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State of implementation of the United Nations
Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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* CAC/COSP/IRG/2024/1.
II. Executive summary

Togo

1. Introduction: overview of the legal and institutional framework of Togo in the context of implementation of the United Nations Convention against Corruption


The implementation by Togo of chapters III and IV of the Convention was reviewed in the first year of the first review cycle, and the executive summary of that review was issued on 9 January 2012 (CAC/COSP/IRG/I/1/1/Add.3).

Article 140 of the Constitution of 14 October 1992, as amended, stipulates that duly ratified international treaties take precedence over national laws, provided that the treaties are also applied by the other States parties.

The national legal framework implementing chapters II and V of the Convention includes, among other laws, Act No. 2015–006, creating the High Authority for the Prevention of and Fight against Corruption and Related Offences (HAPLUCIA), and Uniform Act No. 2018–004 on the fight against money-laundering and the financing of terrorism in States members of the West African Economic and Monetary Union (WAEMU).

The principal institutions involved in preventing and fighting corruption are the Ministry of Justice, HAPLUCIA and the National Financial Information Processing Unit (CENTIF).

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

At the time of the country visit, a national strategy for preventing and fighting corruption and related offences was in the development stages. The development process was initiated by HAPLUCIA, based on a diagnostic analysis, and was led by a steering committee composed of representatives of various ministries, the private sector and civil society.

HAPLUCIA and other ministerial departments have implemented anti-corruption measures including awareness-raising and training programmes for public officials.

A national awareness-raising campaign targeting sectors vulnerable to corruption and covering the period 2018–2021 was launched by the Prime Minister.

Act No. 2015–006 provides for HAPLUCIA to conduct periodic evaluations of legal instruments and administrative measures for fighting corruption (art. 2).

Togo collaborates with other States in implementing preventive measures, including within the framework of the work of the Economic Community of West African States (ECOWAS), WAEMU, the African Association of Anti-Corruption Authorities and the Network of National Anti-Corruption Institutions in West Africa.

In addition to its mandate to disseminate knowledge and best practices related to the prevention of and fight against corruption, HAPLUCIA is responsible for overseeing the implementation of action to prevent corruption by public bodies (art. 2 of Act No. 2015–006).

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1 The strategy was adopted on 13 October 2022 and is accompanied by a five-year action plan covering the period 2024–2028.
HAPLUCIA has administrative and financial independence. It is awarded a grant from the State budget each year but is also able to accept donations and legacies (arts. 1 and 17 of Act No. 2015–006).

HAPLUCIA has seven members, four of whom are appointed by the President of the Republic, one by the President of the National Assembly, one by the Presiding Judge of the Court of Auditors and one by the President of the Senate. Members serve a term of office of three years, renewable once, and may be removed from their position before their term expires only under certain circumstances (arts. 4 and 11 of Act No. 2015–006). Specialized staff are either made available to members on request or selected by means of a competitive recruitment process (art. 12 of Act No. 2015–006). Capacity-building for staff is included in the HAPLUCIA Strategic Plan for 2019–2023.

Togo has named HAPLUCIA as the authority designated to assist other States parties pursuant to article 6, paragraph 3, of the Convention.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The General Civil Service Regulations (Act No. 2013–002) and Implementing Decree No. 2015–120/PR, setting out standard modalities for the application of the General Regulations, are the main instruments governing public service in Togo. Chapter IV of the General Regulations provides for the promotion of responsibility, transparency and integrity as guiding values.

Access to the civil service is by means of a competitive recruitment process, details of which are published by decree three months before the date of the tests. Results are ranked in order of merit (art. 41 of the General Regulations and arts. 35–37 and 51 of Implementing Decree No. 2015–120/PR). Contractual employees may be recruited on the basis of articles 251 to 258 of the General Regulations and articles 123 to 160 of Implementing Decree No. 2015–120/PR.

Any irregularities in the competitive recruitment process may be appealed, if necessary, before the administrative courts (art. 49 of the General Regulations).

The General Regulations enshrine the right to training (art. 181), and training courses are held at various specialist training centres. An indexed salary scale has been established for civil servants (arts. 99 and 100 of Implementing Decree No. 2015–120/PR).

Togo has not identified any positions as being especially vulnerable to corruption, and no specific procedures for selecting and training persons recruited to fill such positions are provided for.

Eligibility criteria for candidates wishing to stand for election as President of the Republic are set forth in article 62 of the Constitution and those applicable to candidates wishing to stand for election as President of the Senate or of the National Assembly are set forth in articles 173 and 206 of the Electoral Code. Candidates wishing to stand in these elections, or in elections to regional and municipal councils, are required to provide proof of a lack of a criminal record dated no more than three months previously (arts. 151, 192, 222, 243, 263 and 282 of the Electoral Code). Articles 72, 79 to 81 and 86 of the new Criminal Code provide for additional penalties in the event of a criminal conviction, including the loss of civic rights and ineligibility to stand in any election.

Funding for candidates is governed by the Charter for Political Parties (arts. 18–21), Act No. 2013–013 on the public financing of political parties and election campaigns, the Electoral Code (arts. 118–133 and 140) and the Criminal Code (arts. 1200 and 1201). Candidates representing a political party are required to comply with all four laws, but independent candidates are subject only to the provisions of the Electoral Code, a situation which engenders a lack of clarity as to the obligations of independent candidates. Donations from outside the country are prohibited, subject to criminal penalties (arts. 1200 and 1201 of the new Criminal Code). Anonymous donations are
not permitted. All candidates are required to give an account of the manner in which funds are used to the Court of Auditors (art. 122 of the Electoral Code and art. 3 of Act No. 2013–013).

The General Civil Service Regulations and the special or sector-specific regulations include measures to foster integrity, honesty and responsibility on the part of public officials. The General Regulations establish a code of conduct and a disciplinary system, as well as applicable penalties (chap. IV, arts. 166–180). At the time of the country visit, a bill containing a code of ethics and rules of conduct for public officials was pending review and adoption.

Other than the reporting channels available to the general public (see the section on article 13 below), Togo has not adopted any specific measures to facilitate the reporting of acts of corruption by public officials. However, in the specific field of public procurement, warning and reporting mechanisms are provided for in article 48 of Act No. 2021–033 of 31 December 2021 on public procurement.

There are no procedures in place to guide public officials in how to avoid conflicts of interest. The General Civil Service Regulations prohibit all public officials from engaging in profit-generating activities and from holding, either themselves or through intermediaries, interests in an enterprise that they administer, manage or control, or that they administered, managed or controlled in the past (art. 154). Any profit-generating private activity carried out by the spouse of a public official must be declared (art. 155).

The acceptance of gifts is prohibited for all public officials in general under the first indent of article 153 of the General Civil Service Regulations, and for all persons involved in public procurement in particular in article 11 of the code of ethics and rules of conduct in public procurement.

An asset declaration system is provided for certain public officials occupying specific positions (see the section on article 52, paragraph 5, below).

Judges and prosecutors form a single body. The independence of the judiciary and security of tenure for judges are enshrined in the Constitution (arts. 113 and 114). Prosecutors are under the authority of the Minister of Justice (art. 7 of the Statute for Judges).

Judges are appointed by means of a competitive recruitment process, on the recommendation of the Supreme Council of the Judiciary in the case of judges and on the recommendation of the Minister of Justice, after consultation with the Supreme Council of the Judiciary, in the case of prosecutors (art. 118 of the Constitution and art. 2 of the Statute for Judges). The Supreme Council of the Judiciary also acts as a disciplinary board for judges (art. 117 of the Constitution and arts. 27–41 of the Statute for Judges).

Ongoing training for judges is provided by the Training Centre for Justice Officials and includes modules on ethics.

Exercise of the functions of a judge is incompatible with the performance of any other public function or professional activity (art. 8 of the Statute for Judges). Directive No. 001/2013/CSM on the ethics and conduct of judges and the guide to the rights and obligations of litigants published in 2017 contain principles of conduct for judges and prosecutors. Articles 41 to 43 of the Judicial Organization Code (Act No. 2019–015) of 30 October 2019 contain provisions relating to the recusal of judges.

Judges are subject to asset declaration obligations.

Public procurement and management of public finances (art. 9)

Public procurement procedures in Togo are decentralized and are governed by the provisions of Act No. 2021–033 on public procurement. The regulations needed to
implement the Act had not yet been adopted at the time of the country visit, a situation that limited the review of certain legislative compliance matters.  

Article 3 of Act No. 2021–033 defines the scope of application of the Act and the institutions that can act as contracting authorities. Open tendering is the rule for any contract worth more than 85 million CFA francs ($140,766), the threshold applicable at the time of the country visit (art. 4 of Act No. 2021–033) being the threshold set forth in the previous implementing decree (Decree No. 2018–171/PR, establishing value, publicity, audit and approval thresholds for public procurement and price solicitation procedures). Below this threshold, and above the amount of 10 million CFA francs ($16,560), price solicitation is permitted. Recourse to any other procurement method must be justified, and must be authorized by the national directorate exercising oversight of public procurement (art. 18 of Act No. 2021–033).

Contracting authorities must publish their provisional annual procurement plans (art. 13 of Act No. 2021–033). Procedures for the public opening of tenders were due to be set forth in regulations, but the regulations had not yet been adopted at the time of the country visit (art. 19 of Act No. 2021–033).  

Candidates and bidders who consider themselves to have been unfairly eliminated from procurement processes may file with the contracting authority a preliminary request for reconsideration of the decisions made, which has suspensive effect (art. 35 of Act No. 2021–033). Candidates should seek an amicable settlement to disputes with the contracting authority prior to lodging an appeal with the Public Procurement Regulatory Agency, which is required to issue a binding decision within five working days (arts. 38 and 43 of the Act). A non-suspensive judicial appeal against any decision of the Public Procurement Regulatory Authority is possible within five working days of the date of notification (art. 40 of the Act).

The Public Procurement Regulatory Authority may penalize candidates, bidders and contract holders for violations, irregularities, breaches and anti-competitive practices (arts. 8 and 49–57 of Act No. 2021–033).

Decree No. 2019–097/PR, establishing the code of ethics and conduct in public procurement, sets forth the principles of good conduct applicable to all public officials involved in public procurement (who are subject to an obligation to declare their interests) and to all candidates and bidders (chap. III and arts. 51–53). The regulations in force at the time of the country visit did not establish any specific selection procedures or training requirements for those public officials.

Budget bills are debated publicly before the National Assembly, after preparation by the Government (art. 91 of the Constitution, art. 16 of the Code of Transparency in the Management of Public Finances (Act No. 2014–009) and arts. 56–62 of Organic Act No. 2014–013 on budget acts). Any changes to the budget must be adopted by an amending law or ministerial order (art. 35 of Act No. 2014–009 and arts. 5, 15, 21, 47 and 48 of Organic Act No. 2014–013). Budget execution reports are submitted to the Parliament after adoption by the Court of Auditors (art. 63 of Act No. 2014–013). The system of accounting and auditing standards and related oversight includes an ex post facto administrative review and a judicial review by either the Togolese Court of Auditors or the WAEMU Court of Auditors (arts. 70–72 of Decree No. 2015–054/PR, establishing the general public accounting regulations). Administrative audits are also carried out by the Inspectorate General of State and the Inspectorate General of Finance.

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2 The regulations implementing the Act, specifically the Public Procurement Code (Decree No. 2022–080/PR of 6 July 2022), Decree No. 2022–063 of 11 May 2022 on the powers, organization and operation of the Public Procurement Regulatory Authority, and Decree No. 2022–070/PR of 30 May 2022 on the powers, organization and operation of the national directorate exercising oversight of public procurement, were adopted following the country visit.

3 The Public Procurement Code (Decree No. 2022–080/PR of 6 July 2022) sets out public opening procedures.
The Criminal Code prohibits the falsification of public administration documents (arts. 670–698), while the general public accounting regulations establish the liabilities of accounting officers and the corrective action to be taken in the event of management irregularities (arts. 28–31). The integrity and preservation of accounting books are addressed in articles 65 to 67 of Decree No. 2015–054.

**Public reporting; participation of society (arts. 10 and 13)**

Act No. 2016–006 on freedom of access to public information and documentation guarantees access to information and documents held by public bodies (art. 4), subject to certain exceptions (arts. 2 and 25–45). Public bodies have 30 days to respond to written requests (arts. 8 and 10). Any decision to refuse a request must be duly reasoned and notified to the applicant in writing (arts. 14 and 15).

All public bodies must designate a focal point to assume responsibility for ensuring that information is published and for handling requests and appeals (art. 7 of Act No. 2016–006 and art. 4 of Decree No. 2017.104/PR).


At the time of the country visit, Togo indicated that no statistics on the use of appeal procedures were available, that very few cases had been referred to the Ombudsman and that citizens had insufficient knowledge of the existing procedures.

Togo has taken a series of measures to simplify administrative procedures, including launching a plan to make public services accessible online, digitizing criminal records, creating a one-stop shop for foreign trade and introducing the option of declaring and paying taxes online.

HAPLUCIA is required to publish an annual activity report detailing the causes of corruption and providing a statistical analysis of its incidence (art. 2 of Act No. 2015–006). However, while such annual activity reports are published, they do not include a statistical analysis of cases of corruption.

The Code of Transparency in the Management of Public Finances provides for public participation in budget processes (art. 2). Civil society organizations are regularly consulted when legislation is being drafted.

State institutions and civil society organizations engage in action to raise awareness of the fight against corruption. At the time of the country visit, the development of teaching modules for schools on the fight against corruption was envisaged in the plan of action to implement the national strategy for preventing and fighting corruption and related offences.

HAPLUCIA has made available a toll-free telephone hotline, a WhatsApp number, a post office box number, an email address and a website through which citizens can report corruption, including anonymously, while also leaving open the possibility for them to visit its offices in person to report concerns (art. 3 of Act No. 2015–006). The Togolese Revenue Office, the Supreme Council of the Judiciary, the Ministry of Security, the Inspectorate General of Judicial and Prison Services and the Public Procurement Regulatory Authority also operate toll-free telephone hotlines and various other reporting mechanisms. There is no system in place through which information received through these reporting channels can be shared, and the small number of reports received by HAPLUCIA in the period 2018–2020 suggests that the reporting mechanisms are little used.

**Private sector (art. 12)**

Decree No. 2017–111, establishing the Business Climate Unit, was issued with a view to promoting good governance in the business environment. The Chamber of Commerce is working with the Unit to improve services and simplify procedures with the aim of preventing corruption in the private sector.
Act No. 2015–006 accords HAPLUCIA responsibility for assisting the private sector with the development of staff training policy manuals, codes of ethics and conduct, and compliance and audit procedures (art. 2).

The Togolese Employers’ Association has a code of conduct and professional ethics. At the time of the country visit, the Togolese authorities indicated that the draft framework law contained provisions introducing a requirement for private sector entities to adopt codes of ethics and other standards of conduct.

The Togolese Register of Trade and Personal Property Credit does not systematically include information on the identity of natural and legal persons involved in the incorporation and management of companies.

Togo has not taken any measures to prevent the misuse of procedures regulating private entities.

Measures to prevent conflicts of interest among former public officials apply only to former officials involved in public procurement (art. 53 of Decree No. 2019–097/PR).

Togo is a party to the Uniform Acts of the Organization for the Harmonization of Business Law in Africa (OHADA) related to general commercial law, the law of commercial companies and the organization and harmonization of companies accounting. It is also a party to the West African accounting system, known as SYSCOA, which establishes accounting standards. However, Togolese legislation does not require companies to establish audit controls to prevent and detect acts of corruption.

As for measures regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, the use of false documents is prohibited and other offences related to the management, administration and direction of companies are defined under chapter IX of title IV and chapter I of title X of the Criminal Code, as well as in the OHADA Uniform Acts. Article 1245 of the Tax Code establishes penalties for accounting irregularities for which tax evasion is the incentive. However, Togolese legislation does not contain provisions expressly prohibiting the acts listed in article 12, paragraph 3, of the Convention when such acts are carried out for the purpose of committing any of the offences established in accordance with the Convention.

Measures to prevent money-laundering (art. 14)

The regulatory regime for preventing money-laundering in place in Togo is essentially based on Uniform Act No. 2018–004.

Obligated persons include banks and non-bank financial institutions, as well as designated non-financial businesses and professions, including natural or legal persons that provide formal or informal services for the transmission of money or value (art. 1 (24) and (35), and arts. 5 and 6 of Uniform Act No. 2018–004).

Audit and supervision responsibilities in respect of obligated persons are set out in article 86 of Uniform Act No. 2018–004. Disciplinary powers are attributed to the supervisory authorities under article 112 of the Uniform Act. However, supervisory responsibilities in respect of money-laundering have not been established for each obligated person, no data have been provided on inspections of designated non-financial businesses and professions, and there are no statistics on penalties imposed on obligated persons.

The customer identification requirements incumbent on obligated persons in respect of the prevention of money-laundering are clearly set out in legislation. In particular, Uniform Act No. 2018–004 expressly prohibits the opening of anonymous or fictitious accounts (art. 20 (2)), requires all obligated persons to correctly identify customers, including beneficial owners (art. 18 (1)), defines the circumstances in
which verification checks are required (art. 26) and the measures applicable, and requires enhanced scrutiny where there is a high risk of money-laundering (art. 51).

In accordance with article 35 of Uniform Act No. 2018–004, the retention period for records and documents relating to financial transactions carried out by obligated persons is 10 years. The information retained may be disclosed, on request, to government law enforcement officers, CENTIF and the judicial authorities. However, there are no measures in place to ensure that analyses carried out by financial institutions are maintained, nor any measures establishing a requirement to maintain the records necessary to reconstruct individual transactions.

The requirement for obligated persons to report to CENTIF transactions that they suspect constitute money-laundering is set forth in article 79 of Uniform Act No. 2018–004. However, the requirement does not extend to the reporting of attempted transactions.

Pursuant to article 10 of Uniform Act No. 2018–004, in 2018 Togo performed a national money-laundering risk assessment, the results of which were issued in 2019. In addition, article 11 of the Uniform Act requires obligated persons to adopt a risk-based approach. However, it has not been established that the supervisory regime is risk-based.

The nationwide coordination of anti-money-laundering activities is the responsibility of CENTIF, which has been in operation since 2009 (arts. 66, 74 and 75 of Uniform Act No. 2018–004) and has a national network of correspondents. The Togolese authorities have also established a national committee to coordinate action to combat money-laundering and the financing of terrorism,4 which meets quarterly.

Articles 76 to 78 of Uniform Act No. 2018–004 empower CENTIF to cooperate internationally and exchange information with its foreign counterparts. In addition to being a member of the Egmont Group of Financial Intelligence Units, the WAEMU network of financial information processing units and the Intergovernmental Action Group against Money-Laundering in West Africa, CENTIF has entered into 20 cooperation agreements.

Cross-border movements of cash and bearer negotiable instruments in amounts equivalent to or greater than 5 million CFA francs ($8,302) are subject to reporting obligations, with penalties applicable in the event of failure to declare them (art. 12 of Uniform Act No. 2018–004). The reporting system is administered by the Customs Authority, which is empowered to request details of the origin and destination of the cash amounts and bearer negotiable instruments transferred and to seize the assets concerned in the event of an incomplete or false declaration or if money-laundering is suspected (art. 111 of Uniform Act No. 2018–004). CENTIF receives monthly statistics on declarations. The movement of cash and bearer negotiable instruments by ordinary mail is prohibited under articles 12 and 16 of Uniform Act No. 2018–004, although their transportation by cargo is as yet unregulated. The applicable penalties may be criminal (arts. 113–117), administrative or disciplinary in nature (art. 112).

Article 33 of Uniform Act No. 2018–004 imposes an obligation on financial institutions to obtain and verify relevant information on the originators of wire transfers and to maintain such information throughout the payment chain. Transaction requests containing incomplete information are not executed (art. 34 of Uniform Act No. 2018–004).

The judicial regime for preventing and fighting money-laundering in Togo is essentially the result of the transposition of the relevant WAEMU directives. Any

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4 See Decree No. 2018–128/PR of 3 August 2018 on the establishment, powers and operation of the National Committee for the Coordination of Action to Combat Money-Laundering and the Financing of Terrorism and Decree No. 2021–041/PR of 15 April 2021, appointing the members of the National Committee for the Coordination of Action to Combat Money-Laundering and the Financing of Terrorism.
amendments introduced are based on the results of the mutual evaluations carried out by the Intergovernmental Action Group against Money-Laundering in West Africa.

2.2. Successes and good practices

• The active participation of civil society in the formulation of anti-corruption policies in application of the Charter for Consultation and Coordination in the Fight against Corruption (art. 5).

2.3. Challenges in implementation

It is recommended that Togo:

• Ensure that the national strategy for preventing and fighting corruption and related offences and the corresponding action plan are adopted, are implemented in a manner that is coordinated among all stakeholders and are accompanied by an appropriate mechanism for monitoring and evaluating their effectiveness (art. 5, para. 1).

• Increase the independence of HAPLUCIA, including by guaranteeing the transparency of procedures for the selection of its chair and members, increasing its human resources and ensuring that personnel receive adequate training (art. 6, para. 2).

• Endeavour to enhance the transparency of procedures for the recruitment of contractual employees and the appointment of senior civil servants, and identify public positions considered especially vulnerable to corruption with a view to adopting adequate procedures for the selection, training and rotation, where appropriate, of persons occupying such positions (art. 7, para. 1).

• Ensure that the existence of previous convictions for acts of corruption established in accordance with the Convention is considered an ineligibility criterion for candidature and election to any public office (art. 7, para. 2).

• Consider enhancing transparency in the funding of candidatures for elected public office and political parties by harmonizing the existing legal framework so as to ensure that all candidates, including independent candidates, are subject to accounting obligations, and consider prohibiting anonymous donations (art. 7, para. 3).

• Endeavour to develop a regulatory and institutional framework for managing and preventing conflicts of interest, including guidelines on issues such as the acceptance of gifts and the declaration of interests and outside non-profit-generating activities (art. 7, para. 4, and art. 8, para. 5).

• Consider taking additional measures to facilitate the reporting of acts of corruption committed by public officials by adopting procedures in addition to the reporting mechanisms available to citizens and codifying a comprehensive system of whistle-blower protection (art. 8, para. 4).

• Endeavour to adopt the bill containing the code of ethics and rules of conduct for public officials, ensuring that it is applicable to public officials of all categories and that its substantive provisions and disciplinary mechanisms are harmonized with those set forth in the General Civil Service Regulations (art. 8, paras. 2 and 6).

• Ensure that implementing regulations are adopted to give effect to Act No. 2021–033, that these regulations establish appropriate threshold values for the use of different procurement methods, that appropriate procedures for the selection and training of public officials involved in public procurement are applied and that judicial appeals have suspensive effect (art. 9, para. 1).

• Step up efforts to establish an appropriate framework to preserve the integrity of accounting books, records, financial statements and other documents relating to public expenditure and revenue (art. 9, para. 3).
• Ensure the effective implementation of legislation on the right to information, including by organizing the necessary awareness-raising activities (art. 10 (a) and art. 13, para. 1).

• Publish periodic reports on the risks of corruption in public administration (art. 10 (c)).

• Strengthen the mechanism for managing conflicts of interest among judges (art. 11).

• Strengthen measures to prevent corruption and enhance accounting and auditing standards in the private sector (art. 12, paras. 1 and 2), including by:
  
  (a) Promoting the development of standards of conduct in the private sector (art. 12, para. 2 (b));

  (b) Taking steps to ensure mandatory identification of the beneficial ownership of corporate and legal entities (art. 12, para. 2 (c));

  (c) Taking measures to prevent the misuse of procedures regulating private entities, including procedures regarding subsidies and licences (art. 12, para. 2 (d));

  (d) Extending the restrictions on the professional activities of former public officials who have worked in public procurement to other public officials, as appropriate (art. 12, para. 2 (e));

  (e) Adopting corporate governance standards and requiring private enterprises to have adequate internal audit controls (art. 12, para. 2 (f)).

• Prohibit all acts listed under article 12, paragraph 3, of the Convention when such acts are carried out for the purpose of committing any of the offences established in accordance with the Convention.

• Expressly disallow the tax deductibility of expenses that constitute bribes (art. 12, para. 4).

• Continue to increase the active participation of stakeholders outside the public sector in decision-making processes and develop public education programmes (art. 13, para. 1).

• Strengthen the system for reporting acts of corruption with a view to making it more widely known to the public (art. 13, para. 2).

• Define the supervisory, audit and disciplinary responsibilities of obligated persons; extend the obligation for financial institutions to maintain records to cover the analyses the institutions themselves carry out; adopt data retention measures that allow for individual transactions to be reconstructed; extend the obligation to report suspicious transactions to include attempted financial transactions; and take account of the results of national risk evaluations, including in terms of supervision (art. 14, para. 1 (a)).

• Consider extending the reporting and supervision system to cross-border movements of cash and appropriate negotiable instruments carried out by cargo (art. 14, para. 2).

2.4. Technical assistance needs identified to improve implementation of the Convention

• Capacity-building to enhance monitoring of the implementation of the anti-corruption strategy, including through the establishment of a platform for exchanging information between the actors involved (arts. 5 and 6).

• Support for the establishment of a digital platform or online portal for public procurement (art. 9).
• Formulation of a national plan to reinforce integrity in the justice sector, including through increased support for information and communication technologies (art. 11).

• Formulation of teaching modules on preventing and fighting corruption for inclusion in primary and secondary school and university curricula (art. 13).

• Legislative assistance and capacity-building for CENTIF (art. 14).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The legal framework for asset recovery in Togo is based on the relevant provisions of Uniform Act No. 2018–004.

Togo considers the Convention to be a legal basis for cooperation for the purposes of asset recovery.

The Ministry of Justice is the central authority for international judicial cooperation, but it has not received any requests for the recovery of assets deriving from offences established in accordance with the Convention.

By virtue of article 78 of Uniform Act No. 2018–004, CENTIF may transmit to its foreign counterparts, without the need for prior request, any information that it has on amounts of money indicative of or transactions that might be being conducted for the purpose of laundering the proceeds of criminal activity or the financing of terrorism. Togo voluntarily exchanges information, including information on criminal assets, through the National Central Bureau of the International Criminal Police Organization (INTERPOL), via the I-24/7 global police communications system, and through the Egmont Group.

Togo is a party to the ECOWAS Convention on Mutual Assistance in Criminal Matters and the ECOWAS Protocol on the Fight against Corruption. The country is also a member of the Network of West African Central Authorities and Prosecutors against Organized Crime and the Asset Recovery Inter-Agency Network for West Africa.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

Uniform Act No. 2018–004 places financial institutions under a legal obligation to disclose the identity of their customers, whether they are natural or legal persons, branches or representative offices (arts. 18, 27 and 28). The criteria determining the beneficial owner are set forth in article 1 (12) of the Uniform Act and are inclusive. However, there is no requirement to understand the nature of the customer or legal person’s business and, in the event that money-laundering is suspected, there is no requirement to suspend due diligence procedures in respect of a customer if it may reasonably be believed that suspension might alert the customer to the suspicion. Furthermore, there are no measures in place for identifying customers that are legal arrangements and there is no requirement for financial institutions to suspend a customer relationship in the event that they are unable to complete their customer due diligence obligations.

Togo has not established a register of beneficial owners. ⁵

Article 1 (44) of the Uniform Act defines a politically exposed person as any natural person exercising or having exercised prominent public functions in Togo, abroad or within an international organization. It provides a list of the functions that should be

⁵ Following the country visit, Togo reported that it had adopted a legal instrument to facilitate the collection and retention of information on beneficial owners. The instrument in question is Order No. 025/MEF/SG/OTR/CG of 21 February 2022, specifying the procedures for identifying and retaining and declaring information on beneficial owners.
considered as meeting this definition. Although the concept of politically exposed persons encompasses the family members and close associates of foreign politically exposed persons (art. 1 (44) (j)), it does not include the family members and close associates of Togolese politically exposed persons or politically exposed persons working in international organizations.

The procedures for opening and exercising enhanced scrutiny of the accounts of politically exposed persons is set forth in articles 54 and 55 of Uniform Act No. 2018–004. However, these measures do not apply to family members and close associates of Togolese politically exposed persons or politically exposed persons working in international organizations, and financial institutions are not required to consider those who have exercised the relevant functions for a period of less than one year as politically exposed persons (art. 54 (3) of Uniform Act No. 2018–004).

In their efforts to prevent and fight money-laundering, the Togolese authorities directly apply the instructions and directives of the Central Bank of West African States and the regulations of the Inter-African Conference of Insurance Markets. In addition, CENTIF has issued a set of 12 guidelines for implementing the provisions of Uniform Act No. 2018–004, intended for obligated persons, including in particular designated non-financial businesses and professions.

These guidelines provide financial institutions with detailed instructions regarding the persons, accounts and transactions to which particular attention should be paid.

Togo has not taken any specific measures that would enable it to notify another State of the identity of any natural or legal persons whose accounts should be monitored more rigorously.

The retention period for information on customers’ identities, financial transactions and the results of the review of the implementation of enhanced due diligence measures is 10 years (art. 35 of Uniform Act No. 2018–004). However, it is not clear in the regulations whether this obligation extends to information about the beneficial owner.  

Financial institutions are expressly prohibited from entering into or maintaining banking relationships with credit institutions that have no effective physical presence or are not affiliated with a regulated institution or group. In addition, financial institutions must take appropriate steps to ensure that they do not establish or maintain any correspondent banking relationship with persons who themselves have a correspondent banking relationship with an institution constituted under the aforementioned conditions (art. 52 of Uniform Act No. 2018–004). However, Togo has not adopted any legal provisions prohibiting the constitution of institutions of this type.

Togo has established a (currently paper-based) asset declaration system to which a number of public officials are subject, including high-profile government figures and other officials occupying positions vulnerable to corruption (art. 145 of the Constitution and Decree No. 2021–091/PR of 25 August 2021, specifying and supplementing the procedures for organizing, protecting, maintaining and securing declarations of goods and assets). Declarations are required upon assuming and leaving office, and each time a new mandate or function is assumed in the course of the year (arts. 3–11 of Organic Act No. 2020–003, as amended). The content of declarations may not be published without the authorization of the declarant.

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6. Article 24 of Order No. 025/MEF/SG/OTR/CG establishes the same retention period for this information as that provided in article 35 of the Uniform Act.

7. Article 145 of the Constitution is implemented through Organic Act No. 2020–003 of 24 January 2020, setting forth the terms and conditions for declaration of the assets and property of high-profile public figures, senior civil servants and other public officials, as amended by Organic Act No. 2021–013 of 1 July 2021 and Decree No. 2021–091/PR of 25 August 2021, specifying and supplementing the procedures for organizing, protecting, preserving and securing declarations of assets and property.

However, a copy of the declaration of assets may be communicated to the judicial authorities, without prejudice to any immunities that the declarant may claim (art. 15 of Organic Act No. 2020–003). Failure to declare is punishable by a fine of 500,000 to 5 million CFA francs and entails automatic resignation from or relinquishment of office (new art. 19 of Organic Act No. 2020–003). False declarations are also subject to penalties (art. 680 (5) of the Criminal Code and new art. 19 of Organic Act No. 2020–003, as amended). Declarable assets include the income of the declarant and his or her spouse, including any income of foreign origin, unless the marriage was contracted under the separation of property regime (new arts. 8 and 9 of Organic Act No. 2020–003). Although Organic Act No. 2020–003 considers a “related person” to be any person related to the declarant by marriage, de facto union, filiation or adoption of children when still minors, and any person acting on behalf of the declarant, the obligation to declare does not extend to the property and assets of the declarant’s spouse and minor children, encompassing only the spouse’s income. At the time of the country visit, the Togolese authorities were in the process of determining which civil servants were subject to asset declaration obligations and had not yet begun the process of verifying declarations.

There is no requirement for public officials to report interests in or signature or other authority over a financial account in a foreign country.

CENTIF operates under the oversight of the Ministry of Finance but has financial autonomy and independent decision-making powers in the exercise of its functions. It is legally empowered to receive, analyse and follow up on suspicious transaction reports received from obligated persons (chap. III, arts. 59–78 of Uniform Act No. 2018–004). It has concluded 20 bilateral agreements with its foreign counterparts. However, insufficient financial and human resources prevent it from operating optimally.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Togo has no specific provisions recognizing the right of third States to bring a civil action before its courts in order to recover property acquired by means of one of the offences established in accordance with the Convention. However, there is nothing to preclude application of the general regime set forth in article 2 of the Code of Criminal Procedure, which allows any natural or legal persons to bring a civil action before a competent Togolese court to claim compensation for injury caused by a felony, misdemeanour or petty offence, provided that they have been personally affected by injury attributable directly to the offence.

Perpetrators of offences covered by the Convention may be ordered to pay compensation or damages to victims who have suffered injury as a result of the offence’s commission on the basis of article 337 of the Code of Criminal Procedure.

No express provision is made for the Togolese courts or competent authorities to recognize, when having to decide on confiscation, another State party’s claim as a legitimate owner of property.

Subject to the principle of reciprocity, the Togolese authorities may give effect to seizure and confiscation orders issued overseas on the basis of article 150 of Uniform Act No. 2018–004. The Togolese authorities may also issue a confiscation order at the request of a foreign State, with or without a decision of a court or competent authority of the requesting State party ordering freezing or seizure, on the basis of articles 130 and 148 of the Act. They may also issue a seizure order on the basis of articles 147 and 149 of the Act and carry out investigations and inquiries on the basis

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9 Belgium, Cabo Verde, Chad, France, the Gambia, Ghana, Guinea, India, Japan, Kazakhstan, Liberia, Monaco, Morocco, Nigeria, Panama, Sao Tome and Principe, Sierra Leone, South Africa, Trinidad and Tobago and Ukraine.
of article 142 of the Act. However, these cooperation mechanisms appear to be limited to money-laundering and terrorist financing offences.

Requests for cooperation within this framework are transmitted through diplomatic channels and, in urgent cases, through the intermediary of INTERPOL, or else are submitted directly to the national judicial authorities (art. 132 of Uniform Act No. 2018–004).

Togo has not taken any steps to allow for the confiscation of property constituting the proceeds of crime in the absence of a criminal conviction, nor has it taken any steps to enable its competent authorities to preserve property for the purposes of confiscation.

The conditions governing mutual legal assistance in money-laundering cases, including assistance with the enforcement of foreign freezing, seizure or confiscation orders and in cases where Togo has been requested to order freezing, seizure or confiscation measures, are set forth in articles 139 and 149 of Uniform Act No. 2018–004.

International cooperation measures for purposes of confiscation are implemented in Togo in accordance with its domestic law, as stipulated in articles 150 and 153 of Uniform Act No. 2018–004.

Togo does not make international cooperation conditional upon the existence of a relevant treaty, regarding the Convention as a sufficient basis for such cooperation.

In direct application of the Convention, Togo may refuse international cooperation for purposes of confiscation or lift provisional measures if it does not receive sufficient and timely evidence or if the property in question is of a de minimis value. Togo may also, before lifting such measures, give the requesting State party the opportunity to present its reasons in favour of continuing the measure.

Protection of the rights of third parties in confiscation proceedings resulting from the execution of a request for mutual legal assistance related to money-laundering offences is provided for in articles 148 and 150 of Uniform Act No. 2018–004.

Return and disposal of assets (art. 57)

Togo has no legislation providing for the restitution of property confiscated following a request for mutual legal assistance. Under the terms of article 151 of Uniform Act No. 2018–004, the Togolese authorities retain such property unless an agreement with the requesting State provides otherwise. In practice, confiscated assets are assigned to the treasury, which manages them, and their restitution may be arranged by agreement with the requesting State.

Togo has not entered in any treaties related to the restitution of assets.

In general, the costs incurred in executing a request for mutual legal assistance are borne by Togo. However, in the case of costly procedures, Togo may ask for the costs incurred to be deducted.

Article 151 of Uniform Act No. 2018–004 allows the Togolese authorities to enter into agreements or arrangements for the definitive disposal of confiscated assets.

3.3. Challenges in implementation

It is recommended that Togo:

- Require financial institutions to understand the nature of the customer or legal person’s business; suspend the customer relationship in the event of non-compliance with due diligence measures and consider notifying CENTIF; allow for due diligence procedures in respect of a customer to be suspended if their execution will alert the customer to suspicions; and extend identification measures to legal arrangements (art. 52, para. 1).
• Establish a register of beneficial owners (art. 52, para. 1).

• Ensure that the list of functions established for politically exposed persons does not limit the identification of foreign politically exposed persons who exercise, or have in the past exercised, prominent public functions; require that enhanced due diligence and scrutiny measures be extended to family members and close associates (including legal persons) of the three categories of politically exposed persons (nationals, foreign nationals and officials of international organizations); and eliminate the requirement for politically exposed persons to have exercised their functions for at least one year (art. 52, para. 1).

• Take appropriate steps to notify financial institutions of the identity of particular natural or legal persons to whose accounts enhanced scrutiny should be applied (art. 52, para. 2 (b)).

• Prohibit the establishment of banks that have no physical presence and are not affiliated with a regulated financial group (art. 52, para. 4).

• Consider strengthening the asset declaration system, including by extending it to cover all property and assets belonging to obligated persons; introduce a requirement to revise the declaration in the event of a significant increase in assets; continue efforts to effectively operationalize the electronic declaration system and the verification procedure; make asset declarations accessible to the competent authorities and, where appropriate, to the general public; allow information to be shared with the competent authorities in other States parties when necessary to investigate, claim or recover proceeds of criminal offences; and consider taking steps to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to the appropriate authorities and to maintain appropriate records related to such accounts (art. 8, para. 5, and art. 52, paras. 5 and 6).

• Ensure that the law is interpreted in such a way as to permit foreign States to bring claims before Togolese courts, in application of article 53 of the Convention. If the judiciary were to interpret the law differently, a legislative amendment would be required (art. 53 (a)).

• Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State party’s claim as a legitimate owner of property acquired by means of an act of corruption (art. 53 (c)).

• Adopt, in order to provide mutual legal assistance in confiscation matters, such measures as may be necessary to permit the competent authorities to:
  (a) Give effect to orders of confiscation issued by a court of another State party relating to any offence established in accordance with the Convention (art. 54, para. 1 (a));
  (b) Order the confiscation of property of foreign origin by adjudication of an offence within its jurisdiction or by other procedures authorized under its domestic law (art. 54, para. 1 (b)).

• Consider taking such measures as may be necessary to allow confiscation of property without a criminal conviction and the preservation, for purposes of confiscation, of assets acquired through the commission of an offence or used to commit an offence (art. 54, paras. 1 (c) and 2 (c)).

• Ensure that the competence of CENTIF extends to the proceeds of other offences established in accordance with the Convention (art. 56).

• Adopt measures for the return and disposal of confiscated property in accordance with article 57, paragraphs 1 to 3, of the Convention, taking into account the rights of bona fide third parties; and ensure that, in cases of offences established in accordance with the Convention, confiscated property is returned.
to the requesting State party in accordance with article 57, paragraph 3, of the Convention, including in cases in which bilateral or multilateral treaties provide otherwise.

• Provide CENTIF with sufficient human, financial and technical resources (art. 58).

3.4. **Technical assistance needs identified to improve implementation of the Convention**

• Management and verification of asset declarations (art. 8 and art. 52, paras. 5 and 6).

• Capacity-building in special investigative techniques, including supply of the necessary equipment (art. 51).

• Training for officials involved in national evaluations of corruption and money-laundering risks (arts. 14, 52 and 58).

• Capacity-building for officials involved in asset tracing and recovery (arts. 53 and 57).

• Technical assistance with the establishment of the register of beneficial owners (arts. 12, 14 and 52).