure the reforms introduced by the new Criminal Code are effective.

Mr Bruni then summed up the concluding observations of the Committee against Torture following the latest review of Togo. These observations concerned not only recommendations on legislative measures such as the entry into force of a new Criminal Code providing the definition and criminalization of torture, as well as the coming into force of a new Code of Criminal Procedure, but also recommendations on the effective application of these measures. Among these recommendations were in particular those on investigating allegations of torture and bringing the perpetrators to justice, improving judicial safeguards of people in pre-trial detention in order to prevent arbitrary detention, limiting the use of pre-trial detention, improving prison conditions,

in particular hygiene, access to medical care, and overcrowding, and guaranteeing that prisoners would soon have at least two meals per day.

Before discussing how these recommendations could be monitored, Mr Bruni stated that the third periodic report on Togo, expected by the Committee against Torture on 23 November 2016 had to date still not been presented by the State.

He continued by giving the latest information provided by the State in 2013 on the subject of the most urgent recommendations formulated by the Committee against Torture. The Togolese State had presented the progress made in drawing up the new Criminal Code, which had since come into force. It had also referred to several construction and sanitation projects of detention centres. On the other hand, the State had admitted it still could not guarantee adequate food for prisoners and recognised the difficulties of opening legal proceedings against those who inflicted torture because of a lack of legal resources.

In conclusion, Mr Bruni recalled that of the 160 recommendations accepted by Togo during its Universal Periodic Review, some fifteen related to the prohibition of torture and the excessive use of force, the legal safeguards of prisoners, improvements to living conditions in prison, and the establishment of impartial enquiries into allegations of torture and other violations of human rights. He said that he hoped the Committee would soon be able to examine how its own recommendations were being applied, as well as those of the Universal Periodic Review.

«Clearly, the legislative measures represent only the first step. Effective implementation of them must follow»



## INTERACTIVE DIALOGUE

The presentations by the speakers were followed firstly by an intervention of the representative of the Permanent Mission of Togo in Geneva who took the floor to give the opinion of the State on the topics discussed as well as on the measures put in place to deal with these.

He began by thanking the organisers before assuring the audience that reforming the justice system was a central issue for the Togolese State. He stated that despite the difficulties in substantially improving the living conditions of people in detention, some measures had nevertheless been taken, that is, the organisation of special hearings, the construction of new prisons to alleviate overcrowding in Lomé prison (267% level of occupation according the statistics produced by Mr Franck Gafan) as well as new alternatives to pre-trial detention under the new Criminal Code. He assured the audience that the slow progress in these matters was not because of a lack of will on the part of the State but due instead to a lack of human and financial resources to effectively implement them.

The representative from Togo also gave assurances on how serious the State was about combatting the phenomenon of mob justice, which according to him was not due to lack of trust in the justice system but to ignorance of the law and the traditional nature of this aspect of society. He pointed out that despite the difficulty of prosecuting those who carried out mob justice, because of the



crowd effect, some cases had already been brought to court and convictions achieved. According to him, the phenomenon of mob justice is the result of a lack of education and awareness among the people. Moreover, limited human, material and financial resources do not permit an effective and decisive response on the part of the government. Nevertheless, he assured the audience that it was the will of the government to cooperate with civil society actors to tackle mob justice.

Following this intervention, there was time for questions and comments from the public to stimulate debate. The first question, asked by the representative from Good Neighbors International, concerned the current situation relating to the imprisonment of minors in Togo and projects currently underway to improve the protection of children. Then the CCPR Centre raised the question of legal aid and asked for details on the improvements made by the new law of 2013. A member of the Association for the Prevention of Torture (APT) then asked for information on the National Preventive Mechanism against torture and updates on the mandate of the National Commission on Human Rights in Togo. Other questions followed on the setting up of new laws on the judicial system, on the slowness of justice and in particular the slowness of preliminary enquiries mainly due to the practical difficulties of implementing the financial and human resources of the legal system.

Mr Franck Gafan then took the floor to answer the questions. On the subject of the poor conditions in which children were detained, he reiterated the observation of Good Neighbors International,





that very young children had been seen in the women's section of the civilian prison in Lomé. He gave assurances that despite everything new projects to help access had been initiated. In answer to the question about the new law on legal aid, he said that the decree to enforce the law had still not been issued, but that its effective implementation was expected to take place in the coming weeks. He then explained that the national action plan to implement the recommendations of the Universal Periodic Review did not, to his knowledge, yet exist. He ended by stating that the most important thing now for improving the efficiency of the legal system and the work of magistrates was that the new Code of Criminal Procedure should come into force.

By bringing together members of civil society, representatives of the Permanent Missions and of the United Nations as well as the representative of the State concerned, this event created a space for dialogue and the sharing of information in order to identify the different ways of dealing with the issues identified.

## ANNEX

FOR THE FULL PRESENTATIONS OF THE PANELISTS,  
PLEASE CONSULT THE FOLLOWING LINKS:

- **MR FRANCK GAFAN**  
Director of Programmes, YMCA Togo  
<http://www.ccig-iccg.org/wp-content/uploads/2017/11/Presentation-YMCA-sept-2017.pdf>
- **MS MARIE SALPHATI**  
Representative to the United Nations, FIACAT  
<http://www.ccig-iccg.org/wp-content/uploads/2017/11/Présentation-sur-la-vindictre-populaire.pdf>
- **MR ALESSIO BRUNI**  
Member of the UN Committee against Torture  
<http://www.ccig-iccg.org/wp-content/uploads/2017/11/Évènement-parallèle-sur-le-Togo-13-septembre-2017-Alessio-Bruni.pdf>
- **MS MARIA D'ONOFRIO**  
Secretary General, CCIG  
<http://www.ccig-iccg.org/wp-content/uploads/2017/11/Opening-remarks-Maria-D-Onofrio-CCIG.pdf>



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