



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

Distr.
GENERAL

CERD/C/TGO/Q/17/Add.1
21 July 2008

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-third session
Geneva, 28 July-15 August 2008

**WRITTEN REPLIES BY THE GOVERNMENT OF TOGO TO THE LIST
OF ISSUES (CERD/C/TGO/Q/17) TO BE TAKEN UP IN CONNECTION
WITH THE CONSIDERATION OF THE SIXTH TO SEVENTEENTH
PERIODIC REPORTS OF TOGO (CERD/C/TGO/17)***

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Distribution of the Togolese population by ethnic group

Ethnic group	Number	Percentage
ADELE	5 558	0.204
ADJA	84 801	3.118
AGNAGAN	5 481	0.201
AHLON-BOGO AHLON	4 864	0.178
AHLONLAN: ANLO	2 019	0.074
AKEBOU	31 168	1.146
AKPOSSO	72 715	2.673
ANA ANA IFE	68 107	2.504
BARIBA: BARBA TAMBERMA	15 176	0.558
BASSAR	47 777	1.756
BASSILA	510	0.0187
COTOCOLIS	156 446	5.752
EHOUE	3 183	0.117
EWE	630 667	23.189
FON	27 189	0.999
GOURMA	92 317	3.394
HAOUSSA	7 352	0.270
KABYE	374 958	13.787
KONKOMBA	38 409	1.412
KPESSI	2 358	0.086
LAMBA	82 846	3.046
LOSSO	111 579	4.102
MINA GUE	153 970	5.661
MOBA	146 122	5.372
MOSSI	7 155	0.263
NAGO-ANAGO	7 067	0.259
N'GAM-GAM	25 703	0.945
OUATCHI	280 131	10.300
PEDA(PLA)	10 966	0.403
PEULS	36 965	1.359
TAOULAMBA	231	0.008
TCHAMBA	26 285	0.966
TCHOKOSSI	32 035	1.177
YANGA	7 908	0.290
YORUBA	5 172	0.190
OTHER	45 995	1.691
OTHER AFRICAN COUNTRIES	59 754	2.197
NON AFRICANS	8 683	0.319
Total	2 719 622	

Source: Atlas of Regional Development of Togo (General population census conducted in 1981).

Article 1

Reply to question 2

Article 59, paragraph 2, of the Togolese Criminal Code refers to racial discrimination only in the context of insults. According to this article, “if the insult includes a pejorative reference to the victim’s ethnicity, religion or nationality, the fine may be doubled and the guilty party shall be liable to between 10 and 30 days of penal labour”. It clearly does not include every component of the definition of racial discrimination within the meaning of article 1 of the Convention, which refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. However, a definition of racial discrimination in keeping with the meaning of article 1 of the Convention is currently being incorporated in the Criminal Code in accordance with the section of the Programme for the Modernization of the Justice System on the harmonization of national legislation with international human rights instruments ratified by Togo. The preliminary draft of the Code has been adopted by the drafting committee and will soon be submitted to the Government for adoption so that the bill on the Criminal Code may be submitted to the National Assembly.

Reply to question 3

The principle that all human beings should enjoy equal dignity and rights is contained in article 11 of the Constitution. The provisions of domestic law which infringed on this principle were found in the Nationality Code and in the Individuals and Family Code under which, respectively, women could not pass on their nationality to their children and could not inherit from the deceased if during his lifetime he had not opted for the application of the modern law. With respect to the Nationality Code, article 32 of the Constitution provides that children born to a Togolese father or mother must be granted Togolese nationality by law. The international agreements on gender equality which confer rights and do not require any harmonization with domestic law before their application are being implemented, so that women now enjoy the same right to inherit as men. The constitutional principle set out in article 11 should be applied in domestic law. The Criminal Code has clearly not taken into account the legislative provisions suppressing the behaviour specified in article 11, paragraph 3, of the Constitution. This shortcoming will be remedied with the amendment of the Criminal Code, which is older than the Constitution, especially as it will incorporate the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination.

Reply to question 4

Pursuant to the provisions of articles 50 and 140 of the Constitution, the conventions duly ratified by Togo take precedence over domestic law and are directly applicable in principle. In practice, however, it is necessary to distinguish between conventions which simply confer rights and those which advocate making actions and acts a criminal offence.

In the former case, the Convention may be directly invoked before the courts which are required to apply it; in the latter, domestic law must be brought into line with the provisions of the Convention before it is applied by the courts. Thus, the provisions of the Convention which confer rights and which do not require compliance with domestic law may be directly invoked before the courts; those which call for the application of criminal penalties must comply with domestic law. For example, a provision of the Convention which makes discrimination a criminal offence may not be invoked to call for a conviction if domestic law has not yet provided for applicable penalties.

Article 2

Reply to question 5

Act No. 2005-004 of 9 February 2005 amending and supplementing Act No. 96-12 of 11 December 1996 on the membership, organization and operation of the National Human Rights Commission was adopted and promulgated.

Under new article 1 of this Act, the Commission is an independent institution subject only to the Constitution and the law, in accordance with article 152 of the Constitution.

No member of the Government or Parliament and no other person may interfere in the performance of its duties and all other government institutions must provide it with any assistance which it may require to maintain its independence, dignity and effectiveness.

It should be recalled that, following this reform, the International Coordinating Committee of National Institutions decided to grant the National Human Rights Commission A-status accreditation at its twentieth session, held in Geneva from 14 to 18 April 2008, which shows that the institution meets the requirements of independence, effectiveness and credibility set out in the Paris Principles governing national institutions for the promotion and protection of human rights.

Reply to question 6

The crisis in Togo has provided a clearer picture of the issue of discrimination. Therefore, to achieve the reconciliation process in Togo, the Office of the High Commissioner for Reconciliation and Strengthening National Unity was established by Decree No. 2008-032/PR of 11 March 2008.

Under article 3 of the Decree, the Office of the High Commissioner for Reconciliation and Strengthening National Unity is responsible for:

- Helping to establish a peaceful atmosphere necessary for national reconciliation
- Presenting to the President of the Republic all measures which may strengthen the effectiveness of the institutions involved in nation-building
- Proposing legislative or regulatory measures to establish a commission responsible for combating impunity and promoting forgiveness and reconciliation

- Proposing any relevant legislative or institutional measures to combat impunity, promote reconciliation and strengthen national unity
- Promoting community values of peaceful coexistence, a culture of dialogue and solidarity and the participation of citizens in everyday life based on the acceptance of differences
- Ensuring, in the fulfilment of its mandate, observance and implementation of the goals of combating impunity and promoting reconciliation, peace and national unity by all national authorities and actors

Furthermore, a study on the occurrence of ethnic strife has been carried out and the conclusions will be taken into consideration by the Office of the High Commissioner for National Reconciliation within the scope of its mandate.

Reply to question 7

Reports on national and international investigations to track down the perpetrators have been submitted to the Government, which has initiated national consultations with a view to establishing a truth, justice and reconciliation commission.

The measures called for to combat this phenomenon will be taken into account by the Office of the High Commissioner for National Reconciliation within the scope of its mandate.

In connection with the implementation of the national reconciliation policy, the Government has initiated national consultations with a view to establishing a truth, justice and reconciliation mechanism.

Reply to question 8

The national consultations launched on 15 April 2008 by the head of State seek to solicit the views of the population in order to determine the duties, organization and membership of the truth, justice and reconciliation commission.

This commission will begin its work at the end of the current national consultation process.

Reply to question 9

With respect to the civil service, the administration organized a national competitive examination in 2003 to recruit officials on the basis of equality, without ethnic, political or gender discrimination.

A new competitive examination has just been launched in 2008 for the recruitment of more than 3,000 officials. The candidates were requested to mention their prefecture of origin in their application. This system will facilitate the gradual restoration of balanced ethnic representation in the civil service without neglecting the qualifications factor.

Moreover, the Government is making concrete efforts to increase school enrolment in areas which lacked officials who could apply for a public service post.

This constitutes measures intended to promote the equal participation of all ethnic groups in the civil service.

In both the army and the police, the recruitment process adopted is best suited to promoting the participation of all ethnic groups. The commission responsible for recruitment has always cut across all prefectures of Togo and given priority to the natives of each town or village. In recent years, the commission has spent more time recruiting in the south than in the north (the commission spent four to six days recruiting in Lomé as opposed to two to three days in Kara). In order to carry out its work thoroughly, the national recruitment commission is composed of:

- A south commission
- A north commission

Reply to question 10

With respect to army reform, Act No. 2007-010 of 1 March 2007 on the status of Togolese military personnel and armed forces was adopted and promulgated. This Act specifies that the Togolese armed forces are national, republican and non-political. Several implementing decrees of this Act were adopted by the Council of Ministers on 23 January 2008. Among these decrees aimed at army reform there is one which establishes the Supreme Council of the Military Services whose purpose is to provide the Togolese armed forces with an organization for negotiation and consultation serving as an institutional framework within which problems specifically affecting soldiers are considered. The Supreme Council of the Military Services will express its views on a range of issues concerning the conditions and status of soldiers and will be apprised of draft implementing legislation on the general status of Togolese armed forces personnel.

A decree has also provided that the gendarmerie may be headed by a high-ranking official, a magistrate, or a general or superior officer of the gendarmerie. The main duties of the gendarmerie have also been mentioned, namely the duties of the judicial police, the administrative police and military duties.

It should be pointed out that persons are maintained after recruitment on the basis of a national competitive examination. The minimum required level is the general certificate of secondary education.

At this level, the recruit is intellectually capable of assimilating courses and notions of human rights modules.

The Force Sécurité Elections Législatives (FOSEL 2007), the security force deployed for the 14 October 2007 legislative elections, clearly demonstrated this new approach.

Before the legislative elections of 2007 the Government, in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), organized training modules for all elements of the security forces.

The following modules were provided:

- Retraining in the maintenance and basic principles of law and order
- Human rights
- First aid
- Civilian-military relations (African Security Sector Reform Programme)

Lastly, a leaflet laying down a code of conduct for the security forces during the performance of their duties was prepared and distributed to all persons concerned.

Today, it is gratifying to see that the conduct of the security and police forces has markedly improved. This was especially evident during the security forces' implementation of *Opération Araignée* among the population.

The police forces, which now perform their traditional duties of defending territorial integrity, and the security forces regularly attend information seminars and workshops on international humanitarian law, disarmament in general, the well-being of men, women and children, and first aid initiated by such institutions of the United Nations system as OHCHR, the United Nations Regional Centre for Peace and Disarmament in Africa, the United Nations Institute for Disarmament Research and the International Committee of the Red Cross, all of which are accredited in Togo.

Reply to question 11

Since the colonial period, the ethnic groups in northern Togo have been in the majority in the military service. These groups, made up mostly of former farmers and agricultural workers, are accustomed to physically demanding work, which accounts for their interest in the military service.

Recruitment within the Togolese army has always been voluntary and open to all ethnic groups. Despite the efforts of the State to ensure that all ethnic groups are represented within the army, the ethnic groups of the south have been reluctant to take up military service.

Reply to question 12

Non-governmental organizations have not taken part in drafting this report. Nevertheless, provisions have been made for actively involving NGOs in drafting future reports.

Article 4

Reply to question 13

The incorporation of the provisions of the Convention will necessarily lead to the adoption of new penalties to punish behaviour deemed discriminatory by clearly taking account of the seriousness of the behaviour.

It must be said that the courts have not had to register any complaints based on article 59 of the Criminal Code, nor has the Public Prosecutor's Office had to initiate ex officio legal proceedings in accordance with the aforementioned article.

Reply to question 14

The Togolese courts did not have to try the alleged authors of the biased articles which incite ethnic hatred and tribalism although, under article 86 of the Press Code, the authors of articles or broadcasts which incite interracial hatred are punishable by three months to one year of imprisonment. It should be recalled that the political situation at the time was not conducive to such trials, given that any trial against a journalist or newspaper was perceived as an encroachment on freedom of opinion. In order to avoid aggravating the situation, the Public Prosecutor's Office, which is responsible for legal proceedings, had considered that such proceedings would be ill-timed. It should be recalled that the truth, justice and reconciliation commission will be able to shed light on all these facts and decide on the course of action to take.

Reply to question 15

Racial discrimination exists in Togo. However, before 1990, there was no clear notion of this phenomenon. Therefore, the Togolese Government, with support from the United Nations Development Programme (UNDP), commissioned a study on ethnic and regional strife in Togo. This study has been added to the file of the Office of the High Commissioner for Reconciliation and Strengthening National Unity, which will make specific proposals to the Government.

Article 5

Reply to question 16

Article 32 of the Constitution has already solved the problem of the discriminatory provision that existed in the Nationality Code. At present, any child born of a Togolese father or mother is Togolese, unlike the former practice according to which a child was Togolese only if his or her father was Togolese.

Reply to question 17

In order to strengthen national unity, the State has not adopted specific measures to promote the equitable participation of ethnic groups in government posts, the National Assembly and the judiciary. It should be pointed out that an elected deputy is the representative of the entire nation.

Nevertheless, every prefecture is represented by at least two persons who have been elected to the National Assembly. In the composition of the Government, account is always taken of ethnic and regional balance.

Reply to question 18

In accordance with the provisions of the Political Parties Charter, in order for a political party to be legally constituted, its members must come from at least 20 of Togo's 30 prefectures; this condition is essential and is in the interest of both the party itself and the Togolese people.

Requests that do not meet this requirement are purely and simply rejected.

The act establishing the Political Parties Charter is well respected, and all of its provisions are implemented.

Reply to question 19

The disparities in the fields of health and education are linked to the density of the population in certain cities or prefectures. In order to reduce these disparities, health centres have been established in areas with high population density. On average, there is one health centre for 9,600 inhabitants. In order to encourage girls' school enrolment, the Government has decided to reduce their tuition costs in public schools.

Reply to question 20

It should be pointed out that the question of trafficking in children has not really been addressed except in Act No. 2005-009 of 3 August 2005 on trafficking in children. Before this Act, only persons who transferred children without the consent of the persons having authority over them were subject to sanctions for abducting children. Thus, every time a child's parents or guardians were involved, the judge had no authority to punish them. By recognizing that even parents or guardians may be prosecuted for trafficking or complicity in trafficking, the new text broadens the scope of criminalization.

The following courts have handed down decisions on this subject:

Dapaong court

Abdou Kompe, born in 1980 in Tatri, Kpendjal prefecture, to Kanfi Kompe and Boumpoa Gbambine; married, father of one child; Kombaté Takpandja Namoun, born in 1984 in Tatri, Kpendjal prefecture, son of Atine Kombate and Bouhan Djetar; married, father of one child; both [accused persons] reside in Côte d'Ivoire; they travelled through Dapaong and were prosecuted for trafficking in children.

The first was sentenced to 12 months' imprisonment, with a four-month suspension; the second was sentenced to 12 months' imprisonment, suspended, with two years probation.

The children were returned to their parents.

Notse court

Ama Okouwe, born ... Prosecuted for trafficking in children (two children) to Benin; sentenced to 24 months' imprisonment, with an 18-month suspension, and a fine of 100,000 CFA francs (CFAF). The children were returned to their parents in Akébou at the convict's expense.

Bafilo court

Abalo Manbafei, born in 1971 in Soumdina in Kozah prefecture, farmer, domiciled in Kpoya, Benin; prosecuted for trafficking in children (two children); sentenced to 24 months' imprisonment, with a 12-month suspension. The two children were handed over to the Sotouboua prefectural committee pending their return to their families.

Gnandi Saï Dare, born in 1971 in Banghaï, Bassar prefecture, farmer, residing in Iboho, Nigeria; prosecuted for trafficking in children (10 children); sentenced to 24 months' imprisonment, with a 12-month suspension; and his accomplice, Dandima Soukolmou, born in 1982 in Kagnigbara, Sotouboua prefecture, and also residing in Iboho. The children were returned to their parents by the Bassar prefectural committee.

Amina N'yiwam, born in 1981 in Bassar, female, trader living in Saki, Nigeria; prosecuted for trafficking in children (four children); sentenced to 24 months, with an 18-month suspension; the children were handed over to the Bassar prefectural committee pending their return to their families.

Adjoa Kontre, born in 1983 in Bafilo, female, trader living in Saki, Nigeria; prosecuted for trafficking in children (five children); sentenced to 24 months' imprisonment. The children were returned to their parents by the Haho prefectural committee.

Sokodé court

Abass Abdou, born in 1969 in Sokodé, prosecuted for trafficking in children; sentenced to six months' imprisonment, suspended, and to a fine of CFAF 50,000 and to CFAF 10,000 for the victim; the children were returned to their parents.

Zourékinini Issa Ousmane, born in 1973 to Ousmane Issa and Afissétou; prosecuted for trafficking in children; sentenced to 24 months' imprisonment; the children were returned to their parents.

Abdoulaye Akpo, born in 1960 to Djadjero Akpo and Amama Tchabana; prosecuted for complicity in trafficking in children; released for lack of evidence; the children were returned to their parents.

Talatou Boukari, born in 1973 to Egbelem Boukari and Adidja; prosecuted for facilitating trafficking in children (complicity); sentenced to 12 months, suspended; the children were returned to their parents.

As a preventive measure, the child victims are handed over to the prefectural committee for combating trafficking, which is responsible for monitoring the treatment of such children and their physical presence with their parents. Advice has been given to the parents of child victims, and they are encouraged, to the extent possible, to enrol their children in school or, if the children are of an appropriate age, to place them in apprenticeship.

The sentences against the perpetrators were handed down at the civilian level with a view to compensating the victims. Unfortunately, most of the time, the victims are not present at the time of sentencing, and the judge is obliged to uphold their rights.

Reply to question 21

The Peuhls are disadvantaged because they are a nomadic population and are less integrated into the community. They are the group with the lowest school enrolment, owing to their nomadic way of life. During the dry season, the seasonal migration originating in the Sahel increases the latent tension between the indigenous - often agricultural - populations and the Peuhls, whose herds destroy the fields.

Their temporary or permanent presence becomes a major problem in the parts of the country where population density exceeds the capacity to give them use of land, as is the case in the north-western part of Tône prefecture.

Reply to question 22

The text applicable to land ownership in Togo continues to be the Decree of 24 July 1906 “on the organization of the landed property system in the colonies and territories under the General Government of French West Africa”.

Article 19 of the aforementioned Decree makes a distinction between the property of indigenous people, which is subject to customary law, and property subject to French law, taking into account whether or not the land in question is registered. It is inferred from this article that, while the modern right to land is proven by the presentation of deeds and other documents, customary law remains subject to oral evidence. Thus, with regard to proof of ownership, the right to land varies according to region and customs, with one constant factor: proof by testimony. In spite of what has been written about customary property in Togo, it remains difficult to state exactly what the real reference is in cases where testimonies diverge. This is what prompted the National Commission for the Modernization of Legislation to deal with this matter by drafting new texts to be submitted to the Government.

Reply to question 23

In 2004, the Togolese Government, seeking to remedy the difficulties encountered in the functioning of the judiciary, undertook, with support from UNDP, a study of the judiciary that today has resulted in the preparation and execution of the National Programme for the Modernization of the Justice System. The Programme is currently in progress and focuses on the following points:

Material resources

With assistance from development partners, courts are provided with equipment, including microcomputers, usual codes and texts through the creation of a database accessible to everyone, the creation of libraries, and the creation of a judicial Intranet. This will support the Government's intention of improving the living conditions of magistrates through modification of their special status. The Government is also taking measures to give court clerks the special status.

All of these measures are no longer projects; some have already become a reality, such as the database, which will be launched in July 2008.

In the context of implementing the Programme for the Modernization of the Justice System, the European Union provided support to the Government with a view to constructing and equipping the Lomé and Kara courts of appeal, as well as rehabilitating certain existing infrastructures.

The Government has taken measures to grant each court a sizeable operating credit in order to avoid shortfalls of working equipment.

Training

France is currently strengthening the capacities of magistrates through the organization of retraining seminars and exchanges of experience. All these training activities will be crowned by the creation of a training centre for judicial professions; construction of the centre will begin in the coming months. Moreover, a team of magistrates is sent for one week to the National College of Magistrates in Bordeaux for training in the organization of a training centre. The training centre for judicial professions will train magistrates and provide ongoing training for judicial professionals.

Staffing

Every year, a competitive examination is held to recruit magistrates in order to increase the existing number of magistrates. This year, the magistrature is preparing to welcome 21 new magistrates who have just completed their training. Another class of 12 magistrates is currently being trained, and the competition has just been launched for the recruitment of another class of 10 magistrates.

The digitization of files of judicial personnel, which has just been introduced, will make possible the rational and effective management of personnel and the monitoring of careers; it will also make it possible to predict real staffing needs in the judicial service.

At the same time, court clerks are being trained in order to increase the number of clerks who are already active.

Reply to question 24

As we have mentioned with regard to the number of decisions handed down in application of article 59 of the Criminal Code, judicial remedies against racial discrimination are not used. This is most likely due to the fact that the population is not sufficiently aware of the existence of such remedies.

Reply to question 25

The National Programme for the Promotion and Protection of Human Rights, which was adopted by the Council of Ministers on 31 May 2007, provides for a subprogramme devoted to the dissemination of all human rights instruments ratified by Togo, including the International Convention on the Elimination of All Forms of Racial Discrimination. This dissemination activity will raise the population's awareness of the remedies that exist for victims of acts of racial discrimination.

Reply to question 26

The question relating to the State party's declaration concerning article 14 of the Convention is being studied.

Reply to question 27

In August 2001, prior to the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance, the National Human Rights Commission held a national workshop on racial discrimination. The impact of the workshop has not yet been evaluated.

Reply to question 28

The Government of Togo adopted Decree No. 98-108/PR of 17 November 1998 on the inclusion of human rights education in Togolese schools. The decree introduced the teaching of basic human rights, public freedoms, the dignity of the human person and subjects relating to these principles for training citizens in democratic culture and peace. However, this programme was not very successful owing to the difficulties facing the country. The National Programme for the Promotion and Protection of Human Rights, prepared by the Ministry of Human Rights and Consolidation of Democracy with support from UNDP and adopted by the Council of Ministers on 31 May 2007 devoted one section to the teaching of human rights and the dissemination of the international human rights instruments ratified by Togo. This Programme is just beginning to be implemented; a piloting committee has been established.

Reply to question 29

In order to strengthen national unity, the media broadcast programmes that promote tolerance among Togo's various ethnic groups, through sketches, special advertising features, etc.
