



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

Distr.: General
15 June 2011

Original: English

Committee against Torture

Forty-sixth session

9 May-3 June 2011

Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

Ghana

1. The Committee against Torture considered the initial report of Ghana (CAT/C/GHA/1) at its 992nd and 995th meetings (CAT/C/SR.992 and 995), held on 16 and 17 May 2011, and adopted, at its 1011th meeting (CAT/C/SR.1011), the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Ghana. However, it regrets that the report does not follow generally the Committee's Guidelines on the form and content of initial reports (CAT/C/4/Rev.3), and that it was submitted nearly eight years late, which prevented the Committee from conducting an analysis of the implementation of the Convention in the State party, following its ratification in 2000. The Committee also regrets that the report lacks statistical and practical information on the implementation of the provisions of the Convention.

3. The Committee appreciates the frank and open discussions it enjoyed with the State party's delegation, and the additional information that was provided during the consideration of the report.

B. Positive aspects

4. The Committee welcomes the efforts and progress made by the State party since the return to democratic rule in January 1993.

5. The Committee welcomes the fact that in the period since the entry into force of the Convention for the State party in 2000, Ghana has ratified or acceded to the following international and regional instruments:

- (a) The International Covenant on Economic, Social and Cultural Rights, in 2000;
 - (b) The International Covenant on Civil and Political Rights and its Optional Protocol on individual complaints, in 2000;
 - (c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2000;
 - (d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2011.
6. The Committee notes the efforts undertaken by the State party to reform its legislation to ensure better protection of human rights, in particular:
- (a) The adoption in 2003 of the Juvenile Justice Act (Act 653);
 - (b) The adoption in 2005 of the Human Trafficking Act (Act 694), and its 2009 amendment;
 - (c) The adoption in 2007 of the Domestic Violence Act (Act 732);
 - (d) The adoption in 2007 of the amended Criminal Code (Act 741), which criminalizes the practice of female genital mutilation.
7. The Committee welcomes the fact that on 9 February 2011, Ghana made the declaration under article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights accepting the competence of the Court to receive and examine cases from individuals and non-governmental organizations, in accordance with article 5 (3) of the Protocol.
8. The Committee notes with appreciation that the State party has issued a standing invitation to the special procedures mechanisms of the Human Rights Council and welcomes the recent visit of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

C. Principal subjects of concern and recommendations

Definition and offence of torture

9. While noting that article 15, paragraph (2)(a) of the 1992 Constitution prohibits torture and cruel, inhuman or degrading treatment or punishment, the Committee regrets that the offence of torture as defined in article 1 of the Convention has not yet been included in the State party's Criminal Code. The Committee welcomes the information provided by the State party's delegation that the Attorney's General Office is in the process of seeking Cabinet approval for the domestication of the Convention, which will then be submitted to Parliament for consideration, in accordance with article 106 of the Constitution (arts. 1 and 4).

The State party should take the necessary measures to ensure that torture is established as an offence in its domestic law, and should adopt a definition of torture that includes all the elements contained in article 1 of the Convention. The State party should also ensure that such offences are made punishable by appropriate penalties which take into account their grave nature, in accordance with article 4, paragraph 2, of the Convention.

Fundamental legal safeguards

10. The Committee notes the measures adopted by the State party to ensure compliance with due process, including the right for all detainees to obtain immediate access to a counsel, to undergo a medical examination, to be informed immediately of their rights in a language they understand, and to appear before a judge within 48 hours of arrest. It also notes the establishment of pilot interrogation rooms in some police stations where fixed closed-circuit television (CCTV) cameras have been installed. However, the Committee expresses concern about reports that police fail to bring suspects before a judge within 48 hours of arrest, and that some police officers allegedly sign remand warrants themselves and take suspects directly to prison. The Committee also expresses concern at the very limited number of legal aid defence lawyers which precludes many defendants from obtaining legal counsel. Furthermore, it is concerned at the content of sections 10 to 13 of the Police Service Instruction 171, which provides for medical examinations to be conducted under the control of Government Medical Officers, who shall be requested to be present during independent medical examinations (arts. 2, 11 and 12).

The State party should take effective measures to guarantee that the fundamental legal safeguards for persons detained by the police are respected, including the right to be promptly informed of reasons for arrest and of any charges against him or her, the right to appear before a judge within the time limit prescribed by law and the right to an independent medical examination or a doctor of their own choice.

The State party should also:

(a) **Ensure that all detained persons are guaranteed the possibility to challenge effectively and expeditiously the lawfulness of their detention through habeas corpus;**

(b) **Make audio and video recording of interrogations of all persons questioned a standard procedure;**

(c) **Expand the number of legal aid defence lawyers;**

(d) **Ensure prompt registration of all persons deprived of their liberty and ensure that custody records at police and prison facilities are periodically inspected to make sure that they are being maintained in accordance with procedures established by law;**

(e) **Guarantee the privacy and confidentiality of medical information: public officials should not be present during medical examinations of persons under custody, save under exceptional and justifiable circumstances.**

Absolute prohibition of torture

11. While noting the information provided by the State party on the relevant constitutional precepts governing the declaration and administration of a state of emergency, the Committee is concerned at the absence of clear legal provisions ensuring that the absolute prohibition against torture is not derogated from under any circumstances (art. 2, para. 2).

The State party should incorporate in the Constitution and other laws the principle of absolute prohibition of torture, whereby no exceptional circumstances whatsoever may be invoked to justify it.

Death penalty

12. The Committee notes with interest the information provided by the delegation stating that the death penalty has not been applied in the State party since the military regime that ended in 1993.

The Committee invites the State party to consider the possibility of abolishing the death penalty, or failing that, to formalize the current de facto moratorium on the death penalty. The Committee strongly encourages the State party to consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Coerced confessions

13. The Committee values the information and clarification given by the representative of the State party in respect of the 1975 Evidence Decree (NRCD 323), which regulates the taking of evidence in legal proceedings, and which renders inadmissible as evidence statements made in the absence of “an independent witness approved by the person other a police officer or a member of the Armed Forces”. However, the Committee is concerned that the regulation does not refer explicitly to torture. It is also concerned at the lack of information on decisions taken by the Ghanaian courts to refuse confessions obtained under torture as evidence (art. 15).

The State party should ensure that legislation concerning evidence to be adduced in judicial proceedings is brought in line with the provisions of article 15 of the Convention, so as to explicitly exclude any evidence obtained as a result of torture.

The Committee requests the State party to submit information on the application of the 1975 Evidence Decree, and on whether any officials have been prosecuted and punished for extracting a confession under torture.

National human rights institution

14. While noting that during the universal periodic review of Ghana in 2008 the State party accepted to further strengthen the capacities of the Commission on Human Rights and Administrative Justice (CHRAJ) by increasing its funding and resources, the Committee is concerned that, according to the information provided by the delegation of the State party, which included a CHRAJ representative, the Commission does not receive adequate funding for its programmed activities.

The State party should strengthen the independence of the Commission, including by providing it with an adequate operating budget and intensifying its efforts to ensure that it is in full compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

Torture and cruel, inhuman or degrading treatment of detainees (arts. 2, 4, 11 and 15)

15. The Committee is gravely concerned at the State party’s statement that the likelihood that torture occurs in detention centres is high. The Committee has raised questions as to what will be done to stop this practice, including holding prison staff accountable and providing redress for those tortured. The Committee is concerned at the existence of legislation that allows caning or flogging, but takes note of the low frequency of such incidences.

The Committee urges the State party to take immediate and effective measures to investigate, prosecute and punish all acts of torture, and to ensure that torture is not used by law enforcement personnel, including by unambiguously reaffirming the absolute prohibition of torture and publicly condemning practices of torture,

especially by the police and prison officers, and issuing a clear warning that anyone committing such acts or otherwise complicit or participating in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.

Conditions of detention

16. The Committee takes note of the information provided by the State party on steps taken to deal with the problems of overcrowding and prolonged pretrial detention, notably by the construction of a new penitentiary at Ankaful, and the introduction of the Justice for All programme in 2007. The Committee is nevertheless concerned at the high levels of occupancy recorded in most detention centres, which are described in the State party's report as "in very deplorable state" and "not suitable for habitation". It further notes with particular concern persistent reports of the lack of staff, poor health and hygiene conditions, inadequate health-care services, shortage of bedding and food. In this regard, the Committee notes that inmates are fed by the State only once a day because the stipend for their upkeep is below US\$1. The Committee also expresses concern at reports about the limited number of remand homes for juvenile offenders, and the poor conditions in such institutions. The Committee takes positive note of the marked decrease in the number of deaths in prison (from 118 in 2008 to 55 in 2010), but regrets the lack of information on the causes of these deaths. It also regrets the lack of information on the conditions of detention for migrants with irregular administrative status (art. 11).

The State party should:

- (a) **Ensure that conditions of detention in the country's prisons are compatible with the Standard Minimum Rules for the Treatment of Prisoners;**
- (b) **Increase its efforts to remedy prison overcrowding, in particular by instituting alternatives to custodial sentences;**
- (c) **Continue to put into effect plans to improve and expand the prison infrastructure and the remand centres, including those for juvenile offenders;**
- (d) **Take steps to increase the number of prison officials;**
- (e) **Examine the adequacy of health-care resources available in penitentiary institutions, and ensure that the medical assistance given to detainees is of high quality;**
- (f) **Review all legal provisions which authorize the practice of caning or flogging with a view to abolishing them as a matter of priority.**

The State party should include in its next periodic report statistical data regarding reported deaths in custody, disaggregated by location of detention, sex, age, ethnicity of the deceased and cause of death.

Psychiatric facilities

17. The Committee is concerned at reports about the inadequate treatment of mental health patients and poor living conditions in psychiatric institutions, in particular at Accra Psychiatric Hospital. The Committee notes with concern the reports of severe overcrowding, lack of qualified staff and poor material and hygienic conditions in this psychiatric facility. It is also deeply concerned at the situation of persons admitted by reason of a court order, who have allegedly been abandoned for years. In this regard, the Committee notes with interest the information provided by the State party's delegation on existing proposals for expanding mental health facilities in the country, and on the draft mental health bill before Parliament, which would include an individual complaint system.

The Committee is seriously concerned at reports regarding persons remaining in hospital long after they should have been discharged, for lack of appropriate after-care or alternative and secure settings. It takes note of the explanation given by the delegation that efforts to reintegrate persons declared fit faced a number of obstacles, including social stigma, but points out that this can never be held as a reason for not initiating alternative care facilities after hospitalization (art. 16).

The State party should:

- (a) Improve the living conditions of patients in psychiatric institutions;**
- (b) Ensure that no psychiatric confinement takes place unless strictly required, that all persons without full legal capacity are placed under guardianship that genuinely represents them and defends their interests, and that an effective judicial review of the lawfulness of the admission and detention of all persons in health institutions takes place in each case;**
- (c) Ensure that all places where mental-health patients are held for involuntary treatment are visited by independent monitoring bodies to guarantee the proper implementation of the safeguards set out to secure their rights;**
- (d) Alternative forms of treatment, especially community-based treatment, are developed in particular with a view of receiving persons discharged from hospitals.**

Monitoring and inspection of places of deprivation of liberty

18. The Committee takes note of the information provided by the State party that the Auditor General and a number of independent bodies conduct regular inspections of penitentiary institutions. However, and notwithstanding the explanations given by the delegation, the Committee remains concerned at the fact that a visit request made by the non-governmental organization, Amnesty International, in March 2008 was refused by the Ghanaian government due to “unsafe” circumstances (art. 2).

The Committee calls upon the State party to establish an effective independent national system to monitor and inspect all places of deprivation of liberty and to follow-up on the outcome of such systematic monitoring.

The State party should strengthen its cooperation with, and support to non-governmental organizations that undertake monitoring activities.

The Committee recommends that the State party provide detailed information on the place, time and periodicity of visits, including unannounced visits, to places of deprivation of liberty, and on the findings of and action taken on the outcome of such visits.

Prompt, thorough and impartial investigations

19. The Committee is concerned about reports of impunity in cases of torture and ill-treatment, including cases of police brutality and excessive use of force. While noting the information provided by the State party on a few highly publicized cases, the Committee remains concerned at the fact that law enforcement officials and military personnel responsible for alleged acts of torture are seldom prosecuted. It is further concerned that the State party was unable to provide information about some of the specific incidents to which the Committee drew attention, and at the lack of statistical data on allegations of torture and ill-treatment and on the results of the investigations undertaken in respect of those allegations. The Committee notes the existence of a proposal to create an independent prosecution service (arts. 12 and 13).

The State party should take appropriate measures to ensure that:

- (a) All allegations of torture or ill-treatment are thoroughly and impartially investigated, perpetrators are duly prosecuted and, if found guilty, convicted to penalties taking into account the grave nature of their acts, and that the victims are adequately compensated, including their full rehabilitation;**
- (b) Clear and reliable data are compiled on acts of torture and ill-treatment in police and prison custody and in other places of deprivation of liberty;**
- (c) All law enforcement officials and military personnel are thoroughly trained in international human rights standards, particularly those contained in the Convention.**

Refugees and asylum-seekers

20. The Committee notes, based on reports, that due to the post-election crisis in Côte d'Ivoire, over 14,178 Ivorians (including 6,036 children) have sought asylum in the State party since 16 May 2011. Among the new arrivals, are persons who might have been subjected to direct threats and abuse due to their perceived political affiliation. The Committee is particularly concerned about information received concerning the suspected presence of combatants among those fleeing Côte d'Ivoire in refugee hosting areas, which could generate serious security concerns for refugees, asylum-seekers and communities, as well as threaten to undermine the civilian and humanitarian character of asylum. The Committee appreciates the efforts of the State party in responding to this massive influx and encourages it to establish procedures required for the identification and separation of combatants, and to promptly determine the refugee status of Ivorian asylum-seekers. The Committee also notes with concern that 11,000 refugees from Liberia have been living in Ghana for over 20 years and that, according to the information provided by the delegation, the State party is planning to either relocate them or return them to their place of origin (arts. 3 and 16).

The Committee calls on the State party to take a more active approach in relation to its obligations at the international and regional levels under international refugee law. In this respect, the State party should:

- (a) Pursue its efforts, in cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), to continue to identify refugees and asylum-seekers and ensure their protection in accordance with international law, including, in particular, respect for the principle of non-refoulement;**
- (b) Consider granting refugee status on a prima facie basis to Ivorians fleeing their country, except for those who may be considered combatants, until it is established that they have genuinely and permanently renounced military activities;**
- (c) Take measures to effectively screen arrivals and to separate combatants and non-combatants in order to ensure the civilian nature of refugee camps and/or sites, including through strengthening existing screening mechanisms and enhancing the capacity of the Ghana Refugee Board at the border;**
- (d) Reinforce the capacity of the Ghana Refugee Board to process refugee claims of asylum-seekers in the country other than those who may benefit from recognition on a prima facie basis;**
- (e) Ensure that Liberian refugees in Ghana are not forcibly returned to their country of origin in a manner that would be inconsistent with the non-refoulement obligations under the Convention or other international human rights instruments.**

Human trafficking

21. The Committee takes note of the adoption in 2005 of the Human Trafficking Act, and its 2009 amendment, which brought the definition of trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. However, the Committee expresses its concern at persistent reports of internal and cross-border trafficking of women and children for the purpose of sexual exploitation or forced labour as, for example, domestic workers or head-load carriers (*kayaye*). The Committee is also concerned at the lack of statistics in the State party's report on, inter alia, the number of prosecutions, convictions and sentences of perpetrators of trafficking, including for child labour, and the absence of practical measures taken to prevent and combat this phenomenon. It also notes with concern that there is no formal referral process to transfer victims in protective custody to other facilities (arts. 2, 12 and 16).

The State party should:

- (a) Intensify its efforts to prevent and combat trafficking in human beings, especially women and children, including by implementing the anti-trafficking legislation, providing protection for victims and ensuring their access to medical, social, rehabilitative and legal services, including counselling, as appropriate;**
- (b) Ensure adequate conditions for victims to exercise their rights to make complaints;**
- (c) Conduct prompt, impartial investigations of trafficking and ensure that those who are found guilty for such crimes are punished with penalties appropriate to the nature of their crimes;**
- (d) Conduct nation-wide awareness-raising campaigns and conduct training for law enforcement officials;**
- (e) Provide detailed information on the number of investigations and complaints of human trafficking, as well as prosecutions and convictions in such cases.**

Violence against women, including domestic violence

22. The Committee takes note of the adoption in 2007 of the Domestic Violence Act and the statistics presented by the State party during the dialogue on the domestic violence cases that occurred in 2010. However, the Committee is concerned at reports of widespread violence against women, including domestic violence; the partial implementation of the Domestic Violence Act; and that the Domestic Violence and Victim Support Unit (DOVVSU) of the Police Service is inadequately resourced. The Committee is concerned at the reluctance of the State party to criminalize marital rape, and the lack of information in the State party's report on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of violence against women during the period under review (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

- (a) Investigate, bring to trial and punish the perpetrators of such acts;**
- (b) Take more effective measures to protect and assist the victims;**
- (c) Allocate sufficient financial resources to ensure the effective functioning of DOVVSU;**

(d) **Strengthen awareness-raising and educational efforts on violence against women and girls for officials in direct contact with the victims (law enforcement officers, judges, social workers, etc.), as well as for the public at large;**

(e) **Enact legislation criminalizing marital rape.**

The Committee requests the State party to provide in its next periodic report statistics on the number of complaints of violence against women, including rape, as well as information on investigations, prosecutions and convictions in such cases.

Harmful traditional practices

23. The Committee takes note of the positive actions of the Government in criminalizing harmful traditional practices, such as female genital mutilation and *trokosi* (ritual or customary slavery). It also notes the 25 per cent decrease in the number of reported cases of female genital mutilation between 1999 and 2010, although there were still a total of 123,000 reported cases during that period. The Committee remains concerned at the clear incompatibility between certain aspects of Ghana's customary law and traditional practices and the respect for fundamental rights and liberties, including the prohibition of torture and cruel, inhuman or degrading treatment or punishment. In this regard, the Committee is concerned at reports that some women have been accused of practicing witchcraft, and subjected to severe violence, including mob violence, burning and lynching, and forced to leave their communities. Many such women have been sent to so-called "witch camps" through a system that lacks minimal due legal process, and from which the possibility of returning to society is uncertain. The Committee also expresses concern about reports of cases of violence against widows who are often deprived of their inheritance and, in some cases, subjected to humiliating and abusive widowhood rites. The Committee regrets the lack of information on prosecutions and sentences imposed on perpetrators of such acts, as well as on assistance and compensation to the victims. It also regrets the lack of information on the steps taken to ensure that customary law in Ghana is not incompatible with the State party's obligations under the Convention (arts. 2 and 16).

The State party should:

(a) **Strengthen its efforts to prevent and combat harmful traditional practices, including female genital mutilation, in particular in rural areas, and ensure that such acts are investigated and that the alleged perpetrators are prosecuted and convicted;**

(b) **Provide victims with legal, medical, psychological and rehabilitative services, as well as compensation, and create adequate conditions for them to report complaints without fear of reprisal;**

(c) **Provide training to judges, prosecutors, law enforcement officials and community leaders on the strict application of the relevant legislation criminalizing harmful traditional practices, and other forms of violence against women.**

In general, the State party should ensure that its customary law and practices are compatible with its human rights obligations, especially under the Convention. The State party should also provide information on the hierarchy between customary and domestic law, especially with regard to forms of discrimination against women.

The Committee further requests the State party to provide, in its next periodic report, detailed information and updated statistical data on complaints, investigations, prosecutions, convictions and sentences imposed on perpetrators of criminal conduct related to harmful traditional practices, including murder, as well as on assistance and compensation provided to victims.

Corporal punishment

24. While noting that the Juvenile Justice Act (2003) and the Children's Act (1988) explicitly prohibit corporal punishment as a disciplinary measure in prisons, the Committee expresses its concern at the still widespread use of corporal punishment, in particular within the family, schools and alternative care settings (arts. 11 and 16).

The State party should:

(a) Explicitly prohibit corporal punishment of children in all settings, including through the repeal of all legal defences for 'reasonable' and 'justifiable' corporal punishment;

(b) Engage in the promotion of alternative forms of discipline to be administered in a manner consistent with the child's dignity, and in conformity with the Convention;

(c) Develop measures to raise awareness on the harmful effects of corporal punishment.

Training

25. The Committee regrets the scant information provided by the State party on human rights training schemes for medical and law enforcement personnel, judicial officials and other persons involved with custody, interrogation or treatment of persons deprived of their liberty on matters related to the prohibition of torture and ill-treatment. It notes with concern that the human rights training activities for police personnel, organized through the UNDP Access to Justice programme in Ghana, ended in 2010 due to lack of funding.

The State party should:

(a) Continue to provide mandatory training programmes so as to ensure that all public servants, in particular members of the Police and other law enforcement officials are fully aware of the provisions of the Convention, that breaches are not tolerated, but investigated, and that perpetrators are brought to trial;

(b) Assess the effectiveness and impact of training schemes and education on the incidence of torture and ill-treatment;

(c) Support training on the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) for all relevant personnel, including medical personnel.

Data collection

26. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as on violence against women, trafficking and harmful traditional practices.

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions and convictions in cases of torture and ill-treatment by law enforcement, security, military and prison personnel, as well as violence against women, trafficking and harmful traditional practices, including compensation and

rehabilitation provided to victims. The State party should include such data in its next periodic report.

27. While welcoming the signing of the Optional Protocol to the Convention on 6 November 2006, the Committee encourages the State party to accelerate the ratification process, as well as the designation of a national preventive mechanism.

28. Noting the commitment made by the State party in the context of the universal periodic review (A/HRC/8/36), the Committee recommends that the State party consider ratifying the Convention on the Rights of Persons with Disabilities, as well as the new International Convention for the Protection of All Persons from Enforced Disappearance.

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

30. The Committee invites the State party to present its next periodic report in accordance with its reporting guidelines and to observe the page limit of 40 pages for the treaty-specific document. The Committee also invites the State party to submit an updated common core document in accordance with the requirements of the Harmonized guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6), approved by the inter-committee meeting of human rights treaty bodies, and to observe the page limit of 80 pages for the updated common core document. The treaty-specific document and the common core document together constitute the reporting obligation of the State party under the Convention.

31. The Committee requests the State party to provide, within one year, follow-up information in response to the Committee's recommendations contained in paragraphs 10 (c) and (d), 17(d) and 23(a) of the present document.

32. The State party is invited to submit its next report, which will be the second periodic report, by 3 June 2015.