



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the initial report of Togo, adopted by the Committee at its fiftieth session (29 April–17 May 2013)

1. The Committee on Economic, Social and Cultural Rights considered the initial report of Togo on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/TGO/1) at its 12th to 14th meetings (E/C.12/2013/SR.12–14), held on 6 and 7 May 2013, and adopted the following concluding observations at its 28th meeting, held on 17 May 2013.

A. Introduction

2. The Committee appreciates the presentation of the initial report of Togo which, though submitted with some delay, is in keeping with the Committee's guidelines and the State party's written replies to the list of issues (E/C.12/TGO/Q/1/Add.1).

3. The Committee welcomes the constructive dialogue held with the State party, and notes that its implementation of the Covenant was considered by the Committee in 2001 in the absence of a report. The Committee notes with appreciation the presence of a high-level delegation consisting of government ministers and members of the interministerial committee responsible for the preparation of initial and periodic treaty body reports. The Committee also expresses its appreciation for the delegation's answers to the questions posed during the dialogue.

B. Positive aspects

4. The Committee welcomes the ratification by the State party of the following international human rights instruments:

(a) The optional protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict (respectively on 2 July 2004 and 28 November 2005);

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (20 July 2010);

(c) The Convention on the Rights of Persons with Disabilities and its Optional Protocol (1 March 2011).

5. The Committee welcomes the adoption of laws that strengthen the protection of economic, social and cultural rights, including the following:

- (a) The Female Genital Mutilation Prohibition Act (Act No. 98-016 of 17 November 1998);
- (b) The Labour Code (Act No. 2006-010 of 13 December 2006);
- (c) The Children's Code (Act No. 2007-017 of 6 July 2007);
- (d) The Water Code (Act No. 2010-004 of 14 June 2010);
- (e) Act No. 2010-018 of 31 December 2010 amending the HIV/AIDS Protection Act (Act No. 2005-012 of 14 December 2005);
- (f) The Health Insurance Act (Act No. 2011-003 of 18 February 2011 instituting mandatory health insurance for civil servants and similar categories);
- (g) The Togo Social Security Code (Act No. 2011-006 of 21 February 2011);
- (h) The Industrial Free Zone Statutes Act (Act No. 2011-018 of 24 June 2011);
- (i) The Togo Statistical Activities Organization Act (Act No. 2011-014 of 3 June 2011).

6. The Committee notes the measures taken by the State party to help give effect to economic, social and cultural rights, in particular:

- (a) The adoption in 2011 of the National Policy on Gender Equality and Gender Equity;
- (b) The introduction of human rights focal points in every ministry;
- (c) The refund provided for simple malaria diagnosis and treatment for children under the age of 10 and of antiretroviral treatment for persons infected with HIV;
- (d) The partial refund for caesarean deliveries;
- (e) Measures taken to eradicate Guinea worm disease;
- (f) Measures taken to reduce the prevalence of female genital mutilation.

C. Principal subjects of concern and recommendations

7. The Committee regrets that, despite their constitutional status, the Covenant and its provisions have never been invoked by the courts of the State party. The Committee also regrets that the national laws do not give effect to economic, social and cultural rights (art. 2, para. 1).

The Committee recommends that the State party take appropriate steps to give effect to the Covenant in the national legal order and to bring national law into line with the Covenant, where necessary. The Committee requests that the State party include information in its next periodic report on rulings by the national courts and the administrative authorities that give effect to the rights protected by the Covenant. The Committee draws the attention of the State party to its general comment No. 9 (1998) on the application of the Covenant at national level.

8. The Committee notes with concern that the possibilities for securing an effective remedy in the event of violations of economic, social and cultural rights are limited in the State party owing to the prohibitive cost of court proceedings, the fact that legal aid is not available and the lack of awareness of the Covenant and available remedies.

The Committee recommends that the State party take whatever steps are required to guarantee the right to effective remedies in the event of violations of Covenant rights. The Committee strongly urges the State party to establish a system of legal aid. The Committee also recommends that it provide information on economic, social and cultural rights and their justiciability to the population and to the members of the judicial branch.

9. The Committee regrets the absence of reliable statistics that would allow for an accurate assessment of the fulfilment of economic, social and cultural rights in the State party.

The Committee calls upon the State party to include data collection and the production and use of statistics for human rights indicators, including for economic, social and cultural rights, in its National Strategy for the Development of Statistics. In this respect, the Committee refers the State party to the conceptual and methodological framework for human rights indicators that was developed by the Office of the United Nations High Commissioner for Human Rights. The Committee requests that the State party include in its next periodic report comparative annual statistics on the exercise of each of the Covenant rights. These statistics should be broken down by age, sex, rural/urban population, ethnic origin and other relevant criteria.

10. The Committee notes with concern that the budget allocations for social sectors are insufficient, and that this impedes the steady realization of the economic, social and cultural rights set forth in the Covenant (art. 2, para. 1).

The Committee urges the State party to increase to the extent possible the budgets allocated to social sectors such as housing, food, health and education and to the Ministry of Human Rights, in keeping with its obligation to make the most of its available resources, in particular by making use of the resources freed up by debt relief operations. The Committee draws the attention of the State party to its general comment No. 3 (1990) on the nature of States parties' obligations.

11. The Committee considers the prevalence of corruption in the administration of the State party to be a matter of concern (art. 2, para. 1).

The Committee recommends that the State party redouble its efforts to combat corruption and related impunity, and to ensure transparency in the conduct of public affairs, in law and in practice. The Committee also recommends that the State party adopt an anti-corruption law and enforce compliance with article 145 of the Constitution on the declaration of property and assets. The Committee further recommends that the State party take measures to draw the attention of politicians, members of parliament and national and local officials to the economic and social costs of corruption, and of judges, prosecutors and members of law enforcement agencies to the importance of the strict application of the law.

12. The Committee notes with concern that certain provisions of the State party's legislation discriminate against persons with disabilities, such as those of article 23 of Ordinance No. 1 of 4 January 1968, concerning the general civil service regulations, on the conditions of physical aptitude required for recruitment to the civil service. The Committee further notes with concern that persons with disabilities in the State party find themselves socially excluded, including on account of behavioural and physical barriers. The Committee also considers it regrettable that the State party has not supplied reliable and complete data either regarding the number of persons with disabilities or on their enjoyment of economic, social and cultural rights (art. 2, para. 2).

The Committee recommends that the State party: (a) reinforce its legislation promoting equality, in particular by abrogating all provisions that discriminate against persons with disabilities and by introducing the obligation to provide reasonable adjustments and to apply a quota system in employment; (b) establish a system for collecting data on the situation of persons with disabilities; (c) continue efforts to remove behavioural and physical barriers; and (d) provide sufficient resources for the implementation of the national strategy for the protection and promotion of persons with disabilities in Togo and its plan of action.

13. The Committee regrets that provisions that discriminate against women were maintained in the Individuals and Family Code of 2012, including the possibility of applying customary law in matters of succession. The Committee is also concerned about delays in the adoption of the revised Criminal Code, which includes a prohibition of all forms of discrimination (art. 3).

The Committee recommends that the State party revise its legislation with a view to amending any provisions that are discriminatory or likely to lead to discrimination once enforced, and to ensuring that it prohibits any form of discrimination in the exercise of economic, social and cultural rights. In this respect, the Committee draws the attention of the State party to article 2, paragraph 2, of the Covenant and to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights. The Committee furthermore calls upon the State party to speed up adoption of the new Criminal Code.

14. The Committee is concerned about the persistence of the many practices that are harmful to women and girls listed in paragraph 317 of the State party's report, such as early marriage, forced marriage, or the exploitation of girls in fetishist convents, despite the fact that they are prohibited by law and despite the steps taken by the State party to raise awareness of the matter (art. 3).

The Committee calls upon the State party to redouble its efforts to combat practices that are harmful to women and girls, by, for example, acting on studies that are corroborated by empirical data on the root causes of such practices, paying due attention to their various manifestations in ethnic groups and in customs, and conducting an ongoing awareness campaign to draw attention to such practices. The Committee refers the State party to its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.

15. The Committee is concerned about the scale of unemployment in the State party, despite the implementation of the National Employment Policy. While noting the delegation's statement to the effect that the National Employment Agency is one of the most viable public bodies, the Committee would like to express its concern regarding the Agency's ineffectiveness in the light of the very low number of persons who received assistance in 2012 (art. 6).

The Committee recommends that the State party speed up the adoption and implementation of the new National Employment Policy and a functional action plan. The Committee also recommends that the State party incorporate a rights-based approach into this policy. The Committee directs the State party's attention to its general comment No. 18 (2005) on the right to work. It also encourages the State party to do more to make the public aware of the existence and terms of reference of the National Employment Agency.

16. The Committee notes with concern the very low level of the minimum wage and of the wages paid in the public sector. It considers to be a matter of even greater concern the fact that the minimum wage does not apply to rural workers, domestic workers or workers in the informal sector (art. 7).

Recalling the State party's obligation to safeguard the right of all persons to fair and decent working conditions, the Committee urges the State party to raise the minimum wage strictly in line with the cost of the "basket of household goods" for workers and their families and to ensure that the minimum wage is applied in all sectors. The Committee also calls upon the State party to revise the salary scale in the public sector in order to ensure a decent standard of living for civil servants and their families.

17. The Committee is concerned that working conditions in the free zone remain appalling and that only a fraction of the workforce is covered by social security insurance. The Committee also notes with concern that labour inspectors have been denied access to companies operating in the free zone, despite the entry into force of the 2011 Act on the status of the free zone (art. 7).

The Committee urges the State party to ensure that labour law is applied in companies operating in the free zone and to impose effective sanctions in the event of non-compliance. The Committee further recommends that the State party ensure that the parties concerned are familiar with the new 2011 Act on the status of the free zone so as to ensure that labour inspectors are given free access to all companies operating in the free zone.

The Committee requests that the State party provide, in its next periodic report, statistics on labour disputes, including those involving companies in the free zone. The Committee also asks the State party to clarify the role of the Company for the Administration of Free Trade Zones (Société d'Administration des Zones Franches, SAZOF) in the new legal framework.

18. The Committee is concerned that persons working in the informal sector, including domestic workers, do not enjoy fair and satisfactory working conditions (arts. 7 and 9).

The Committee recommends that the State party apply the Labour Code and social legislation within the informal sector, in particular by opening it up to labour inspection services. The Committee requests that the State party deal with regulatory obstacles to job creation in the informal sector.

19. The Committee notes with concern that a large proportion of the State party's population enjoys no form of social protection, despite the passage into law of the Medical Insurance Act and the Social Security Code in 2011, under which coverage of the schemes was considerably expanded. The Committee also notes with regret the slowness with which the planned reforms are being introduced and is concerned by reports that the financial future of the social security institutions involved is not secured (art. 9).

The Committee urges the State party to speed up the implementation of the social security system in order to achieve the extended coverage provided for in the Social Security Code of 2011 as rapidly as possible. The Committee recommends that the State party ensure that these reforms are based on lasting institutions and procedures that are accessible to all. The Committee refers the State party to its general comment No. 19 (2007) on the right to social security.

20. The Committee draws attention, with particular concern, to the fact that child labour is widespread in the State party, especially in the most deprived regions (art. 10).

The Committee urges the State party to implement the National Plan of Action to Combat Child Labour and to ensure that it is properly funded.

21. The Committee is concerned that the difficulties involved in obtaining civil status certificates prevent many individuals in the State party from exercising their economic, social and cultural rights (art. 10).

The Committee requests that the State party expedite the registration of the births of persons who do not have identity papers and to ensure that civil status services are made available across the country.

22. The Committee notes with concern that the great majority of the population of the State party, including women and young people, live in poverty despite the poverty reduction strategy implemented since 2008. The Committee also notes with concern that poverty is more acute and affects more persons in rural areas and in certain regions, such as Savanes, the Central Region, Kara and the Maritime Region (art. 11).

The Committee recommends that the State party ensure that the accelerated growth and employment creation strategy is given sufficient priority and resources to combat poverty in rural areas and the most deprived regions. The Committee requests that the State party include in its next periodic report comparative data, disaggregated by year and by rural and urban area, as well as indicators on the number of persons living in poverty and extreme poverty and on the progress accomplished with its efforts to combat poverty. The Committee draws the State party's attention to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/2002/22-E/C.12/2001/17, annex VII).

23. The Committee notes with concern the shortage of housing in the State party and the precarious state of the dwellings of the greater part of the population, who live in slums. The Committee is also concerned that the target for the construction of new housing in 2012 has not been met, especially considering that the targets for the following 10 years are far more ambitious (art. 11).

The Committee recommends that the State party ensure that the national housing strategy is based on the right to decent housing and allows priority access to newly built housing for the most disadvantaged and marginalized individuals and groups, including slum dwellers. The Committee also recommends that the State party substantially increase the proportion of the national budget allocated to housing in order to address the scale of the problem. The Committee draws the State party's attention to its general comment No. 4 (1991) on the right to adequate housing.

24. The Committee is concerned by the inadequacy of the legal framework regulating the right to housing, notably with regard to tenancy and forced eviction (art. 11).

The Committee recommends that the State party regulate rental arrangements with a view to eradicating the abuses identified and to establishing the right to affordable and decent housing for tenants. The Committee also recommends that the State party align its legislation on forced eviction with international norms, particularly with respect to its obligation to ensure that no persons find themselves homeless or the victims of other human rights violations following an eviction. The Committee refers the State party to its general comment No. 7 (1997) on the right to adequate housing: forced evictions.

25. The Committee regrets the absence of security of tenure and security of occupancy in the State party, owing to the obsolescence of the legal framework, the slowness and cost of property transactions and procedures, as well as corruption and fraud. The Committee also notes with concern the vulnerability of landowners to land seizure (art. 11).

The Committee calls upon the State party to reform the real estate sector as soon as possible and urges it to take account of the vulnerability of rural landowners to land seizure, as well as the needs of the most marginalized and vulnerable social groups, with regard in particular to access to land. The Committee further calls upon the State party to implement the series of recommendations (No. 28) on land-related issues formulated by the Truth, Justice and Reconciliation Commission.

26. The Committee notes with deep concern the large number of cases that have been brought to its attention where communities and landowners whose land has been seized in the public interest have not been provided with compensation or relocated appropriately (art. 11 and art. 1 para. 2).

Taking note of the statement by the delegation to the effect that the State party is reviewing expropriation cases, the Committee calls upon the State party to resolve, as a matter of urgency, the situation of the groups and individuals concerned by expropriation in the public interest, for whom compensation or replacement rent have not been paid.

Furthermore, the Committee urges the State party to align the legal provisions on expropriation, including Decree No. 45-2016 of 1 September 1945 regulating expropriation in the public interest, with the relevant international norms. In particular, the Committee recommends that the right of dwellers, local communities and landowners to prior, free and informed consent in matters that could have an impact on their lives be protected by law. The Committee also draws the attention of the State party to the basic principles and guidelines concerning development-based evictions and displacements (A/HRC/4/18), which were prepared by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living.

27. The Committee is concerned about the harmful environmental and social impact of the natural resource extraction activities undertaken in the State party (art. 11 and art. 1, para. 2).

The Committee recommends that the State party strengthen the legal framework governing the protection of the environment and social rights in the area of mineral exploitation in the light of the problems that have emerged as a result of these activities. The Committee also recommends that the State party ensure that the decree implementing Act No. 2011-008 of 3 May 2011 on the contribution of mining companies to local and regional development establishes provisions that allow tangible benefits for the realization of the economic, social and cultural rights of the communities concerned.

28. The Committee deplores the food insecurity and malnutrition that affects a large part of the population in the State party, notwithstanding the fact that the National Agricultural Investment and Food Security Programme has been implemented. The Committee is further concerned by the marketing of food products that do not comply with legal standards (art. 11).

The Committee requests that the State party, through its National Agricultural Investment and Food Security Programme and the activities of the National Food Security Agency, ensure that: (a) the legal framework of the right to food is strengthened; (b) the activities conducted are aimed at implementing the right to food by including the various components of that right, namely adequacy, quality, availability and physical and economic accessibility; and (c) the responsibilities of the various stakeholders are clearly defined, particularly where the implementation of the national programme is concerned. The Committee draws the State party's attention to its general comment No. 12 (1999) on the right to adequate food.

29. The Committee notes with concern the difficulties that the State party faces in upholding the right to health. The Committee notes the inadequacy of the resources allocated to the health sector and the impact that this has on human resources and health infrastructure, as well as the high cost of health care for households, public health problems such as malaria and diarrhoeal diseases, and infant and maternal mortality rates (art. 12).

The Committee urges the State party to: (a) increase the resources allocated to the implementation of the national health policy adopted in 2012 and draw up a timetable for meeting the Abuja objective; (b) ensure that the health policy is drafted with the aim of realizing the right to health; and (c) disseminate and ensure compliance with the Health Code adopted in 2009. The Committee refers the State party to its general comment No. 14 (2000) on the right to the highest attainable standard of health.

30. The Committee is concerned by the proliferation of unauthorized private medical practitioners and the illegal market for pharmaceutical products, the quality of which cannot be guaranteed.

The Committee recommends that the State party ensure that no unauthorized medical practitioners may practice medicine in the State party. It also requests that the State party as soon as possible introduce legislation to combat the illegal market in pharmaceutical products and launch campaigns as planned to make the public aware of the dangers inherent in such products. The Committee further recommends that the State party ensure that pharmaceutical products are affordable, including for disadvantaged and marginalized groups, in order to avoid the need to resort to illegal goods.

31. The Committee is concerned by the high prevalence of HIV in the State party, especially among vulnerable groups. The Committee also notes with concern that free antiretroviral treatment is not provided throughout the country and that supplies of such treatment were interrupted in 2009 and 2010.

The Committee urges the State party to: (a) adopt implementing legislation for Act No. 2005-12 on the protection of persons against HIV/AIDS and ensure the effective application of that Act, in particular by creating awareness among both the public and the authorities responsible for its implementation; (b) extend refunding for the cost of antiretroviral treatment to the whole country and ensure that vulnerable groups have equal access to such treatment; and (c) ensure that stable funding is allocated for that purpose in order to prevent any interruption in the supply of antiretroviral treatment.

32. The Committee notes with concern that regular visits are not made by the authorities to psychiatric institutions, despite provisions to that effect in the Health Code (art. 12).

The Committee urges the State party to adopt and implement the implementing legislation on the application of the Health Code with respect to the protection of mental health as soon as possible. In particular, the Committee urges the State party to include clear provisions in the text on visits to centres for persons with mental disorders, as provided for in article 127 of the Health Code, and on regular inspections and effective judicial oversight of internment. The Committee requests that the State party provide details in its next periodic report of the mental health situation in the State party.

33. The Committee notes with concern that access to safe water and sanitation is insufficient, particularly in rural areas and in certain regions. The Committee is also concerned at inadequate monitoring of water quality and the pollution in urban areas caused by deficiencies in waste and sewage treatment and disposal (art. 12).

The Committee urges the State party to develop public sanitation, waste and sewage treatment services and safe drinking water distribution systems, particularly in rural areas and in the Savanes and Kara regions, and to clean up sites that have become polluted by wastewater. The Committee recommends that a separate and better funded budget line be created for water management and sanitation in the budget for the health sector. The Committee invites the State party to provide information in its

next periodic report on the impact of the implementation of the national action plan for water management and sanitation. The Committee draws the State party's attention to its general comment No. 15 (2002) on the right to water and its statement on the right to sanitation (E/C.12/2010/1).

34. The Committee notes with concern the high illiteracy, dropout and repetition rates in the State party, particularly among girls. The Committee is further concerned that the education system in the State party is affected, inter alia, by a critical shortage of teachers, insufficient infrastructure and the proliferation of primary and secondary schools arising from local initiatives (arts. 13 and 14).

The Committee recommends that the State party: (a) allocate sufficient resources to uphold the right to education; (b) address the underlying causes of its school dropout and repetition rates and of the disparity between girls and boys with respect to their enjoyment of the right to education; (c) adopt a literacy and non-formal education policy; and (d) ensure that minority languages and human rights are taught at all levels of the education system. The Committee draws the State party's attention to its general comment No. 13 (1999) on the right to education.

35. The Committee regrets that it has not been provided with information on the application of the principle of cultural self-identification in the State party or on the lawfully protected rights of ethnic groups (art. 15).

The Committee requests that the State party provide information in its next periodic report on the application of the principle of cultural self-identification in the State party. In view of the State party's ethnic diversity, the Committee recommends that it ensure that its laws protect the rights guaranteed to all ethnic groups, including the right to enjoy their cultural diversity, their traditions, their customs and their own languages, as well as all other manifestations of their identities and cultural ties. The Committee also calls on the State party to act upon the recommendations of the Truth, Justice and Reconciliation Commission concerning ethnic disputes (recommendation No. 30). The Committee directs the State party's attention to its general comment No. 21 (2009) on the right of everyone to take part in cultural life.

36. The Committee recommends that the State party review and adopt the national plan for the implementation of human rights recommendations in the light of the treaty bodies' recommendations as soon as possible. The Committee also urges the State party to allocate the necessary financial and human resources to put that plan into effect.

37. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which it signed on 25 September 2009.

38. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. The Committee also encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

39. The Committee invites the State party to continue to cooperate with the Office of the United Nations High Commissioner for Human Rights and with the relevant specialized agencies and programmes of the United Nations in Togo on matters related to the protection of economic, social and cultural rights.

40. The Committee requests that the State party disseminate these concluding observations widely among all sectors of society, including the civil service, the judiciary and civil society organizations, and to provide information in its next periodic report

regarding the steps taken to implement them. The Committee encourages the State party to invite civil society organizations to take part in discussions leading up to the submission of its next periodic report.

41. The Committee invites the State party to submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2006/3).

42. The Committee requests that the State party submit its next periodic report, in accordance with the guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 May 2018.
