



International Convention on the Elimination of All Forms of Racial Discrimination

Distr.: General
18 January 2017
English
Original: French

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined eighteenth and nineteenth periodic reports of Togo*

1. The Committee considered the combined eighteenth and nineteenth periodic reports of Togo (CERD/C/TGO/18-19) at its 2498th and 2499th meetings (CERD/C/SR.2498 and 2499), held on 28 and 29 November 2016. At its 2509th meeting, held on 6 December 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined eighteenth and nineteenth periodic reports of Togo, which include responses to the concerns raised by the Committee in its previous concluding observations. The Committee wishes to commend the State party's regularity in reporting and welcomes the open and constructive dialogue with its high-level delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and policy measures taken by the State party:

- (a) Act No. 2014-019 of 17 November 2014 amending the Personal and Family Code;
- (b) Act No. 2015-10 of 24 November 2015 establishing the new Criminal Code;
- (c) Act No. 2016-21 of 24 August 2016, the Refugees Act;
- (d) The Organic Act of 11 March 2016 on the Composition, Organization and Functioning of the National Human Rights Commission, and establishing it as the national mechanism for the prevention of torture;
- (e) The establishment of the Truth, Justice and Reconciliation Commission in February 2009 and the Office of the High Commissioner for Reconciliation and Strengthening National Unity on 4 May 2013;

* Adopted by the Committee at its ninety-first session (21 November-9 December 2016).



(f) The adoption of the project on infrastructure for peace in Togo for the prevention of conflict and violence, funded by the United Nations Development Programme, in January 2015.

4. The Committee welcomes the State party's ratification of the following international instruments:

(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 and the Optional Protocol thereto, on 1 March 2011;

(c) The International Convention for the Protection of All Persons from Enforced Disappearance, on 21 July 2014;

(d) The declaration of acceptance of the individual communications procedure under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, in 2015;

(e) The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 14 September 2016.

C. Concerns and recommendations

Provision of data

5. The Committee welcomes the information provided by the State party on the ethnic composition of its population, thanks to its fourth general population and housing census, taken in 2010. It regrets, however, that the data have not been analysed and that no mention is made of human rights or socioeconomic indicators that would make it possible to assess progress towards the realization, in conditions of equality, of the rights set forth in the Convention. The Committee also regrets that the State party has not provided detailed information on the number and origin of the non-citizens present in its territory, in particular migrant workers (art. 1).

6. **Recalling its general recommendation No. 4 (1973) concerning reporting by States parties and its previous recommendation (CERD/C/TGO/CO/17, para. 10), the Committee urges the State party to collect and provide it with up-to-date and complete statistical data, disaggregated by ethnic origin, gender, age and geographic region, as well as human rights and socioeconomic indicators, including for the non-citizens present in its territory, in particular migrant workers.**

Definition of discrimination

7. While acknowledging the efforts made by the State party to adopt a definition of racial discrimination in conformity with the Convention, particularly with the adoption of the new Criminal Code, the Committee notes that the definition of racial discrimination does not cover all the grounds set out in article 1 of the Convention, as the grounds of "national origin" are not included in the definition (art. 1).

8. **The Committee recommends that the State party include in article 304 of its new Criminal Code a definition of racial discrimination that contains all the grounds for discrimination, including national origin, set out in article 1 of the Convention.**

Policies aimed at eliminating racial discrimination

9. The Committee takes note of the Programme for the Promotion and Protection of Human Rights, as well as the various awareness-raising campaigns that the State party has undertaken to combat racial discrimination. However, it regrets that the action plan on combating racial discrimination has not yet been finalized and that the State party did not provide further details on how it is being drawn up (art. 2).

10. **The Committee recommends that the State party take the measures necessary to finalize the action plan on combating racial discrimination and that it provide, in its next periodic report, detailed information on the policies adopted in the framework of the plan and on the impact of those policies.**

National human rights bodies

11. The Committee takes note of the work of the National Human Rights Commission, which has been awarded A status by the Global Alliance of National Human Rights Institutions. The Committee also welcomes the recent adoption of the decree setting out the way in which the Ombudsman's Office is to be organized and operated. However, while noting that civil society took part in the preparation of the combined periodic report, the Committee regrets that no representatives of civil society or the National Human Rights Commission were present during the dialogue. The Committee also regrets the lack of information on the Ombudsman's mandate and activities (art. 2).

12. **Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party:**

(a) **Ensure that the Commission has all the means required to carry out its mission independently;**

(b) **Provide detailed information on the work of the Ombudsman in combating racial discrimination.**

Compatibility of criminal legislation with article 4 of the Convention

13. The Committee reiterates its concern (CERD/C/TGO/CO/17, para. 12) about the fact that the domestic law of the State party, including its Criminal Code, includes no measures making the provision of support to and financing of racist activities a crime and prohibiting organizations that disseminate racist propaganda (art. 4).

14. **Recalling its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993) relating to the implementation of article 4 of the Convention, according to which the provisions of article 4 are of a preventive and mandatory character, the Committee recommends that the State party incorporate in its new Criminal Code the missing provisions in order to give full effect to article 4 of the Convention.**

National reconciliation process

15. The Committee notes with satisfaction the initiatives taken by the State party to promote peace and national reconciliation, in particular the project on infrastructure for peace in Togo and the civic education month initiative. However, the Committee regrets that no precise data has been given on the impact and results of such mechanisms (arts. 2, 5 and 7).

16. **The Committee recommends that the State party:**

(a) **Put in place a formal evaluation policy for projects carried out as part of the process for national reconciliation and the promotion of peace, in particular for the civic education month initiative;**

(b) **Provide detailed information on the implementation of the project on infrastructure for peace in Togo and on the activities of the peace committees established in July 2016;**

(c) **Provide data on all measures taken to promote peace and national unity and on their results.**

Truth, Justice and Reconciliation Commission and Office of the High Commissioner for Reconciliation and Strengthening National Unity

17. The Committee takes note of the establishment in 2009 of the Truth, Justice and Reconciliation Commission, which has been assigned the task of investigating the violent acts committed in particular during the events of 2005, and of the Commission's report, submitted to the Head of State in 2012. Furthermore, the Committee welcomes the establishment on 24 May 2013 of the Office of the High Commissioner for Reconciliation and Strengthening National Unity, which has the task of implementing the Commission's recommendations. The Committee also takes note of the will of the State party to promote reconciliation through restorative justice and redress. However, the Committee remains concerned about the impunity that could result from this approach and about the absence of criminal prosecution of the perpetrators of the violent acts of 2005 (arts. 3 and 5).

18. **The Committee recommends that the State party:**

(a) **Ensure implementation by the Office of the High Commissioner for Reconciliation and Strengthening National Unity of the 68 recommendations issued by the Truth, Justice and Reconciliation Commission;**

(b) **Take the necessary measures to ensure that the Office has the financial and human resources required for the performance of its mandate;**

(c) **Pay particular attention to the implementation of recommendation No. 30 of the Truth, Justice and Reconciliation Commission, which emphasizes the need to work to calm ethnic tensions within the State party;**

(d) **Take all steps to ascertain who was responsible for the violent acts of 2005, so as to initiate criminal proceedings against them and end impunity.**

Access to education and training

19. The Committee notes with satisfaction the measures taken by the State party to ensure equal access to education and training for all ethnic groups living in its territory, in particular by eliminating charges for public primary education and regularly setting up school cafeterias in the poorest rural areas. However, the Committee remains concerned about low enrolment among girls, especially in rural areas (art. 5).

20. **The Committee encourages the State party to continue its efforts, to take the necessary measures to reduce existing disparities in access to education and vocational training, including for girls, and to ensure that people living in the most remote areas benefit from appropriate measures in this regard.**

Access to health

21. The Committee notes the measures taken by the State party to ensure access to health for all ethnic groups living in its territory. It remains concerned about the lack of

access to care for the most disadvantaged persons, in particular those living in remote areas (art. 5).

22. The Committee encourages the State party to continue its efforts as part of its public health policy to ensure that persons of all ethnic groups, in particular the most disadvantaged persons and those living in remote areas, have equal access to care.

Equitable representation in the civil service and the defence and security forces

23. The Committee notes the efforts made by the State party to restore ethnically balanced representation in the recruitment of public administration personnel and within the defence and security forces. However, it remains concerned about the limited scope of these measures and regrets that it has no statistics on the impact of the quota policy implemented in the recruitment of the defence and security forces. It also regrets the lack of information on the impact of the measure, taken during the most recent civil service competition, that recorded the ethnicity of candidates (art. 5).

24. The Committee encourages the State party to continue its efforts to prevent racial discrimination in access to the civil service and recommends that it take appropriate measures, with caution, to ensure that the cultural and ethnic diversity of Togolese society is reflected in the public administration and in the defence and security forces. The Committee requests that the State party provide in its next periodic report detailed information on all measures taken to ensure equitable ethnic representation in the public administration and the impact and results of such measures.

Situation of non-citizens

25. The Committee notes with satisfaction the adoption by the State party of the Refugees Act of 24 August 2016. However, it is concerned about the lack of status of Ghanaian nationals in the territory of the State party. Furthermore, while welcoming the State party's initiation of the ratification process of the 1954 Convention relating to the Status of Stateless Persons, the Committee notes that the law on accession to that Convention has still not been promulgated by the Head of State. The Committee is concerned about the current limits on the enjoyment by stateless persons of their rights, including the right to work, owing to their status (arts. 5 and 6).

26. Recalling its general recommendations No. 22 (1996) on article 5 and refugees and displaced persons and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:

(a) **Continue efforts to find a solution for the status of Ghanaian citizens in its territory;**

(b) **Take the measures required to ensure for all non-citizens in its territory equal access to the exercise of their economic, social and cultural rights, particularly for stateless persons;**

(c) **Complete the ratification process for the 1954 Convention relating to the Status of Stateless Persons and consider ratifying the 1961 Convention on the Reduction of Statelessness.**

Acquisition of Togolese nationality

27. While welcoming the draft of the new nationality code that is currently being drawn up, the Committee regrets that it has not been able to obtain detailed statistics on the number of refugees and non-citizens of the State party who have acquired Togolese nationality. The Committee is also concerned about the fact that relinquishing the

nationality of origin is a prerequisite for the acquisition of Togolese nationality (arts. 5 and 6).

28. The Committee recommends that the State party adopt the new nationality code as soon as possible. The Committee requests the State party to provide in its next periodic report precise and disaggregated data on persons who have applied for Togolese nationality, the number of applications accepted, the number denied and, if applicable, the reasons for denial.

Access to effective remedies and provision of data relating to the application of article 6

29. The Committee notes that the State party, while providing information on the number of requests registered and examined by the National Human Rights Commission, provided no information on the number of complaints or on the prosecution, penalties and compensation awarded in cases of racial discrimination handled by the courts in application of the new Criminal Code. The Committee thus remains concerned about the lack of a mechanism for effective data collection (art. 6).

30. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reminds the State party that the absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, fear of social disapproval or an unwillingness on the part of the authorities to initiate proceedings. It recommends that the State party ensure that the public is correctly informed of all available legal remedies in the area of racial discrimination. It also recommends that the State party put in place a system for the collection of data on complaints, prosecutions, penalties and compensation awarded in cases of racial discrimination registered by the courts and other bodies providing redress.

D. Other recommendations

Ratification of other instruments

31. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Follow-up to the Durban Declaration and Programme of Action

32. In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

International Decade for People of African Descent

33. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed the International Decade for People of African Descent, 2015-2024, and its resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next report precise information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

34. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

Amendment to article 8 of the Convention

35. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Common core document

36. The Committee encourages the State party to submit an updated version of its common core document, which dates to 1996, in accordance with the harmonized guidelines on reporting for the international human rights treaty bodies (HRI/GEN/2/Rev.6, chap. I), in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for common core documents.

Follow-up to the present concluding observations

37. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12 and 16, above.

Paragraphs of particular importance

38. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 10, 18, 24, 26 and 28 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Dissemination of information

39. The Committee recommends that the State party's reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

40. The Committee recommends that the State party submit its combined twentieth to twenty-fourth periodic reports, as a single document, by 1 October 2021, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.
