

TOGO

CCPR A/44/40 (1989)

233. The Committee considered the initial report of Togo (CCPR/C/36/Add.5) at its 870th, 871st, 874th and 875th meetings held on 21 and 23 March 1989 (CCPR/C/SR.870, 871, 874 and 875).

234. The report was introduced by the representative of the State party who, underscoring his country's determination to ensure respect for human rights, stated that Togo had ratified the majority of international human rights instruments, including the Optional Protocol to the Covenant. Furthermore, a National Human Rights Commission had been established, which was competent to hear petitions by any individuals whose rights had been violated within the national territory. In addition to its role as a mediator, the Commission also helped to enhance public awareness of human rights and fundamental freedoms - as illustrated by seminars at Lomé in February and April 1988, in collaboration with the United Nations Centre for Human Rights.

235. Members of the Committee welcomed the report, which had been drafted in conformity with the Committee's general guidelines on the form and content of initial reports. They considered, nevertheless, that the report should have laid greater stress on the factors and difficulties affecting the implementation of the Covenant in Togo.

236. With regard to article 2 of the Covenant, members of the Committee wished to receive additional information on the legal status of the Covenant in Togolese internal law, particularly its place within the Togolese legal order and whether any difficulties had been met in incorporating its provisions into Togolese domestic law. They also wished to know what would happen if the provisions of Togolese legislation conflicted with those of the Covenant, whether there had been any cases in which the provisions of the Covenant had been invoked before, or applied by, the courts or administrative authorities; whether there had been any cases in which a court had found that the Covenant took precedence over national legislation; and whether the reference in article 43 of the Constitution to the principle of reciprocity also applied to multilateral treaties such as the Covenant. Further information was also sought as to the nature of the various remedies available to victims of human rights violations, particularly those committed by public servants acting in their official capacity, and what was the legal status of the French laws inherited from colonial times. Clarification was also requested of the prohibition of discrimination on the grounds of language and property and of the restrictions mentioned in paragraph 65 of the report according to which political and civil rights were only enjoyed by Togolese.

237. With particular reference to the National Human Rights Commission, detailed information was requested as to its powers, activities and membership; whether the Commission acted as a court of appeal in the context of examining an alleged miscarriage of justice; whether it was considered as a local remedy to which recourse had to be made in advance of filing a complaint with the Human Rights Committee; how its jurisdictional role related to its functions in safeguarding human rights; how many and what kind of cases had been submitted to it; whether it had actually decided certain cases and how such decisions were enforced; to what degree it could act independently of the executive authorities; what subsidies had been granted by the Government to the Commission to

enable it to discharge its duties; and whether a copy of the Commission's first report could be made available to the Committee.

238. In addition, members of the Committee wished to know whether human rights instruction was included in school programmes; whether the Covenant was published in the country's various languages and distributed to all population groups, particularly the most disadvantaged among them, as well as to the military and police forces; and whether the Togolese public was aware that the report was being considered by the Committee.

239. Referring to article 3 of the Covenant, members of the Committee wished to receive statistical information on the proportion of women in elected bodies, in universities, among the executive staff of private businesses, in public service and the liberal professions, and in the active part of the population in general. It was inquired whether there were any exceptions to the principle of equal pay for equal work, whether prostitution constituted a problem and, if so, what the Government had planned to do about it. Questions were also raised regarding the scope of the remaining problems concerning discrimination against women and the effects in this area, if any, of the various traditional practices in the country.

240. With regard to article 4 of the Covenant, members of the Committee wished to know the circumstances under which the President of the Republic was empowered to proclaim a state of emergency; whether the national assembly had the right to review emergency measures and whether the President could dissolve it under such circumstances; what the duration of such an emergency was; whether rights and freedoms under the Covenant, particularly those recognized as being inviolable in all circumstances, could be suspended; what remedies were available to persons whose rights had not been respected; what guarantees there were against the wrongful application of emergency measures; and why, in implementing the emergency measures taken following the attempted coup of 1986, the Government of Togo had not made the notification provided for in article 4 of the Covenant.

241. In connection with article 6 of the Covenant, members of the Committee wished to know when the death penalty could be applied; how many executions had been carried out in Togo over the past five years; and whether the death penalty could be imposed on individuals between 16 and 18 years of age. With regard to crimes carrying the death penalty, members asked for further clarification of the terms "offence against morality" and of "action threatening the external or domestic security of the State" and questioned whether such broad definition might not have left too much room for interpretation by the courts.

242. With regard to articles 7 and 10 of the Covenant, members of the Committee asked what remedies were available to persons claiming that they had been tortured; whether there were any laws or prison regulations specifically guaranteeing that such practices did not occur; whether there were any ways of speeding up judicial proceedings in the foregoing regard; whether confessions obtained under torture were considered admissible by the courts; whether the National Human Rights Commission was able to deal with allegations of torture against the security services, and if so, what procedures applied to such cases of torture; whether there was a system for the inspection of prisons allowing impartial investigations by independent persons of allegations of torture and the adoption of corrective measures; whether there had been any cases where members of the police or

prison wardens had been accused or found guilty of violating human rights; and to what extent secret detention was resorted to. Members also requested additional information concerning Togo's social rehabilitation system.

243. With regard to article 9 of the Covenant, members of the Committee wished to receive further information on the 48-hour limit on custody of detainees mentioned in the report, asking in particular whether that time-limit was strictly respected and what remedies were available in case that period was exceeded. They also wished to know what remedies there were if the conditions of custody were not satisfactory, and what the maximum allowable period was before an individual had to be informed of the reasons for his arrest. Questions were also asked as to the abolition of administrative detention and concerning guarantees of rapid court actions in determining the legality and regularity of an arrest. With regard to the conditions of detention, members asked whether an arrested person could be kept in a secret location, whether he had an effective right to communicate with his family and lawyer and undergo medical examination, how problems of overcrowding in prisons, if any, were being solved, and whether there were any problems in ensuring food for prisoners. Additionally, it was asked why the International Red Cross did not have access to military prisoners. Further information was also requested about article 113 of Togo's Code of Criminal Procedure, according to which an accused person could not be held in custody for more than 10 days, and about the compensation granted to individuals who had been illegally detained or arrested.

244. With regard to article 11, clarification was requested of the practice of detention for failure to meet financial obligations towards the State.

245. Members of the Committee wished to receive further information on the implementation by Togo of articles 12 and 13 of the Covenant and in particular regarding the circumstances under which resort was had to the penalty of local expulsion rather than imprisonment and concerning the remedies that were available to persons whose expulsion had been ordered.

246. With reference to article 14 of the Covenant, members of the Committee wished to receive fuller information on the independence of the judiciary, particularly regarding guarantees for ensuring the independence of judges, conditions under which judges were appointed and exercised their functions, rules regarding dismissals and remuneration, and procedures for training judges, lawyers and other judicial personnel. With respect to the organization of the judiciary, further information was sought concerning the State Security Court and other special courts, particularly as to their jurisdictions, composition, competence, procedures, the guarantees they accorded to defendants and possible rights of recourse and appeal. Moreover, it was asked why those special courts had been established and what the differences were between the State Security Court and the High Court of Justice. Members also requested detailed information regarding the legal aid system. Concern was also expressed over the apparent contradiction between article 14 (1) of the Covenant and the 1988 Decree relating to public proceedings.

247. In connection with article 17 of the Covenant, members requested further information on the prohibition of blackmail and wire-tapping.

248. With reference to article 19 of the Covenant, members of the Committee wished to receive further information on the extent to which freedom of expression and opinion was guaranteed by

law. In that connection, they inquired as to the extent the press was controlled or censored; whether there were restrictions on the freedom to establish newspapers independent from the single party; what remedies were available if an authorization to establish an organ of the information media was denied; and whether any foreign newspapers had been prohibited in Togo in recent years. Additional information was also requested as to the nature of insults against the authorities that constituted a crime punishable by imprisonment; the number of people detained for such offences during the previous two years; the legal provisions, if any, prohibiting defamation and libel; and offences against the Republic committed through the press that were penalized by the Act of 29 July 1987. In the latter connection, members asked how Togolese restrictions on certain expressions of opinion, in particular concerning the ruling party, could be reconciled with article 19 (3) of the Covenant; whether the National Human Rights Commission had received any complaints concerning violations of the rights guaranteed under article 19 of the Covenant, and what remedies were available to a citizen who had criticized or attacked the authorities.

249. Regarding articles 21 and 22 of the Covenant, further information was requested on procedures regulating freedom of assembly or association and on instances where meetings had been suspended or associations dissolved by official intervention. Members also asked whether Togo was considering altering the law requiring advance notice of public meetings in order to bring it into line with the Covenant; whether the right to freedom of association embraced the right to establish political parties; which organ had the legal authority to decide that an association had been set up with the aim of harming the State; and whether it was possible to establish an independent trade union that was not affiliated with the National Workers' Confederation.

250. In relation to articles 23 and 24 of the Covenant, members asked how Togolese women could obtain a divorce, how many divorces had been applied for and granted, at what age a minor could be brought before the courts and whether a minor over 13 years of age could be prosecuted for a crime that he had committed before reaching that age.

251. With reference to article 25 of the Covenant, members of the Committee wished to receive detailed information on laws and regulations concerning the periodicity of elections and the age limits for voters, and concerning any relevant restrictions. Observing that article 10 of the Constitution provided for carrying out political activity exclusively within the framework of a single party, members asked whether a citizen who did not want to be a member of the Togolese People's Rally was deprived of the right to vote; whether a person could remain outside the party and still be considered as having the same rights and privileges as party members; whether the party was also a legislative body; what the party's relationship was with the General Assembly; what position the party's statute occupied in the hierarchy of legislative texts; whether it was possible in the case of violations of certain rights to bring complaints before organs; and, lastly, how the Government of Togo could reconcile the existing system with the rights laid down in article 25 of the Covenant.

252. With reference to article 27 of the Covenant, members of the Committee wished to know the extent to which the numerous ethnic groups in the country could live in accordance with their own cultures and maintain their religious and linguistic identities.

253. In reply to questions concerning the status of the Covenant to Togolese law, the representative of the State party explained that the Constitution took precedence over international conventions

while the latter took precedence over internal laws. Measures had been taken to incorporate the Covenant in Togolese internal law and to that end a commission on legislative and regulatory studies had been established. The Covenant could also be used to eliminate lacunae in national legislation and it was possible for a domestic provision incompatible with the Covenant to be declared inapplicable. The Covenant and the Universal Declaration of Human Rights had been invoked twice before the courts and in both cases the litigious acts were held to be illegal. The reservation in article 43 of the Constitution, according to which the validity of treaties depended on the principle of reciprocity, did not apply to a multilateral treaty such as the Covenant.

254. In reply to other questions raised in connection with article 2 of the Covenant, the representative explained that the laws of the colonial era occupied an important place in the current judicial system, although Togo also had a series of texts of its own formulation. With regard to the remedies available to those whose rights had been violated by persons acting in an official capacity, he noted that, in cases of violations occurring during administrative detention, the perpetrator could be condemned for false imprisonment. Employees of a public establishment who had been wrongfully dismissed could file claims with the Labour Court. Aliens enjoyed the rights set forth in the various instruments governing life in the country, except for some restrictions relating to the requirement of Togolese nationality in the enjoyment of certain civil and political rights such as employment as judges or civil servants and eligibility to vote.

255. Replying to questions concerning the National Human Rights Commission, the representative noted that it had been established in 1987 by the National Assembly for an indefinite period and could only be dissolved by specific legislation. The Commission was currently presided over by the President of the Bar while its 13 members were elected by representatives of the various professional sectors and enjoyed legal immunity. The Commission was independent and received substantial State subsidies. While its function was to hear complaints and to end abuses, it was not a judicial mechanism for protecting freedoms and was not a judicial organ. Any party could appeal to it at no cost, and the Commission then immediately appointed a special rapporteur to investigate the alleged violation. The letter was legally empowered to intercede directly with the administrative authority concerned and had access to all police reports, registers and other relevant documents. At a later stage, the Commission could refer the matter to the court, Parliament and even to the Head of State. Placing any obstruction in the way of the discharge of the Commission's functions was subject to criminal sanctions.

256. The Commission had no power to enforce compliance by the administration and relied heavily on extrajudicial elements to secure a settlement. During its first year of operation, the Commission had received 208 applications and had found 149 of them admissible, of which 78 had been settled. Some 30 other cases were referred to administrative courts, which were the only ones which could handle damage suits against the Government. Once the Commission referred a case to these courts, it had the power to intervene if action was not taken within reasonable time; nevertheless, it could not challenge any decision taken by the courts. It was not considered to be a means of internal recourse for the purpose of determining the admissibility of complaints to the Human Rights Committee. The Commission also exercised a preventive function through its involvement in promoting the education and training of government officials and its authority to enter places of detention for the purpose of drawing the attention of the prison authorities to situations that might give rise to human rights violations. The Commission had also undertaken various information

activities to publicize the Covenant, was planning to establish clubs to each prefecture for the purpose of informing and educating the public and was promoting the introduction of human rights courses in various educational establishments.

257. In reply to questions concerning article 3 of the Covenant, the representative explained that equality between men and women was complete in every respect. In the family, parental authority was exercised jointly by the father and the mother and the spouses had the same duties and the same responsibilities. Merit was the sole criterion for an employee's promotion and the principle of equal pay for equal work was fully applied.

258. Regarding questions raised in connection with article 4 of the Covenant, he stated that the special measures authorized by article 19 of the Constitution could be used by the President of the Republic only in case of a threat to the institutions of the Republic. The nature and duration of those measures depended on the nature and gravity of the circumstances. The provisions authorizing the suspension of fundamental rights had never been invoked - even in 1986 when the President had declared a curfew - and the Government of Togo had therefore not had any reason for issuing the notification envisaged in article 4 of the Covenant.

259. Replying to questions raised in connection with article 6 of the Covenant, the representative stated that the offences sanctioned by the death penalty were very clearly defined by the Criminal code and that the offence against morality for which the death penalty could be imposed was limited to sexual morality. The State Security Court had imposed 23 sentences of capital punishment between 1970 and 1986, but no executions had as yet been carried out. The special court responsible for punishing crimes involving bloodshed had now become nearly obsolete. While it had imposed a number of death sentences between 1978 and 1984, only four of them had actually been carried out. In the event that a minor was guilty of an act entailing the death penalty, the maximum sentence that could be incurred was 10 years' imprisonment.

260. Commenting on questions raised under article 7 and 10 of the Covenant, the representative emphasized that, although torture was not expressly prohibited by law, certain articles of the Criminal Code were assumed to cover it and were sufficient. There had as yet been no proceedings instituted on such grounds against police or prison authorities and a complaint that had once been filed with the National Human Rights Commission was subsequently withdrawn.

261. Referring to questions raised by members concerning article 9 of the Covenant, the representative explained that an arrested person had to be brought before the Prosecutor's Office within 48 hours. Administrative detention not exceeding three years was one of the measures authorized by an Act of 1961 designed to penalize acts that endangered public order and State security. Lacking a sufficient legal foundation, the measure was to have disappeared in 1977 but that had not yet happened. However, the establishment of the National Human Rights Commission represented a significant forward step in that regard. A person who had been detained for an unduly long period of time could appeal to the Indictment Division, the Public Prosecutor or the Chief State Counsel. Togolese prisons were not overcrowded and efforts were being made to rehabilitate the detainees, although the lack of resources made this difficult. Detainees could be assigned to three categories of work, depending on their behaviour and their prospects for reform. If the Red Cross had not yet been allowed to see military detainees, that could only have been for lack of

perseverance since the Government could not refuse to grant it such authorization.

262. With reference to article 11 of the Covenant, the representative explained that imprisonment for debt was applicable only to benefit special creditors such as the State, public entities and third parties instituting a civil action in a criminal case and it was not possible to imprison someone for a purely civil debt. In cases of misappropriation of public funds, the period of imprisonment could be extended beyond the normal duration. However, a detainee could be released if he provided guarantees of reimbursement.

263. In reply to questions relating to article 12 of the Covenant, the representative explained that expulsions ensuing from a judicial order or pursuant to extradition decrees adopted by the Council of Ministers could be appealed on the grounds of abuse of authority. An appeal before the Supreme Court for rescission of extradition measures was suspensive in effect.

264. Commenting on questions raised under article 14 of the Covenant, the representative of the State party recalled that Togo had a French legal tradition and that its judges were appointed and trained in the same manner as French judges. Judges were appointed by decree of the President of the Republic and enjoyed absolute independence. They could neither be removed nor promoted against their wishes. It was expected that the new legal texts relating to the High Judiciary Council and the Judiciary Statute that were currently in preparation would strengthen the autonomy of the judiciary even further. The State Security Court ruled on cases affecting the internal and external security of the Republic and had been established to take up cases that, if submitted to ordinary courts, could expose such courts to pressure. Other special courts had been established for punishing embezzlement of public funds and crimes involving bloodshed. The presiding official of a special court was in all cases a judge and such courts utilized the ordinary legal provisions appearing in the Criminal Code. The rights of the defence were fully guaranteed and convicted persons could appeal to the Supreme Court. Legal assistance had been provided for under the 1978 Ordinance concerning the organization of the judiciary and was obligatory in criminal cases and in judgements involving minors. All criminal proceedings were public except when they involved threats to public order or morality. However, even in the latter case, the decision was made public following the proceedings.

265. In reply to questions relating to article 19 of the Covenant, the representative explained that political opinions were expressed in the context of a single party; that militants were free to criticize or to propose political options at all levels, particularly on the occasion of the assembly held in preparation for the Party's national congress; and that once decisions had been taken by the majority they were no longer open to discussion and could only be criticized at the ensuing congress. With regard to political offences, he noted that some trials involving offences against the Head of State had actually occurred in Togo but that the offences in question related to acts that went far beyond mere criticism.

266. With reference to articles 23 and 24 of the Covenant, the representative explained that, in principle, only the death of the spouse could put an end to a marriage. However, in certain circumstances a decree of divorce could be issued by the courts. The age of majority in Togo was 21 years in respect of civil liability, 18 years in respect of criminal liability and political eligibility, and 17 years for women and 20 for men in respect of marriage. After the age of 13, a judge had to determine whether a minor who had committed a crime could be held to have acted knowingly.

267. In reply to a number of questions asked by members of the Committee in connection with article 25 of the Covenant, the representative explained that the pluralism which had been instituted at the time of independence had rapidly degenerated, giving rise to a plethora of parties based on ethnic units, each serving its own interests. This had engendered a civil war mentality. The Togolese People's Rally had proved to be the best means of achieving national unity and solidarity. The concept of "rally" implied respect for the individual and for diversity of opinions, the single Party being a forum where citizens could engage in dialogue and freely express their points of view. The Party took precedence over the State and its statutes could indeed be regarded as a kind of super-constitution. According to article 5 of the statutes, admission to the Party was not automatic and no citizen was obliged to be a member of the Party. Those who preferred not to join the Party were not subjected to any discrimination and could vote or stand for election.

268. With respect to article 27 of the Covenant, the representative of the State party said that approximately 40 ethnic groups lived in Togo, in full respect of each other's customs. Customary courts had competence in dealing with cases involving minorities.

269. Members of the Committee thanked the representatives of the State party for their clear replies to the Committee's questions and commended the Government of Togo, in particular, for its efforts toward limiting the imposition of the death penalty and for having established the National Human Rights Commission. At the same time, members noted that certain aspects of the situation in Togo continued to give rise to concern, especially in respect of article 4, 9, 14, 18, 19, 21 and 22 of the Covenant. Several members also referred to concerns associated with the single party system. The Committee expressed the hope that the Togolese authorities would take its concerns into account and looked forward to learning or further progress toward the enjoyment of human rights in Togo when reviewing the second periodic report.

270. The representative of the State party said that his delegation had taken due note of the Committee's comments and suggestions and would convey them to the Government. Those observations would help Togo in bringing its national legislation into closer conformity with the Covenant.

CCPR A/49/40 (1994)

245. The Committee considered the second periodic report of Togo (CCPR/C/63/Add.2) at its 1325th to 1327th meetings, held on 7 and 8 July 1994, and adopted 29/ the following comments:

1. Introduction

246. The Committee thanks Togo for its report (CCPR/C/63/Add.2) and core document (HRI/CORE/1/Add.38) and welcomes the willingness of the Government to pursue the dialogue with the Committee. However, it notes with regret that the report, which contained scant information about constitutional and legal measures giving effect to the Covenant, was not drawn up in accordance with the Committee's guidelines regarding the form and contents of periodic reports (CCPR/C/20/Rev.1); in particular, it was characterized by a lack of information on the practice concerning human rights as well as on the factors and difficulties affecting the implementation of the provisions of the Covenant. The Committee nevertheless thanks the delegation of Togo for endeavouring to reply to some of the questions raised and thus, to a certain extent, make up for the report's shortcomings.

2. Factors and difficulties affecting the implementation of the Covenant

247. The Committee notes that Togo is only now emerging from a long and devastating period of internal disturbances during which grave human rights violations occurred and that it is still in the process of recovery and transition to democracy. The lack of awareness of individuals of their rights under the Covenant and the Optional Protocol impedes the enjoyment thereof and further contributes to the failure to provide remedies for violations of those rights. The remnants of certain traditions and customs also constitute an obstacle to the effective implementation of the Covenant, particularly with regard to equality between men and women.

3. Positive aspects

248. The Committee welcomes the adoption of a new Constitution and related legislation which incorporate a number of provisions of the Covenant and purport to institute a legal environment favourable to the promotion and protection of human rights as well as the enactment of the new Electoral Code. It also takes note of the establishment of the Ministry of Human Rights which could play an important role in coordinating the Government's human rights policy.

4. Principal subjects of concern

249. The Committee notes with concern the internal disturbances in Togo during the period under review which resulted in serious and systematic violations of the rights guaranteed by the Covenant, particularly articles 4, 6, 7, 9, 10 and 14. It is particularly concerned with the fact that despite

29/ At the 1353rd meeting (fifty-first session), held on 27 July 1994.

initiation of the democratic process, the rule of law has not yet been re-established in Togo and violations of human rights continue to occur. Consequently, a significant gap persists between constitutional and legal norms and their application in practice. The Committee also notes with concern in that context the manifold obstacles faced by the National Human Rights Commission, which, unfortunately, is no longer operative and which is unable to contribute to the promotion of respect for human rights.

250. The Committee deplores the large number of cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces during the period under review. It is deeply concerned that those violations were not followed by any inquiries or investigations, that the perpetrators of such acts were neither brought to justice nor punished and that the victims were not compensated. It notes that failure to exclude violators of human rights from service in the military or the security forces seriously undermines the transition to democracy.

251. The Committee is disturbed by the composition of the army, whose members are almost exclusively recruited from only one of the ethnic groups in Togo, depriving other groups of the opportunity for equitable participation. Such composition, whatever its historical background, together with the apparent lack of full and effective control by civilian authorities over the military and security forces is a particular cause of anxiety.

252. The Committee regrets that the State party has not yet embarked on all the necessary reforms to cope with the factors and difficulties impeding equality of men and women in order to fully implement article 3 of the Covenant. The reported cases of traffic of women, the effect of certain customs and traditions, as well as the lack of effective government measures aiming at promoting equality of the sexes constitute matters of grave concern.

253. The Committee regrets the fact that derogations from some of the rights provided for in the Covenant through proclamation of curfews during the transitional period have not been notified to the Secretary-General in accordance with article 4 of the Covenant.

254. The Committee is concerned with the excessive number of offences punishable by the death penalty in the Togolese legislation which contravenes the provisions of article 6 of the Covenant.

255. The Committee notes that freedom of expression is not yet fully guaranteed in Togo owing to censorship and control exercised by the authorities over the press, radio and television.

256. The Committee notes with concern the restrictive conditions in which the rights provided for in articles 21 and 22 of the Covenant are to be exercised, and deplores the severe repression of peaceful demonstrations during the period under review involving loss of life which has not been fully investigated.

257. The Committee has serious doubts and concerns about the existing electoral system, as well as the conditions under which the presidential and legislative elections have recently taken place, which preclude the full guarantee of free choice by all voters and the participation of all citizens in the conduct of public affairs, as provided for in article 25 of the Covenant.

258. A number of additional concerns remain, including the failure to ensure full and effective application of the Covenant in matters pertaining to the enjoyment of the right to a fair trial and the rights of persons deprived of their liberty.

5. Suggestions and recommendations

259. The Committee urges the Government to proceed with national reconciliation and to restore the confidence of all ethnic groups.

260. The Committee recommends that the State party take appropriate measures to translate and disseminate the Covenant, so that all people in Togo become aware of their rights guaranteed under the Covenant.

261. The Committee urges that the Government take all necessary measures to prevent summary or arbitrary executions, enforced or involuntary disappearances, torture and ill-treatment and illegal or arbitrary detention; that all such cases be systematically investigated in order to bring those suspected of having committed such acts before the courts; and that those found guilty be punished and that the victims be compensated.

262. The Committee deems it necessary that specific measures be taken to ensure that human rights are respected by the military and security forces. Vigorous action should be taken to ensure that persons closely associated with human rights abuses do not re-enter the police, army or security forces. Urgent steps should be undertaken to ensure that the composition of the army equitably represents various ethnic groups of the Togolese population, including currently under-represented minority groups, and that the army remains subject to the control of the elected civil government.

263. The Committee exhorts the Government to take appropriate action to ensure the effective application of article 3 of the Covenant, in particular by adopting administrative and educational measures designed to break with customs and traditional practices detrimental to the well-being and status of women in Togolese society.

264. The Committee urges the authorities of Togo to revise the Criminal Code with a view to diminishing the number of offences carrying the death penalty, in conformity with article 6 of the Covenant.

265. The Committee emphasizes that measures should be taken to ensure the implementation in prisons and detention centres of all provisions of article 10 of the Covenant together with the United Nations Standard Minimum Rules for the Treatment of Prisoners. They should be more widely disseminated and observed, particularly among the personnel of the armed forces, security and police officers involved in arrest and detention matters, as well as members of the judiciary.

266. The Committee recommends that necessary measures be taken by the Government to ensure the independence and the proper functioning of the judiciary and to provide proper and adequate staffing of courts in accordance with the provisions of article 14 of the Covenant.

267. Measures should be taken to allow for a proper resumption of the activities of the National

Human Rights Commission under its statutes, including the guarantee of safety of its members and proper funding.

268. The Committee recommends that the censorship and control exercised by the authorities over the press, radio and television should be brought in line with article 19 of the Covenant.

269. Measures should be taken to ensure that elections are organized in full conformity with the requirements of article 25 of the Covenant.

270. The Committee recommends that the Government of Togo avail itself of the advisory and technical assistance services of the Centre for Human Rights in order to overcome some technical difficulties in implementing the Covenant, including the preparation of the third periodic report in accordance with the Committee's guidelines.

CCPR A/58/40 (2003)

78. Togo

(1) The Human Rights Committee considered the third periodic report of Togo (CCPR/C/TGO/2001/3) at its 2052nd and 2053rd meetings, held on 21 and 22 October 2002 (CCPR/C/SR.2052 and 2053). It adopted the following concluding observations at its 2064th meeting (CCPR/C/SR.2064), held on 24 October 2002.

Introduction

(2) The Committee welcomes the submission of the third periodic report of Togo, containing detailed information on Togolese legislation relating to civil and political rights, and the opportunity thus afforded to it to resume its dialogue with the State party after eight years. Nevertheless, the Committee regrets the lack of information concerning the practical implementation of the Covenant, and on the factors and difficulties encountered by the State party in that regard. The Committee notes that the information supplied orally by the delegation replied only in part to the questions and concerns expressed in the list of written questions and during consideration of the report.

(3) The Committee wishes in particular to express its concern at the major contradictions between the many consistent allegations of serious violations of several provisions of the Covenant, notably articles 6, 7 and 19, and the sometimes categorical denials of the State party. In the view of the Committee, the State party has not demonstrated its resolve to get to the bottom of the allegations. Noting that the submission and consideration of reports are designed to institute a constructive and sincere dialogue the Committee encourages the State party to make every effort to that end.

Positive aspects

(4) The Committee is gratified at the importance attached in article 50 of the Constitution of Togo to international human rights instruments, and particularly the Covenant, the provisions of which form an integral part of the Constitution.

(5) The Committee welcomes the adoption on 17 November 1998 of an Act prohibiting female genital mutilation. The Committee takes note of the State party's commitment to pursue its efforts in that regard.

Principal subjects of concern and recommendations

(6) The Committee notes with concern that the process of bringing domestic laws, many of which predate the 1992 Constitution, into line with the provisions of the Constitution and international human rights instruments is at a standstill. Proposals drawn up with the help of the Office of the High Commissioner for Human Rights during the 1990s have not been followed up. The Committee is also concerned at the fact that many proposed reforms dealing in particular with the rights of children and women, some of them announced several years ago, have still not been enacted.

The State party should revise its legislation so as to bring it into line with the provisions of the Covenant.

(7) The Committee notes that, notwithstanding the provisions of articles 50 and 140 of the Constitution, the provisions of the Covenant have not been directly invoked in any case before the Constitutional Court or ordinary courts.

The State party should provide training for judges, lawyers and court officers, including the persons already serving in those capacities, concerning the content of the Covenant and the other international human rights instruments that Togo has ratified.

(8) The Committee would like to receive additional information on the structure, functions and results of the National Human Rights Commission, and welcomes the delegation's promise to forward the Commission's annual reports to it speedily (article 2 of the Covenant).

(9) The Committee is concerned at:

(a) Information that many extrajudicial executions, arbitrary arrests, threats and intimidation perpetrated by the Togolese security forces against members of the civilian population, in particular members of the opposition, have not been investigated in a credible manner. The Committee notes that the adoption of laws such as the December 1994 Amnesty Act is likely to reinforce the culture of impunity in Togo;

(b) The fact that the Joint United Nations/Organization of African Unity International Commission of Inquiry concluded that "a situation involving systematic violations of human rights existed in Togo during 1998" (E/CN.4/2001/134, para. 68). Those violations relate, in particular, to article 6 of the Covenant, and also to articles 7 and 9. The categorical rejection of the Commission's report, which the State party has declared to be inadmissible, and the creation some weeks later of a national commission of inquiry, which has clearly not sought to identify precisely those responsible for the violations drawn to the Government's attention, also prompt the greatest concern on the part of the Committee.

The State party should adopt legislative or other measures to combat and prevent the perpetration of such violations, in keeping with articles 6 and 9 of the Covenant and the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions. The State party should establish, through judicial proceedings, the individual responsibilities of the alleged perpetrators of these violations.

(10) The Committee notes with satisfaction that for several years no death sentence imposed by a court has been carried out in Togo, but it remains concerned about the vagueness of the crimes for which the death penalty may be imposed.

The State party should limit the cases in which the death penalty is imposed and ensure that it is applied only for the most serious crimes. The Committee requests that it be provided with precise information (procedure followed, copy of court decisions, etc.) on the persons who have been sentenced to death under articles 229 to 232 of the Penal Code, which relate

to attacks against the internal security of the State. The Committee encourages the State party to abolish the death penalty and to accede to the Second Optional Protocol to the Covenant.

(11) The Committee expresses its concern at the consistent information that law enforcement personnel make excessive use of force in student demonstrations and various gatherings organized by the opposition. The Committee is surprised at the State party's reply in this regard, to the effect that the security forces never resort to excessive use of force and that the demonstrators are principally the victims of movements within the crowd. The Committee regrets that the State party has made no mention of any inquiry having been opened following these allegations.

The State party should open impartial inquiries following any allegation relating to the excessive use of force by the security forces. In particular, such inquiries should be carried out into the December 1999 demonstrations by students and teachers, and the demonstrations organized by non-governmental human rights organizations and political parties which were reported to have been violently broken up during 2001 and 2002.

(12) The Committee notes with concern the many allegations that torture is common practice in Togo, particularly on arrest, during police custody and in places of detention, whereas the State party claims that only a few rare cases of torture have occurred and that they were punished (art. 7).

The State party should honour its promise to transmit to the Committee, as soon as possible, written information concerning the treatment of detainees in Landja and Temedja camps.

The State party should ensure that all acts of torture constitute offences under its criminal law and prohibit any statement obtained under torture being used as evidence. Impartial and independent inquiries should be carried out with a view to addressing all allegations of torture and inhuman and degrading treatment ascribed to public officials and bringing the presumed perpetrators of the violations to justice. The Committee requests the State party to provide it with statistics on complaints of torture, proceedings undertaken to address such complaints, and sentences imposed.

(13) The Committee, taking note of the State party's acknowledgement that arbitrary arrests sometimes take place, is concerned at the many reports of the arbitrary arrest of members of the opposition and of civil society, human rights defenders and journalists, in violation of article 9 of the Covenant.

The State party should identify the prisoners who have allegedly been detained for political reasons in Togo and review their situation. The State party should also ensure that persons who have been arbitrarily arrested are released as soon as possible, and that judicial proceedings are instituted against the perpetrators of such violations.

(14) The Committee notes with concern that, on the one hand, the provisions of the Code of Criminal Procedure relating to police custody contain no reference to notifying detainees of their rights, the presence of a lawyer or the right of the detainee to inform a member of his family of his arrest. On the other hand, a medical examination of the detainee is possible only at his request or

at the request of a member of his family, and with the consent of the procurator's office. Moreover, the time limit of 48 hours for police custody is allegedly rarely observed in practice, and some persons have reportedly been detained for years without being charged.

The Committee welcomes the delegation's promise to reply to it in writing concerning the cases of the persons whose names have been transmitted to it. The State party should reform the provisions of its Code of Criminal Procedure that deal with police custody with a view to ensuring the effective prevention of violations of the physical and psychological integrity of persons held in police custody and protecting their right to a defence, pursuant to articles 7, 9 and 14 of the Covenant. It should also ensure that justice is administered in a timely fashion, in accordance with article 14.

(15) The Committee notes with concern that detention conditions in Togo are appalling, particularly in the civil prisons in Lomé and Kara, which are very overcrowded and where the food supply is uncertain and inadequate. This situation has been acknowledged by the State party, which draws attention to its financial difficulties and to its officers' lack of training.

The State party should develop alternative sentences to imprisonment. In addition, the State party should establish an independent inspectorate to carry out regular visits to all detention centres. That inspectorate should include elements independent of the Government, to ensure transparency and observance of articles 7 and 10 of the Covenant, and should be charged with making all the necessary proposals concerning ways of improving detainees' rights and detention conditions, including access to health care.

(16) The Committee is deeply concerned at the alleged harassment, continuous intimidation and arrest of journalists, including incidents that took place in 2001 and 2002, and at reports that several independent publications and radio stations have been banned since the beginning of the year. The Committee takes note of the delegation's assertions that such restrictions on freedom of expression are imposed in accordance with article 26 of the Constitution but finds that the Press and Broadcasting Code has been amended over the past two years in a particularly repressive spirit.

The State party should review the Press and Broadcasting Code and ensure that it is consistent with article 19 of the Covenant.

(17) The Committee is concerned at reports that opposition political parties lack practical access to public audio-visual and sound media and that the members of such parties are the target of continuous public slander campaigns in the media (articles 19 and 26 of the Covenant).

The State party should guarantee the fair access of political parties to public and private media and ensure that their members are protected against slander. The Committee would like to receive additional information on the way in which the

High Audio-visual and Communications Authority ensures, in practice, that parties have fair access to the media, as well as on the results obtained. The substance of the regulations in that area should also be transmitted to the Committee.

(18) The Committee is concerned at reports that peaceful demonstrations organized by civil society are regularly prohibited and forcibly dispersed by the authorities, while marches in support of the President of the Republic are regularly organized by the authorities.

The State party should ensure the practical enjoyment of the right of peaceful assembly and should restrict the exercise of that right only as a last resort, in accordance with article 21 of the Covenant.

(19) The Committee is disturbed by the distinction that the State party makes between associations and non-governmental organizations and by reports that non-governmental human rights organizations have been unable to obtain permission to register.

The State party should provide information on the consequences of the distinction made between associations and non-governmental organizations. The State party should ensure that this distinction does not violate, in law or in practice, the provisions of article 22 of the Covenant.

The Committee notes the assurance given by the delegation that human rights defenders who have submitted information to the Committee will not be harassed in Togo.

(20) The Committee takes note of the State party's decision to dissolve, in June 2002, on the basis of article 40 of the Electoral Code, the Independent National Electoral Commission (CENI) that was the outcome of the Lomé Framework Agreement and was composed of representatives of various political parties. The Committee also takes note of the delegation's explanations in that regard, as well as of other reports that the State party has not made all the necessary efforts to ensure the smooth operation of CENI. In such conditions, the legislative elections of 27 October 2002, in which part of the opposition again refused to participate, might not have been sufficiently in keeping with the requirements of transparency and honesty under article 25 of the Covenant.

The State party should do everything in its power to ensure that the spirit and letter of the Lomé Framework Agreement are respected. The Committee also requests the State party to ensure the safety of all members of civil society, particularly the members of the opposition, during the forthcoming elections.

(21) The Committee notes with great concern that the Individuals and Family Code, which has been under review since 1999, still contains provisions that discriminate against women, particularly with respect to the minimum age for marriage, the choice of the matrimonial home and freedom to work; that it authorizes polygamy and designates the husband as head of the family; and that it upholds the primacy of particularly discriminatory customary laws relating to marriage and succession.

The State party should bring the Individuals and Family Code into line with articles 3, 23 and 26 of the Covenant and bear in mind, in this regard, the concerns expressed by non-governmental organizations active in the field of women's rights.

(22) The Committee is worried about continuing discrimination against women and girls with respect to access to education, employment, inheritance and political representation in Togo.

Moreover, as the State party itself has acknowledged, certain cultural practices, as well as women's unawareness of their rights, give rise to many violations of women's rights.

The State party should eliminate all forms of discrimination against women, increase its efforts to educate girls and make the population more aware of women's rights, and carry out new programmes with a view to giving women access to employment and political posts.

(23) The Committee recommends the introduction of a far-reaching human rights education programme for law enforcement personnel, particularly policemen, gendarmes and members of the armed forces, as well as all prison staff. Regular and specific training should be conducted with a view to combating torture and inhuman and degrading treatment and prohibiting extrajudicial executions and arbitrary arrests; such training should also include the treatment and rights of detainees. In this regard, the Committee suggests that the State party request assistance from the Office of the United Nations High Commissioner for Human Rights and from non-governmental organizations.

(24) The State party should disseminate widely the text of its third periodic report and the present concluding observations.

(25) In accordance with article 70, paragraph 5, of the Committee's rules of procedure, the State party should within one year provide information on the measures that it has taken or plans to take with a view to implementing the recommendations contained in paragraphs (9), (10), (12)-(14) and (20) of these observations. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 November 2004, information on the other recommendations made and on the implementation of the Covenant as a whole.