



## International Covenant on Civil and Political Rights

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### Human Rights Committee

101st session

New York, 14 March–1 April 2011

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

#### Concluding observations of the Human Rights Committee

#### Togo

1. The Human Rights Committee considered the fourth periodic report of Togo (CCPR/C/TGO/4) at its 2774th and 2775th meetings, held on 14 and 15 March 2011 (CCPR/C/SR.2774 and 2775). It adopted the following concluding observations at its 2793rd meeting, held on 28 March 2011 (CCPR/C/SR.2793).

#### A. Introduction

2. The Committee welcomes the fourth periodic report of Togo, prepared in accordance with the Committee's guidelines, which was submitted somewhat late. It thanks the State party for having submitted its written replies (CCPR/C/TGO/Q/4/Add.1) in advance. It also thanks the delegation for having answered the questions put to it orally and supplied other information in the course of its dialogue with the Committee.

3. The Committee appreciates the contribution that the Togolese non-governmental organizations have made to its work and recalls the State party's obligation to respect and protect the human rights of all human rights defenders in the country.

#### B. Positive aspects

4. The Committee welcomes the State party's accession, during the period under consideration, to international instruments relating to human rights guaranteed by the Covenant, in particular:

- (a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 20 July 2010;
- (b) The Convention on the Rights of Persons with Disabilities, on 1 March 2011.

5. The Committee is also pleased that the State party adopted:
- (a) Legislation abolishing the death penalty, on 23 June 2009;
  - (b) Act No. 2005-04 of 9 February 2005 amending Framework Act No. 96-12 of 11 December 1996 on the composition, organization and operation of the National Human Rights Commission (CNDH) to bring it into line with the Paris Principles.

### **C. Principle subjects of concern and recommendations**

6. While it notes the State party's assurances that legislative reforms are well advanced, namely the imminent adoption of the Criminal Code (CCPR/C/TGO/4, para. 98), the Code of Criminal Procedure and the Personal and Family Code (CCPR/C/TGO/4, para. 47), the Committee notes with concern that the reforms were still at the planning stage, while the Committee had already made a recommendation on their implementation in its preceding concluding observations in 2002 (CCPR/CO/76/TGO) (article 2 of the Covenant).

**The State party should amend its legislation to bring it into line with the Covenant, especially in the areas covered by the Criminal Code, the Code of Criminal Procedure and the Personal and Family Code.**

7. As in its preceding concluding observations in 2002 (CCPR/CO/76/TGO), the Committee regrets that, notwithstanding articles 50 and 140 of the Constitution, which give precedence to the Covenant over domestic law, the provisions of the Covenant have not been taken into account in judicial decisions, although they have sometimes been invoked by the parties in court proceedings. It regrets that the State party has not taken the necessary measures to enforce some of the provisions of the Covenant under domestic law (art. 2).

**The State party should take the necessary measures to enforce the provisions of the Covenant under domestic law and provide appropriate instruction and further training for judges, lawyers and court officers concerning the content of the Covenant to ensure that it is enforced by judicial authorities.**

8. While noting the efforts made to bring the National Human Rights Commission (CNDH) into line with the Paris Principles (General Assembly resolution 48/134, annex) through the adoption of the Act of 9 February 2005, the Committee observes that the Commission's limited budget does not permit it to carry out its mandate fully. The Committee is concerned about the lack of follow-up to recommendations made by the Commission (art. 2).

**The Committee encourages the State party to allocate additional funds to the Commission so that it can fulfil its mandate effectively and bring cases before the courts if necessary.**

9. The Committee is concerned about the failure of the State party to impose penalties on political leaders and journalists whose incitement to ethnic hatred during the 2005 elections brought about serious breaches of human rights, such as the violation of the right to life and massive population displacements. The Committee expresses concern at the continuing impunity for such crimes and at the fact that this state of affairs makes it easier for similar violations to recur (arts. 2 and 20).

**The State party should adopt the legislative reforms needed to criminalize any advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence and impose criminal penalties on any person making statements whose effect is the incitement to such acts, in violation of article 20 of the Covenant.**

10. The Committee notes with regret that the serious human rights violations committed during and after the presidential elections of 24 April 2005, six years after they occurred, have yet to be investigated, that the perpetrators have not been prosecuted and convicted and that compensation has not been granted to the victims of those violations (art. 2).

**With a view to combating the impunity that persists in Togo, the State party should continue its efforts to bring the work of the Truth, Justice and Reconciliation Commission to an early conclusion. Independent and impartial investigations must also be conducted in order to shed light on the human rights violations committed in 2005 and prosecute those responsible. In this connection, the Committee emphasizes that the establishment of a transitional system of justice cannot serve to dispense with the criminal prosecution of serious human rights violations.**

11. The Committee notes with concern that the legislative reforms guaranteeing equal rights for men and women, in particular the adoption of a new Criminal Code and Personal and Family Code, have still not been completed, although the State party has been announcing for years that they would be. The Committee is concerned that the bills in question still fail to take account of its own recommendations to introduce domestic violence and marital rape into the Criminal Code as separate offences and to repeal all provisions discriminatory against women, and also the recommendations of the Committee on the Elimination of Discrimination against Women relating to polygamy. Furthermore, the Committee regrets that the State party has still not developed a statistical tool to keep track of complaints of violence committed against women (arts. 2, 3 and 26).

**The State party should speed up its legislative reforms to align its domestic law with the Covenant and ensure that women are not subjected to de jure or de facto discrimination. The legislation should make acts of violence against women such as domestic violence and marital rape offences entailing penalties under the Criminal Code that are commensurate with their gravity. The State party should also enable the courts to develop the statistical tools to keep track of cases of violence against women.**

12. While noting the progress achieved in making Togolese society aware of gender equality issues, the Committee remains concerned that discriminatory laws have remained in force and that few women are recruited in the civil service and in positions of authority.

**The State party should amend any provision of the Personal and Family Code that perpetuates inequality between men and women, such as the stipulation that the man is the “head of the family”. The State party should promote the recruitment of women in the civil service and the role of women in positions of authority. The Committee draws the attention of the State party to its general comment No. 28 (2000) concerning equality of rights between men and women.**

13. The Committee notes with regret that female genital mutilation continues to be widely practised despite the measures taken by the State party to put an end to it. The Committee is also concerned that the practice is not punished by the Togolese criminal system (arts. 2, 3, 7 and 26).

**The State party should continue and expand its efforts to end traditions and customs that are discriminatory and contrary to article 7 such as female genital mutilation. The State party should step up its efforts to increase awareness about female genital mutilation, particularly in communities where it is still widespread. It should penalize the practice and ensure that those who perform female genital mutilation are brought to justice.**

14. The Committee remains concerned about the criminalization of sexual relations between consenting adults of the same sex, punishable by 1 to 3 years of imprisonment and

a fine of up to 500,000 CFA francs under article 88 of the current Criminal Code. As pointed out by the Committee and other international human rights bodies, such criminalization violates the rights to privacy and to protection against discrimination set out in the Covenant. The Committee's concerns are not allayed by the information furnished by the State party that the provision in question is not applied in practice or by its statement that it is important to change mindsets before modifying the law in this regard (arts. 2, 9, 17 and 26).

**The State party should take steps to decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation into line with the Covenant. The State party should also take the necessary steps to put an end to prejudice and the social stigmatization of homosexuality and send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons based on their sexual orientation.**

15. The Committee remains concerned that since its last concluding observations were issued in 2002 (CCPR/CO/76/TGO), the State party has not yet adopted criminal legislation that defines and criminalizes torture explicitly and that the use of torture and cruel, inhuman or degrading treatment still goes unpunished (arts. 2 and 7).

**The State party should adopt criminal legislation defining torture on the basis of international standards and legislation criminalizing and penalizing acts of torture with penalties commensurate with their gravity. The State party should ensure that any act of torture or cruel, inhuman or degrading treatment is prosecuted and penalized in a manner commensurate with its gravity.**

16. The Committee remains concerned at the allegations of torture and ill-treatment in detention facilities, particularly the National Intelligence Agency (ANR) facilities, and by certain deaths alleged to have resulted from abuse in prison. The Committee deplores the lack of any reply from the State party concerning the number of complaints filed regarding torture or ill-treatment and its failure to act on these complaints. It also deplores the fact that investigations are not conducted to shed light on the cases of death in prison (arts. 6, 7 and 2).

**The State party should take steps to investigate all allegations of torture and ill-treatment and all deaths in detention. Such investigations should be conducted expeditiously in order to bring the perpetrators to justice and provide effective compensation to victims.**

17. The Committee is concerned about the large number of persons who are arbitrarily detained and the fact that no immediate remedy to challenge the legality of detention is available. The Committee is also concerned about the lack of training for judges, who apparently consent to the use of detention for debt (arts. 9, 10 and 11).

**The State party should take steps to guarantee the right of anyone who has been deprived of liberty to have access to an immediate remedy to challenge the legality of detention and make visits to places of detention systematic in order to identify and put an end to all arbitrary detention, including of persons detained for debt.**

18. While aware of the State party's efforts to ease prison crowding, particularly through the construction of additional facilities — though this measure, in and of itself, would hardly be sufficient to resolve overcrowding — the Committee remains concerned that prison conditions in Togo are such that they constitute a violation of article 10 of the Covenant. Such overcrowding is partly attributable to the persistent phenomenon of arbitrary detention, resulting in the number of pretrial detainees being out of all proportion with the number of persons convicted. The Committee considers it a source of deep concern

that, according to the State party, there is no mechanism for detainees to go before the judge with complaints about their conditions of detention (arts. 9 and 10).

**The State party should take steps to ensure that: (a) every detainee has access to mechanisms for reporting violations of which they are victims, in particular arbitrary detention or deplorable conditions of detention; and (b) measures are taken to restore such persons' right to liberty or to conditions respectful of human dignity when in detention.**

19. The Committee is concerned about the State party's observation that the principle of presumption of innocence is flouted by judges and that the practice of pretrial detention has become the norm, and release the exception. The Committee is also concerned about detainees' lack of access to counsel and delays in the adoption of legislation on legal aid. Although in practice, persons who cannot afford an attorney are provided with the services of a public defender, one is not assigned to them until the final stages of criminal proceedings (arts. 9 and 14).

**The State party should reinforce the importance of the principle of the presumption of innocence and the other guarantees covered by article 14 of the Covenant in training for judges. The Committee invites the State party to adopt criminal legislation guaranteeing all persons deprived of liberty access to an attorney from the outset of their detention, along with legislation on legal aid. The State party should adopt the legislation required to give effect in practice to the right to compensation for miscarriage of justice.**

20. The Committee notes with concern the unjustified restrictions on freedom of expression, in particular the censorship of certain media by the High Audio-visual and Communications Authority (HAAC), whose independence and operating procedures have been called into question. The Committee is concerned about the restrictions that are imposed on the freedom to demonstrate peacefully and the varying degree of such freedom depending on whether the demonstrations are planned in Lomé or elsewhere in the country. It is also concerned about the threats made against certain journalists and human rights defenders (arts. 18, 19, 21 and 22).

**The State party should take steps to ensure that the new act ensuring the freedom to demonstrate is in conformity with the Covenant. The State party should also review the statutes and operating procedures of the High Audio-visual and Communications Authority in order to guarantee its independence and impartiality and strengthen its authority. Any infringement on the freedom of thought and expression of journalists and human rights defenders or any attack on their integrity must be thoroughly investigated. Those who commit such acts must be prosecuted and subject to criminal penalties.**

21. The Committee is concerned that minorities are underrepresented in the civil service and the army in particular. It also notes with concern that neither the existence of indigenous peoples in Togo nor their right to free, prior and informed consent is recognized (arts. 2 and 27).

**The State party should take the necessary steps to guarantee the recognition of minorities and indigenous peoples. It should also ensure that indigenous peoples are able to exercise their right to free, prior and informed consent. The State party must also give minorities in Togo the means for better representation in public life and positions of responsibility.**

22. The State party should disseminate widely the Covenant, the Optional Protocol to the Covenant, the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty, the fourth periodic report, its written replies to the Committee's list of issues

and these concluding observations so as to raise awareness among the judicial, legislative and administrative authorities, civil society, non-governmental organizations active in the country and the public. The Committee also suggests that the report and the concluding observations be translated into the other official language of the State party.

23. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, the information requested on the assessment of the situation and implementation of the Committee's recommendations contained in paragraphs 10, 15 and 16 above.

24. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 1 April 2015, information on the implementation of other recommendations that are made, and of the Covenant as a whole. It also recommends that the State party include civil society and non-governmental organizations active in its territory in the drafting of its fifth periodic report.

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