

TOGO

Human rights defenders and political opponents throughout Togo were said to have come under constant harassment. Lawyers have difficulties in the exercise of their profession, notably when assisting detainees *en garde à vue*. Security guards frequently prevent lawyers from meeting with their clients. The International Inquiry Commission on Togo concluded in its 2001 report that hundreds of people were extrajudicially executed throughout 1998.

Togo gained independence from France in 1960, and Togo's first President, Sylvanus Olympio, was assassinated in a military coup three years later. The current President, Gnassingbe Eyadéma, seized power in a 1967 *coup d'état* and dissolved all political parties. President Eyadéma ruled unchallenged for two decades and did not face a multi-party election until 1993, following a liberalisation in 1992 allowing for the operation of political parties. A new Constitution was adopted by referendum in September 1992 providing for the basis of democratic institutions, but power in the country is still overwhelmingly concentrated in the presidency.

According to the Constitution, the country is led by an elected President as the Head of State. The President is directly elected for a five-years term and may be re-elected only once. The President, taking into consideration the parliamentary majority, names the Prime Minister, as head of the government. The Council of Ministers is appointed by the President on proposal of the Prime Minister. The President of the Republic presides over the Cabinet and has the power to dismiss the Prime Minister as well as the members of the government. The President is responsible for promulgating the laws voted by the National Assembly and transmitted to him by the Government 15 days thereafter. The President may, before the expiration of the above periods, demand that the National Assembly deliberate a second time on any particular Article, and this deliberation can not be refused. Any laws which are not promulgated by the President within the applicable period set out above are decreed by executive order of the Constitutional Council.

Legislative power is exercised by a unicameral National Assembly, whose deputies are elected for a five-year term and may be re-elected. Under Article 84 of the Constitution, the National Assembly approves legislation concerning the organisation of courts of law and administrative courts, as well as the procedure before them.

Fraud and intimidation marred the 1993 presidential election, the 1994 legislative election, and President Eyadéma's re-election in 1998. On 28 June 1998, the Minister of Interior and Security proclaimed Eyadéma the winner, although competency for this function belonged to the Electoral Commission (CENI). In July 1998, the Constitutional Court ruled that the Minister could replace the CENI. The European Union suspended aid in 1993 in protest at alleged voting irregularities and human rights violations, but assistance has since been resumed. In the March 1999 election boycotted by the opposition, the ruling party won 78 out of 81 seats. In the June 1998 and March 1999 elections, hundreds of people were allegedly extrajudicially executed, and many civilians including opposition activists were arrested and tortured. On 5 April 2000, a new electoral code was adopted by Parliament establishing an independent Electoral Commission.

In June 1999, President Eyadéma and his party (Rally of the Togolese People-RPT) met with the opposition parties in Paris in the presence of international facilitators to initiate negotiations aimed at breaking the political deadlock that has existed since the 1998 elections. On 29 July 1999, the negotiating parties signed the Lomé Framework Agreement (*Accord-Cadre de Lomé*). According to the agreement, President Eyadéma would respect the Constitution and not run for another term as President in 2003 pursuant to Article 59 of the 1992 Constitution. The agreement addresses the rights and duties of political parties and of the media as well as the issue of the safe return of refugees. The agreement also contains a compensation plan for victims of political violence, but Article 2 of the 1994 Amnesty law, which provides impunity for those who have committed human rights abuses, was not challenged.

President Eyadéma serves as the Chairman of the Organisation of African Unity. There is also controversy over his alleged support for the Angolan rebel leader, Jonas Savimbi, in contravention of UN sanctions. A detailed report by the UN sanctions committee accused President Eyadéma of trading in the diamonds that Savimbi mines illegally to finance his rebellion.

HUMAN RIGHTS BACKGROUND

Togo has ratified the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ISCR), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRRC).

On 23 March 2001, the Committee of the CERD examined the implementation of the CERD in Togo. As Togo had failed since 1991 to file a report with the Committee, it urged the country to file the outstanding reports and to avail itself of the technical assistance programmes offered by the Office of the High Commissioner for Human Rights. Expert Ion Diaconu, the Committee's Rapporteur on Togo said the Minister of Justice in Togo had maintained that the country did not have an administrative structure to draw up such reports and that it would forward a report to the Committee when able to do so. The latest report submitted by Togo to the Committee was in 1991. The 1992 Constitution prohibits discrimination based on ethnicity, as well as regional or family origin and indicates that all discriminatory manifestations are punishable by law. However, no law had been enacted to punish such acts.

On 4 May 2001, the Committee on Economic, Social and Cultural Rights considered the situation in Togo. The Rapporteur on Togo, Eibe Riedel said that the country has not yet filed its initial report since 1984, when it became a state-party to the Covenant. The Rapporteur said that despite the findings of the Commission of Inquiry to Togo, there were a few positive aspects to be recognised, such as a technical co-operation project entered into with the OHCHR to strengthen the rule of law. The Committee recommended that “the Togolese government address the persistence of societal discrimination patterns, in particular in relation to women and girls, and between the various ethnic minorities living in Togo, with a view to eliminate such discrimination patterns”.

The 1999 Amnesty International report on Togo and proceedings against AI

On 5 May 1999, Amnesty International (AI) published a report entitled “Togo: Rule of Terror” based on a fact-finding visit to Togo in November and December 1998. The report alleged that

hundreds of people had been killed by the security forces shortly before and after the June 1998 elections, and that bodies dumped at sea by military aircraft had washed up on beaches in Togo and neighbouring Benin. The Togo government employed a top French lawyer and declared it intended to sue the human rights body for libel. In September 1999, the Togolese authorities started legal proceedings against Pierre Sane, AI's Secretary General, and summoned him to appear before an investigative magistrate of the High Court in Lomé for a "possible indictment for contempt, incitement to revolt, dissemination of false news and conspiracy against the state.". At the end of 1999, Togo agreed to invite an international commission of inquiry to investigate the reported killings.

In November 2000, the Dean of the examining judges ordered that all proceedings against Pierre Sané and four other human rights defenders be discontinued until further notice. However, according to AI, it still remains unclear whether the charges have been dropped.

In February 2001, the Togolese Interior Minister General Walla alleged that AI had received a USD 500,000 payment from Togolese opposition leader Gilchrist Olympio in return for writing a report that was critical of the human rights situation in the country.

International Commission of Inquiry for Togo

Under the auspices of the United Nations and the Organization of African Unity, at the request of the government of Togo, an International Inquiry Commission was established on 7 June 2000 to look into the Amnesty International allegations, following a consideration of this question in the Sub-Commission on the Promotion and Protection of Human Rights. International experts from Chad, Mauritania and Brazil constituted the Commission and carried out investigations in Togo and neighbouring countries in November and December 2000. The Commission's report was released on 22 February 2001. The Commission held that the allegations by AI that hundreds of persons had been victims of extrajudicial killings "must be taken into consideration". The Commission concluded that "executions were aimed especially at political activists linked to opposition parties" and recommended the nomination of a UN Special Rapporteur on Togo charged with monitoring respect for human rights in the country.

In March 2001, testifying before the UN Commission on Human Rights, the Togolese Prime Minister Kodjo stated that the "grave and unfounded" allegations "aimed to tarnish Togo's image and to speed up the change over in favour of the opposition". The Prime Minister announced the establishment of a national commission of inquiry, composed of four senior magistrates to investigate allegations concerning the 1998 extrajudicial executions.

Human rights defenders

Since the 1999 publication of the AI report on Togo, members of Togolese human rights organisations have been harassed. On 31 July 2000, Maître Kofimessa Devotsou, director of the *Ligue Togolaise pour les Droits de l'Homme* (LTDH), was questioned by the Minister of the Interior and threatened that he could be accused of defamation after the publication of a critical report by the LTDH on the human rights situation. The interrogation took place in the presence of four independent journalists who were also criticised by the Minister for having published articles on the LTDH report. In November 2000, the Dean of Examining Judges ordered the dropping of charges of "false accusation and defamation" against Togolese human right defenders, especially members

of the *Association Togolaise pour la défense et la promotion des droits de l'homme* (ATPDH) arrested in relation to AI's May 1999 report.

Freedom of the press

At the beginning of 2000, a new bill regulating the press was passed, introducing criminal libel as an offence carrying a penalty of imprisonment. On 23 May 2001, Lucien Messan, editorial director of the weekly *Le Combat du peuple* was arrested when he presented himself to the police to answer a summons. He was informed that a complaint had been lodged against him by the Interior Minister for "falsehood and the use of falsehood". The journalist was immediately transferred to Lomé civil prison. He was accused of having affixed his signature at the bottom of a communiqué from the Togolese Private Press Publishers (ATEPP). The communiqué denounced statements by the Togolese prime Minister according to whom "publication directors were unanimous in affirming that there have never been hundreds of deaths in Togo". The ATEPP accused the government of "seeking to use the private press". The Fourth Criminal Chamber of the Lomé Court of First Instance sentenced Messan, among the most prominent figures within the Togolese private press, to a prison term of eighteen months, six months of which were suspended. In August 2000 Lucien Messan lodged a complaint against the Interior Minister for "abuse of power" following repeated seizures of copies of *Le Combat du Peuple* by the police.

The university crisis

Academic freedom has been highly restricted at the country's sole university. Opposition students groups are not tolerated and attempts to silence students continued throughout 2000. The authorities arrested leading members of the student council of the University of Benin (CEUB) and in January 2000 an international arrest warrant was issued against the CEUB leader on grounds of spreading false information, although the charges were dropped one week later. The Union of Togolese lecturers has written to the Rector-Chancellor of the University to complain against the expulsion of student leaders. Teachers' salaries and students' stipends are rarely paid on time. In May 2001, students and lecturers at the University of Benin boycotted classes to protest against the non-payment of allowances. President Eyadéma met with the protesters and promised the payment of a one-month grant. Security forces have reportedly dispersed student demonstrations throughout the year and lecturers have denounced the presence of security forces in the university campus.

The Judiciary

The Constitution embodies the principle of the separation of powers. Article 113 of the Constitution establishes the judiciary as an independent authority: "Judges are only subject, in the exercise of their functions, to the Rule of Law." According to Article 115, the President of the Republic is the guarantor of judicial independence. He is assisted to that effect by the Judicial Council. However, in practice, the executive power interferes with judicial matters.

The legal system is primarily based on French law, and as such it distinguishes between administrative and civil and criminal jurisdiction. Title VIII ("*Du Pouvoir Judiciaire*") of the Constitution provides for the organisation of the judiciary. Organic Law 96-11 enacted on 21 August 1996 deals with the status and regulation of the judiciary.

The court system

The Constitution provides for a Supreme Court (*Cour Suprême*), a High Court of Justice (*Haute Cour de la Justice*) and a Constitutional Court (*Cour Constitutionnelle*). Under Title VII of the Constitution, a *Cour des Comptes* is established in order to control matters related to the finances of the State.

Located in Lomé, the Supreme Court is the highest jurisdiction in the country, with two chambers, one for judicial (*chambre judiciaire*) matters and one dealing with administrative (*chambre administrative*) issues. Organic Law 97-05 of 6 March 1997 provides that the Supreme Court is chaired by a judge appointed upon the proposal of the Judicial Council (*Conseil Supérieur de la Magistrature*). According to Article 9 of this law, judges cannot be pursued, arrested, detained or tried for opinions expressed in their judgement. Charges can be initiated against the Supreme Court judges only following authorisation by the Judicial Council.

The High Court of Justice is the only competent jurisdiction to deal with cases against the head of state and crimes of high treason. The High Court is composed of the President, the Presidents of the chambers of the Supreme Court and four legislators, elected by the National Assembly. The High Court, under Article 128 of the Constitution, has jurisdiction over crimes committed by members of the Supreme Court.

The Constitutional Court has jurisdiction over matters arising under the Constitution or involving its interpretation or the fundamental rights provisions of the Constitution. Its decisions are binding on all administrative and public authorities and there is no possibility of appeal against them. There exists only one functioning Court of Appeal in Togo, as the second one is moribund. There also exists a Military Tribunal for crimes committed by security forces. Trials before the Military Tribunal are not public. The Constitution, under Article 132, provides also for an Economic and Social Council (*Conseil Economic et Social*), that gives advisory opinions on legislation concerning economic and social issues.

Court Administration

Judges are nominated by decree of the President of the Republic, with the approval of the Judicial Council (*Le Conseil Supérieur de la Magistrature*) following a proposal by the Minister of Justice. According to Organic Law 97-04 of 6 March 1997, the Judicial Court is composed of three judges of the Supreme Court, four judges of the Courts of Appeal, a member of the National Assembly and a person chosen by the President based on his or her experience. The Council is headed by the President of the Supreme Court. All the members are appointed for 4 years and their terms may be renewed only once. Under Article 117, the Judicial Council is the disciplinary body for judges.

Most members of the Judicial Council are supporters of President Eyadéma. Judges who belong to the Professional Association of Togo Magistrates (APMT), which is said to support the President, reportedly receive the most prestigious assignments, while judges who advocate an independent judiciary and belong to the National Association of Magistrates (ANM), have been marginalized.

Resources

The judiciary is severely understaffed and the judicial system does not ensure defendants the right to a fair and expeditious trial. There are approximately 100 judges in Togo and hundreds of cases are pending before each judge. Some detainees wait years to be tried. Other factors aggravating the

failure of the judiciary include poor training and low remuneration. Judges are not paid on time. Consequently, delays in the judicial process are frequent and corruption, which is very common, encourages impunity.

The independence and impartiality of the judiciary is not guaranteed in practice. The few judges who have complained about political interference in the judicial system have not risked doing so publicly.

CASES

Maître Doe Bruce Adama {lawyer}: On 23 May 2001, the lawyer of Lucien Messan (*see Freedom of Expression*), while trying to defend his client, was assaulted by a police officer at the office of the Public Prosecutor.

Maître Kofimessa Devotsou and Maître Gahoun Hegbor {lawyers}: On 13 August 2001, the Director of the National Security Office refused to receive the two lawyers who were defending three persons arbitrarily detained *en garde à vue* from 9 to 24 August 2001.

Maître Yawovi Agbouyibo {lawyer}: On 3 August 2001, Maître Agboyibo, former President of the Bar Association, was sentenced to six months imprisonment by the Correctional Chamber of the First Instance Tribunal of Lomé for defaming the Prime Minister, Messan Agbeyobé Kodjo. The Court issued a custody warrant against him before the audience, in what was considered to be a rather unusual process. A group of 53 lawyers was formed to assist in his defence. During the first days of his imprisonment, none of his lawyers has been permitted to visit Maître Agboyibo. In 1998, Maître Agboyibo, in his capacity as the President of the opposition political party (*Comité d'Action pour le Renouveau*) CAR, had denounced the human rights violations committed and impunity enjoyed by certain groups associated with the Prime Minister in the region of Sendome. Once the parliamentary immunity of the lawyer was lifted in 2001, the Prime Minister asked the Public Prosecutor to file a complaint against Maître Agboyibo, which may disqualify him from participating in the next parliamentary elections.