



# TOGO

Submission to the Committee on the Rights of the Child

94<sup>th</sup> Pre-Sessional Working Group, February 2023

NGO Report

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## INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 94<sup>th</sup> Pre-Sessional Working Group of the Committee on the Rights of the Child.

This brief will focus on the following areas:

- General Principles: **Equality and Non-Discrimination**
- Special Protection Measures: **Child Marriage**
- Special Protection Measures: **Children in Situations of Emergency (Detention based on Immigration Status)**

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states (150 in the case of detention based on immigration status) using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Togo, and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Togo address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Togo for having provisions in place, we hope the Committee will recommend that Togo work with stakeholders to overcome any obstacles in implementing these provisions.



## SUMMARY OF FINDINGS AND RECOMMENDATIONS

### 1. General Principles: Equality and Non-Discrimination (Article 2)

Togo's constitution guarantees equality before the law to all citizens without distinction of race, sex, religion, origin, and social class, and further prohibits discrimination on the basis of family, ethnic or regional origin, social or economic status, and religious, political, philosophical, or other convictions. These protections do not, however, include some of the groups included in Article 2.1 of the Convention, including children facing discrimination based on disability or language status.

#### RECOMMENDED CONCLUDING OBSERVATION

We hope the Committee will:

- Recommend in its concluding observations that Togo amend its constitution to add explicit guarantees of equality and non-discrimination regardless of disability and language status, consistent with CRC commitments. These guarantees could be added to Article 2 of the constitution, which guarantees equality before the law based on other personal and social characteristics, and/or to Article 11, which prohibits discrimination against a similar list of personal and social characteristics.

### 2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

Based on our review, Togo explicitly prohibits the marriage of all children, with very narrow exceptions that require court authorization, since 2007. However, as recently as 2017, data from UNICEF's Multiple Indicator Cluster Surveys indicated that the rates of child marriage remain high in Togo; at the time of survey, 11% of girls aged 15-19 were already married, 6% of women aged 20 to 24 had been married before age 15, and 25% of women aged 20 to 24 had been married before age 18.

#### RECOMMENDED QUESTION FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATION

We hope the Committee will:

- In its list of issues, ask Togo: Can Togo outline how it will effectively enforce the provisions in the Children's Code that generally prohibit marriage before age 18?
  - If Togo has no concrete plans to improve enforcement of the minimum age of marriage, recommend that Togo formulate concrete, near-term plans to do so.



### 3. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

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Our review of legislation, regulations and decrees finds that the Togo's immigration law **generally permits the imprisonment of foreigners without constraints and without specifying ages**, and contains no provisions on alternatives to detention.

#### RECOMMENDED QUESTIONS FOR THE LIST OF ISSUES AND CONCLUDING OBSERVATIONS

**We hope the Committee will:**

- In its list of issues, ask Togo: given the absence of explicit legal provisions on the detention of minor migrants and minor asylum-seekers in both the *Loi relative à la police des étrangers* and the *Loi portant statut de réfugié*, can Togo provide:
  - details on the current rates of detention among minor migrants?
  - details on the current rates of detention among minor asylum-seekers?
- In its list of issues, ask Togo: given the absence of explicit legal provisions on detention of minor migrants and minor asylum-seekers in both the *Loi relative à la police des étrangers* and the *Loi portant statut de réfugié*, can Togo provide details on any specific steps it is taking to explicitly prohibit the detention of minor migrants and minor asylum-seekers?
  - If Togo is not taking any specific steps to explicitly prohibit the detention of minor migrants and minor asylum-seekers, recommend that Togo pass and implement legislation against immigration detention of minors.

#### DETAIL OF CONSTITUTIONAL AND LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

### 1. General Principles: Equality and Non-Discrimination (Article 2)

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Article 2.1 of the Convention states that:

*States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*



Constitutions state the values of a country, outlining the rights of people living within the country and profoundly influencing norms and practices. In nearly all countries, constitutions take precedence over other sources of law—making them critical tools for delineating and implementing equal rights. New constitutions and new rights guaranteed in constitutions can be used to overturn discriminatory laws, as well as to legislate non-discrimination guarantees. Moreover, constitutions can offer protection against policy and legal changes during periods of social and political shifts that may seek to undermine equal rights. For these reasons and others, as the foundational document setting out the rights of all human beings in a country, a constitution and the rights contained therein are essential to realizing equal rights.

We reviewed full text constitutions for all 193 UN member states available from official government sources to determine whether the constitution took any approach to equality across the grounds listed in article 2.1 of the CRC by prohibiting discrimination based on each specific status, guaranteeing equal rights, guaranteeing equality before the law, or guaranteeing overall equality or equal opportunities.

*TOGO'S CONSTITUTIONAL PROVISIONS: MISSING EXPLICIT GUARANTEES OF EQUALITY AND NON-DISCRIMINATION BASED ON DISABILITY AND LANGUAGE*

Article 2 of Togo's constitution guarantees equality before the law to all citizens without distinction of race, sex, religion, origin, and social class. Article 11 further prohibits discrimination on the basis of religious, political, philosophical or other convictions, ethnic origin, social or economic status, family, and regional origin.

*Constitution of Togo, amended to 2019*

*Article 2*

*La République togolaise assure l'égalité devant la loi de tous les citoyens sans distinction d'origine, de race, de sexe, de condition sociale ou de religion.*

*Elle respecte toutes les opinions politiques, philosophiques ainsi que toutes les croyances religieuses. Son principe est le gouvernement du peuple par le peuple et pour le peuple.*

*Sa devise est : « Travail - Liberté - Patrie. »*

*Article 11*

*Tous les êtres humains sont égaux en dignité et en droit.*

*L'homme et la femme sont égaux devant la loi.*

*Nul ne peut être favorisé ou désavantagé en raison de son origine familiale, ethnique ou régionale, de sa situation économique ou sociale, de ses convictions politiques, religieuses, philosophiques ou autres.*



**There are, however, some groups guaranteed equality in Article 2.1 of the Convention which are not explicitly included in these provisions, including children facing discrimination based on disability or language status.**

## 2. Special Protection Measures: Child Marriage (Articles 19, 24, 28, 34, and General Comment No. 4)

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General Comment No. 4 (2003) states that:

*The Committee strongly recommends that States parties review and, where necessary, reform their legislation and practice to increase the minimum age for marriage with and without parental consent to 18 years, for both girls and boys.*

Child marriage has life-long health, educational, and economic consequences. For girls in particular, child brides are more likely to drop out of school, be victims of domestic abuse, and experience pregnancy and childbirth complications due to early childbearing, all of which affect core rights of the Convention, specifically the right to protection from violence (Article 19), the right to health (Article 24), the right to education (Article 28), and the right to protection from sexual exploitation and abuse (Article 34).

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization's NATLEX database, Pacific Islands Legal Information Institute, Asian Legal Information Institute, JaFBASE, and official country websites.

### *TOGO'S LEGISLATIVE PROVISIONS: MONITORING IMPLEMENTATION OF MARRIAGEABLE AGE*

Since 2007, Togo's Children's Code prohibits all marriages of children under the age of 18 with exceptions to be granted only for serious reasons by the court.

#### *Loi 2007 - 017 Portant code de l'enfant, 2007*

*Art. 2 - Aux termes du présent code, on entend par enfant tout être humain âgé de moins de dix-huit (18) ans. Le terme mineur prend le même sens que celui d'enfant.*

*Art. 267 - Le mariage des enfants est interdit. L'âge de la nuptialité est fixé à dix-huit (18) ans révolus. Cependant, le président du tribunal de première instance peut accorder des dispenses aux enfants des deux sexes âgés de seize (16) ans révolus pour motifs sérieux.*

**However, as recently as 2017, data from UNICEF's Multiple Indicator Cluster Surveys indicated that child marriage remains a significant concern in Togo; at the time of survey, 11% of girls aged 15-19**



were already married, 6% of women aged 20 to 24 had been married before age 15, and 25% of women aged 20 to 24 had been married before age 18.<sup>1</sup>

### 3. Special Protection Measures: Children in Situations of Emergency (Detention based on Immigration Status) (Articles 9, 24, 28, 37)

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As noted in the 2002 Committee's Report on the *Rights of All Children in the Context of International Migration*, migrant children may experience heightened vulnerabilities. Particularly, the detention of children based on immigration status violates the principle of the best interests of the child and infringes on core values outlined in the Convention including the right to liberty (Article 37) and the right to not be separated from their family (Article 9). Children held in detention may also face barriers accessing education (Article 28) and health services (Article 24).

Article 37.b. specifically states:

*No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;*

Article 9.1 affirms the right to family unity, stating:

*1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. [...]*

#### *TOGO'S LEGISLATIVE PROVISIONS: NO EXPLICIT PROVISION ON DETENTION OF MINORS*

Our review of legislation, regulations and decrees finds that Togo's 2016 law on refugees contains no provisions on detention. Togo passed law 2022-005 earlier this year; this law applies to all foreigners within Togolese territory, and generally **permits imprisonment without constraints and without specifying ages**. It does not contain further provisions on alternatives to detention.

*Loi 2022-005 relative à la police des étrangers en République Togolaise*

***Art. 27** : Violation des règles relatives au séjour d'un étranger au Togo*

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<sup>1</sup>UNICEF data – Child Marriage. Retrieved September 23, 2022 from <https://data.unicef.org/topic/child-protection/child-marriage/>





*Est passible d'une peine d'emprisonnement de trois (3) mois à douze (12) mois et d'une amende de deux cent mille (200 000) à cinq cent mille (500 000) francs CFA ou de l'une de ces deux (2) peines, l'étranger qui :*

*(...)*

*- sans avoir reçu l'autorisation appropriée ou après l'expiration du délai fixé par l'autorisation, séjourne ou s'établit au Togo.*

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