

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION 73RD SESSION TOGO, 6TH-17TH REPORTS 30-31 JULY 2008

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Key facts¹

Date of Ratification	Reservations	Additional ratified core treaties
1 September 1972	None	CEDAW, ICCPR, ICESCR, CAT, CRC

¹ The information in these two tables 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.

Type of report	Date submitted	Report submitted on time	NGO / NHRI consultation/input	List of issues provided / Written replies to issues rec'd	Last appearance before Committee
6 th -17 th	13 July 2007	No	No	Yes, submitted, before the session.	21 March 1983

Information submitted to the Committee

State report²

On 13 July 2007, Togo submitted its combined 6th to 17th periodic report to the Committee on the Elimination of Racial Discrimination (the Committee) in accordance with its obligation under Article 9 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (the Convention). Togo acceded to the Convention in September 1972.

The report presents information concerning Articles 2 to 7 of the Convention, with provisions on national legislation (Articles 2, 5, and 6)³ receiving the most attention.⁴ The report is divided into two sections, the first describes the changes in the legal and political framework that Togo in the last 20 years, and the second focuses specifically on its adherence to the Convention. In its report, Togo outlines that ‘the Togolese people are determined to build a State based on the rule of law, in which fundamental human rights, civil liberties and the dignity of the individual shall be guaranteed and protected’.⁵ This was reflected in the State’s interaction with the Committee. The delegation was open to constructive criticism and acknowledged that much change is needed in the State’s legislation and society. The delegation stressed that there has been a socio-economic crisis in Togo over the past 20 years, and the situation is still stabilising. Two issues which Togo emphasised throughout its report were the ethnic disparities within civil service and within the law. The Government needs to consider ways to create a more balanced society. The State report also focussed on the right to marriage and inheritance, the right to education, and the national health system.

List of issues⁶

The Committee focussed its requested data on the demographic composition of Togo, as these were not provided in the State report. The Committee also asked questions on specific articles of the Convention. Some of the more prominent issues were the definition of racial discrimination in domestic law, information regarding the two dominant ethnic groups, the Adja-Ewe-Mina and the Kabye-Tem-Losso. The former are dominant in politics and the latter in the army. The Committee inquired about measures being taken to

² CERD/C/TGO/17, 13 July 2007, www2.ohchr.org/english/bodies/cerd/cerds73.htm.

³ Article 2: State parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

Article 5: In compliance with the obligations laid down in Article 2 of the Convention, State parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law.

Article 6: State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other States institutions, against any acts of racial discrimination which violates his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation of satisfaction for any damage suffered as a result of such discrimination.

⁴ The *Convention on the Elimination of All Forms of Racial Discrimination* is available at www2.ohchr.org/english/law/cerd.htm

⁵ Para 54, CERD/C/TGO/17.

⁶ List of issues, available at www2.ohchr.org/english/bodies/cerd/cerds73.htm.

integrate other ethnic groups into both the make-up of the army and the political sphere. . Another issue was whether the perpetrators of racial hatred in the media are being brought to justice. The Committee also requested more information about people responsible for child trafficking in Togo and the measures in place to protect and rehabilitate victims. More information was also requested concerning the National Commission of Human Rights and the educating the general public on human rights issues.

NGO reports

No non-governmental organisations (NGOs) submitted reports to the Committee.

Themes and issues

The delegation of Togo was led by Ms Celestine Akouavi Aidam, Minister of Human Rights and the Consolidation of Democracy. The delegation was composed of high-ranking officials from the Ministry of Human Rights and the Consolidation of Democracy, Ministry of Justice, Ministry of Defence, and Ministry of Foreign Affairs.

In presenting the State report on 30 July 2008, the head of the delegation of Togo, Ms Celestine Akouavi Aidam explained that various elements of the media are broadcasting television programmes to raise awareness of racial intolerance. A key focus of the Government is educating people on their legal rights in relation to racial discrimination. The Government also gives particular attention to land laws due to their complexity, as customary laws and French tenure land laws exist side-by-side. The Government is concerned about the tensions that exist between the various ethnic groups due to these two systems. A key challenge facing the State is finding sufficient funding for legal reforms. In conclusion, Ms Akouavi Aidam stated that although Togo has made significant progress, efforts remain to be made. She stressed the importance of the dialogue with the Committee in helping the Government move forward in a ‘new stage of cooperation’ with the international treaty bodies, following twenty years of political unrest in Togo.

Mr Koffi Kounte, President of the National Commission of Human Rights, agreed with the Committee that the State report lacks statistical data. He emphasised that the racial problems in Togo are highly complex, with problems focused on tribalism and regionalism rather than racism based on colour.

Throughout the dialogue with the State, the Committee was interested in the status of the Convention in domestic law and questioned the assertion made in the State report that there are no problems with racial discrimination in Togo. Mr Amir pointed out that when a delegation claims there are no problems of racial discrimination; it usually signifies the exact opposite. The absence of complaints to the Government based on racial discrimination could be for a number of reasons, such as a lack of knowledge of the available instruments and fear of repercussions. The Committee’s examination of Togo ended earlier than scheduled primarily because of the lack of data and information available. The Committee urged that the next report contain more up-to-date information so it can better assess the racial situation in Togo.

The delegation of Togo consisted of high-level officials who were open to constructive criticism from the Committee. The delegation also highlighted the fact that the State is entering a ‘new era’ of implementation of its international obligations; this set the tone for the debate on racial issues in Togo. The delegation openly admitted the problems faced by the Government in funding and the divisions that exist between various ethnic groups in Togo. In her opening speech, Ms Akouavi Aidam illustrated the progress made in the State, giving the free, democratic elections held in October 2007 as an example of the beginnings of democracy.

Status of the Covenant in domestic law

Mr de Gouttes, the rapporteur, raised the question of the status of the Convention in domestic law. He wished to know whether, under the provisions of the Constitution, people can directly enforce their Convention rights in the domestic courts. Mr de Gouttes also enquired whether Togo has been applying Article 7 of the Convention, which prohibits any political party identifying itself with a specific ethnic group, religion or region. Mr de Gouttes emphasised that the domestic definition of ‘racial discrimination’ needs to be fully compatible with that contained in Article 1 of the Convention. The Committee strongly recommended that this be ensured as soon as possible. In reply, Ms Akouavi Aidam reported that the possibility of incorporating the definition contained in the Convention into the Criminal Code evaluated by an expert on racial discrimination.

Legal framework

New legislation concerning the National Commission of Human Rights was introduced to better define its function. Act 87-09 defines the Commission as an ‘independent institution, subject only to the Constitution and the law’. Its overarching aim is to protect and defend human rights in Togo. While welcoming the reforms, Mr de Gouttes remarked that the National Commission of Human Rights does not appear to be in a position to receive complaints from individuals on matters related to race. Mr de Gouttes also stressed that the lack of complaints to this National Commission is not regarded positively by the Committee; rather, it reveals a situation where people have insufficient knowledge of their legal rights. The delegation recognised the need to inform citizens of their right to submit complaints.

The Committee expressed its concern about the criminal sanctions for journalists or politicians who have taken part in racist campaigns in Togo. Mr Thornberry enquired about the measures in place to investigate campaigns which promote religious hatred and violence. In answering this question, Ms Akouavi Aidam stressed that the socio-political developments in Togo are deeply marked by crises and that there is a backdrop of violence which feeds into political unrest. She stressed how vital it is to confront the question of impunity which feeds this political violence. Togo has developed the Truth, Justice and Reconciliation Committee to effectively address this issue. Mr de Gouttes pointed out that on the one hand, impunity needs to be decreased but, on the other hand, the goal should be a true national reconciliation where peace prevails.

In response to journalists who are inciting racial hatred, awareness-raising campaigns are being carried out. This process concludes a nationwide consultation process, the results of which will determine the functions and composition of Truth, Justice and Reconciliation Committee. The primary focus appears to be conducting campaigns in relation to political and journalistic racism in order to assess the best way to combat it. The composition of the Truth, Justice and Reconciliation Committee was not described in much detail. Nevertheless, the delegation assured the Committee that the next periodic report will contain more information on this issue.

Divisions between ethnic groups

The primary racial tensions in Togo are based on ethnic or tribal groups, rather than on skin colour. Mr de Gouttes pointed out that there is very little information in the report on the ethnic composition of Togo, and requested concrete statistics on this. The report does, however, recognise that Togo almost found itself in a situation of ethnic intolerance, where there were various manhunts and killing between different ethnicities.⁷ Mr de Gouttes requested more information regarding the measures in place to reduce ethnic tensions. Much time was spent discussing the issues of the two dominant ethnic groups, one in the army, Kabye-Tem-Losso, and one in politics, Adja-Ewe-Mina. The Committee requested information on the reforms regarding recruitment into the army.

⁷ CERD/C/TGO/17.

The report emphasises the division between the north and the south of the country. The Committee also pointed out the contradiction between paragraphs 75 and 351 in the State report. In the former, the report states that racial discrimination rarely occurs in Togo, whereas in the latter, it frankly admits that in 1999 Togo was on the verge of ethnic intolerance. Mr Thornberry also noted that paragraph 177 of the State report paints a dramatic picture of ethnic conflict within Togo. Mr Thornberry stressed the importance of utilising cultural differences to create national unity and stressed the importance of highlighting cultural diversity as a positive rather than a negative aspect of Togolese society. Mr Amir pointed out that we see ethnic divisions throughout Africa and that the problem is not unique to Togo. He emphasised that Togo must continue to modernise institutions, including International ones.

Mr Lindgren also focussed on issues of tribalism and how these issues are manipulated by politicians, leading to explosions of violence. In her replies, Mr Akouavi Aidam emphasised that Togo wishes to diversify the makeup of its army, but did not provide details on the plans in place to achieve this. She explained that racism exists towards the minority ethnic groups due to their nomadic lifestyles, which sets them against other ethnic groups. She stressed the importance of promoting ethnic unity within Togo. Mr Lahiri stated that he felt the Committee has a much clearer overview of Togo due to the State report, but insisted that the Committee is still lacking information required to understand the implementation of the Convention in Togo. He requested that the delegation compile data which illustrates the disparities in Togo, to further clarify the existing disparities in access to education and jobs.

The Committee reiterated that more effort is required to diversify the army and the political arena, and requested more detailed information on the social, economic and political situations of the various tribes. Mr Akouavi Aidam assured that in the next periodic report, the data presented will not be out of date, as new statistics will be compiled before then. She also stipulated that the next recruitment process into the government will pay particular attention to ethnicity in order to create a balanced political sphere. She also clarified that a High Commission has been set up by decree and a study of ethnic descent is underway at present, this is in collaboration with the United Nations Development programme, the conclusions of which will be used to begin a National Reconciliation Commission.

Education and training

Training of the judiciary

Emphasis was also placed on the training of magistrates. A team of magistrates are regularly sent to Bordeaux to a judicial training centre. There is also a new competitive exam to recruit magistrates; this is to produce an efficient judiciary that can successfully uphold Togo's international treaty obligations. The Committee stressed that the lack of financial resources for the legal system needs to be addressed. However, assistance from a number of development partners has allowed for the acquisition of new materials such as libraries, books and computers, as well as the creation of a judicial intranet. The issue of educational programmes was also raised in relation to the legal system and citizens' right to bring a cases based on racial discrimination. The Government claimed that it is attempting to increase the participation of victims of human rights violations by collaborating with NGOs to promote awareness of international laws applicable to them.

Human rights education

The Government of Togo adopted a decree on 17 November 1998 on the inclusion of human rights education in schools. However, this programme was not very effective due to the financial and policy difficulties faced by the Government. The National Programme for the Promotion and Protection of Human Rights, prepared by the Ministry of Human Rights and Consolidation of Democracy with the support of the United Nations Development Programme (UNDP), was adopted by the Council of Ministers on 31 May 2007. This National

Programme devotes one section to the teaching of human rights. It also stipulates that new recruits into the army must complete primary school education, thus ensuring that they have had basic human rights education.

The delegation also explained the steps taken to ensure that schools are closer to the students in order to make education accessible to everyone, in particular the tribal minority groups. Furthermore, the Government is currently studying Article 14 of the Convention with a view to include fundamental human rights in the national curriculum. Although the Committee requested information regarding the language used in schools, the delegation did not offer further information on this subject.

Mr Peter also briefly raised the issue of girls' schooling. The delegation said that tuition fees are being reduced in order to encourage more girls to attend school. However, Mr Peter pointed out that in order to increase the school attendance of girls, tribal customs must be addressed.

Land law

The issues related to land law arise due to Togo's dualist legal system in this field. In her opening speech, Mr Akouavi Aidam outlined the difficulties resulting from the Decree of 1906, which organises the land tenure system of the colonies in French colonial Africa. Mr Peter enquired about inheritance laws, in particular whether it is customary rules or the Constitution which prevails.

In reply, Mr Akouavi Aidam explained that the Decree of 1906 sets up a system of land ownership which draws a distinction customary land laws of indigenous people and French civil land laws on land registration. Therefore, the provisions regulating the right to land vary depending on the region and the customs. The Government is in the process of drawing up legal reforms in relation to land laws. The reform of the land law is not yet complete, as the State has been unable to find a partner to help finance the project. Mr Thornberry remarked that the dualist land-law situation is not unusual and is in line with Articles 14 and 15 of the International Labour Organization *Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries*.⁸ In many countries, there are customary and State land law systems, and both have equal value. Landholding systems create human rights problems and the pluralist system is a common feature in many countries around the world. In many ways it helps protect the indigenous people, who could lose their land under the French civil laws relating to ownership.

Decentralisation

Mr Amir enquired whether Togo is on the path to achieving decentralisation or deconcentration. The Permanent Representative of Togo to Geneva answered this question in full, discussing the concept of decentralisation in Togo. The Ambassador described the historical background of Togo to emphasise the difficulties that the Government faces in relation to decentralisation. He described Togo as a 'mosaic' of peoples from different cultures and countries all attempting to co-exist. For such a small country, Togo has a huge ethnic diversity, which has created struggles for power, as each ethnicity wants to be involved in the governing of the State. The Ambassador stressed that the Government plans to move towards decentralisation, to spread the distribution of power through the different regions in Togo.

He also explained the division between the north and south of the country. The south is much more educated than the north, resulting in divisions between dominating tribes in the army and politics. He stated that the Government has invested in promoting the education of the north to enable it to catch up with the south. He recognised that it will take time to correct this imbalance in society. Togo expressed the desire to achieve

⁸ Available at www.unhcr.ch

decentralisation alongside encouraging the creation of political parties that are not associated with any particular ethnicity.

Other issues

Media

The national media broadcasts television programmes on racial tolerance in Togo. Mr Thornberry stressed that the remedy for racial and ethnic tensions in Togo is educational reforms. The responsibility lies with the media and politicians to educate citizens on their rights. It is necessary for the Government to value diversity and condemn discrimination at the same time. The delegation explained that the media broadcasts programmes that promote tolerance among Togo's various ethnic groups, through sketches and special advertisements.

Durban Declaration and Plan of Action

In his concluding observations, Mr de Gouttes highlighted that Togo had not referred to the implementation of the *Durban Declaration and Plan of Action*,⁹ and urged that it do so its next periodic report.

NGO input

The Committee commented on the absence of NGO reports, and expressed its hope for more input from NGOs at the Committee's next examination of Togo.

Conclusions and next steps

The lack of adequate financial means to ensure the effectiveness of measures on the ground remains a huge challenge in Togo.

Mr de Gouttes made his preliminary concluding observations at the end of the examination of Togo. He stated that there had been a very 'fruitful' dialogue and the delegation had provided detailed replies. He welcomed the progress made in national reconciliation, normalisation of the civil administration, reform of civil law, and ongoing reforms of the justice system. In his concluding speech, Mr de Gouttes recommended that the Government consider the Committee's *General Recommendation 31* on the prevention of racial discrimination in the administration and criminal justice system.¹⁰ He also urged the full incorporation of the Convention into national legislation, with particular emphasis on the definition of racial discrimination (Article 1) and a definition of 'acts' of racial discrimination (Article 4).

Last revised and updated: 17 September 2008.

⁹ Information on the *Durban Declaration and Plan of Action* A is available at www.unhchr.ch/html/racism.

¹⁰ General Comment 31 (2005) is available at www2.ohchr.org/english/bodies/cerd/comments.htm.

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