

Togo

The judicial system in Togo continued to be subject to gross interference from the executive throughout 1999. Magistrates are recruited, and their career is administered, on the basis of their political allegiance rather than on professional merit. There is a widespread practice of impunity for human rights violations which greatly contributes to public distrust in the judiciary.

Togo is a republic and attained independence from France in 1960. According to its Constitution, the country is led by an elected President as the head of state, a Prime Minister, drawn from the parliamentary majority, as head of the government, and a Council of Ministers, appointed by the President and the Prime Minister together.

General Etienne Gnassingbé Eyadéma has been President of Togo since a military coup d'état in 1967. On 21 June 1998, presidential elections were held and were won for the second time since 1993 by General Eyadéma. The results were contested with allegations of serious irregularities. On 24 June 1998, the Minister of the Interior usurped the National Electoral Commission's legal authority to validate election results and declared Mr. Gnassingbé Eyadéma officially elected. The President's party, the Togolesse People's Rally (Rassemblement du Peuple Togolais - RTP), continues to dominate political life in Togo, despite the fact that political opposition was legalised in 1991.

Legislative power is exercised by a unicameral National Assembly (Assemblée Nationale), whose deputies are elected for a five-year term and may be re-elected. On 21 March 1999, legislative elections were held, but were boycotted by the opposition parties and a majority of voters because of procedural irregularities and widespread fraud.

On 29 July 1999, the government and opposition parties signed the Lomé Framework Agreement (Accord-Cadre de Lomé), aimed at breaking the political deadlock which had existed since the 1998 presidential elections. According to the terms of this 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 also outlines a compensation plan for victims of political violence, but it does not provide for concrete measures to put an end to impunity for human rights violations. Moreover, the Amnesty Law of December 1994 is not challenged. This law offers impunity to those responsible for human rights violations and denies the victims and their families truth and justice (Article 2).

Human Rights Background

Togo has ratified a number of international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the African Charter on Human and Peoples' Rights.

Nevertheless, the human rights situation in the country is characterised by systematic violations. Impunity is widespread in Togo, particularly regarding officials close to President Eyadéma. Members of the armed forces (FAT), controlled by the President, continue to commit serious human rights violations including extrajudicial killings, beatings, arbitrary arrests and detention, as well as restricting the freedoms of speech and the press, assembly,

association and movement, and carrying out repeated harassment and intimidation. Perpetrators of gross violations of human rights are rarely brought to justice in Togo.

Prison conditions are extremely severe, with serious overcrowding, poor sanitation and a lack of proper medical care. Prolonged pre-trial detention is common: an estimated 50% of the prison population are pre-trial detainees. Arbitrary detention of journalists and human rights defenders is common.

The Judiciary

Although Article 113 of the Constitution establishes the judiciary as an independent authority, the executive power interferes with matters that are within the competence of the judicial system.

Structure of Courts

Togo's Constitution states that the judicial system is composed of a Supreme Court, two Courts of Appeal and Tribunals of First Instance. At the local level, the village chief or council of elders may try minor criminal and civil cases.

Located at 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 states that the Supreme Court is chaired by a judge, appointed upon the proposal of the High Council of the Magistracy (*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.

There exists only one Court of Appeal in Togo as the second one is not functioning. There is also a High Court of Justice which is the only competent jurisdiction to deal with cases against the head of state and crimes of high treason. The President, the Presidents of the chambers of the Supreme Court and four deputies, elected by the National Assembly, constitute the court. The deputies are also competent to try crimes committed by members of the Supreme Court.

The Constitutional Court is composed of seven members, several of whom belong to the ruling political party. Its main function is to rule on the constitutionality of laws. However, in Decision E-004/98, handed down on 2 July 1998, the court infringed the principle of the separation of powers by delivering a verdict legitimising illegal action by the Ministry of the Interior regarding electoral matters, rather than finding a breach by the Ministry of Article 71 of the Electoral Code. According to the court, the inaction of the Ministry may have blocked the evolution of the electoral process, so the court decided to validate the results of the elections which were generally accepted as being unfair and irregular.

There also exists a Military Tribunal for crimes committed by security forces. Trials before this are not public.

Court Administration

According to Organic Law 97-04 of 6 March 1997, the High Council of the Magistracy is composed of nine members: three judges from the Supreme Court, four from the Courts of

Appeal, a deputy from the National Assembly and a person chosen by the President based on his/her experience. The Council is headed by the President of the Supreme Court. All the members are appointed for 4 years, renewable only once.

A majority of the members of the High Council of the Magistracy are supporters of President Eyadéma. Judges who belong to the pro-Eyadéma Professional Association of Togo Magistrates (APMT) reportedly receive the most prestigious assignments, while judges who advocate an independent judiciary and belong to the National Association of Magistrates (ANM) are marginalised.

The Minister of Justice, following the advice of the CSM, chooses judges in accordance with Organic Law 96-11 of 21 August 1996. According to Article 3 of this law, judges' terms are fixed. However, there have been some cases where judges have been illegally "appointed" and because they protested against this they were sanctioned by the Minister of Justice who withheld their salary for several months.

Resources

The judiciary is understaffed and does not ensure defendants' rights to a fair and expeditious trial. There are approximately 100 judges in Togo. This is insufficient for an efficient running of the judiciary. There are hundreds of cases pending before each judge. Some detainees wait years to be tried. Other factors aggravate this situation, such as the problem of 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 at all. The rare number of judges who have complained about political interference in the judicial system did not dare to do so in public.

Appointment and promotion

Judges are recruited and appointed according to their political preference or their ethnic origin more than for their professional capacity. On 21 August 1996, a law that gives the judiciary more independence and increased resources was passed. However, this law is not yet in force. Judges' careers, including promotion, are under the control of the High Council of the Magistracy.

Due to a climate of terror and of a growing lack of confidence in the judiciary, official complaints are not even submitted regarding human rights violations. All these characteristics illustrate the serious lack of credibility and inefficiency of the Togolese justice system.