



## International Covenant on Civil and Political Rights

Distr.: General  
9 December 2016  
English  
Original: French  
English, French and Spanish only

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### Human Rights Committee

#### List of issues prior to submission of the fifth periodic report of Togo\*

##### A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on measures taken to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/TGO/CO/4<sup>1</sup>). Please also indicate the measures taken to give full effect to all the provisions of the Covenant in the domestic legal order, and describe the mechanisms in place to ensure full compliance with the Committee's Views under the Optional Protocol to the International Covenant on Civil and Political Rights.

2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations, and provide examples of cases in which the provisions of the Covenant have been referred to by national courts. Please indicate whether there are any continuous training programmes for judges, lawyers and court officers concerning the content of the Covenant and its primacy over domestic law.

##### B. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the previous recommendations of the Committee

###### Constitutional and legal framework within which the Covenant is implemented (art. 2)

3. Given the adoption on 11 March 2016 of the new Act on the composition, organization and operation of the National Human Rights Commission, which allows the President of the Republic to appoint four of the Commission's nine members, please explain how this appointment procedure ensures the independence of the Commission, in

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\* Adopted by the Committee at its 118th session (17 October-4 November 2016).

<sup>1</sup> Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations.



accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). With reference to the recommendations made by the Committee in its previous concluding observations (para. 8), please provide information on the human and financial resources allocated to the Commission to enable it to fulfil its mandate effectively. Please also provide statistics since 2011 on the number and type of complaints received by the Commission and its response, where applicable, to the complaints of violations of civil and political rights referred to it. Please indicate whether the Commission's findings are made available to the public and provide information on the State party's implementation of recommendations made by the Commission since 2011.

**Non-discrimination and the rights of persons belonging to ethnic, religious, linguistic or sexual minorities (arts. 2, 20, 22, 26 and 27)**

4. With reference to the recommendations made by the Committee in its previous concluding observations (para. 9), please provide information on measures taken, including legislative measures, to prohibit all advocacy of ethnic hatred constituting incitement to discrimination, hostility or violence. Please clarify whether cases of suspected incitement of ethnic hatred by political leaders and journalists during the 2005 electoral process have been investigated and prosecuted, and indicate the outcomes of any such proceedings.

5. In the light of the Committee's previous concluding observations (para. 14) and the adoption on 2 November 2015 of the revised Criminal Code, which continues to criminalize sexual relations between consenting adults of the same sex and increases the applicable penalties, please indicate whether the State party envisages repealing such provisions so as to bring its legislation into conformity with the Covenant. Please clarify reports that people have been harassed, ill-treated and arbitrarily detained by the security forces because of their sexual orientation or gender identity, actual or perceived, and report on the measures taken to ensure the protection of victims and to put an end to impunity for such acts. Please also provide statistics since 2011 on the number of allegations of assault and arbitrary arrest and detention of persons because of their actual or perceived sexual orientation or gender identity, and on the inquiries conducted and proceedings brought, including their outcomes. Please describe the efforts made by the State party to combat the social stigmatization of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons in relation to their access to employment, housing, education and health services, as well as to address the restrictions imposed on LGBTI rights organizations, and indicate whether the State party is planning to amend the domestic legislation prohibiting discrimination in employment so as to include the prohibition of discrimination based on sexual orientation or gender identity. Please also indicate any measures taken to ensure that different ethnic groups are better represented in the civil service and in the security forces.

**Non-discrimination and violence against women (arts. 2, 3, 6, 7 and 26)**

6. In the light of the Committee's previous concluding observations (para. 11) and the adoption on 2 November 2015 of the revised Criminal Code, please provide detailed information on the changes introduced under the Criminal Code to abolish discriminatory provisions against women. Please indicate whether the State party plans to amend domestic legislation in order to abolish polygamy. With reference to the recommendations made by the Committee in its previous concluding observations (para. 12), please describe the measures taken to promote the recruitment of women in the civil service and provide statistical data on female representation in decision-making posts in the public administration and in the private sector. Please also report on the measures taken to reduce the gender wage gap and to ensure that State law prevails over rules of customary law that perpetuate inequality between men and women.

7. Taking into account the inclusion of marital rape in the new Criminal Code, please explain why the penalty for this offence is less than the penalty for rape in general. Please also indicate whether the State party plans to outlaw domestic violence as a separate criminal offence. Please provide annual data since 2011 on: (a) the number of complaints filed concerning different forms of violence against women, including domestic violence and sexual violence; (b) the investigations into and prosecutions of those complaints; (c) the convictions handed down; (d) the number of protection measures granted, if any; and (e) the compensation awarded to victims. Taking into account the previous concluding observations (para. 13), please indicate the measures taken to put an end to the practice of female genital mutilation, including awareness-raising programmes put in place since 2011 in communities where the practice is widespread. Please also indicate whether there are any statistics on illegal abortion and its consequences for the lives and health of women.

**Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 2, 6 and 7)**

8. In the light of the Committee's previous concluding observations (para. 11) and the introduction of the offence of torture under article 198 of the new Criminal Code, please explain whether torture is defined in conformity with article 7 of the Covenant and international standards. Please provide information on the specific measures taken in response to allegations of torture and ill-treatment during arrest and pretrial detention in order to extract confessions, as well as the measures taken to prosecute the perpetrators of such acts, in particular those committed: (a) during the protests in Mango in November 2015; (b) during the arrests of students in Kara in April 2012; (c) during the arrest of Mohamed Loum in January 2013 following the fires that destroyed markets in Lomé and Kara. Please indicate the number of complaints of torture and ill-treatment by law enforcement officials and prison staff received during the reporting period and provide information on the investigations and prosecutions carried out and on the convictions obtained, the penalties imposed and the compensation awarded.

9. In the light of the Committee's previous concluding observations (para. 15) and the information provided by the State party on the implementation of the concluding observations, please give further details of measures taken to give effect to Decree No. 2014/PR of April 2014 concerning the white paper on the implementation of the recommendations of the Truth, Justice and Reconciliation Commission. Please also provide statistics on the number of complaints lodged by the families of victims of the political violence that accompanied the presidential election of 2005, the number of disciplinary and criminal investigations opened, the outcomes of such investigations, the sanctions imposed on the perpetrators and the compensation obtained by the victims.

10. With reference to the Committee's previous recommendations (para. 16) and the information provided by the State party on the implementation of the concluding observations, please provide further information on the measures taken to implement the recommendations made by the National Human Rights Commission in 2012 following its investigation into allegations of torture and ill-treatment on the premises of the National Intelligence Agency, including in the case of Kpatcha Gnassingbé and co-defendants. Please also respond to allegations that the Commission's report was falsified by members of the Government and that threats were made against the President of the National Human Rights Commission, and explain whether investigations have been opened to shed light on those allegations. Please also describe the specific reforms undertaken by the State party concerning the National Intelligence Agency and indicate the current status of the implementation of the ruling of the Court of Justice of the Economic Community of West African States in the case of Kpatcha Gnassingbé and co-defendants, including with regard to the status of compensation payments and the release of the detainees, as requested by the United Nations Working Group on Arbitrary Detention. Please describe the measures taken

to open a criminal investigation, irrespective of disciplinary proceedings, into the torture suffered by the seven victims concerned, as well as by other victims mentioned in the report of the National Human Rights Commission.

11. Please respond to allegations that mob justice, administered to persons suspected of having committed criminal acts, is widespread in the State party. Please provide information on the identified cases of mob justice: (a) in Nukafu, where a suspected thief was set on fire by a crowd on 4 November 2015; (b) in Lomé, where two people accused of theft were lynched by a group of young people, also on 4 November 2015; and (c) in Djidjolé, where another alleged thief was set on fire by a crowd on 5 November 2015. Please indicate the measures taken to prosecute the perpetrators of these and other acts of mob justice identified since 2011, the number of prosecutions and convictions, and the sanctions imposed. Please also indicate the measures taken or envisaged to combat this practice.

**Right to liberty and security of person, and treatment of prisoners (arts. 7, 9, 10 and 11)**

12. In the light of the Committee's previous concluding observations (para. 17), please respond to reports of arbitrary arrest and detention and the failure to observe the legal time limits on police custody. Please specify the measures taken to ensure that the legal time limits on police custody are respected in practice, to put an end to all arbitrary detention and to compensate all persons detained arbitrarily. Please also state whether the law and practice of the State party permit any person who is arrested or detained to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the detention and order his or her release if the detention is not lawful, in accordance with article 9 of the Covenant. Please also indicate whether the State party intends to repeal the 2001 Ordinance concerning debt collection by financial institutions, which authorizes imprisonment for debt.

13. With reference to the Committee's previous recommendations (para. 18), please provide statistics, disaggregated by sex, age group and ethnic origin or nationality, on the number of persons in detention, including remand prisoners, and the total capacity of places of detention. Please describe the steps taken to ensure that pretrial detention is limited to exceptional cases and to promote the use of alternative measures. Please also provide information on measures taken or envisaged to ensure the effective separation of accused persons from convicted prisoners, juveniles from adults, and women from men in police and gendarmerie stations.

14. Please explain the measures taken to improve conditions in prisons, in particular those aimed at eliminating overcrowding, improving food, sanitary conditions and access to health care, and stepping up the presence of medical personnel. Please also provide information on the number of deaths in custody and the measures taken to significantly reduce the number of such deaths. Please indicate the measures taken to establish effective mechanisms for detainees to report violations of which they are victims, including in relation to their conditions of detention.

**Prohibition of slavery and servitude (art. 8)**

15. Please describe the measures taken to: (a) eliminate child labour in sectors such as stone and sand quarrying and agriculture, including cocoa, coffee and cotton farming, and to end the servitude of children working as domestic servants, pedlars, beggars or in prostitution; (b) combat the cross-border trafficking of children, mainly from Benin and Ghana, as well as that of women and men, for forced labour; and (c) adopt legislative measures prohibiting the forced labour and forced prostitution of adults. Please provide annual statistical data, disaggregated by sex, age group and country of origin, on: (a) the

victims of trafficking in persons; (b) the number of reported cases of trafficking; (c) the investigations and prosecutions initiated and the convictions and sentences handed down; (d) the availability of support services for victims of trafficking, including legal assistance and reintegration services, as well as the occupancy rate of shelters. In addition, please provide information on the training provided to judges, prosecutors, police officers and other State agents in detecting, investigating and handling cases of trafficking in persons. Please provide information on the steps taken to grant residence permits to victims of trafficking.

**Protection against arbitrary arrest and security of person (arts. 2, 9 and 10)**

16. Taking into account the Committee's previous recommendations (para. 19) and the adoption on 27 May 2013 of the Legal Aid Act, please provide information on the measures taken to effectively implement the Act by allocating the necessary financial resources. Please also give information on measures taken to ensure that the population is aware of the automatic legal assistance guaranteed by the Act of 10 July 1991. Please indicate the legislative measures taken or envisaged to guarantee the right to legal counsel as soon as a person is deprived of his or her liberty.

**Right to a fair trial and independence of the judiciary (art. 14)**

17. Please indicate whether the National Justice Sector Policy provides for a review of Ordinance No. 78-35 concerning the organization of the judicial system, in order to ensure the separation of judges and prosecutors' functions in all jurisdictions. Please also indicate the legislative measures taken to ensure that the right of appeal is respected in procedures against judicial officers, criminal police officers, prefects and sub-prefects, mayors and cantonal and village leaders. Please respond to allegations of interference by influential people or the Minister of Justice in "sensitive" court cases, and of so-called punitive assignments or transfers of judges that have no basis in law. Please provide information on measures taken or envisaged to guarantee the right to real and effective access to a court, and to allocate financial and human resources to the judiciary. Please provide information on measures taken to guarantee the independence of the Supreme Council of Justice from the executive branch.

**Refugees and asylum seekers (arts. 7, 12 to 14, 24 and 26)**

18. In view of the adoption on 3 March 2016 of the new Refugee Status Act, please provide information on the timetable for the effective implementation of the Act and for the establishment of the appeals board envisaged therein. Please also indicate measures taken to avoid discrimination against refugees in the application of the Togolese Nationality Code.

**Freedom of religion and association (arts. 18 and 22)**

19. Please describe the content of the draft law on freedom of association, adopted on 7 April 2016 by the Council of Ministers, and explain its compatibility with article 22 of the Covenant. Please indicate the number of organizations of a religious character that have applied to be registered with the Ministry of the Interior during the past five years, the number of cases in which registration has been refused and the grounds for refusal.

**Freedom of expression and peaceful assembly (arts. 19 and 21)**

20. Taking into account the revised Criminal Code adopted in 2015, which provides for prison sentences for offences such as defamation, insulting a representative of the Government and insulting the representatives of public authority, and the introduction of a new offence whereby the publication, dissemination and reproduction of "false news" is punishable by up to 5 years' imprisonment, please explain the compatibility of these offences with article 19 of the Covenant and give examples of cases in which such

infractions were identified. Please also explain whether the new offences relating to “seditious cries and songs uttered in public places or at public meetings”,<sup>2</sup> the financing of terrorism, the publication of messages inciting terrorism and participation in the commission of a terrorist act are precisely defined so as to ensure that they do not lead to unwarranted or disproportionate interference with the freedom of expression of dissenting individuals.

21. With reference to the Committee’s previous recommendations (para. 20), please comment on reports that the authorities continue to limit the freedom of expression of journalists, human rights defenders and political activists who express opinions against the Government. In this regard, please provide information on the measures taken to provide effective protection against intimidation and arbitrary arrest for journalists who raise issues of public interest — as in the cases of Zeus Aziadouvo, Carlos Ketohou and Abi-Alfa, Noël Tadegnon, Younglove Egbéboua Amavi, Fredo Attipou, Aimée Gbotso, Luc Abaki and Justin Anani — or of human rights defenders reporting on issues in that sphere, such as Amah Olivier, President of the Association des victimes de la torture au Togo and Koffi Kounté, President of the National Human Rights Commission, both of whom left the country because of fears for their safety. Please provide information on the number of complaints lodged since 2011, on the outcome of the investigations into those complaints, and on the convictions and sentences handed down in cases of assault, threats, harassment and arbitrary detentions targeted at individuals engaged in journalism or the reporting of human rights violations.

22. In the light of the Committee’s previous concluding observations (para. 20) and taking into account the adoption in February 2013 of the Act on the High Audio-visual and Communications Authority and the Constitutional Court decision which deemed six articles of that Act to be unconstitutional, please provide information on measures taken to ensure the independence of the Authority from the executive branch.

23. Taking into account the Committee’s previous concluding observations (para. 20), please provide information on measures taken to ensure the conformity of Act No. 2011-010, setting the conditions for the exercise of freedom of assembly and the right to peaceful public demonstrations, with article 21 of the Covenant. Please also explain whether the new offences set forth in the Criminal Code of 2015, criminalizing the organization of and participation in meetings that have not met the necessary administrative requirements and making the organizers criminally liable for any violent behaviour by other demonstrators, constitute justified and proportionate restrictions on the freedom of peaceful assembly. Please comment on allegations that peaceful assemblies organized by political parties and human rights defenders are often prohibited arbitrarily.

24. Please respond to allegations that demonstrations are often broken up by law enforcement or security forces, including the military, while using excessive force. Please also provide information on the events that occurred: (a) in Mango in November 2015, when 7 people were killed and at least 117 others were injured following the intervention of the security forces; (b) in the town of Gléi on 25 March 2016, during which gendarmes allegedly fired live ammunition at protesters, injuring at least 30 people; and (c) in Dapaong in April 2013, when two students died following the intervention of the police during a peaceful demonstration in support of a teachers’ strike. Please indicate the measures taken to prosecute the perpetrators and to prevent such events from recurring in the future. Please elaborate on the compatibility of Decree No. 2013-013, on maintaining and restoring law and order, with international standards.

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<sup>2</sup> Article 552 of the Criminal Code of 2015.