



International Covenant on Civil and Political Rights

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Summary record of the 3783rd meeting

Held via videoconference on Thursday, 1 July 2021, at 12.30 p.m. Central European Summer Time

Chair: Ms. Pazartzis

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The meeting was called to order at 12.30 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fifth periodic report of Togo (continued) (CCPR/C/TGO/5; CCPR/C/TGO/QPR/5)

1. *At the invitation of the Chair, the delegation of Togo joined the meeting.*
2. **Mr. Furuya** said that he would like to know whether the reform of the judicial system in 2019 had resulted in a clearer separation between the functions of judges and prosecutors. He would also be interested to learn in what ways the reform had helped to protect the right to a fair trial and to strengthen the independence of the judiciary. In the light of reports that corruption within the judiciary remained a serious problem, he would welcome up-to-date information on the number of corruption cases involving State officials that had been investigated and prosecuted and the number of convictions handed down. He wondered what specific measures had been taken to combat corruption, whether a strategic plan had been developed to that end and how the State party intended to reform the High Authority for Preventing and Combating Corruption and Related Offences in order to tackle corruption more effectively.
3. According to the State party's report, article 497 of the new Criminal Code was targeted at non-journalists who, through social media and other means of communication, deliberately tarnished or insulted the image of the authorities. Bearing in mind that the Covenant guaranteed freedom of expression for everyone, including non-journalists, he would like to know how the State party ensured that article 497 was applied in accordance with the principles set out in paragraph 47 of the Committee's general comment No. 34 (2011). In the light of concerns that the cybersecurity law passed in December 2018 could be used to silence whistle-blowers and to restrict the civic space, he wished to know how many people had been prosecuted and convicted under that law and how the State party ensured that the application of the law was consistent with its obligations under article 19 of the Covenant. He would also like to hear more about the new Press and Communications Code and its compatibility with article 19 of the Covenant.
4. **Mr. Quezada Cabrera** said that he would be interested to know what the state of play was in the implementation of the Refugee Status Act; whether the National Commission for Refugees and the Appeals Board were operational; and whether there was an avenue for appealing against decisions handed down by the Appeals Board in a court of law. He wondered why the State party had not yet deposited its instrument of accession to the 1954 Convention relating to the Status of Stateless Persons, despite having been authorized to do so by the parliament in 2012.
5. With reference to the concerns raised by four United Nations special rapporteurs about the amendments made to Act No. 2011-010 of 16 May 2011 on freedom of assembly in 2019, he would like to know what the basis for those amendments was, whether they were compatible with the Constitution and whether the State party had considered repealing them in order to lift restrictions on freedom of assembly that were in breach of the Covenant. He would appreciate more information on the number of military and law enforcement officers who had been punished in connection with the violent events mentioned in paragraph 24 of the list of issues and on the nature of the punishments imposed. Lastly, he would like to know why Decree No. 2013-013 allowed for the involvement of the armed forces in maintaining or restoring public order, a task that was normally handled by the police.
6. **Mr. Ben Achour** said that it would be interesting to learn which civil society organizations had been involved in the process of improving the bill on freedom of association and what kind of improvements had been made. He would welcome more information on the number of associations registered in Togo and the nature of their activities. According to the State party's report, only 25 of the 150 religious associations that had applied for registration between 2011 and 2016 had received certification. He would like to know why some places of worship had been shut down and whether the current registration procedure was compatible with article 22 of the Covenant and appropriate in a democratic society.

7. **Ms. Tigroudja**, welcoming the progress made in protecting women's rights, said that she would like to know whether the State party was planning to decriminalize abortion. In the light of information received about the growing insecurity faced by journalists, human rights defenders and other civil society actors, it would be helpful to know what specific measures had been taken to actively protect the civic space and to allow such persons to carry out their work without intimidation; how many complaints of threats and violence against such persons had been recorded and investigated, bearing in mind that, if complaints were rare, that could be a reflection of a lack of confidence in the authorities; whether human rights defenders, including those working to protect the rights of lesbian, gay, bisexual and transgender persons, were afforded special protection under national law; what impact Act No. 2019-009 of 12 August 2019 on internal security had had on the activities of journalists and other civil society actors; and what legal and other safeguards had been put in place to ensure that the fight against terrorism and the response to the coronavirus disease (COVID-19) pandemic did not have the effect of curbing freedoms and further limiting the civic space.

8. The Committee had received reports that the High Audiovisual and Communications Authority was not independent from the executive branch, did not adequately protect freedom of expression or freedom of the press and frequently imposed punitive measures on media outlets that were critical of the Government and the justice system. The Committee would appreciate more information on the safeguards in place to ensure the Authority's independence and the reasons behind the apparent lack of trust in the Authority among journalists and other media workers.

9. **Mr. Santos Pais** said that, according to the 2019 Global Corruption Barometer, 55 per cent of the people in Togo thought that the country's justice system was corrupt, yet the Supreme Council of Justice had imposed disciplinary sanctions on members of the judiciary in only 14 cases between 2011 and 2016. Several features of the justice system, including the fact that the president of the Supreme Court was appointed by the President of the Republic, appeared to conflict with the principle of the independence of the judiciary. It was concerning that the executive branch had the power to determine whether or not cases – including cases involving members of the Government or law enforcement officers – should be prosecuted. Prosecutors should enjoy the same independence as judges in the exercise of their functions and be subject to the same rules and regulations. He would like to know whether the State party was planning to take measures to ensure the independence of prosecutors with a view to protecting the rights of those involved in legal proceedings.

10. **Mr. Muhumuza** said that he would be interested to know why fees had to be paid in order to bring criminal proceedings in cases of torture. Exactly who was required to pay the fees and how much were they?

The meeting was suspended at 1.10 p.m. and resumed at 1.20 p.m.

11. **Mr. Bakai** (Togo) said that the members of the Appeals Board envisaged under the Refugee Status Act had been appointed by a decree of 18 October 2019 and had commenced work in 2021. Asylum seekers whose applications were rejected by the National Commission for Refugees had one month in which to appeal to the Board, which would review their case and issue a reasoned decision. The procedure was free of charge and without prejudice to the possibility of lodging an administrative appeal.

12. **Mr. Trimua** (Togo) said that his country had ratified both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The Ministry of Foreign Affairs had prepared the instruments of ratification and would deposit them with the United Nations in the coming days.

13. **Mr. Agbetomey** (Togo) said that the Constitution enshrined the principle of the independence of the judiciary from the legislative and executive branches. In keeping with that principle, the recruitment, careers and discipline of judges were the responsibility of the Supreme Council of Justice, a body of judges elected by their peers. Prosecutors, on the other hand, were appointed by decree of the Council of Ministers on the advice of the Ministry of Justice. That arrangement created a clear separation between the respective powers of judges and prosecutors. The independence of the prosecution service was not, at present, considered a priority item for discussion.

14. Victims of torture could file a complaint with the State prosecutor, who would then open an investigation. That procedure was free of charge. Alternatively, victims could bring their complaint directly before an investigating judge, in which case the law required the payment of a fee before proceedings could commence. The amount of the fees was at the discretion of the investigating judge and would depend on the facts and complexity of the case.

15. **Mr. Meleou** (Togo) said that the actions of the security forces were governed by Decree No. 2013-013, among other laws and regulations. The deployment of those forces was subject to a request from the competent civil authority; they were not authorized to use lethal weapons. The armed forces present during the demonstrations in Mango, Gleï and Dapaong had been given the specific mission of guarding sensitive locations while allowing the police and gendarmerie to maintain order. However, in some cases, protesters had attacked the members of the military and succeeded in taking their weapons. Those incidents served to illustrate the violent nature of the demonstrations and the non-combative stance of the defence and security forces.

16. At Mango, it had been clear from the outset that the organizers of the demonstration were acting unlawfully. Protesters had ransacked the city's police station, killed a police officer and seized weapons. In response to the violence, and given that the crowd was armed, the military had been called in and tasked with guarding the police station so that the police and the gendarmerie could restore order. Similar circumstances had arisen at Gleï, a largely rural area, where violence had broken out and the civil authority had requested the assistance of the military to prevent private property from being vandalized. Again, the presence of the armed forces had allowed the police and the gendarmerie to restore order.

17. The authorities did not turn a blind eye to the excessive use of force. In 2020, disciplinary penalties had been imposed on 88 police officers and 137 gendarmes for acts involving deliberate violence, excessive use of force or, in one case, murder. Of those 225 officers, 216 had been placed under close arrest, 4 had been suspended without pay for six months and 5 had been dismissed and their cases reported to the criminal justice system. The Government continued to work to increase the professionalism of the defence and security forces.

18. **Mr. BoukpeSSI** (Togo) said that the establishment and activities of associations were governed by a French law, the Associations Act of 1 July 1901. As at 2020, Togo had 15,551 registered associations, of which 7,653 had received their registration certificates. Persons wishing to establish an association were required to submit a declaration to the Ministry of Territorial Administration, after which the association was permitted to operate. The Ministry then checked whether the leadership of the association was composed of fit and proper persons. If the application was approved, the certificate would then be issued and published in the Official Gazette. The procedure was not incompatible with the Covenant, since the lack of a certificate did not prevent associations from operating. The possession of a certificate was, however, important in that it conferred legal capacity upon the association.

19. The Government had categorized about 8,000 associations as being of a religious or philosophical nature. It was no surprise that not all religious associations had received certificates, as their applications were subject to the necessary checks, and some would not be approved. The Government considered the checks to be justified, since criminal organizations had been known to use associations as a front for money-laundering.

20. The bill on freedom of association that was to replace the French Associations Act had been withdrawn. However, work to improve the bill would soon commence, and 16 associations would be invited to participate in that process. The Government was also considering additional legislation on religious associations in response to reports that rape, sexual abuse and other forms of ill-treatment had been committed in churches. It hoped that such legislation would provide it with the necessary tools to prevent such abuse and ensure the safety of places of worship.

21. **Mr. Ayewouadan** (Togo) said that article 497 of the Criminal Code, which introduced the offence of publishing, disseminating or reproducing false news, targeted social media users who deliberately tarnished the image of the authorities. Although the Criminal Code applied to all citizens of Togo, the Constitutional Court, in its decision of 29 April

2019, had expressly barred the application of article 497 to journalists in the exercise of their functions. The profession of journalism was also protected under Act No. 2020-001 of 7 January 2020, the Press and Broadcasting Code, which established the specific rights of journalists. Press offences were no longer punishable by imprisonment, and no journalists were serving prison sentences in Togo for acts committed in the course of their professional activities. Since 2011, neither the criminal justice system nor the National Human Rights Commission had received any complaints of journalists being subjected to attacks, threats, harassment or arbitrary detention. Togo did not have any specific legislation on whistle-blowers. Anybody falling into that category would be protected by ordinary law provisions and international standards.

22. For a country with a population of about 7 million inhabitants, Togo had an extremely diverse media landscape, including 221 registered newspapers, 92 radio stations and 9 television channels, as well as various online outlets. During the period 2017–2021, the High Audiovisual and Communications Authority had issued about a dozen penalties to newspapers – a very small number indeed, given the number of newspapers and the size of their readership. Criticism was not prohibited in Togo. Media outlets offered a range of programming and provided an ample arena for public debate. Nevertheless, they were subject to certain limitations. Facts were important, and it was sometimes necessary to have recourse to the law to ensure that the truth was respected.

23. The Government recognized that many journalists lacked trust in the High Audiovisual and Communications Authority. To address the problem, the Council of Ministers had recently approved the text of a draft bill intended to improve the way in which the Authority operated.

24. **Mr. Trimua** (Togo) said that Togo had a strong legislative framework for combating corruption which specifically addressed certain administrative and government functions, such as calls for tenders and access to public services. Penalties for different forms of corruption were provided for under the Criminal Code and the relevant codes of conduct. Various government agencies, such as the authority responsible for regulating public contracts and the customs service, had special anti-corruption units. The Constitution had been amended to require public officials to disclose their holdings and income, and the scope of its application was currently being expanded. The High Authority for the Prevention of Corruption and Similar Offences had recently embarked on a reform effort and was working to strengthen its operations. The country had previously had an anti-corruption body that had maintained its own police and enforcement service, but experience had shown that it was preferable to avoid such an arrangement, which could be perceived as a political tool. The work of the High Authority tended to focus on prevention, awareness-raising, the strengthening of due diligence and the establishment of anti-corruption mechanisms in companies and administrative services, while leaving it to the ordinary law enforcement services and the courts to apprehend and prosecute persons engaging in corrupt acts.

25. Regarding the Committee's questions concerning the amendment of the law regulating public demonstrations, States parties to the Covenant were allowed to ensure public order while guaranteeing the right of peaceful assembly. During the public demonstrations referred to earlier by Committee members, officers of the law enforcement and security services had been subjected to violent acts, and some had been killed or injured. Those demonstrations had by no means been peaceful and therefore did not fall within the scope of article 21 of the Covenant. Their participants had not been demonstrators, but criminals, and were being treated as such under the Criminal Code. The amendments taken on board in 2019 had been adopted in a specific context in the subregion, where terrorism was on the rise, and taking into account the local sociological and geographical specificities of the country. Since 2017, certain persons had started to invoke the law in bad faith, so it was quite normal for the Government to amend the law to address gaps in existing legislation. The city of Lomé exhibited specific characteristics which justified the prohibition on assembly in certain strategic or sensitive areas in a subregion that had fallen prey to terrorism. In response to concerns raised by the National Human Rights Commission, civil society organizations and United Nations special rapporteurs, the Government had established a framework for a national political consultation on ways to improve the law on public demonstrations.

26. The parliament had very recently adopted a new law that empowered the National Human Rights Commission to protect human rights defenders. It had also called upon civil society organizations to propose another specific piece of legislation on the protection of those defenders, and those organizations were currently working on just such a proposal with technical assistance from United Nations bodies. While reports were sent to the Committee about discrimination against lesbian, gay, bisexual and transgender persons, complaints were not filed with the Togolese authorities, even those devoted to defending human rights. The Government strove to protect all citizens, regardless of their sexual orientation or gender identity. The Public Health Code made provision for medical or therapeutic abortion in cases, for example, of rape or incest, or when the life of the mother was in jeopardy, but it did not allow elective abortion, which was not yet in line with the country's values.

27. **Mr. Quezada Cabrera** said that the Committee would like to know whether persons applying for refugee status who felt their cases had not been handled properly were able to appeal before the courts or if their only recourse was an administrative appeal.

28. **Mr. Furuya** said that the Community Court of the Economic Community of West African States had issued a decision in 2020 in which it had found that the shutdown by the Government of Togo of the Internet in 2017 had violated the rights of its citizens and had directed the State party to enact safeguards for the right to freedom of expression in accordance with international human rights instruments. He would like to know what steps had been taken to give effect to the Court's ruling.

29. **Ms. Tigroudja** said that she would appreciate further information about the strengthening of the Audio-Visual and Communication Regulatory Authority. The delegation had pointed out that the authorities had received no complaints about threats against persons who defended the rights of lesbian, gay, bisexual and transgender persons and journalists, but such reports had been received by third parties. As the lack of complaints was very likely indicative of a deficit of trust in government institutions, she wished to know what steps the authorities were taking to improve the situation.

30. **Mr. Ben Achour** said that the Committee had been informed that the Government had brought charges against opposition political parties such as the Dynamique Monseigneur Kpodzro (DMK) or the Comité d'Action pour le Renouveau (CAR). He would be interested in hearing the delegation's comments on that score.

31. **Mr. Trimua** (Togo) said that refugees who considered that their cases were not handled properly were able to bring appeals before the courts. The decision handed down in 2020 by the Community Court of the Economic Community of West African States did not address freedom of the press, but rather the shutdown of the Internet during the political crisis of 2017. The Court had recognized the right of the State party to close down the Internet for reasons of State security or public order, but it had considered that the interruption of Internet service had been abusive because it had been carried out on the basis of a regulation instead of a law. The country now had a legal framework for the regulation of online media, and some 30 media outlets had already registered and been granted official status. The Government was encouraging some 200 others to follow suit.

32. The question of trust in national institutions was fundamental. In recent years the country had made great strides in the implementation of the Covenant and its Optional Protocols, but many members of Togolese society still had a rather superficial understanding of the mechanisms for implementing not only international instruments, but also the country's own Constitution and laws. Togo thus faced the challenge of improving communication with civil society and raising awareness among the population of the tools available for the implementation of human rights instruments. Criminal acts such as undermining State security or inciting ethnic hatred, when committed by politicians, were still criminal acts, and the perpetrators were prosecuted regardless of whether they were in the governing party or in the political opposition.

33. The Togolese delegation had found the dialogue with the Committee to have been extremely useful and constructive, and it had taken on board a number of the Committee's observations even before they were formally issued. The Government of Togo was ready and able to continue to cooperate with United Nations bodies, including the Committee, to implement the Covenant.

The meeting rose at 2.20 p.m.