

UPR of Togo: willingness to improve but 'no' to decriminalisation of same-sex relations

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On 6 October 2011 the Working Group on the UPR considered the human rights situation in Togo. The delegation sent by Togo comprised eight delegates, including ministerial representatives from several departments, such as the Minister of Justice, the Minister of Arts and Culture, the Minister of Commerce and the Director General of the Promotion of the Child in the Ministry of Social Action and National Solidarity.

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Togo's report was very comprehensive and outlined progress already made in the promotion and protection of human rights. The report highlighted the numerous international human rights instruments which Togo has already ratified or acceded to and the regional human rights instruments which they are party to; all of which are either already integrated into their domestic laws, or are in the process of being integrated. The report also discusses other successes, such as the existence of the National Human Rights Commission, which was established in 1987 and recognised in the Constitution in 1992; the abolition of the death penalty in 2009; the establishment of a Truth, Justice and Reconciliation Committee with a mandate to investigate political violence between 1958 and 2005 (including the 2005 electoral violence); the provision of free anti-retroviral drugs since 2008 and other efforts to protect the rights of those with HIV/AIDS; and efforts to ensure the right to food, which resulted in a food surplus in 2010.

In the interactive dialogue that followed, specific recommendations, questions and comments included:

- Recommendations that Togo ratify the Optional Protocol of the *International Covenant on Economic, Social and Cultural Rights*, the *International Convention for the Protection of All Persons from Enforced Disappearances*, the second Optional Protocol of the *International Covenant on Civil and Political Rights*, and the Optional Protocol of the *Convention on the Elimination of All Forms of Discrimination Against Women*.
- Calls to sign the *Rome Statute of the International Criminal Court*.
- Concerns regarding the low representation of women in decision-making positions, and recommendations that Togo introduce a bill to address this issue.
- Praise of the National Human Rights Commission, which has been granted A-status by the International Coordinating Committee for National Human Rights Institutions for its adherence to the Paris Principles (*Principles Relating to the Status and Functioning of National Institutions*), but concerns that the Commission lacks the requisite resources to effectively carry out its mandate.
- Criticism of high rates of violence against women, particularly conjugal violence, and the need to address this and other gender-based discrimination.
- Praise for the establishment of the Commission on Truth, Justice and Reconciliation, but concerns that this Commission lacks requisite resources.
- Calls to improve the recruitment process for public services and the armed forces so that these sectors are more representative and include women, and ethnic and cultural minority groups.
- Criticism of prison conditions, the lengthy detention times prior to conviction and the holding of those awaiting trial with convicted criminals; calls that that prison conditions be brought into line with

international standards.

- Praise for efforts in the areas of water and sanitation, food provision, and HIV/AIDS.
- Recommendations that Togo prepare a bill to reform their criminal code to include a definition of torture as a crime in accordance with the *Convention Against Torture*.
- Concerns over cultural practices that perpetuate discrimination against women, particularly the practice of female genital mutilation (FGM).
- Praise regarding the abolition of the death penalty.
- Concern over the lack of freedom of speech, freedom of expression, and freedom of assembly in Togo.
- Calls to decriminalise same-sex relations, and adopt political and legislative measures to stop discrimination on the basis of sexual orientation and protect the rights of LGBTI peoples.
- Praise for the assistance which Togo provides to refugees, despite the State's lack of resources; also urged to codify their current procedures in granting refugee status.
- Recognition that several special procedures were invited and able to visit Togo in 2007 and 2008, but calls that the State issue an open invitation to all special procedure mandate holders.
- Recommendations that Togo provide human rights training to law officials, judges, and their police force, and questions raised as to whether Togo has mainstreamed human rights education into their school syllabus.

Notable responses given by the delegation to the 43 States that participated in the interactive dialogue included:

- Explanations that Togo is in the process of modernising their judicial system which has led to efforts in the capacity building of judicial staff through measures such as improving remuneration, recognition, and ethics education of judicial staff to ensure their independence and impartiality.
- Recognition that Togo has a problem with the rights of detainees and assurances that they would work to address this issue, including by creating a separate wing for those who have not yet been convicted.
- Assurances that by 2012 Togo's prison refurbishment program should be implemented.
- Claim that access to armed forces and civil service is through an open but competitive recruitment process, which they do not believe is restrictive or discriminatory.
- Assurances that the budgets of the Commission on Truth, Justice and Reconciliation and the National Human Rights Commission would be considered and called for international financial assistance.
- Recognition that Togo needs to 'bolster' its courts to tackle impunity.
- Explanation that FGM is prohibited by law and that a study is currently being undertaken on the matter to raise public awareness of the issue.
- Assurances that a law is currently being enacted on gender-based violence and a strategy has been drafted on gender-based policy.
- Answers that it is giving regular human rights training workshops to judges, police officers, and teachers, but that it does not have human rights in their school curriculum and recognise that this needs to be altered.
- Assurances that the Togolese Government is currently completing a bill to ensure gender mainstreaming and a quota of 30% to 40% women in decision-making roles.
- Assurances that Togo is working on a bill to bring its criminal code into line with the *Convention Against Torture* through defining torture, providing sanctions, and providing reparations for victims.

The delegation felt that any failures or slow progression of Togo in the area of human rights should be considered in light of the fact that it is a 'fragile' State that lacks human and financial resources. It explained that the State takes a 'pragmatic approach' to ratifying international instruments, which it argued makes the process of mainstreaming these instruments into their domestic legislation more lengthy. Togo also rejected recommendations that it decriminalise homosexuality, arguing that the topic was too controversial for the fragile nation and that attempts to legislate on this matter could be 'counter-productive' due to the way that 'this phenomenon is perceived in society in Togo'. The response given regarding freedom of speech was not entirely clear, with delegates arguing that the support mechanism for private media outlets ensures freedom of speech for media. The delegation responded to concerns over freedom of assembly with information that a law was passed a few months ago to supplement the right to peaceful demonstration as enshrined in the Constitution.

At the adoption of the report, the delegation accepted 112 of the recommendations given to them and rejected only 11. The remaining 10 recommendations were to be further discussed between the Togolese Government

and civil society, and a decision on them will be given at the 19th session of the Human Rights Council in March 2012. In her conclusion, Mme Wilson-de Souza made assurances that Togo would implement the accepted recommendations as soon as possible, and called for the support of the international community in assisting Togo to promote and protect human rights.

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