



# International Covenant on Civil and Political Rights

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## Human Rights Committee 132nd session

### Summary record of the 3781st meeting

Held via videoconference on Tuesday, 29 June 2021, at 12.30 p.m. Central European Summer Time

*Chair:* Ms. Pazartzis

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*The meeting was called to order at 12.30 p.m.*

### **Consideration of reports submitted by States parties under article 40 of the Covenant**

*Fifth periodic report of Togo (CCPR/C/TGO/5; CCPR/C/TGO/QPR/5)*

1. *At the invitation of the Chair, the delegation of Togo joined the meeting.*
2. **Mr. Trimua** (Togo), introducing the fifth periodic report of Togo (CCPR/C/TGO/5), said that, since the review of the previous report in 2011, the country had made great strides in developing its legislative framework through the adoption of laws in such areas as freedom of expression, organization of the judiciary, land rights, the Criminal Code, military justice, excessive use of force and family law. Togo had also modernized its institutional framework pursuant to Act No. 2019-003 of 15 May 2019 amending the Constitution of 1992. That reform had strengthened all governmental institutions, along with the protection of fundamental rights. Political rights had also been reinforced by, for example, putting in place a two-round voting system with direct universal suffrage for presidential elections.
3. With regard to specific issues relating to articles 1 through 27 of the Covenant, he wished to point out that incitement of ethnic hatred was an offence punishable under article 553 of the Criminal Code of 2015 and, in the case of journalists, also under article 157 of the Press and Communications Code. The Government did not envisage the repeal of the provisions criminalizing sexual relations between consenting adults of the same sex because it did not view that sexual orientation as being consistent with the country's social values.
4. Articles 311 to 313 of the Criminal Code contained specific provisions on the prevention and punishment of all forms of discrimination against women. The Personal and Family Code, which had been amended in 2012 and 2014, provided under article 42 that monogamy was the form of marriage provided for under ordinary law; polygamy was the exception rather than the rule. Act No. 2018-005 of 14 June 2018, the Land and Property Code, guaranteed women's access to land on an equal footing with men. In recent years, the Government had rolled out programmes to promote the advancement of women, including by improving their representation in the civil service. The current Prime Minister and Head of Government was a woman, while the National Assembly, the National Human Rights Commission, the High Commission for Reconciliation and Strengthening of National Unity and the Office of the Ombudsperson were all led by women. In the Government, women currently held 34.3 per cent of the ministerial positions.
5. To combat gender-based violence, Togo had established 15 outreach and counselling centres to provide shelter and psychosocial support for victims. A national strategy to combat gender-based violence was being implemented, along with various sectoral programmes, under which women were encouraged to report cases of abuse so that the authorities could intervene and bring those responsible to justice. The Education Sector Plan 2014–2025 prohibited all forms of violence against women and girls in schools. The Council of Ministers was currently considering a draft decree that would establish a national commission to combat trafficking in persons.
6. Togo had abolished the death penalty in 2009 and had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, in 2016. Since then, the Government had gone even further by including a provision on the abolition of the death penalty and of sentences of life imprisonment in the Constitution.
7. Regarding the prohibition of torture, the Criminal Code of 2015 had been amended to incorporate a definition of torture in line with international standards. The National Human Rights Commission served as the national preventive mechanism against torture. To prevent the excessive use of force, security and law enforcement agencies covered the subject in their initial and in-service training courses, while the Act on the Special Status of Police Personnel of 2015 contained provisions aimed at increasing officers' familiarity with the ethical standards of their profession and their respect for established procedures.
8. The recommendations of the Truth, Justice and Reconciliation Commission continued to be implemented, notably in relation to compensation for the victims of the political

violence that had accompanied the presidential elections of 2005. Between 12 December 2017 and 21 December 2019, the High Commission for Reconciliation and Strengthening of National Unity had drawn on a total budget of over 6 billion CFA francs to provide compensation to more than 8,725 victims. The process would continue with community and collective reparation pursuant to recommendation No. 54 of the Truth, Justice and Reconciliation Commission.

9. While article 15 of the Constitution stipulated that no one might be arbitrarily arrested or detained, there had been some irregularities. Inspection services in police and gendarmerie units conducted regular checks to ensure that the legal time limits of police custody were respected.

10. The Government recognized that convicted prisoners and accused persons should be held separately, although historical and structural factors had hindered the application of that principle. Nevertheless, work had recently commenced on a programme to renovate and expand prison infrastructure in order to allow for the separation of convicted and remand prisoners in the future. It was hoped that the new facilities, together with measures such as presidential pardons and parole, would also relieve prison overcrowding.

11. The Legal Aid Act of 2013 had not entered into force because difficulties with regard to its implementation had arisen. A proposal to amend the Act to facilitate its application remained under consideration. The State recognized the principle that accused persons should receive the assistance of a lawyer from the moment of their arrest, and legal assistance was automatically provided to persons accused of serious offences.

12. Concerning the right to a fair trial and the independence of the judiciary, the Supreme Council of Justice had launched an extensive programme designed to ensure that justice officials were held to the highest moral standards. Disciplinary actions taken against judges and prosecutors, which formerly had preserved their anonymity, were now published in full. The new Judicial Code introduced in 2019 strengthened the foundations of the justice system and allowed for greater specialization within the judiciary.

13. To ensure the promotion and protection of the rights of refugees and asylum seekers, the appeals board envisaged under the Refugee Status Act of 2016 had been established and was now operational. Togo had ratified the Convention on the Reduction of Statelessness on 5 November 2020.

14. The bill on freedom of association, which had been withdrawn so that the Government could work with civil society organizations to improve the text, would be reintroduced without delay once the necessary amendments had been made. As a secular State, Togo promoted freedom of religious expression and authorized the establishment of places of worship of all faiths. The reasons why the Ministry of the Interior had refused to register some religious associations included, for example, the fact that applicant churches were located in prohibited areas or, in some cases, the questionable moral standards of the leadership of some of the associations. In others, the applicants had failed to submit the correct documents.

15. The mission of the High Audiovisual and Communications Authority of Togo was to ensure the freedom and protection of the press and other media and to monitor media ethics. The Authority was currently undergoing a reform process intended to strengthen the protection of journalists and promote freedom of expression. Article 497 of the Criminal Code, which provided for prison sentences for offences such as defamation, insulting a representative of the Government and insulting the representatives of public authority, did not apply to journalists in the exercise of their functions. Indeed, the Constitutional Court, in a decision of 29 April 2019, had confirmed that journalists were subject only to the provisions of the Press and Broadcasting Code. The Act on Freedom of Access to Public Information and Documentation and its implementing decree were now in force. Minor amendments had been made to Act No. 2011-010 of 16 May 2011 in regard to the conditions for exercising the right to freedom of assembly and to peaceful public demonstrations in order to take into account ongoing security threats and the need to protect the rights of residents.

16. While Togo had made undeniable progress, significant challenges remained, including those encountered in the course of efforts to implement the recommendations of

human rights mechanisms, foster an individual and collective culture of human rights, and strengthen the professionalism of human rights organizations. The Government listened to the views and comments of its partners, civil society and citizens and was striving to enhance the promotion of human rights by maintaining a steady pace of reform despite the constraints imposed by the security and public health situations.

17. **Mr. Ben Achour**, noting that Togo had ratified the Second Optional Protocol to the Covenant, said that he was interested to know whether the Government had deposited its instrument of ratification with the United Nations. He would also appreciate more extensive information on the application of the provisions of the Covenant by the Togolese courts.

18. While the implementation of several recommendations made in the Committee's previous concluding observations (CCPR/C/TGO/CO/4) was welcome, it remained unclear whether the Government also planned to bring the Code of Criminal Procedure into line with international standards regarding the right to a fair trial and legal safeguards against torture and ill-treatment. He also wondered to what extent the 2019 law on national security, the 2019 law on assemblies and the 2018 law on cybersecurity were in conformity with the Covenant.

19. The Committee would appreciate an explanation of why the reports produced by the National Human Rights Commission were confidential unless the Commission decided to publish them. It would also welcome clarification on whether the Commission had a mandate, under the Organic Act establishing the Composition, Organization and Functioning of the National Human Rights Commission, to bring cases involving human rights violations to court, or whether it merely reported such cases to the judicial authorities.

20. Various sources had contended that the report published by the National Human Rights Commission following an investigation into allegations of torture made by Kpatcha Gnassingbé and his co-detainees had been falsified by members of the Government and that threats had been made against the President of the National Human Rights Commission, who had left the country fearing for his safety. He would therefore be grateful if the delegation could respond to the allegations of government interference in the Commission's work.

21. Regarding paragraph 8 of the list of issues prior to submission of the fifth periodic report (CCPR/C/TGO/QPR/5), the State party was to be commended for amending the applicable law so that confessions alone were no longer admissible as evidence, as that would help to discourage the extraction of forced confessions. The definition of torture in the State party's Criminal Code, while largely in line with the one accepted in international law, lacked an important element, as it did not explicitly state that acts of torture were defined as such when committed by or at the instigation of or with the consent of a public official. As acts of torture were apparently covered by the statute of limitations set out in the Code of Criminal Procedure, it would be necessary to establish that they were not subject to any such limitation in order to bring the national law into line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party had commented in its report that, since the amendment of the law to incorporate the definition of torture, no complaints of torture had been registered and that, because criminal law was not retroactively applicable, it was not possible to list previous complaints that had been categorized as intentional violence. The Committee could not accept such a proposition. Even before the amendment of the national law in 2016, acts of torture had been prohibited under international law, which, according to the Togolese Constitution, was of a higher rank than national law. Very serious allegations of torture had been noted by national and international non-governmental organizations even before the new legal provisions had entered into force, including the arrest and ill-treatment of activists from the Parti National Panafricain (Pan-African National Party) (PNP) in 2017 and the death of a prisoner at the Kpalimé prison in May 2018 following his ill-treatment.

22. **Mr. Quezada Cabrera** said that the Committee would like to find out whether cases of suspected incitement of ethnic hatred by political leaders and journalists during the 2005 elections had been investigated and prosecuted and, if so, with what outcomes. The State party had merely reported that no investigation had been undertaken to identify the perpetrators owing to the reconciliation process launched by the Truth, Justice and Reconciliation Commission and the subsequent establishment of the High Commission for

Reconciliation and Strengthening of National Unity. The Committee would like to know what legal basis had been invoked for the decision not to prosecute, whether the Truth, Justice and Reconciliation Commission had publicly indicated the names of persons suspected of having incited ethnic hatred and whether the reparations programme designed by the Truth, Justice and Reconciliation Commission provided for monetary or moral compensation or measures to honour the memory of the victims.

23. In the head of delegation's opening statement, he had said that the Government did not intend to repeal the law criminalizing sexual relations between consenting adults of the same sex. The Committee would like to know whether the State party was protecting human rights defenders who sought to uphold the rights of lesbian, gay, bisexual, transgender and intersex persons and whether it had adopted measures to raise awareness among security and law enforcement officers and public servants of issues related to sexual orientation and gender identity with a view to protecting sexual minorities.

24. **Ms. Tigroudja**, noting that provisions that were deeply discriminatory against women remained on the books, said that she was disturbed to see that, despite the recommendations of the Committee and also of the Committee on the Elimination of Discrimination against Women, polygamy was still legal. In addition, following the dissolution of a marriage, women, unlike men, were obliged to wait 300 days before remarrying. The Committee would be interested to learn to what extent the new anti-discrimination provisions in the Criminal Code regarding women's access to land were being implemented in practice. It would also be of interest to know whether the awareness programmes carried out by the Government in an effort to reconcile traditional practices with modern legal standards were proving successful in upholding the rights, including inheritance rights, of women who had either been forced into marriage, who were living out of wedlock with their partners or who, under customary law, were still actually considered to be their husband's property.

25. In view of the fact that marital rape had recently been defined as a criminal offence, she would appreciate information on the application of the new law, including details about the provisions on sentencing in cases where a person was convicted of that crime. She wondered why the Criminal Code established lesser penalties for marital rape than for other cases of rape and what measures the Government had taken to assist victims and raise awareness of the problem. It would be advisable to adopt a distinct legal provision that addressed the various types of violence perpetrated against women. The Committee would appreciate further clarification about the compensation for victims of sexual violence to which the State party report referred in paragraph 66.

26. The Committee had received reports that female genital mutilation was practised in border areas where, for example, Togolese citizens crossed into Burkina Faso to have such an operation carried out. She would be interested to learn what specific results had been achieved by the Government's programmes for eliminating the practice. Lastly, she would like to invite the delegation to specify what steps the State party was taking to put a stop to illegal, unsafe abortions, including in the context of the coronavirus disease (COVID-19) pandemic, and to ensure access to safe abortions in accordance with its international commitments.

*The meeting was suspended at 1.35 p.m. and resumed at 1.50 p.m.*

27. **Mr. Bidassa** (Togo) said that, under the new version of the Criminal Code adopted in 2016, the last paragraph of the article on the crime of torture specified that the crime was not subject to a statute of limitations and was punishable by 20 to 30 years of deprivation of liberty. The guards accused of ill-treatment in the death of the inmate at the Kpalimé prison had been arrested and were facing prosecution. An investigation was being conducted into the treatment in 2017 of PNP activists to which Mr. Ben Achour had referred, but it was currently on hold. Complaints had been filed in the case, but certain formalities, such as the payment of deposit fees by the persons bringing cases before the investigating judge, had not yet been completed.

28. **Ms. Gnassa** (Togo) said that it was currently estimated that only about 0.3 per cent of Togolese girls under the age of 15 had been subjected to female genital mutilation. The Government was targeting awareness campaigns at traditional chiefs and local community leaders in an effort to counter the practice in the border regions where it persisted. A national

programme to discourage early marriage and pregnancy had been implemented up until 2019, and the Government was currently planning to conduct an evaluation of the programme with a view to adopting further measures. Youth centres, in-school and extracurricular programmes and a special-purpose hotline had been set up to address such issues as sex education and reproductive health in an effort to help put an end to domestic and sexual violence and to avert unwanted pregnancies.

29. **Ms. Tebie-Amoussou-Koutete** (Togo) said that the Government carried out awareness-raising and training activities for traditional chiefs to give them a sense of how important it was for women to have access to land and to the associated income-generating opportunities. The Rural Women's Land Empowerment Programme had recently been established to support women's groups working on that issue. The Government was considering the possibility of repealing the provision of the Personal and Family Code that required women to wait 300 days after the dissolution of a marriage before entering into a new one, as that provision was increasingly considered to be outdated. Polygamy had become exceptionally rare.

30. **Mr. Bakai** (Togo) said that, in 2017, a group of political parties, led by PNP members, had started to hold very violent demonstrations in violation of the law. The violence had spread throughout a large area of the country after the demonstrators had obtained authorization from the Government to organize events in several different places simultaneously. The demonstrations had descended into a form of guerilla warfare that had resulted in a number of deaths. Faced with that grave situation, which was coupled with the threat of terrorism, the Government had decided to amend Act No. 2011-010 of 16 May 2011 on freedom of assembly in order to protect the citizens of Togo. The Government was aware that the amendments were not entirely compatible with the Covenant and was discussing ways in which to rectify that situation.

31. **Mr. Akpaou** (Togo) said that the reparation provided to victims of human rights violations by the High Commission for Reconciliation and Strengthening of National Unity included financial compensation. In addition, all vulnerable victims received medical and psychological care, while non-vulnerable victims were assessed by psychologists and provided with special care if necessary. Togo had deposited its instrument of ratification of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, on 14 September 2016. A bill that would amend Organic Act No. 2018-006 of 20 June 2018 on the composition and organization of the National Human Rights Commission had been approved by the Council of Ministers and was being considered by the National Assembly. The bill would address all the concerns raised by the Committee about the workings of the Commission.

32. **Mr. Ayewouadan** (Togo), noting that efforts to address the practice of polygamy were ongoing, said that it was important to recognize the progress that had already been made in that regard, taking into account the social context. There were plans to repeal the provision that prevented women from remarrying for a period of 300 days following the dissolution of their previous marriage. The new rules that had been introduced in order to secure access to land for women were helping to ensure that statutory law prevailed over customary law. The provisions relating to marital rape should be considered within the broader social context. The aim of those provisions was to prevent marriages from breaking down as a result of a conviction for marital rape. For repeat offenders, the penalty for marital rape was the same as for rape in general. Awareness-raising campaigns were being carried out in order to help prevent marital rape and to encourage people to report such offences.

33. **Mr. Trimua** (Togo) said that the legislature had left it up to the National Human Rights Commission to decide whether or not it wished to make its reports public because some victims might not want the details of their cases to be disclosed. Under the bill that would amend Organic Act No. 2018-006, the Commission would be required to publish its annual reports but could exercise its discretion in publishing or withholding its thematic reports. The Commission had the power to refer cases directly to the courts, including, as of 2019, the Constitutional Court.

34. **Kpatcha Gnassingbé** had never been subjected to torture. In its ruling in the case of *Kpatcha Gnassingbé et al. v. Togo*, the Court of Justice of the Economic Community of West

African States had ordered the State of Togo to compensate those complainants who had been found to be victims of torture. The State of Togo had complied with that order. Koffi Kounté, former President of the National Human Rights Commission, had left the country because of fears for his safety. Although those fears might have been justified at the time, he no longer had any reason to be afraid of what might happen to him if he returned to Togo. The Government was ready to take any measures necessary to help him – and anyone else in a similar situation – to return to the country. Prior to the revision of the Criminal Code in 2015, there had been no specific penalty for acts of torture under national law. Such acts had been classed as intentional violence for the purposes of prosecution. Any cases of torture that had occurred since the entry into force of the amended Criminal Code could be reported and would be dealt with by the judicial authorities. Accusations made against the State in reports submitted to the Committee by civil society actors were allegations, not established facts, and should be referred to as such, in line with the principle of the presumption of innocence.

35. Although Togolese society was not ready for the legalization of same-sex conduct, no one had ever been arrested or imprisoned because of his or her sexual orientation. Unfortunately, victims of violence perpetrated against them on the basis of their sexual orientation were often reluctant to reveal the motivation for the offence when filing a complaint, which meant that it was difficult to gather accurate data on the subject. Similarly, women victims of marital rape were disinclined to lodge a formal complaint because they did not want to disclose details of their relationship with their husband.

36. Civil society consultations were under way on a bill concerning the protection of human rights defenders. Any concerns raised about the protection of human rights defenders and social workers who served as advocates for lesbian, gay, bisexual, transgender and intersex persons would be taken into account. In addition, the bill that would amend Organic Act No. 2018-006 of 20 June 2018 on the composition and organization of the National Human Rights Commission would formalize the Commission's role as a protector of human rights defenders.

37. The Personal and Family Code stipulated that persons whose spouse had died were entitled to remain in the marital home for up to 30 months after the death. The application of that provision in practice was being evaluated, and further amendments would be made to the Code if necessary. Feminist organizations were doing important work on the ground to raise awareness of the legislative changes that had been introduced to protect the rights of women, and the Government would continue to encourage their efforts. Information on the performance of clandestine abortions during the pandemic would be provided in writing.

38. **Mr. Ben Achour** said that he would like to know exactly what kinds of cases could be referred to the courts, including the Constitutional Court, by the National Human Rights Commission.

39. **Ms. Tigroudja** said that her question as to whether there were plans to define violence against women as a specific criminal offence had not yet been answered.

40. **Mr. Muhumuza** asked why the initiation of criminal proceedings in cases of torture was conditional on the payment of a deposit fee by the persons bringing such cases before a judge.

*The meeting rose at 2.30 p.m.*