

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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**Consideration of Reports Submitted by States Parties Pursuant to Article 62 of
the African Charter on Human and Peoples' Rights**

**Concluding Observations and Recommendations on the Combined 3rd, 4th and
5th Periodic Report of the Republic of Togo**

I - Introduction

1. Togo is a State Party to the African Charter on Human and Peoples' Rights (the African Charter), having ratified it on 5 November 1982.
2. The present Concluding Observations encompass the Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo. The Combined Report was considered at the 50th Ordinary Session of the African Commission on Human and Peoples' Rights (the African Commission) held from 24 October to 5 November 2011 in Banjul, The Gambia, and was a follow-up to the report that was presented at the 31st Ordinary Session held in May 2002.
3. The Report was presented by the Head of the Togolese Delegation, Mr. Minekpor Kokou, Acting Director of Legislation and Human Rights Protection at the Ministry of Human Rights, Consolidation of Democracy and Civic Education. He was accompanied by Ms. Tebie Amoussou Mazalo, Director of Gender and Women's Rights at the Ministry for the Advancement of Women, and Ms. Yapko Ama Essenam, Legal and Administrative Research Officer at the Office of the Ministry of Environment and Forest Resources. The above representatives are all members of the Inter-Ministerial Committee on Initial and Periodic Report Writing.
4. The present Concluding Observations take into account the report presented, the oral submissions and additional written information provided by

representatives of the Republic of Togo, in response to the issues that were raised by the African Commission.

5. The present Concluding Observations give an account of the positive aspects identified in the report with regard to human rights promotion and protection in Togo, as well as the factors restricting the effective enjoyment of human and peoples' rights in Togo. They also highlight the areas of concern which, in the view of the African Commission, require further action.
6. Moreover, the African Commission, through the present Concluding Observations, makes recommendations on the measures to be taken by the Government of Togo in order to enhance the enjoyment of the human rights enshrined in the African Charter and other relevant instruments.

II - Positive Aspects

The African Commission:

7. Commends the Republic of Togo for submitting its report in accordance with Article 62 of the African Charter;
8. Appreciates the efforts of the Government of Togo, since its previous report, to ensure the enjoyment of the rights and freedoms enshrined in the African Charter;
9. Welcomes the information and answers provided by the Togolese delegation to the issues raised during the consideration of the report;
10. Further welcomes the delegation's readiness to provide the African Commission with the answers and information that it did not have at the time the report was being considered;
11. Notes with satisfaction that in addition to the rights and freedoms guaranteed by the African Charter, the Constitution of the Republic of Togo provides for institutional mechanisms to ensure their promotion and protection;
12. Welcomes with satisfaction the establishment by the Government of Togo of the following human rights promotion institutions:
 - The National Human Rights Commission (CNDH);
 - The Truth, Justice and Reconciliation Commission (CVJR) aimed at promoting political governance and social healing;

- The Audio-visual and Communication High Authority (HAAC), an independent body mandated, among other things, to ensure press freedom and protection;
- The General Inspectorate of Security Services, mainly responsible for supervising police detention conditions and ensuring that detention periods are respected.

13. Further notes that Togo has, since its previous report, ratified key regional and international human rights promotion and protection instruments such as:

- The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- The UN Convention on the Rights of the Child;
- The African Charter on the Rights and Welfare of the Child;
- The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol);
- The UN Convention on the Rights of Persons with Disabilities;
- The Optional Protocol to the UN Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention);
- The UN Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;
- The ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

14. Welcomes Togo's enactment of a law to abolish the death penalty;

15. Welcomes the adoption of Circular No. 222/MISD-CAB of 2004 which provides for arrested persons to receive legal assistance within 24 hours following their detention;

16. Welcomes with satisfaction the decision of the Government of Togo to release several prisoners between June and December 2005 in an effort to address the issue of prison overcrowding;

17. Welcomes the possibility granted to workers of the International Committee of the Red Cross (ICRC) to visit detention centres unannounced;

18. Notes with satisfaction the decriminalization of press offences;

19. Appreciates the efforts of the Government of Togo to improve the health of the population through, in particular:

- The adoption of a national health policy;
- An increase in medical personnel from 6,934 in 2004 to 12,693 in 2010;
- The launch in 2010 of the Campaign for Accelerated Reduction of Maternal Mortality in Africa (CARMMA);
- The integrated campaign for immunization and distribution of insecticide-treated bed nets;
- The enactment of a law on reproductive health;
- The enactment in 2005 of a law to protect people affected and infected by HIV/AIDS;
- The implementation of several strategies including the provision of free anti-retroviral drugs;
- The inclusion, since 2009, of STIs/HIV/AIDS prevention and health education in primary education curriculum;
- The provision of 90% subsidies to Caesarean deliveries in order to reduce maternal mortality;
- The management, since April 2011, of cases of obstetric fistula.

20. Welcomes the adoption of a new Labour Code which takes into account key areas such as health and safety at work, investment monitoring services and social dialogue with a view to improving working conditions in Togo;

21. Further welcomes the adoption of an Employment and Poverty Reduction Policy Framework Paper the establishment of a Ministry of Youth and Youth Employment, and the implementation of a Reintegration and Employment Creation Support Project (AIDE) and a National Volunteers Programme (PROVONAT) to enable the Government of Togo to reduce the staggering unemployment rate;

22. Welcomes the enactment of a law to provide health insurance to civil servants, and the establishment of a National Health Insurance Institute (INAM) to provide social security to Government employees;

23. Commends the measures implemented by the Government of Togo to enhance the protection of children's rights such as:

- The adoption of a new Children's Code;
- The establishment of a General Directorate for the Protection of Children;
- The establishment of children's rights protection mechanisms such as the National Committee for the Protection and Promotion of Children's

- Rights and the National Commission for the Shelter and Social Reintegration of Child Victims of Trafficking (CNARSEVT);
- The institution of a toll-free telephone number in 2009 to facilitate the reporting of perpetrators and acts of violence against children.
24. Commends the Government of Togo for ensuring the protection of delinquent minors, including offenders and victims;
 25. Encourages the refresher training sessions organized for magistrates as part of the programme to modernize the justice sector;
 26. Welcomes the implementation of a National Programme for Human Rights Promotion and Protection;
 27. Notes with satisfaction the significant decline in the practice of genital mutilation which from 12% in 1996, now stands at 1.6%, and welcomes the actions initiated by the Government to combat this practice;
 28. Welcomes the measures taken by the authorities to promote the education of the girl child;
 29. Welcomes the implementation of reforms to promote the rights of women, in particular the adoption in 2006 of a National Gender Strategy Document, the establishment of a ministerial department for women's affairs, and the adoption of a national strategy to mainstream gender issues in policies and programmes, as well as a national policy to promote gender equity and equality;
 30. Takes note of the efforts made by the Republic of Togo to promote and protect the rights of people with disabilities through the enactment of a law to protect their rights;
 31. Welcomes the steps taken to protect older persons, including the establishment of a Ministry Delegate for the Protection of Children and Older Persons in 2005, a Department for Older Persons in the Ministry of Social Affairs and National Solidarity, and a National Advisory Committee on the Rights of Older Persons;
 32. Welcomes the measures taken by the Government regarding the right to food, in particular the strategy to boost agricultural production adopted in 2008, the measure to subsidize fertilizers and seeds, and the establishment of Togo National Food Security Agency (ANSAT) charged with regulating food prices;

33. Warmly welcomes the enactment of legislation to protect the environment, in particular the Framework Law on Environment, the Forest Code, and the Law on Biotechnological Risk Prevention;
34. Welcomes the implementation of a Strategy for the Consolidation of Democracy and Peace in Togo since 2007.

III - Factors Restricting the Enjoyment of the Rights Enshrined in the African Charter

35. Widespread poverty and unemployment constitute the major obstacles to the enjoyment of human and peoples' rights in the Republic of Togo;
36. Sociological and cultural constraints, local customs, and deeply entrenched prejudices, in particular against women, are factors that restrict Togolese women from fully enjoying their rights;
37. Lack of awareness, by the majority of Togolese, of the human rights promotion and protection legal instruments adopted at the national level as well as the instruments ratified by Togo at the international and regional level also restricts the effective enjoyment of human rights;
38. Conflict and political crises in some countries of the west African sub-region also restrict the enjoyment of human rights in the country in the short, medium and long term.

IV - Areas of Concern

While recognizing the efforts of the Government of Togo to promote and protect human rights and to raise awareness about the principles and provisions of the African Charter, the African Commission is concerned by:

39. The lack of information on the measures taken by Togo with regard to the provisions of Article 2, and the fact that the report did not address issues relating to articles 27, 28 and 29 of the African Charter;
40. The lack of sufficient gender disaggregated data, with statistics that are not up to date;
41. The slow procedure for adopting instruments;

42. The failure of Togo to ratify key regional and international human rights instruments, such as the African Charter on Democracy, Elections and Governance, and the Rome Statute of the International Criminal Court;
43. The failure of Togo to make the declaration under Article 34 (6) of the Protocol on the Establishment of an African Court on Human and Peoples' Rights, in order to enable individuals and NGOs to bring cases before the Court;
44. The unaddressed issue of granting authorization which restricts the legal existence of NGOs;
45. The continued existence of the phenomenon of child trafficking in Togo;
46. The very limited participation of civil society and media organizations in the drafting of periodic reports;
47. The practice, by some communities, of voodoo worship which affects the educational cycle of children;
48. The continued existence of cultural practices (*tronsi*) involving children and which are detrimental to their development and physical integrity;
49. The sometimes exorbitant deposit amounts set by judges for the filing of cases (civil action for damages and direct summons) which discourage low-income persons subject to be tried from referring matters to the courts;
50. The cases of arrest conducted without warrant by judicial police officers, excluding cases of persons caught committing a crime;
51. The sometimes systematic use of torture in particular during arrests and in police custody and some places of detention;
52. The non-respect of the statutory period for keeping persons in police custody and pre-trial detention;
53. The guarding of prisons for women by male prison guards which is in violation of female prisoners' right to dignity;
54. The lack of sufficient daily food rations for detainees and the poor living condition in prisons;
55. The lack of adequate prison infrastructure and equipment;

56. The lack of training in fundamental human rights notions for prison officers;
57. The location of specialized courts which are based in only two constituencies, Lomé and Kara;
58. The few sessions of the two Courts of Appeal in Togo (in Lomé and Kara) which, for budgetary reasons, meet once in a year instead of two times a year;
59. The limited number of judges which has led to some courts having only one judge;
60. The administrative delays in the administration of justice;
61. The fact that the right to legal assistance is recognized only in criminal cases and not in cases of offence and violation;
62. The limited access to drinking water, and inadequate food hygiene and sanitation measures, especially in rural areas;
63. The existing practice of female genital mutilation despite the Government's efforts to eradicate such practice;
64. The existence of cultural practices which hinder the education of girls and the leadership of women;
65. The existence of some provisions which discriminate against women, particularly in the Personal and Family Code, and the gender inequality observed in various sectors;
66. The small representation of women in decision-making positions;
67. The high female illiteracy rate, particularly in rural areas, and women's lack of knowledge of their rights which have contributed to several cases of women's rights violation;
68. The high unemployment and underemployment rate, in particular among youths, women and people with disabilities who, increasingly, are victims of marginalization and exclusion in the labour market;
69. The depreciating and inadequate health infrastructure, poor quality public sector health care, and lack of medical personnel;

70. The severely underfunded public health care system which requires households to pay for medical treatment;
71. The high maternal and infant mortality rate, particularly in rural areas, despite the Government's efforts to address the issue;
72. The inadequate measures to manage people with disabilities under the National Health Programme (PNDS).

V- Recommendations

73. The African Commission recommends that the Government of Togo should:
 - i. Take into account, in its future periodic reports, all the various areas dealt with in the African Charter, in conformity with the African Commission's relevant guidelines on the presentation of periodic reports;
 - ii. Expedite the process to enact legislation under review, in particular the Personal and Family Code, Bill to Amend the Criminal Code, Draft Bill to Amend the Code of Criminal Procedure, Draft Bill on Legal Aid, Draft Bill to Organize the Judiciary, Draft Bill to Determine the Conditions for Exercising Freedom of Assembly and Demonstration, and the Law on the Establishment, Organization and Functioning of the National Observatory for the Prevention of Torture;
 - iii. Ensure that the new laws are consistent with the international and regional instruments ratified by Togo;
 - iv. Harmonize the country's legislation with the relevant international and regional human rights instruments ratified by Togo;
 - v. Ensure that perpetrators of acts of torture are prosecuted and enact legislation criminalizing the practice of torture;
 - vi. Ratify other human rights promotion and protection instruments, including the African Charter on Democracy, Elections and Governance;
 - vii. Take measures to promote the education of the girl child, sensitize women to human rights issues, and strengthen women's leadership in Togo;
 - viii. Enact a law on quotas to increase women's representation in decision-making institutions;

- ix. Expedite the issuing of authorization to NGOs, a process which presently takes unusually long;
- x. Provide gender disaggregated statistics in all the various areas in its future periodic reports;
- xi. Ensure that health centres are decentralized, equipped and have the necessary human resources;
- xii. Decentralize screening centres which are all based in the capital;
- xiii. Make the declaration under Article 34 (6) of the Protocol on the Establishment of an African Court on Human and Peoples' Rights in order to enable individuals and NGOs to bring cases before the Court;
- xiv. Ensure that civil society organizations are involved in the preparation and writing of periodic reports;
- xv. Take the necessary measures to improve detention conditions and increase the quantity of meals served to prisoners;
- xvi. Respect the minimum regional and international acceptable standards for the accommodation of prisoners;
- xvii. Recruit female prison guards, in place of male guards, to guard prisons for women;
- xviii. Provide training to prison officers on human rights issues and international standards for the treatment of detainees;
- xix. Decentralize the special courts which are all based in the major cities of Lomé and Kara;
- xx. Increase the budget of the judicial sector to enable the courts of appeal to hold the required number of sessions;
- xxi. Take the necessary measures to resolve the problem of one judge per court as it is the case in some courts in Togo;
- xxii. Take the necessary measures to ensure the effective implementation of legal aid and ensure that the right to be assisted by a lawyer is extended to include cases of offence and violation;

- xxiii. Raise awareness at all levels about citizens' rights, judicial procedures and available remedies;
- xxiv. Take the necessary legislative and other measures to eradicate the phenomenon of child trafficking;
- xxv. Take the necessary measures to eradicate the practice of voodoo worship and *tronsi* which are detrimental to child development;
- xxvi. Ensure the effective implementation of the law on female genital mutilation and step up measures to eradicate the practice;
- xxvii. Adopt measures to combat unemployment;
- xxviii. Write and present its periodic reports in accordance with the African Commission's guidelines on the presentation of periodic reports;
- xxix. Publicize the Robben Island Guidelines and use it, particularly in the police and judicial sectors, as well as take the Guidelines into consideration when producing its reports;
- xxx. Inform the African Commission in its next Periodic Report, which is expected in 2013, of the measures taken to address the areas of concern and implement the recommendations contained in the present Concluding Observations.

Adopted at the 51st Ordinary Session of the African Commission on Human and Peoples' Rights, held from 18 April to 2 May 2012, Banjul, The Gambia.