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TOGO

Time for accountability

32

**No political stability without
respect for human rights**



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TOGO

No political stability without respect for human rights

On 29 July 1999, a political agreement was signed in Togo by all political parties - both opposition parties and those supporting the President. This document, known as the *accord-cadre de Lomé*, Lomé Framework Agreement, aimed to break the political deadlock which had paralysed the country since the disputed presidential elections of June 1998. This agreement was reached primarily thanks to the mediation role played by four facilitators nominated by the European Union, *Francophonie* (the commonwealth of Francophone countries), Germany and France.

While acknowledging the renewal of inter-Togolese dialogue and the parties' commitment to this process of national reconciliation, Amnesty International notes that this agreement focuses on holding new elections in Togo and does not contain any concrete measures aimed at ending impunity, preventing further human rights abuses or promoting respect for human rights. Amnesty International also regrets that the Lomé Framework Agreement signatories did not challenge the 1994 amnesty law which, while allowing some prisoners of conscience to be released, also granted impunity to perpetrators of human rights violations.

President Gnassingbé Eyadéma recently made a public statement on impunity. In a letter dated 27 September 1999 to Amnesty International, he undertook to urge the Nigerien authorities to take "suitable measures to help end impunity" and to carry out appropriate investigations into the killing of President Maïnassara, "despite the amnesty proposed in the new Nigerien Constitution". Amnesty International is urging the Togolese President to do the same in Togo so that necessary measures are taken to promptly end impunity and to ensure that the 1994 amnesty law does not prevent judicial proceedings against those responsible for human rights violations¹.

After three decades of arbitrary arrests and detentions, torture, "disappearances" and extrajudicial executions being committed with total impunity, Amnesty International believes that national reconciliation is only possible if the victims and their families are guaranteed their rights to justice and to know the truth. Political stability in Togo will only last if all political parties make a commitment to reform the security forces, end impunity and open independent and impartial inquiries.

¹ When launching a report on Niger entitled: *NIGER, Impunity enshrined in the constitution* in September 1999, Amnesty International appealed to all heads of State in the sub-region, including the Togolese President, to bring pressure to bear on the Nigerien authorities so that an independent and impartial inquiry establishes who was responsible for the killing of President Maïnassara and that those suspected of these acts are brought to justice.

In a resolution dated 16 September 1999, the European Parliament echoed this concern for truth and firmly condemned "all forms of violence and human rights abuses committed in Togo" and called for independent inquiries into cases of torture and extrajudicial executions so that those responsible may be brought to justice.

In this context, Amnesty International positively welcomed the August 1999 declaration by the President of the UN Sub-Commission on Human Rights about setting up a commission of inquiry into extrajudicial executions which, according to Amnesty International and other human rights organisations, took place at the time of the Togolese presidential elections in June 1998². Amnesty International recalls that since the beginning of the decade it has regularly called for independent impartial inquiries to be opened. In the latest report, published in May 1999, the organization called upon the Togolese authorities to invite the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Special Rapporteur on torture and Working Group on Enforced or Involuntary Disappearances to visit Togo. To ensure that the truth is revealed, the commission of inquiry must be established in accordance with international standards for independence and impartiality. In particular, the commission should be given unlimited time to undertake its investigations and it must be free to visit wherever it sees fit in Togo as well as in neighbouring countries. As it undertook before the Sub-Commission, the Togolese Government must "provide the international commission of inquiry with help and assistance so that it will be able to accomplish its task with competence and within a reasonable time in accordance with international norms" and must "take all appropriate measures to ensure that the competent authorities cooperate fully with the international commission of inquiry". The members of the commission of inquiry must be selected for their impartiality, competence and independence and the findings of the inquiry must be made public. Amnesty International notes that the commission can only be established on the invitation of the Togolese authorities. To this day, the United Nations has still not received such an invitation from the Togolese Government.

In the current document, Amnesty International makes recommendations to the Togolese authorities and to all players in the inter-Togolese dialogue so that they can actively contribute to ending impunity which has reigned for three decades in Togo.

Amnesty International also urges that the mandate of those facilitating the inter-Togolese dialogue should include an explicit reference to look at measures required to end

² In this declaration, the Sub-Commission, "concerned by the allegations that several hundred people were victims of extrajudicial executions in Togo in 1998" noted that "the controversy which has arisen as to whether or not, or the extent to which, these allegations are true" and considered it urgent that "appropriate and effective investigation be undertaken in accordance with international norms and in an impartial and independent manner, so as to establish the truth". The Sub-Commission welcomed the proposal of the Togolese Government to ask the Secretaries General of the United Nations and the Organization of African Unity to set up a commission of inquiry in accordance with international standards and asked to "be informed by the Secretary-General of the United Nations and the Secretary-General of the Organisation of African Unity, at its next session, of the results of the efforts taken in the framework of the present statement". (E/CN.4/Sub.2/1999/L.10/Add.4).

impunity, to reform the institutional and legal framework for the protection of human rights and to guarantee that human rights defenders can work without fear of arrest or intimidation.

If light is not shed on past violations and if guarantees to prevent others are not in place, it will be difficult to introduce the rule of law.

The Lomé Framework Agreement

The presidential elections of June 1998 were marred by widespread fraud and serious human rights abuses. Independent observers made numerous criticisms of the way these elections were held. European Union observers deplored the fact that on the one hand the voting did not meet "the criteria for a free, transparent and fair election and on the other hand that the results as announced do not accurately reflect the votes cast by Togolese citizens". According to that same report, President Gnassingbé Eyadéma, who has been in power since 1967, was declared the winner "when the votes of only 35 of the 617 polling stations had been returned in the capital". As a result, the European Union renewed its decision to suspend aid to Togo; aid had been progressively reinstated since 1995 after it was suspended in 1993³.

Under strong international pressure, particularly from the European Union which made the resumption of aid conditional on positive measures in favour of democracy, the Togolese President had to begin negotiations with political opposition parties. At the beginning of 1999 four mediators, representing the European Union, *Francophonie*, France and Germany were nominated as facilitators for the planned negotiations.

The situation had effectively reached an impasse. The March 1999 elections had been boycotted by the opposition because the Togolese authorities had refused to challenge the result of the June 1998 presidential elections. To tackle this impasse, inter-Togolese discussions were organised in July 1999 under the auspices of the four facilitators. These negotiations, which had a slow start, eventually succeeded when the Togolese President announced that he would leave power in 2003, at the end of his current period of office which the Constitution states is not renewable, and that he would dissolve the National Assembly in 2000 so that new legislative elections can take place⁴.

On 29 July 1999, a framework agreement was signed by all parties of the opposition as well as those supportive of the President. This agreement provides for a *commission électorale nationale*

³ Amnesty International does not take a position on the legitimacy of maintaining or suspending aid or other economic links with countries where human rights are violated. Nor does the organisation take a position on punitive measures such as embargoes and the freezing of aid. However, Amnesty International urges donor countries to take note of the human rights situation in countries receiving their assistance and calls upon donor countries to use their influence to persuade the country's leaders to end these violations.

⁴ Togolese Constitution, Chapter IV, sub-heading 1, Article 59: "The President of the Republic is elected by direct universal suffrage for a five-year period renewable once. In no circumstances can anyone stay in office for more than two periods".

indépendante (CENI), Independent National Electoral Commission, to be set up "with responsibility for organising and supervising elections in co-operation with the Ministry of the Interior and other State bodies." The CENI will "be constituted to ensure equal participation by opposition parties and those supporting the President."

As far as respect for human rights is concerned, the document includes a generic commitment "to democracy, the rule of law, respect for human rights, development and security for all". The Agreement specifies that freedom of expression is a fundamental right and provides for the restructuring of *La Haute Autorité de l'Audiovisuel et de la Communication* (HAAC), The High Authority for Broadcasting and Communication, "so that it will reflect the diversity of views, fully play its regulatory role and guarantee access to the state media for all". However the text only mentions two concrete measures to tackle human rights violations: disbanding militias and providing financial compensation to victims.

There is no reference to the recommendations made by the United Nations Human Rights Committee in 1994 (CCPR/C.79.Ad.36) which deplored "the large number of cases of summary and arbitrary executions, enforced or involuntary disappearances, torture and arbitrary or unlawful detention committed by members of the army, security or other forces" and recommended that the Togolese authorities take the necessary steps to ensure the army and Togolese security forces respect human rights, to guarantee the independence and smooth running of the judiciary and to systematically carry out an inquiry into each violation so that those suspected of being responsible are brought to justice.

While welcoming the Agreement's provision for compensating victims, Amnesty International highlights that victims also have a right to the truth and to see those responsible brought to justice, as stipulated in Togo's obligations under the International Covenant on Civil and Political Rights (ICCPR), in particular Article 2, paragraph 3⁵ and Articles 12 and 13 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Amnesty International regrets that the signatories of the Lomé Framework Agreement did not challenge the 1994 amnesty law. At the time this law was passed, while welcoming the result that prisoners of conscience were released, Amnesty International emphasised that it simultaneously granted impunity to perpetrators of human rights violations. Amnesty International feared that Article 2 of the December 1994 law dealing with "all offences defined in criminal legislation and committed before 15 December 1994 and which have either a political nature or are politically motivated" would be interpreted as granting impunity to violators of human rights and in particular the Togolese security forces if their actions are considered to be political in nature.

⁵ Article 2 (3a) of the ICCPR states that each State Party undertakes "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

Since this law was passed, the organisation has urged the authorities to set up, without delay, independent and exhaustive inquiries into all allegations of extrajudicial executions, "disappearances" and torture. No inquiry has been opened in response to this demand. Amongst those which remain unpunished are, the Bé lagoon massacre in 1991 where at least 28 demonstrators were killed by the army; the bloody repression of a peaceful demonstration on 25 January 1993, when at least 20 people were killed by the security forces; the two massacres at the headquarters of the *Régiment interarmes togolais* (RIT) Togolese Combined Regiment, on 25 March 1993 and 6 January 1994, when at least 70 people, military personnel and civilians, were extrajudicially executed by the army. Moreover, inquiries opened into extrajudicial executions and "disappearances" were stopped after this law; notably the inquiry into the extrajudicial execution on 23 July 1992 of Togolese opposition leader Tavio Amarin, the extrajudicial execution of parliamentarian Gaston Edeh and two others found with him on 13 February 1994, and into the "disappearance" on 6 September 1994 of David Bruce, former Chief Secretary to the President of the *Haut Conseil de la République*, High Council of the Republic.

In November 1997, the Togolese authorities decided to allocate a sum of money to the families of Tavio Amarin, Gaston Edeh and Marc Atidepé, the latter having also been killed extrajudicially by the security forces. The financial compensation which the authorities offered to the relatives represented an acknowledgement that the security forces were implicated in this killings. However, the Togolese authorities have not explained how they reached this financial compromise. The family of Tavio Amarin indignantly took the proposal as an insult: "We do not want the money. We demand that justice is done and that the perpetrators of this crime are arrested". Civil society, and in particular the relatives of the victims, want independent inquiries to be pursued so that light can be shed on these killings and those responsible can be brought to justice.

As a general principle, Amnesty International believes that amnesty laws help to perpetuate impunity if they result in preventing prosecutions and stopping on-going inquiries or trials into human rights violations. Such measures are often justified by linking them to the need to bring about national reconciliation or to preserve security. In many cases, these measures are adopted either because of pressure from political leaders who perhaps want to avoid inquiries into past human rights violations or because of a reluctance to allow the prosecuting and judicial authorities to act independently. Not demanding that perpetrators of serious human rights violations are held accountable for their acts is an obstacle to national reconciliation. It encourages the guilty to continue committing violations or to incite others to do the same. Lastly, it also deprives the victims, their families and the population in general of their right to know the truth.

Amnesty International considers amnesty laws which prevent the truth being revealed and those suspected of responsibility for these acts being held accountable before the law to be unacceptable. The organization insists that the truth is always established and judicial proceedings are completed.

The organization recalls that Article 18 of the Declaration on the Protection of All Persons from Enforced Disappearance states that those suspected of these acts "shall not benefit from any

special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction". Moreover, amnesty laws which contribute to establishing the rule of impunity for perpetrators of human rights violations are incompatible with the Vienna Declaration and Programme of Action which was adopted on 25 June 1993 at the UN World Conference on Human Rights. These texts reaffirm the necessity that States to "abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violation, thereby providing a firm basis for the rule of law" (UN Doc. A/CONF.157/23, para.60) ⁶.

The United Nations Human Rights Committee has frequently reiterated that all amnesties which deny the right to remedy in cases of human rights violations are incompatible with the ICCPR.

Amnesty International also recalls that in the case of bringing General Pinochet to justice, the British, French, Belgian, Swiss and Spanish governments have allowed a procedure to be instigated against a former head of State despite the fact that an amnesty law is in force in Chile.

Not only does the Lomé Framework Agreement fail to challenge the rule of impunity which grips Togo, but it also lays open the possibility of institutionalising impunity. The text mentions the adoption of an "Ordinance for former heads of State and political leaders" as well as the adoption of an "Ordinance for the opposition" and a "Code of good conduct" to "establish the respective rights and duties of the opposition and the majority". The text highlights that "the rapid adoption of these Ordinances will contribute towards national reconciliation", but gives no indication about their possible content. Amnesty International fears that these proposed Ordinances for former heads of State and politicians, which are still not defined, open the way for impunity for numerous Togolese leaders who are suspected perpetrators of human rights violations.

Amnesty International is also concerned that, although the signatories of the Agreement have committed themselves to ensuring refugees and displaced persons can return promptly to Togo and to their homes, there is no reference to the security situation in which such a return could take place. Amnesty International is concerned that during recent years, several Togolese people who have found temporary refuge abroad have been extrajudicially executed, torture or detained without charge on their return. Between February and June 1997, the security forces have extrajudicially executed at least seven refugees after their return to Togo. One of those who escaped an attempted extrajudicial execution told Amnesty International in November 1998: "In June 1997, along with four former refugees from Ghana, we were in a car heading towards Kpalimé when the military fired on us without any warning close to Assahoun. The driver of the vehicle and four other people, including Koffi Amouzou and Koffi Roger Ahiakpo were killed." In January 1998, nine refugees suspected of robbery were handed over to the authorities in Lomé by Ghana, which has hosted a large number of Togolese refugees for many years. All of them were tortured on their arrival in Togo. One of them, Attiso Ntsukpui, died in detention. In January 1998, a former trade unionist whose asylum

⁶ See the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993.

application had been rejected in Germany was arrested after he was expelled back to Togo. As he was held at an unofficial detention centre not far from the airport road he managed to escape in September 1998. Amnesty International has also learned that eight other refugees expelled from Germany and Switzerland in 1998 were arrested after their forced return to the country.

Amnesty International's Recommendations

While recognising that the Lomé Framework Agreement is a first step towards political stability in Togo, Amnesty International is deeply concerned by the lack of any concrete measures aimed at ending impunity, investigating human rights abuses and bringing those responsible to justice. The text makes no commitment to implement measures needed to guarantee protection of human rights in Togo or to enable human rights defenders to work without fear of arrest and intimidation.

Amnesty International believes that durable political stability in Togo can only be achieved, if there is genuine rule of law. The organization urges the European Union and the other facilitators of the inter-Togolese dialogue to ensure its mandate includes responsibility for dealing with measures to be taken to end impunity, to reform the institutional and legal framework for the protection of human rights and to guarantee that human rights defenders can work without fear of arrest or intimidation.

In order to institute genuine rule of law in Togo, Amnesty International urges the Togolese authorities to:

- End the harassment of human rights defenders and guarantee their safety so that they can work without fear of being arrested or intimidated. In particular, all charges must be dropped against human rights defenders arrested in connection with the publication of Amnesty International's report in May 1999.⁷

Amnesty International also urges all players in the inter-Togolese dialogue to ensure that the following issues are explored and that agreement is reached on them:

- Taking concrete measures to end impunity and prevent further human rights abuses. This means going beyond the right to compensation, and recognising the right of victims and their families to know the truth, to justice and to rehabilitation, in line with Togo's contractual obligations to the International Covenant on Civil and Political Rights;
- Bringing all suspected perpetrators of human rights violations to justice.

⁷ See *Human Rights Defenders under attack*, AI Index: AFR 57/32/99.

- Amending Article 2 of the 1994 amnesty law, and in the same vein, ensuring that the planned Ordinance for former heads of State and political leaders and the Ordinance for the opposition does not grant impunity to violators;
- Providing concrete guarantees to ensure that people who have sought refuge abroad or who are internally displaced can return in total security;
- Restructuring and reforming the Togolese security forces. This restructuring must be in accordance with the principles of international law, including the following UN texts: Code of Conduct for Law Enforcement Officials, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Standard Minimum Rules for the Treatment of Prisoners;
- Reforming and strengthening the judicial system so that it is impartial and independent and so that it can attend to respect for human rights, in accordance with the principles of the International Covenant on Civil and Political Rights, the Basic Principles on the Role of Lawyers, Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary, and Basic Principles on the Independence of the Judiciary.

Amnesty International also urges the facilitators to ask their governments and intergovernmental organisations to undertake to ensure that Togolese asylum seekers are not forcibly repatriated if they risk being victims of human rights violations on their return.

National reconciliation in Togo relies upon restoring confidence between all Togolese people on the basis of a common agreement. Such an agreement cannot be lasting unless it has three elements: the pursuit of the truth about past violations, the bringing to justice of those responsible for human rights abuses and the assurance that all citizens will enjoy protection of their rights.

KEYWORDS: IMPUNITY / ELECTIONS / INVESTIGATION OF ABUSES / AI AND GOVERNMENTS / AMNESTIES FOR VIOLATORS
