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**STATUS OF HUMAN RIGHTS IN THE TOGOLESE REPUBLIC
FOR THE 40TH SESSION OF THE
UNIVERSAL PERIODIC REVIEW**

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Introduction

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting human rights around the world. The ECLJ also holds Special Consultative status before the United Nations Economic Social Council. The purpose of this report is to discuss human rights in the Togolese Republic (Togo) for the 40th Session of the Universal Periodic Review (UPR).

Background

2. Togo is a country located in Western Africa with an estimated population of 8.2 million¹. Of the population, 43.7% identify as Christian, 35.6% belong to folk religions, 14% identify as Muslim, and 6.2% have no religious affiliation².

3. Togo's previous review was held on 31 October 2016³. As a result of the review, Togo received 203 recommendations, 166 of which Togo supported. One recommendation supported by Togo was that the government "[i]nvestigate thoroughly cases of female genital mutilation and bring the perpetrators to justice"⁴. There were no recommendations made regarding freedom of religion.

4. Additionally, although there were no recommendations made regarding abortion, we are concerned about the negative impact that abortion has on both the woman and the unborn child. Togo currently allows abortions in cases of rape, incest, and potential birth defects. In these instances, abortion is permitted through surgical means or through abortion pills, both of which can cause severe health complications for the mother.

Legal Framework:

5. Article 13 of the Togolese Constitution states that:

The State has the obligation to guarantee the physical and mental integrity, the life and the security of every living person in the national territory.

No one may be arbitrarily deprived either of their liberty or of their life⁵.

6. Furthermore, under Article 21 of the Constitution, "[t]he human person is sacred and inviolable. No one may be submitted to torture or to other forms of cruel, inhuman or degrading treatments"⁶. Additionally, Article 36 of the Constitution states that, "The State protects youth against any form of exploitation or of manipulation"⁷.

7. On 17 November 1998, Law no. 98-016 went into effect banning female genital mutilation (FGM) within the country⁸. Under this law, those who carry out FGM will either be sentenced to between two months and five years in prison, a fine between 100,000 and 1,000,000 francs, or both⁹. The law also makes a “witness who fails to report a case of genital mutilation . . . liable to a term of imprisonment of not less than one month and not more than one year, or a fine of not less than 20,000 francs and not more than 500,000 francs”¹⁰.

8. In 2006, Togo legalised abortion in some instances¹¹. According to the law, “[t]he voluntary interruption of pregnancy is only authorized when prescribed by a doctor and on request of the woman in cases where the pregnancy is the result of rape or of an incestuous relationship”¹². The law also permits abortions when “there is a strong risk that the unborn child will by [sic] affected by a particularly serious medical condition”¹³.

9. Togo has signed and ratified the Convention on the Rights of the Child (CRC). Under Article 19 of the CRC:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement¹⁴.

10. Furthermore, Article 7 of the International Covenant on Civil and Political Rights (ICCPR), of which Togo is also a party, states that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”¹⁵.

Female Genital Mutilation:

11. The U.N. estimates that “more than 200 million women and girls today have undergone FGM,” and that most victims are between infancy and 15-years old when the procedure is done¹⁶. António Guterres, Secretary General of the U.N., stated that “Female genital mutilation is an abhorrent human rights violation and a form of violence against women – rooted in the desire for power & control that pervades gender inequality”¹⁷. According to the WHO, FGM carries risks of immediate and long-term health complications:

Immediate complications can include:

- severe pain,

- excessive bleeding (haemorrhage),
- genital tissue swelling,
- fever,
- infections e.g., tetanus,
- urinary problems,
- wound healing problems,
- injury to surrounding genital tissue,
- shock,
- death.

Long-term complications can include:

- urinary problems (painful urination, urinary tract infections);
- vaginal problems (discharge, itching, bacterial vaginosis and other infections);
- menstrual problems (painful menstruations, difficulty in passing menstrual blood, etc.);
- scar tissue and keloid;
- sexual problems (pain during intercourse, decreased satisfaction, etc.);
- increased risk of childbirth complications (difficult delivery, excessive bleeding, caesarean section, need to resuscitate the baby, etc.) and newborn deaths;
- need for later surgeries: for example, the sealing or narrowing of the vaginal opening (Type 3) may lead to the practice of cutting open the sealed vagina later to allow for sexual intercourse and childbirth (deinfibulation). Sometimes genital tissue is stitched again several times, including after childbirth, hence the woman goes through repeated opening and closing procedures, further increasing both immediate and long-term risks;
- psychological problems (depression, anxiety, post-traumatic stress disorder, low self-esteem, etc.)¹⁸.

12. The prevalence of FGM varies within Togo. In the more urban areas along the coast, FGM is virtually non-existent with a prevalence of less than 2%¹⁹. However, the further inland, the higher the prevalence, with approximately 13% of girls having undergone the procedure in the Centrale region²⁰. Similar to other countries where FGM is practiced, in Togo, FGM is culturally engrained within society and is considered a rite of passage for many girls²¹.

13. FGM is primarily practiced by the Kotokoli, Tchamba, Mosi, Yanga, and Fuli ethnic groups²². Within these ethnic groups, the prevalence of FGM is between 85 and 98%²³. The majority of girls that are mutilated are between the ages of five and nine; the Fuli carry out the procedure at infancy²⁴.

14. Despite the law banning FGM, its prevalence within ethnic groups remains high. These groups often reside in rural and remote areas of the country where enforcement of the law is lacking²⁵. Additionally, FGM is engrained in Togo's society, and many ethnic groups choose custom over modern law²⁶.

Abortion

15. As previously stated, abortion in Togo is only permitted in the cases of rape, incest, or if the baby is expected to have a serious medical deformity. Despite its recent change to abortion laws, Togo has a long history of protecting life—both the life of the mother and the life of the unborn baby. Because abortion is one of the gravest of all offenses against human life, and against justice because it entails the deliberate killing of an innocent human being, Togo should continue to protect life at all stages. The value of human life is not dependent upon the nature in which it begins, and the life of an unborn baby conceived by rape or incest, or one with medical deformities, is no less valuable than any other. A procedure that deliberately takes the life of living human being is plainly a procedure that fosters insensitivity to, and disdain for, the life in the womb, which is contrary to Togo's long-held regard for life.

16. We are also concerned about the sale and availability of abortion pills within the country. Currently, Togo permits two forms of abortion: the first is Manual Vacuum Aspiration (MVA), and the second is the use of abortion pills²⁷. The two abortion pills that are available are Mifepristone and Misoprostol²⁸. These pills can be extremely dangerous to the woman and can result in serious medical complications.

17. Abortion pills work in two stages and require the mother to take both Mifepristone and Misoprostol²⁹. First, the woman takes Mifepristone which blocks progesterone and causes the lining of uterus to break down which kills the unborn baby³⁰. Then, between 24 and 48 hours after taking Mifepristone, the woman takes Misoprostol which causes the uterus to contract, expelling the unborn baby and the uterine lining. These pills can be extremely dangerous to the woman and can result in serious medical complications such as:

- an undetected ectopic pregnancy, which can be dangerous and is a medical emergency,
- blood clots remaining in the uterus,
- heavy bleeding,
- severe pain,
- fever,
- excessively heavy bleeding (defined as going through two or more pads within an hour span),
- strong-smelling vaginal discharge,
- clots that are larger than the size of a lemon.

18. In fact, in the United States, even though the Food and Drug Administration (FDA) has declared that Mifepristone is safe, nearly 25% of the time it is implemented it may not work in a safe and effective way³¹. Sadly, despite carefully screening to eliminate all but the most physically ideal candidates, 2% of those participating in U.S. clinical trials of Mifepristone hemorrhaged³². Additionally, one out of one hundred women who took the drug had to be hospitalised³³, and, during the clinical trials of Mifepristone, several women required surgery to stop the bleeding, with some requiring transfusions³⁴. In an environment less regulated than that of a clinical trial,

complications are more serious and more common, especially for those women who do not have immediate access to emergency medical care³⁵.

19. Furthermore, as previously stated, the abortion law also permits abortion “if there is a strong risk that the unborn child will by [sic] affected by a particularly serious medical condition”³⁶. This language is extremely vague and could pave the way for abortions to be permitted simply because the unborn baby has the possibility of being born with a medical condition, even if that medical condition is not life threatening. We have seen European countries cite “serious medical conditions” to justify aborting an unborn baby simply because a prenatal test showed that the unborn baby could have Down syndrome³⁷. While those countries view this as a medical condition or a “fetal abnormality”, every unborn baby is a living human being who has the right to be protected.

20. It is an indisputable fact that the human child in the womb is a distinct biological organism, is alive, and belongs to the species *homo sapiens*. Thus, any justification of abortion fundamentally rests on the proposition that some members of the human race do not have even the most basic of human rights, the right to life. That proposition is incompatible with international law and the very notion of human rights found in documents such as the ICCPR. The ICCPR states: “*of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, [that] these rights derive from the *inherent dignity of the human person*, . . . [and that] [e]very human being has the inherent right to life. This right shall be protected by law”³⁸.*

Conclusion

21. Togo must uphold its obligation to protect all life. The government must recognise the inherent dignity of the human person, from conception to death. Therefore, we request that Togo reform its laws to protect the life of the mother and the unborn baby, with no exception based on how the baby’s life began or its possible medical diagnosis.

22. To put an end to FGM in Togo, resources must be better allocated to provide effective implementation of the law in the regions where it is most prevalent. However, because FGM is so engrained within the society and culture of these regions, the government must work to educate these communities as well as work with community leaders to encourage putting a stop to this cultural practice. Thus, to truly put an end to this dangerous practice, there must be a shift in the culture away from FGM.

¹ Togo, WORLD FACTBOOK (22 Mar. 2021), <https://www.cia.gov/the-world-factbook/countries/togo/>.

² *Id.*

³ *Universal Periodic Review - Togo*, UNHRC, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/TGindex.aspx>.

⁴ UPR of Togo – Thematic List of Recommendations A/HRC/34/4 – Para. 128, <https://lib.ohchr.org/HRBodies/UPR/Documents/Session26/TG/MatriceRecommendationsTogo.docx>.

⁵ Constitution of Togo, art.13, *available at* https://www.constituteproject.org/constitution/Togo_2007.pdf?lang=en.

⁶ *Id.* at art. 21.

⁷ *Id.* at art. 36.

⁸ *Law Prohibiting Female Genital Mutilation*, UN WOMEN, <https://evaw-global-database.unwomen.org/en/countries/africa/togo/1998/law-no-98-016-of-17-november-1998-prohibiting-female-genital-mutilation-in-togo>.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Togo Legalizes Abortion in Rape, Incest Cases*, REUTERS (21 Jan. 2017), <https://www.reuters.com/article/us-togo-abortion/togo-legalizes-abortion-in-rape-incest-cases-idUSL2837062220061228>.

¹² *Id.*

¹³ *Id.*

¹⁴ Convention on the Rights of the Child, 20 Nov. 1989, G.A. Res. 44/25, art. 19, <https://www.ohchr.org/documents/professionalinterest/crc.pdf>.

¹⁵ International Covenant on Civil and Political Rights (ICCPR), 16 Dec. 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171, art. 7.

¹⁶ *Female Genital Mutilation Costs \$1.4 Billion Annually: UN Health Agency*, UN NEWS (6 Feb. 2020), <https://news.un.org/en/story/2020/02/1056802>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Thomas Williams, *Female Genital Mutilation in Togo*, THE BORGAN PROJECT (6 Mar. 2021), <https://borgenproject.org/female-genital-mutilation-in-togo/>.

²⁰ *Id.*

²¹ *Id.*

²² *Togo*, RIGHTS IN EXILE PROGRAMME, <https://www.refugeelaidinformation.org/togo-fgm>.

²³ *Id.*

²⁴ *Id.*

²⁵ Williams, *supra* note 19.

²⁶ *Id.*

²⁷ *Abortion Laws in Togo*, HOW TO USE ABORTION PILL, <https://www.howtouseabortionpill.org/regions/africa/togo/>.

²⁸ *Id.*

²⁹ Ana Gotter, *Abortion Pill: What Is a Medical Abortion?*, HEALTHLINE (16 Dec. 2016), <https://www.healthline.com/health/abortion-pill>.

³⁰ *Id.*

³¹ Irving M. Spitz et al., *Early Pregnancy Termination with Mifepristone and Misoprostol in the United States*, 338 NEW ENGLAND J. MED. 1243-44 (1998).

³² U.S. FOOD & DRUG ADMIN., NEW DRUG APPLICATION FOR THE USE OF MIFEPRISTONE FOR INTERRUPTION OF EARLY PREGNANCY 56 (July 19, 1996),

<http://web.archive.org/web/20180125042006/https://www.fda.gov/ohrms/dockets/ac/96/transcript/3198t1a.pdf>.

³³ Spitz et al., *supra* note 31, at 1243.

³⁴ *Id.*

³⁵ See U.S. FOOD & DRUG ADMIN, *supra* note 32.

³⁶ *Togo Legalizes Abortion in Rape, Incest Cases*, *supra* note 11.

³⁷ *Births of Babies with Down Syndrome in Europe Fall Sharply Amid Increased Prenatal Testing*, CATHOLIC NEWS AGENCY (5 Jan. 2021), <https://www.catholicnewsagency.com/news/47040/births-of-babies-with-down-syndrome-in-europe-fall-sharply-amid-increased-prenatal-testing>.

³⁸ ICCPR, *supra* note 15.