



**International Convention on the
Elimination of All Forms of Racial
Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-third session

SUMMARY RECORD OF THE 1881st MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 31 July 2008, at 10 a.m.

Chairperson: Ms. DAH

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE
CONVENTION (agenda item 4) (*continued*)

Fourteenth and fifteenth periodic reports of Togo CERD/C/TGO/17;
HRI/CORE/1/Add.38/Rev.1; CERD/C/TGO/Q/17/Add.1; list of issues, document
without symbol distributed in the Committee room, in French only)

1. *At the invitation of the Chairperson, the members of the delegation of Togo took places at the Committee table.*

2. Ms. AIDAM (Togo), replying to the question whether criminal penalties had been imposed on political leaders inciting to ethnic and tribal hatred, said that socio-political life in Togo before its accession to sovereignty, on 27 April 1965, had been profoundly marked by a series of dramatic crises which had unfolded against a backdrop of violence. Political violence had ended up by becoming the main engine of socio-political change in the country. The question of impunity which sustained and encouraged political violence in Togo must therefore be addressed, as a matter of urgency, with courage and wisdom, in a spirit of forgiveness and reconciliation essential for the reconstruction of national unity, peace and social cohesion.

3. In the current transitional context, efforts to combat impunity, if they were to be effective, must be closely associated with that legitimate quest. Seen in that light, such efforts could not be limited to repairing the wrongs done to the victims of political violence. To produce the positive effects legitimately expected, they should necessarily include educational measures to influence the hearts and minds of those who perpetrated such violence, with the ultimate goal of changing their behaviour so as to prevent such acts from ever recurring in the future. That was the spirit in which the Government had undertaken national consultations which should lead to the establishment of a truth, justice and reconciliation commission which would make it possible to consider the best way of effectively resolving once and for all the question of impunity.

4. The absence of complaints concerning racial discrimination before the National Human Rights Commission and the courts was due essentially to the population's ignorance of existing remedies. For that reason, the Government, the National Human Rights Commission and NGOs were actively involved in awareness-raising campaigns on the subject.

5. The national programme for the modernization of justice, carried out with the support of development partners, should make it possible to overcome the lack of material and human resources within the judicial system. With the help of Togo's partners, courts would be provided with microcomputers, an open-access database, libraries and a judicial intranet. The modernization programme clearly took into account the incorporation into domestic law of all international instruments ratified by Togo, including the International Convention on the Elimination of All Forms of Racial Discrimination. The definition of racial discrimination as set out in article 1 of the Convention was being included in the Criminal Code, a preliminary draft of which had been adopted by the drafting committees and would be validated during a workshop which would benefit from the participation of an international expert. The European Union should also help the country to build and equip the country's two appeal courts and rehabilitate some of the infrastructure. The Government had

earmarked substantial operating funds for each court so as to guard against any shortage of equipment.

6. So far as training was concerned, France was providing capacity-building for judges through in-service seminars and exchanges of experience. All of the training activities would culminate in the establishment of a judicial training centre, which would start being built shortly. In addition, a team of judges had been sent for a week to the National College of the Judiciary in Bordeaux to receive related training. The judicial training centre would serve to train aspiring judges and to provide in-service training for all justice professionals. Every year, a competitive examination was held in order to recruit new judges to swell the numbers of those already serving. In 2008, 21 new judges would complete their training. Another group of 12 trainee judges were undergoing training and an examination had recently been held for the recruitment of a further 10 trainee judges. The recent digitization of judicial personnel files would make it possible to ensure rational and effective personnel management, track careers and anticipate the real needs of the judicial service in terms of human resources. All those improvements should have an impact on prison conditions and lead to the establishment of the post of visiting magistrate and to the recruitment and training of a new body of prison guards. Measures to promote the socio-occupational reintegration of prisoners on leaving prison included the establishment of management committees, prison workshops and experimental prison farms.

7. No repressive measure had been taken against journalists who had published biased articles; campaigns to raise their awareness and remind them of their duty had always been carried out in an effort to restore calm. The national consultations launched on 15 April 2008 by the Head of State were designed to ascertain the views of the population in order to determine the functions, organization and composition of the truth, justice and reconciliation commission, which would be operational at the end of the national consultation process.

8. Parallel to that process, the Government had taken measures to ensure a more balanced representation of the various ethnic groups in the civil service. Accordingly, the next recruitment examination for public officials would take into account the ethnic characteristics of candidates. Efforts were also being made to ensure a better distribution of school facilities so as to enable all social classes to have easier access to education. Similarly, steps were being taken, through appropriate recruitment, to diversify the composition of law-enforcement and security services.

9. Established on 11 March 2008, the Office of the High Commissioner for Reconciliation and National Unity would not move into operation until after the end of the national consultations. For the time being, it was simply gathering information on how it might be run. In that context, it had been informed of the results of the study on the causes of the various ethnic and regional conflicts in Togo carried out by the Government with the financial support of UNDP.

10. With regard to the Peuhl, in terms of numbers they were no longer a minority and they did not live in a particular geographical area in the country. Because of their stockbreeding activities, they often moved around in groups. Their way of life often set them against other ethnic communities in the areas where they lived.

11. In the periodic report of Togo, land owners were referred to indiscriminately as indigenous people, a usage different from that of the United Nations. The applicable text in matters of land tenure in Togo was the decree of 24 July 1906 on the organization of the land tenure system in the colonies and territories under the general rule of French West Africa. Article 19 of that decree made a distinction between the property of indigenous people subject to customary law and property dependent on French civil law, taking into account, where appropriate, the registration of the land concerned. That article made it clear that, while the modern right to land was proved by the presentation of titles and other documents, customary law remained subject to testimonial proof. Proof of land rights thus varied according to region and custom, with however one constant, namely, proof by testimony. It was nevertheless difficult to say what should count as the true benchmark in cases of divergent testimony. The National Commission for the Modernization of Legislation had begun considering that question but as no funding partner had yet come forward, reform of the 1906 decree had not yet begun.

12. Togo was planning to make the declaration under article 14 of the Convention and therefore to recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals claiming to be victims of a violation of any of the rights set forth in the Convention.

13. She also noted that decentralization enabled citizens to take an active part in the local management of public affairs. Feeling themselves concerned, citizens united their efforts by playing complementary roles, thereby being brought closer together and helping to promote reconciliation and national unity. When a fringe of the population was excluded from the management of State affairs, the social fabric was liable to be torn and confrontation to ensue. Abolition of the death penalty was under consideration; the most recent execution dated from 1978, which meant that the death penalty was no longer applied in practice.

14. While recognizing the legitimacy of the concerns of some Committee members in regard to the marriage of minors, she said that that problem had been settled in so far as the recently-adopted Children's Code and the Constitution prohibited the marriage of minors under the age of 18, except in cases of force majeure such as early pregnancy, where the female minor's consent was required. To allow her to exercise her rights and regularize the situation of her future child, a judge could authorize her marriage. Furthermore, as marriage had the effect of emancipating female minors, they thereby became free to change nationality. Non-citizens who married a Togolese woman could apply for Togolese citizenship.

15. The Government realized that poverty was not the only cause of the low rate of school enrolment of girls. It had therefore conducted awareness-raising campaigns targeting parents and had reduced school fees for girls, which had led to a distinct improvement in the enrolment rate of girls.

16. On the question of limiting the presidential term of office, she said that, in accordance with the comprehensive political agreement of 2006, institutional and constitutional reforms were in progress. Consequently, it was very likely that that question would be settled in that context.

17. Lastly, the provisions of domestic law that discriminated against women, particularly in matters of inheritance, were no longer in force. As a result, all

Togolese women now had the right to transmit their nationality to their children and to inherit in the same way as men without any restriction.

18. Mr. AVTONOMOV requested further information about the composition of the foreign community living in Togo, referred to in paragraphs 144, 145 and 151 of the report. He wished to know, in particular, the country of origin of those persons, the number for each nationality and whether foreigners had the right to form associations and to establish their own schools in the State party.

19. Mr. THORNBERRY noted with satisfaction that the delegation considered that the process of decentralization did not run counter to national unity but strengthened it. However, regarding the presumed need to update the Togolese land tenure system by aligning it with international standards, that was not necessary as the trend in international law was to place on an equal footing customary land tenure systems and those based on the national civil code. The coexistence of the two systems was frequent in several regions of the world and quite legitimate under international law. In particular, the method referred to by the delegation of demonstrating the existence of traditional property rights on the basis of testimony was fully in accordance with United Nations standards. He recalled, lastly, that collective property rights and, hence, customary land rights, were protected by the provisions of article 5 of the Convention.

20. Mr. LAHIRI wished to know whether the State party was planning to take affirmative action measures in order to correct existing inequalities, particularly for access to employment and health services, and to diversify the ethnic composition of the Togolese army.

21. Mr. PETER said that he was happy to learn from the delegation that the State party had undertaken awareness-raising campaigns to promote the school enrolment of girls, that it was studying the question of the abolition of the death penalty and, in particular, that capital punishment had not been applied since 1979.

22. Referring to a comment made by the delegation at the previous meeting, he said that the Convention was not a static text, that its interpretation changed over time in accordance with the changing world situation and that it was the very task of the Committee to breathe new life into the text so that it remained relevant.

23. Mr. de GOUTTES, Country Rapporteur, noted with satisfaction that the delegation had replied systematically to all the questions put to it by the Committee members. Concerning the absence of complaints of racial discrimination lodged with the advisory Human Rights Commission in Togo, he recalled that the Committee generally considered that the absence of complaints was not an encouraging sign but suggested rather that the population ignored their rights and that officials of the competent public bodies had not been made sufficiently aware of the issues. The absence of complaints could also be due to the fact that victims were fearful of reprisals, being stigmatized by society, having to pay hefty legal fees, not being able to prove their allegations and meeting with indifference from police or justice officials. For all those reasons, the Committee made it a habit to encourage States parties where there was an insignificant number or indeed an absence of complaints of racial discrimination to conduct public awareness campaigns and to train officials to receive statements and to deal with related complaints.

24. Mr. AMIR wished to have further information on the nature of the decentralization efforts made by the Government. Was it a case of decentralization,

whereby the central authority sent officials throughout the country in order for them to implement its policies in the different regions, or devolution, whereby the central authority allowed certain tasks and responsibilities to be assumed by the local authorities?

25. Ms. AIDAM (Togo) acknowledged that, to her regret, statistical data on ethnic composition and foreigners in Togo were no longer valid as they dated from the last general population census in 1981. However, the new census to be held for the forthcoming local elections should serve to obtain updated data, which would therefore be included in the next periodic report of Togo.

26. For Togo, "foreigners" were taken to mean all persons of non-Togolese nationality. Such persons had the right to practise their religion and to establish their own schools.

27. She recognized that the absence of complaints of racial discrimination could be due not only to ignorance of the relevant texts but also to a fear of reprisals or of not being understood by the competent authorities. The Government would give particular attention to the matter.

28. Mr. SOTOU BERE (Togo) informed the Committee members that Togo would soon be establishing a permanent mission in Geneva, which would make it easier to exchange information with the United Nations Office there.

29. Togo had always been a land of asylum for people fleeing the neighbouring kingdoms; that was why its population was a mosaic of peoples. There were some 46 ethnic groups in a territory measuring 56,000 km². The resulting cultural diversity and complexity had begun to be a source of difficulty once those ethnic groups had started to strive for power, with each seeking to assert itself over the others. A law had accordingly been adopted which prohibited parties from claiming affiliation to any particular ethnic group. It was a long process which was beginning to bear fruit. One after another, governments had therefore had to ensure that all the peoples of Togo lived together peacefully with a view to national unification.

30. The goal of decentralization was to bring government closer to the people and to make up for the various inequalities that existed between the north and the south. Where access to education was concerned, a large number of schools had had to be built in the north of the country, which was far behind in that regard, partly because the settlers had first started living in the south of the country and that was where they had established school facilities. The population in the north of the country being more traditionally taken up with agricultural work, and having even been subjected to forced labour in colonial times, it was mainly from among those sturdy people that the army had taken its soldiers; that accounted for the imbalance still seen today between the two regions in that respect. The current Government was, however, to be commended for seeking to restore some balance in recruitment between the regions, while bearing in mind that persons who did not wish to join the army should not be forced to do so. The fact that more people from the north were recruited into the army was not the result of discrimination or preference but of a situation rooted in history.

31. Mr. de GOUTTES, Country Rapporteur, welcomed the excellent quality of the dialogue established with the Togolese delegation. He recalled that the role of the Committee was to provide general assistance to States parties in implementing the Convention, which, in the case of Togo, also meant advising the Togolese

Government so as to enable it to carry through the process of national reconciliation and the reform of civil law and the national judicial system. He also welcomed the presence of the Chairperson of the Togolese Human Rights Commission during consideration of the periodic report of Togo.

32. The concluding observations that would be drawn up following consideration of the report would highlight a number of positive points, including the proposed establishment of a truth, justice and reconciliation commission, the determination to put an end to impunity for past ethnic violence and the many efforts made to achieve national reconciliation and social peace.

33. The concluding observations would also emphasize a number of subjects of concern, such as possible inter-ethnic discrimination within the State structure, particularly the army, and the preference reported to be given to dominant ethnic groups for the allocation of certain posts in the civil service.

34. The Committee would recommend that the State party should take the opportunity of the reform of its Criminal Code to ensure that acts of racism were more effectively punished in the future; it should refer in that connection to its General Recommendation XXXI on the prevention of racial discrimination in the administration and the functioning of the criminal justice system; it should also incorporate into its domestic law the provisions of the Convention, particularly those of article 1 (definition of discrimination) and article 4 (criminalization of all acts of racial discrimination). Togo would be called on to reform its 1906 law on the land tenure system and to do everything in its power to prevent any incitement in the media to racial or ethnic hatred and to promote inter-ethnic understanding, and also to put in place more human rights training programmes for law-enforcement officials. Lastly, the Committee would appreciate additional information on Togo's implementation of the Durban Programme of Action.

35. The CHAIRPERSON in turn commended the State party for re-establishing contact with the Committee after so long a break and invited it to keep it up by regularly submitting its reports in future.

36. Ms. AIDAM (Togo) thanked the Committee for allowing Togo to submit its sixth to seventeenth periodic reports in a single document. She said that her country appreciated the Committee's willingness to help it out of its difficult situation and assured the Committee members that the Togolese Government was ready to pursue the fruitful dialogue.

37. Mr. KOUNTE (Togolese Human Rights Commission) thanked the Committee and the delegation of Togo for allowing him to participate in the consideration of the sixth to seventeenth periodic reports of his country and said that he would be happy to convey to the Country Rapporteur his views regarding the replies given by the delegation in the course of the dialogue.

38. *The delegation of Togo withdrew.*

The meeting rose at 11.50 a.m.