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Togo

Decentralized Service Delivery

Status and Way forward for Strengthening Communes

Policy Note

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GOV



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Decentralization and Intergovernmental Fiscal Relations in Togo -- Status and Way Forward for Strengthening Communes

A Policy Note

I. Executive Summary

Objective, Rationale and Audience. This policy note constitutes an integral part of the policy dialogue with the Government of Togo in support of its ongoing decentralization process. Its main audience is the range of intergovernmental stakeholders in Togo at national and subnational levels, including the Ministry of Economy and Finance, Ministry of Territorial Administration, Decentralization and Local Collectivities (MATDCL), Union of Communes of Togo, various sector ministries, and local collectivities.

Methodology. The note was developed through a process of consultations and discussions with key stakeholders, field visits to three communes, Lomé, Kpalimé, and Tsévié, as well as conversations with donors supporting the decentralization process in Togo.

The policy note focuses particular attention on the extent decentralization to the communes, the lowest level of local collectivities in Togo, given their potential role in improving local service delivery, while acknowledging that there are also regions to which resources and responsibilities can potentially be transferred¹.

Despite a long history of legislative initiatives, decentralization in Togo remains in its infancy. The history of transfer of administrative, political, and fiscal powers from the central government to localities, especially communes, is one of periodic reflection, followed by enactment of new or amended legislation that is either not implemented or only partially implemented.

The limited progress of the decentralization agenda over several decades has adversely affected the capacity and credibility of communes to serve as effective organs of local service delivery. Special delegations headed by presidents were appointed in 2001 to replace commune governments which were last elected in 1987. The composition of special delegations in terms of specific persons appointed has largely remained the same since the initial appointments in 2001, indicating a lack of attention to reinforcing and updating the local service delivery, administrative, and technical capacities of communes.

New reform momentum begun in 2017 promises to kick-start the decentralization process and strengthen the overall political legitimacy of communes as organs of self-governance. Commune elections planned for June 30, 2019 will usher in the first set of elected commune councils and Mayors since 2001. These new officials will face daunting tasks to organize themselves to deliver local services and to dialogue with central government on the further evolution of the existing decentralization framework.

¹ There has been a recent Council of Ministers decision to abolish prefectures (June 17, 2019).

A significant number of reforms are needed to support communes to effectively execute the mandate envisaged under the constitution and the current legal framework. However, given the low starting base and extent of the pending agenda, not all of the needed reforms can be achieved in the short term; many actions will need to be phased. Below, the policy note summarizes some of the key recommended actions and reforms, organized into recommendations for the short term (0-12 months), and medium to long-term actions (12-24 months).

Recommended Immediate Actions (0-12 months)

Political Decentralization. To provide much needed impetus for decentralization, the Government of Togo could consider the following steps on a priority basis:

- Clarify the roles and responsibilities of newly elected Mayors and Counsellors, including specifying residency requirements, remuneration, and detailed responsibilities.

Administrative Decentralization. The following actions could be considered in order to enhance administrative decentralization and ensure that commune administrations have adequate technical capacity to undertake their functions as soon as possible after elections:

- Assign Secretaries General to all 117 communes (i.e. to the additional 96 new communes) no later than September 30, 2019. Similar to the SGs of the existing 21 communes, these SGs should be assigned/transferred by MATDCL to communes to work directly under the jurisdiction of Mayors and Commune Councils.
- Formally recommend that all communes recruit Directors of Administration and Finance (DAFs) and Directors of Technical Services (DSTs); develop and disseminate detailed TORs for these positions based on lessons from existing donor supported programs and experience from better staffed communes.
- Develop a staffing plan and strategy to support the 96 newest communes to mobilize core staff.
- Undertake an intergovernmental dialogue between central government and the local collectivities (including regions and prefectures), to clarify the competencies to be transferred, and to eliminate existing overlaps between levels.

Fiscal Decentralization. To provide new and existing communes with much needed resources to execute their current and future mandates, recruit needed staff, and implement communal development plans, three immediate actions are recommended:

- Reduce the lag between the month of revenue collection and notification of availability to communes by Togolese Revenue Office (OTR) and the Treasury from 4-5 months to a maximum of 30 days.
- Introduce a system of general-purpose, formula-based transfers to communes, adequate to the needs and mandates of communes.
- Introduce the formula-based central transfers to communes in the 2020 Annual Finance Law, with an annex that indicates the specific formula-based allocations for each of the 117 communes.

Recommended Actions for the Medium Term to Long Term (12-24 months)

Political Decentralization. The following actions are recommended to strengthen political decentralization over the medium term:

- Introduce public participation guidelines that strengthen the participatory methodology and processes to engage citizens in the elaboration of the commune development plan.
- Promote public meetings of the commune general assembly, at least quarterly, to encourage transparency and inform interested citizens on local government deliberations.

Administrative Decentralization. To progressively build the necessary administrative capacity within communes to undertake both basic local development functions and to assume more sector functions over time, the following recommendations are offered:

- Undertake a capacity needs assessment for each commune that looks at human resources—technical, administrative capacities, fiduciary capacity (especially financial management)—as well as equipment and facilities requirements.
- Ensure that all 117 communes have the necessary core administrative staff to undertake their core functions – at least an SG, DST, and DAF.
- Ensure that all communes have the required financial management and accounting systems including software, to facilitate expenditure management, budget execution, reporting, and public disclosure.
- Develop a robust monitoring and evaluation system and reporting mechanism for implementation of commune development plans, such that the central government can effectively track local development and reorient the National Development Plan (NDP) and macro sector investments as needed.
- Engage with donors on a program of comprehensive support to the decentralization process that includes strengthening administrative and technical capacities of communes.
- Transfer the set of clarified commune competences in full to communes within 12-18 months after commune elections.

Fiscal Decentralization. To enhance the long-term fiscal capacity of communes, the following recommendations are offered for consideration:

- Reduce the lag between the month of revenue collection and notification of availability to communes by OTR and the Treasury progressively to not more than 48 hours (within 12-18 months); create an interconnected revenue mobilization platform which allows OTR to transfer resources mobilized directly to dedicated communal sub-accounts, simultaneously notifying Treasury and communes of transfer and availability of funds for use.
- Progressively increase the share of central government budget allocated to the formula-based general-purpose transfer to communes.
- Support communes to undertake an analysis of revenue mobilization potential, including a census of all properties, businesses and tax payers; once completed, use the taxpayer census to assess tax effort and revenue potential of communes.
- Make permanent the annex to the annual finance law that indicates share and amount of the central budget earmarked for transfers to communes, as well as the specific formula-based allocations for each of the 117 communes.

II. Background

A. Objective, Rationale and Audience

1. **This policy note constitutes an integral part of the policy dialogue with the Government of Togo in support of its ongoing decentralization process.** The note recognizes the potential of decentralization to enhance local service delivery, if done well. Hence, the policy note assesses the current state of decentralization in Togo, with a specific focus on decentralization from central government to communes, the lowest level of government and front-line for local service delivery. The note provides a set of recommendations for reform actions that can be implemented in short, medium, and long-term that would place the Togolese decentralization process and intergovernmental system on an optimal path, given the status of reforms as of the date of preparation of the policy note.

2. **The main audience of the policy note is the range of key intergovernmental stakeholders in Togo, whose decisions directly and indirectly affect the pace and direction of decentralization reforms.** These include: (i) Ministry of Territorial Administration, Decentralization, and Local Collectivities (MATDCL); (ii) Ministry of Towns, Urbanism and Housing; (iii) Ministry of Primary and Secondary Education; (iv) Ministry of Cities, Urban Planning, Housing and Public Safety; (v) Ministry of Health and Public Hygiene; (vi) Ministry of Economy and Finance; Ministry of Planning and Development; (vii) Ministry of Water, Rural Infrastructure, and Irrigation; (viii) Ministry of Agriculture, Animal Husbandry, and Fisheries; and (ix) Union of Communes of Togo. This policy note is of equal importance for subnational stakeholders such as the Prefects, and the Special Delegates, as well as the Secretaries-General of communes and other core staff. Finally, it will be of use to citizens, and to civil society organizations involved in initiatives to improve the delivery of communal services, as well as to the range of donors that are actively working to support the decentralization process in Togo².

B. Methodology

3. **The policy note was developed through a process of consultations and discussions with key stakeholders listed above as well as field visits to three communes Lomé, Kpalimé, and Tsévié,** where discussions were held with commune officials—Secretaries General, Directors of Administration and Finance, and Directors of Technical Services of all three communes, as well as the Délégué Spécial of Kpalimé, and Deputy Mayor of Lomé. Additional discussions were held with key donor partners that have been actively supporting the decentralization process in Togo, and the donor decentralization working group. The preparation of the policy note also benefited from a review of existing reports on decentralization prepared by donors and other experts, a review of government strategy documents and existing legislation, as well as the collection of primary data, e.g. with regards to the underlying fiscal situation of communes from the Togolese Revenue Office (OTR – Office Togolese de Recettes), Ministry of Economy and Finance (General Directorate of Treasury and National Accounts), and from communes themselves.

C. Context

4. **Situated in the Gulf of Guinea between Benin and Ghana, Togo faces important development challenges in terms of providing high quality services to its citizens.** Togo has an estimated population

² Donor engaged in decentralization support include: Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), European Union (EU), World Bank, United Nations Development Program (UNDP), Agence Française de Développement (AFD), Kreditanstalt für Wiederaufbau (KfW), and US Government.

of 7.3 million and is ranked 166th on the Human Development Index. In 2016 the GDP per capita was US \$578.46 as compared to US\$ 789.44 in Benin and US\$ 455.37 in Liberia.

5. **Togo's economic growth decelerated in 2017, a reflection of political tensions and fiscal consolidation**, slowing to an estimated 4.4% from 5.1% in 2016—its growth rate driven largely by the good performance of the agricultural sector, which accounts for about 40% of GDP and over 60% of employment.

6. **To attain the 17 Sustainable Development Goals by 2030, Togo will need to make a concerted push to improve service delivery.** Its key development challenges (as stated in its five-year National Development Plan 2018–2022) include: developing sectors with strong growth potential, including agribusiness; strengthening economic infrastructure; developing human capital, social safety nets, and youth employment; strengthening governance; strengthening basic social services in health, water, and power; promoting financial inclusion, gender equity, and social and environmental protection; and promoting more balanced, participatory, and sustainable development.

7. **To make substantial progress towards the SDGs, decentralization of governance and service delivery institutions will be important for Togo to addresses long term service delivery and development** challenges. However, the country remains highly centralized with little effective decentralization of resources, competencies and responsibilities from national to subnational governments (regions, prefectures, and communes)³.

8. **Over the past 25 years, there has been a gradual evolution in the decentralization policy and legal framework which serve as the basis for the intergovernmental system, though few of these laws (summarized below) have fully implemented:**

- Decentralization was inscribed in the 1992 constitution (Article 141) which organizes Togo into a unitary state with three levels of local collectivities (regions, prefectures, and communes).
- In 2007 Law No. 2007-011 on decentralization was passed which superseded an older Law N98-006 11 February 1998 on the same topic, and focused on the key actors, their expectations, responsibilities as well as communication mechanisms.
- In June 2008, rural and urban communes were legally permitted to enter cooperation agreements or unions.
- Law 2009-27 of 3 December 2009 created eight prefectures and sub-prefectures.
- In 2011, two decrees No. 2011-112/PR and N 2011-179/PR were issued that elaborated the role of the prefecture and governor as well as the functioning of the local development funds.
- Law No. 2012-010 of 11/06/2012 established 14 communes (these increased over time to 21).
- Law No. 2017-008 of 29 June 2017, established 116 communes and defined their capitals and territorial jurisdictions. It was modified in December 2018 to increase the number of communes in Douflegou prefecture from 2 to 3, and the total number of communes in Togo to 117.
- Law No. 2018-003 of 31 January 2018, modified Law No. 2007-011 the main decentralization law related to actors, roles, and responsibilities for local collectivities.
- Council of Ministers adopted a draft law on June 17, 2019 that will abolish the prefectures. It also incorporates a six-year term for elected local officials, renewable for two addition terms.

³ On June 17, 2019 by Council of Ministers, Government of Togo adopted draft law to abolish prefectures.

9. **In addition to only partial implementation, these laws represent a patchwork of legislation, which do not collectively create a solid foundation for effective decentralization of relevant service functions to communes.** According to expert observers⁴, Togo suffers from a decentralization process that is characterized by upward accountability and few viable mechanisms for downward accountability. Several structural and design challenges remain across the three important dimensions of Togo’s decentralization—administrative, political and fiscal that significantly affect the effectiveness of the system and its capacity to deliver high quality local services.

10. **The subnational structure.** As mentioned above, subnational Togo consists of three levels: regions, prefectures, and communes. There are five regions, each with 4-9 prefectures (39 prefectures in total). The Governor and Prefect are the heads of the region and prefecture respectively and are appointed by the Council of Ministers. They represent the deconcentrated central state at each level and also have the specific mandate to ensure the legality and conformity of any local government acts with national laws. There are also deconcentrated sector units and staff at all administrative levels which represent line ministries and directly delivery sectoral programs and services. Each of the 21 existing communes is supposed to have an elected mayor and commune council but currently have appointed Special Delegations. The table below summarizes the new distribution of communes, by region, as per Law No. 2017-008, amended in December 2018. Prefectures are expected to be abolished following the recent government decision to that effect.

Table 1: Regions and Communes in Togo

Regional Profile and New Distribution of Communes in Togo					
Name of Region	Savanes	Kara	Centrale	Plateaux	Maritime
Number of Communes	16	22	15	32	32
Population	828,224	769,940	617,871	1,000,551	2,599,555
Land Area	8,470 km ²	11,538 km ²	13,517 km ²	16,975 km ²	6,100 km ²

Source: www.ancetogo.org/en/decentralization

11. **Municipal competencies.** According to the decentralization Law No. 2018-003 of 31 January 2018, communes have been assigned competencies within nine areas: (i) local development and regional planning; (ii) urban development and housing; (iii) infrastructure, equipment, transport, and communications; (iv) energy and water resources; (v) trade and crafts; (vi) management of natural resources and environmental protection; (vii) education and vocational training; (viii) health, population, social welfare and civil protection; (ix) sports, leisure, tourism and cultural activities. The precise roles and assignment of functions within these sectors and subsectors are unclear, as the competency domains overlap with those of the prefectures and regions. In addition, the transfer of these competencies has yet to be operationalized.

12. **Administrative decentralization is fledgling.** While there is administrative decentralization in form (communes, prefectures, and regions) each with deconcentrated or delegated staff, there is minimal clarity in terms of the substance of administrative decentralization to the lowest level. The roles and functional domains of communes are unclear. Communes lack financial and human resources which constitutes a major impediment to Special Delegations and local administrative staff in the execution of

⁴ Anita Breuer et al. 2017, http://www.cib-uclg.org/sites/default/files/decentralisation-in-togo-the-contribution-of-ict-based-participatory-development-approaches_0.pdf

basic commune activities. The situation is clearer for regions and prefectures given the concentration of deconcentrated sector units with clear central mandates at these two levels.

13. **Political decentralization has not yet occurred.** Defined as the transfer of specific powers from central government to elected local government officials for independent decision-making. There is instead a system of strong upward political accountability. As of 2001 all subnational leadership has been appointed by the state. While local mayors are supposed to be elected the last mayoral elections were in 1987, and since 2001 municipal councils are run by centrally appointed Special Delegations.

14. **Fiscal decentralization is minimal as communes lack effective control over own revenue generation or expenditures.** There are no transfers from central government to local collectivities, only to deconcentrated units. There are communal own revenues, however their mobilization is not directly managed by communes but by central government (Office of Togolese Revenue and General Directorate of the Treasury and National Accounts). Government recognizes that local discretion can only be effective when there is some degree of fiscal discretion, and under Article 303 of Law No. 2018-003 of 31 January 2018 on decentralization noted that each transfer of competencies should be accompanied by a corresponding transfer of state resources. The law also envisages the creation of the Fund to Support Localities (FACT), whose modalities were established by decree in 2011. However, FACT is not yet operational.

15. **The overall context is a highly constrained local service delivery space, where communes have very little discretion to implement local development or services independent of central government.** They also seem to have little incentive to engage citizens in addressing local needs, as all accountability faces upwards through centralized local appointments, competencies, and financing mechanisms.

16. This policy note provides a deeper analysis of some of these issues and makes recommendations on how they can be addressed in the short, and medium to long term, in order to facilitate the decentralized delivery of local services.

III. Key Issues and Challenges

A. Political Decentralization

17. **The lack of political decentralization in Togo and needs to be addressed on a priority basis.** The last local elections were held in Togo in 1987, and there are no elected representatives, legislative or executive at any of the subnational levels.

18. **The situation is most pressing at the commune level which is supposed to have the closest, most direct link to the local population.** As per the decentralization law, communes are expected to deliver services in the nine sectors areas. They are also expected to develop and execute communal development plans with the engagement of all stakeholders including citizens.

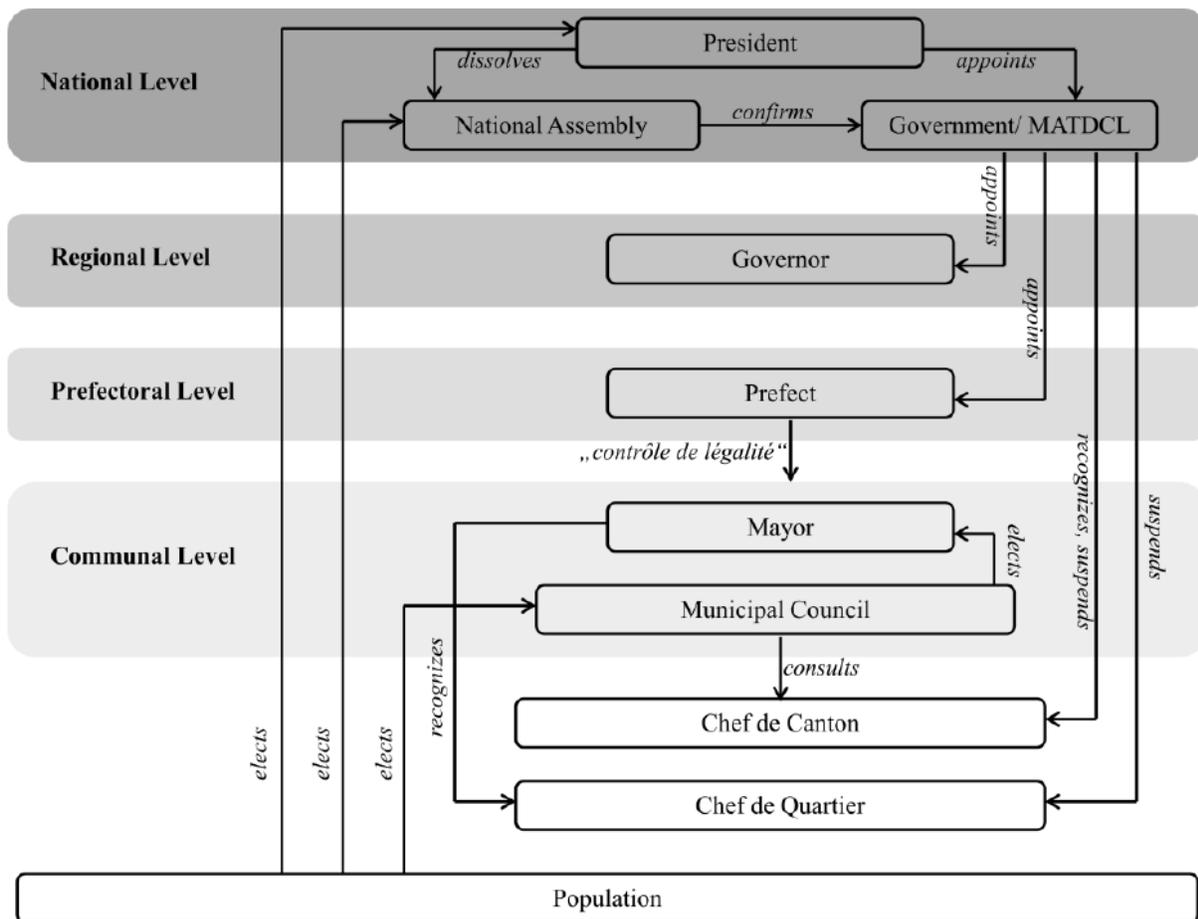
19. **The national and commune have historically been two elected levels of government foreseen in the constitution and other relevant legal texts⁵,** however the updated legislation also foresees elected councils at the regional and prefecture levels⁶. While the formal structure of government provides for four levels, national, region, prefecture, and commune, there are only two levels with elected executives

⁵ Constitution of Togo, Loi No. 2007-002, Loi No. 2007-011

⁶ Law No. 2018-003 of 31 January 2018, Art. 85, 173, 236 & 238

national (President) and commune (Mayor). At the national level, the President and the members of the National Assembly are directly elected by citizens. The President, through MATDCL appoints the governors and prefects for the regions and prefectures respectively. The legal framework envisions directly elected commune councils elected for 5-year terms, renewable for one additional term. These elected councilors in turn elect the Mayors and Deputy Mayors from among their membership (indirect elections). The number of deputy mayors and councilors range from 1-4 and 11-23 respectively depending on the population of the commune (usually between 50,000-150,000). The law also provides for cantons (Chef de Cantons) and Quartiers (Chef de Quartier), subsumed within the communal structure.

Figure 1: Republic of Togo – Levels of Government



Source: Decentralization in Togo: The Contribution of ICT-based participatory development approaches to strengthening local governance, German Development Institute Discussion Paper, 2017.

20. **The 2018 legislation envisages elected councils which would advise Prefects and Governors in their roles as the formally appointed representatives of the state.** Like commune councils, they are to be elected for five-year terms, renewable once, and will indirectly elect the executive team of the council (president, vice-president, and rapporteur). The regional and prefecture councils are designed as advisory bodies which the Prefects and Governors are expected to consult regularly with respect to the conduct of territorial affairs. The recent Council of Ministers decision to abolish prefectures, also incorporates a change in electoral mandates of local collectivities to a six-year term, renewable twice. Once formalized through legislation this would eliminate prefectures and any associated councils.

21. **Special Delegations were appointed by the central government in 2001 to replace the commune mayors and councils whose terms had long since expired.** Each special delegation is headed by a president and its size ranges from 7 to 13 members, depending on the size of the commune. In anticipation of elections within the next three months, the 2007 decentralization law⁷ limited the authority of the special delegations to managing on-going affairs, including execution of the already approved budget. However, with the repeated delays in holding elections, this provision of the law had to be suspended to allow special delegations to adopt the annual communal budgets. Since their appointments in 2001 to present, communes have been headed by the Presidents of the Special Delegation, and they are generally the same persons appointed in 2001. For example, of 21 Presidents of the Special Delegations, approximately six have been replaced since 2001. The absence of a clear political mandate and the limited replacement of Special Delegations have affected their accountability and effectiveness.

B. Administrative Decentralization

22. **Administrative decentralization is nascent in Togo.** As mentioned above: the legislation foresees the transfer of competencies in nine sector areas: (i) local development and regional planning; (ii) planning and habitat; (iii) infrastructure, equipment, transport, and communications; (iv) energy and irrigation; (v) trade and crafts; (vi) management of natural resources and environmental protection; (vii) education and vocational training; (viii) health, population, social welfare and civil protection; (ix) sports, leisure, tourism and cultural activities.

23. **Most of these functions currently reside within the jurisdiction of national ministries and have yet to be formally transferred to communes.** Therefore, the review has focused on the human resource needs in terms of core operational staff, rather than additional technical staff that would be needed in the long term to administer devolved competencies.

24. **Local development and regional planning.** Discussions with Ministry of Planning, Development and Cooperation, and Kpalimé, Tsévié and Lomé communes indicated that all 21 current communes are in principle responsible for the development of a 5-year commune development plan (Plan de développement communal—PDC). However, the PDCs have not been developed in all communes. The Ministry of Planning, Development and Cooperation (Ministère de la Planification du Développement et de la Coopération—MPDC) has provided training and a framework at the regional level and developed a guide for the elaboration of the PDC with donor support.

25. **Donors have supported the development of some local plans (PDCs).** In particular, GIZ/EU has supported the development of PDCs in Kpalimé, Tsévié, and Sokodé, Atakpamé, Kara, Dapaong, as well as the elaboration of the methodological guidance in support of MPDC.⁸

26. **Administrative and technical capacity is lacking in most communes, and this will be exacerbated as the number of communes is expanded from 21 to 117.** Most communes lack basic core staff to execute their development mandates. While all 21 existing communes have Secretaries-General, who are appointed and placed within communes by MATDCL, most do not have the resources to hire additional technical staff, namely a Director of Administration and Finance (DAF) and Technical Services Director (DST). While there is not set list of core staff for communes, analysis and review by donors of human

⁷ République Togolaise, 2007b, Loi No. 2007-11, Art. 87)

⁸ Support to commune development and capacity building provided by joint EU/GIZ program ProdeGOL.

resource capacities indicates that these three are the core minimum senior technical staff needed for communes to function effectively.

27. 31. **A small subset of major communes has been able recruit the required core staff.** The human resources situation is better in major urban cities such as Kara and Lomé, which have the own resources needed to recruit core positions and more, including directors of communications (in Lomé), accountants and other front-line citizen facing staff. Such communes are the exception rather than the rule.

28. **Donors have sought to strengthen HR capacities on a pilot basis.** Under the EU/GIZ ProdeGOL, MATDCL has recruited staff on annual contracts to serve as DSTs and DAFs in Sokodé, Tsévié, and Kpalimé. These staff have been important additions to the human resources capacity of the three communes. However, these staff are on annual contracts, their deployment was a prerequisite for inclusion of the communes in the program of technical support under the project, and their long-term status is unclear. A broader strategy is also needed for recruiting and financing the deployment of similar additional staff in all of the existing 21 communes and in the newly created 96 communes which are mostly largely rural.

29. **Building human resources capacity in a sustainable manner will remain an important challenge and priority for new and existing communes.** And three key challenges need to be addressed: (i) arriving at a firm consensus as to the critical human resource gaps that need to be filled for all communes (prior to sectoral decentralization which will transfer new competencies and require additional skills and capacities); (ii) how to address the fiscal implications of such staffing needs as few communes will have the fiscal capacity to finance these staff from own source revenues; and (iii) how to address the critical staff funding shortages in ways that respect the principles of decentralization, i.e. ensure that these staff effectively report to and respond to commune governments rather than central ministries.

C. Fiscal Decentralization

30. **Fiscal decentralization is very much an unfinished agenda in Togo.** When evaluated in terms of the classic intergovernmental fiscal system (own revenues, transfers, and borrowing) communes benefit from only one of these fiscal sources -- own revenues, and even within this context, there are major constraints on how these are mobilized that impact the timely access of communes to their own revenues.

Fiscal Transfers

31. **There are no fiscal transfers to communes in the national budget.** Central transfers are made to deconcentrated sector units of central government, and the national budget is centrally executed as well as to some other delegated budget entities including hospitals that receive direct transfers and can execute their allocated budgets⁹. Budget allocation is essentially deconcentrated up to the level of the five regions. The budget is allocated through the MTEF and notified to sector ministries after passage by parliament. Togo is introducing a program budgeting approach, in conformity with West African Economic and Monetary Union (WAEMU) directives. This includes changes in budget allocation and execution processes, controls and reporting, which will pose an initial challenge of how to reflect any new direct allocations to communes in the program budget.

⁹ Hospitals are managed by an independent board which includes the local head of commune (President of the Special Delegation) as Chair, and other representatives such as from the medical board, faculty and HR directorate.

32. **Fiscal transfers will be important to facilitate the functioning of communes, most of which are new and rural.** Fiscal transfers are an important part of any decentralized system of governance and will be particularly important in the context of the newly created communes which given their largely rural nature, will have lower potential for mobilization of own revenues than the existing 21 communes. Immediately after elections, commune leadership will need to recruit a core minimum of human resources, and will require financial support from the center, at least in the short to medium term.

33. **A possible budgetary transfer to communes of 2-5% of total national budget is currently under consideration by Government.** Discussions on the possible level of transfers from the national budget, as well as the mechanism and modality are on-going but not at an advanced stage. Such a transfer, if instituted, can be phased in by progressively increasing the share reserved for transfers over time, beginning with 2% in the 2020 budget. And it can be structured as a general-purpose transfer that is formula based and considers the economic conditions and expenditure needs of all communes.

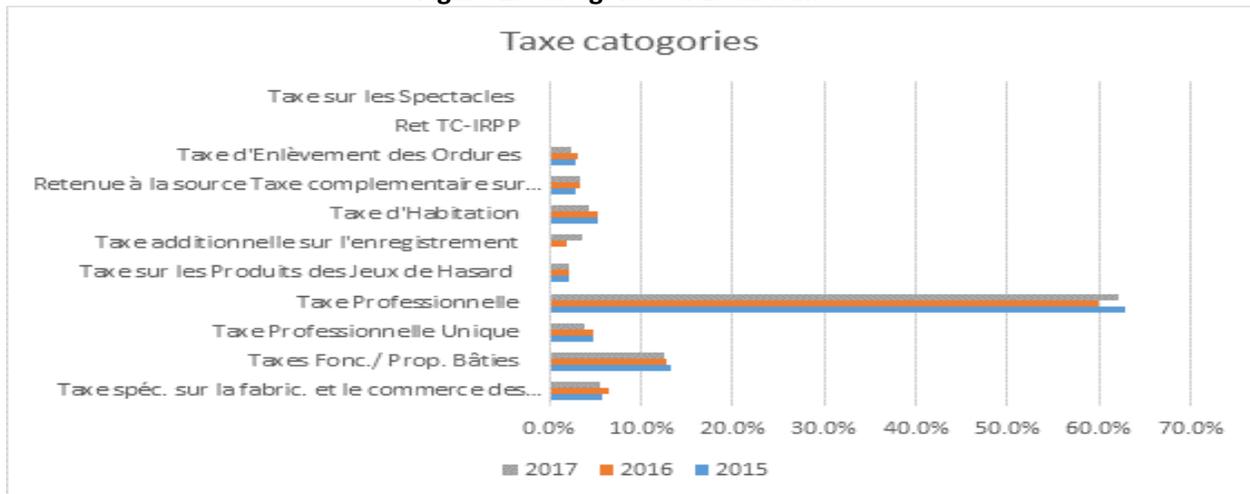
Local revenues

34. **Commune expenditures are financed entirely by local revenues.** These local revenues consist of 11 taxes assigned to local governments under the Fiscal Code, as well as other taxes and fees collected by the Regional Directorate of the Treasury. While commune councils can propose the introduction of new non-fiscal taxes and fees, these need to be approved by the relevant authorities (e.g. Ministry of Mines for minerals) and ultimately by the Ministry of Economy and Finance. In principle, localities can fix tax rates for existing revenues, within the ceiling determined by the annual finance law.

35. **All local taxes which are mentioned in the Fiscal Code are collected by the Togolese Revenue Authority (OTR) on behalf of communes.** These taxes are: (i) taxes on land and buildings; (ii) tax on production and sale of local drinks; (iii) Unified professional tax; (iv) professional tax; (v) payroll tax; (vi) garbage disposal tax; (vii) gambling tax; (viii) supplementary registration fees; (ix) housing tax; (x) supplementary payroll tax; (xi) events tax. The amounts collected on behalf of communes are placed in an account within the treasury. The total quantum of resources collected on behalf of all communes can vary significantly from year to year, e.g. from XOF 8 billion in 2015 to XOF 1 billion in 2017.

36. **The taxes collected by OTR, shown below, are either 100% assigned to local governments or shared with central government.** For each tax, a distribution ratio between the central and local level is included in the budget law, usually between 50% and 100% and can change annually depending on the budget law. Taxes on mineral resources are collected outside this arrangement, by the Ministry of Mines. By far the largest share of local taxes collected by OTR is the professional tax, which accounts for more than half of the total revenue collected by the OTR for local collectivities. This is explained by the nature of the professional tax as it affects any physical and moral person who practices a trade, an industrial activity or any professional activity. Revenue collected by OTR is placed into the treasury account under the Chapter 75 with sub accounts to distinguish the different types of local revenues.

Figure 2: Categories of Local Taxes



Source: OTR

37. **Non-fiscal revenues are collected by communal local tax collectors working under the auspices of the Regional Directorate of the Treasury.** These local revenues are collected and deposited directly in to commune treasury sub-accounts. Revenue collected by Regional Directorate for the communes is reported under different treasury accounts within chapters: 70, 71, 72, 73,74, 76, and 79 which include sub accounts to better track revenue sources. The breakdown below of the 2017 revenues in Tsévié, Lomé and Kpalimé shows that the Regional Directorate of Treasury collected more resources than OTR in Tsévié and Kpalimé. In Lomé commune, the biggest part of the revenue (77%) was collected by OTR, while revenues collected by OTR accounted for only 16% and 22% respectively for Tsévié and Kpalimé.

Table 2: Commune Revenue Distribution in 2017

	Tsevie	Kpalime	Lome Commune
10 Allocation-subvention	0%	0%	0%
16 Borrowing	0%	0%	0%
70 Operating income	40%	31%	5%
71 Municipality property	31%	25%	2%
72 Financial product	0%	2%	0%
73 Covering and participation	0%	1%	2%
74 Miscellaneous product	1%	1%	0%
75 Fiscal and direct tax	16%	22%	77%
76 Fiscal and indirect tax	6%	9%	10%
79 Unusual gain	6%	9%	5%

Source : Tsévié, Lomé and Kpalimé communes

38. **Revenues collected by OTR are not directly made available to communes, rather with significant delays of 3-5 months.** OTR first deposits the revenues that it collects on behalf of communes in the treasury, they the resources are made available to communes by the Treasury. There are two levels of notification which take place, to inform localities of the availability of funds that can be engaged for expenditures. In the first instance, OTR is supposed to notify communes at the same time as it consolidates the transfers and sends them to the Treasury. Thereafter, following some adjustments/modifications, the Treasury informs the communes of the final amounts that are available for use. Discussions with the three communes indicate that the notified amounts don't always match, however, the Treasury notified amounts are the final allocations. Communes reported a significant lag in the notification of available funds, and the data below, shows the specific notification periods for one commune. It corroborates that

communes' own revenues, are not usually available to them until the second quarter of the fiscal year. This has important consequences for timely and effective budget execution. The data also shows that Treasury notification sometimes precedes OTR notification to communes, indicating that the notification lag may in part be explained by capacity constraints or low level of prioritization of the notification to communes by OTR.

Table 3: Commune Revenue Notification and Available

Sample Revenue Collection and Availability to Communes		
Month of Revenue Collection (2018)	Date Commune Notified by OTR	Date Commune Notified by Treasury
January 2018	19/4/2018	
February 2018	7/6/2018	30/5/2018
March 2018	7/6/2018	30/5/2018
April 2018	10/7/2018	22/6/2018
May 2018	6/8/2018	30/7/2018
June 2018	24/9/2018	28/8/2018
July 2018	4/10/2018	31/10/2018
August 2018	8/10/2018	31/10/2018
September 2018	14/11/2018	30/11/2018
October 2018	8/1/2019	31/21/2018
November 2018	5/2/2019	31/1/2019
December 2018	12/3/2019	27/2/2019

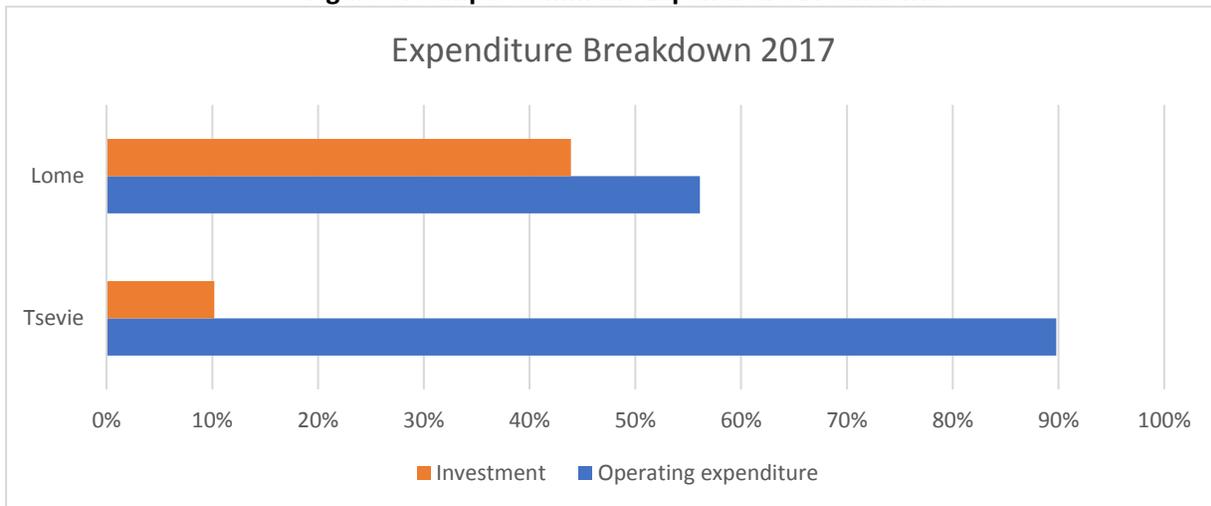
Source: Kpalimé

Commune Expenditures

39. **The expenditure of the municipalities consists of operating and capital expenditure.** Specifically, the budget is comprised of (i) recurrent costs and (ii) investment and equipment. However, with the notable exception of Lomé which has relatively significant revenues, few commune budgets incorporate a substantial allocation for public investment, as a share of total expenditures. Since borrowing is not allowed, debt service obligations do not feature significantly in the local budgets.

40. **Commune expenditures are mostly operating costs.** This is to be expected given the current context of very limited sector decentralization of core competencies and functions. Most of the expenditure goes to recurrent cost obligations such as salary and office papers, utilities, etc.

Figure 3: Sample Commune Expenditure Breakdowns



Source: Lomé and Tsévié communes

41. **There are also limits on the types of investments that can be made where there is enough capital budget.** Decree N 2011-179 describes the modalities of the local development funds. Articles 8-9 limit the investments to non-productive equipment such as urban development, schools, roads, crossing structures, sports centers and health centers but not markets, stations abattoirs, dance halls and lodging.

Fund to Support Local Governments (Fond d'appui aux collectivités territoriales—FACT).

42. **The operationalization of the Fund to Support Local Governments (FACT) to support local investments is under consideration by the government of Togo.** FACT was originally created through Law No. 2007-001 (March 13, 2001) and modalities of operation proposed in decree No. 2011-179 (December 7, 2011). The existence of the FACT was reconfirmed in Law 2018-003 however it is yet to be operationalized or its role clearly defined.

43. **The challenge of operationalization of FACT is linked to an unclear institutional role and funding mechanisms.** The main challenges relate to: (i) the optimal institutional home for the fund; (ii) the appropriate institutional structure for FACT, given the need for a light and efficient structure; (iii) sources of funding; and (iv) rules for facilitating access of local collectivities to the resources available within the FACT.

44. **Organizational structure of FACT.** A recent review of organizational options suggests two options for organizational structure. Firstly, FACT could be an independent public agency with its own Board, as well as a Secretariat and five Regional Agencies. A second option would place FACT as a General Directorate within MATDCL with a Permanent Secretary, Secretariat, and five regional cells. While each of these options has pros and cons, any option if selected would need to address important yet undefined institutional role of FACT vis a vis duly elected commune government.

45. **Financing the FACT remains an important challenge.** The issue of how FACT might be financed remains an important question to be considered if FACT is to be operationalized. Possible sources of financing under consideration include: (i) an annual budget allocation from central government; (ii) allocations from sectors based on the competencies to be progressively transferred by sectors as part of the FACT; (iii) funding from donor partners destined to support local development and local service delivery; and (iv) other resources such as private contributions that are mobilized through donations.

46. **Eligible Investments under FACT.** Discussions also include whether the FACT would fund both operational costs to reinforce technical and administrative capacity of communes as well as investments to support the implementation of the local development plans.

47. **Given the need for improvements in the core intergovernmental system, the operationalization of FACT could be considered as part of the medium to long term agenda.** The overall weaknesses in core administrative, fiscal, and political decentralization of the intergovernmental system, are key binding constraints which should be given higher priority.

48. **No general purpose or sectoral central fiscal transfers should be routed through the FACT.** This means that the first two financing options should be ruled out as financing mechanisms for the FACT: an annual budget allocation from central government or allocations for sectors based on progressive transfer of competencies. Intergovernmental allocations to finance delegated and devolved competencies should be transferred to communes directly based on transparent criteria. If FACT is to be operationalized, it could focus on leveraging donors including private donations as possible sources of financing. However, overall the arguments in favor of establishing such a fund are not strong.

49. **An intergovernmental system that clarifies functional competencies, strengthens revenue sharing and expenditure roles, and builds the core administrative capacity of communes is priority.** Government should initially focus on strengthening of communes' core fiscal position through a direct transfer commensurate with the mandate of communes, prior to considering allocating resources to a central fund even if destined for local governments. And donors would have a better idea of how best to channel pooled resources to support local service delivery, once the assignments of expenditure responsibilities across sectors are clarified and operationalized. Similarly, sector functions once transferred should be accompanied by the appropriate transfer of fiscal means to localities, whether by general purpose or sector specific block grants.

Budget Preparation and Execution

50. **Law 2018-003 stipulates that the budget is prepared by the executive of the local collectivity and voted on by the council.** In the case of the communes this means that the elected Mayor and Deputy Mayors would draft the budget and it is approved by the elected local council. The Prefect and Governor and administrations are responsible for drafting the prefecture and regional budgets, and the law is unclear as to the relationship between the prefect/governor and the proposed advisory councils with respect to budget preparation.

51. **The local budget should be approved no later than January 1st of the associated budget (calendar) year, or in exceptional circumstances by March 31 of the same budget year.** All necessary inputs from deconcentrated and delegated services are to be provided to the localities by October 30th of the preceding year. The local budget is transmitted to MATDCL within eight days of adoption which then has 30 days to formally approve the budget or it is considered *de facto* approved. The approved budget is also to be made available to any citizen upon request of a copy and should also be submitted for public consultation. Given the context of appointed special delegations, this procedure is not currently operational, but can be expected to be reinstated once commune elections are conducted and office holders duly elected.

52. **The local budget execution follows Togo's standard administrative and the accountant steps.** Specifically, it is governed by six principles/rules principle among which is separation of spending authority and accountants (plus universality, unitary, annual, balance, and specialized credits).

53. **Budget executive responsibility diverge from provisions of existing decentralization laws.** By law, the mayor, and presidents of the prefecture and regional councils are officially the authorized spending authorities, and the accounting authority rests with the decentralized representative of the Treasury, MEF. However, given that the most recent decentralization laws are yet to be implemented, the actual administrative procedure starts with the commitment (the acknowledge of the existence of the expenses) made by the financial director (DAFs where they exist, otherwise accountants) on behalf of the President of the Special Delegation. Once the financial director makes necessary calculation to determine the amount to pay to the beneficiary, the special delegate gives the order to pay. The Regional Directorate of Treasury has a delegation of power to pay and oversee the payment of local entities expenditures. Before making the payment, the treasury officer delegated to oversee the commune level expenditures double checks the legality of the expenditure as well as the availability of funds prior to authorizing the accountant to proceed with payments.

54. **External controls.** The municipalities are required to send their financial statements to the Court of Accounts which reviews each statement to certify the financial conformity of the statement before sending it to the parliament.

D. Decentralization of Sector Competencies

55. **A substantial part of the unfinished in Togo's decentralization process is the effective transfer of competencies from central government ministries to communes.** Meaningful sector decentralization is yet to take place despite sector competencies enumerated in the law. Law 2018-003 identified competencies for each level of collectivities under three broad categories: (i) own competencies, (ii) shared competencies, and (iii) transferred competencies.

56. **Own competencies of local collectivities.** The list of functions that are supposed to be managed by collectivities directly are listed as own competencies. For communes these are: (i) local development and regional planning; (ii) urban planning and housing; (iii) infrastructure, equipment, transport, and communications; (iv) energy and water resources¹⁰; (v) trade and crafts; (vi) education and vocational training; (vii) health, population, social welfare and civil protection; (viii) sports, leisure, tourism and cultural activities. Except for "sports, leisure, tourism, and culture activities" which are repeated under transferred competencies from central government, these broad competencies repeat under shared competencies (i.e. between communes and other local collectivities).

57. **Overlapping competencies at various levels.** At each level the division between what is own and shared competencies is generally delineated. For example, under urban planning and housing the supply of certain types of construction permits including for demolition, is listed as an own competency for communes, while the development of the urban and communal master plans is listed as shared competency. However, some specific competencies often overlap at various levels. For example, the development of the communal development plan is an own competency for the communes, and there is development of the similar development plans at the prefecture and regional level, without a clear sense of how these multi-level plans are to be integrated. Similarly, the assignment of competencies proposed the development of the prefecture level urban master plans also appear to overlap.

58. **The stated competencies within the legislation do not correspond to realities on the ground.** As mentioned previously, there is a substantial gap between the listed assignment of competencies in the legislation and the state of actual sector decentralization in Togo. Discussions with central sector

¹⁰ This includes management of natural resources and environmental protection

ministries confirmed that sector ministries have yet to transfer any of these core competencies stated in the decentralization laws to communes.

59. **The state of sector decentralization is a less pressing issue for regions as these are likely to remain as deconcentrated levels of state administration for the foreseeable future.** However, as duly elected commune governments are put in place in 2019, the lack of clearly articulated sector functions and roles, combined with the inadequate fiscal and administrative means to implement service delivery are a likely to create significant frustrations and challenges if not addressed on a priority basis.

60. **Hospital decentralization.** Discussions with Ministry of Health, commune stakeholders, and hospitals indicate that management of hospitals has been effectively decentralized. They are managed by an independent board which includes a range of key stakeholders, such as the head of the commune (President of the Special Delegation) as Chair, as well as representatives from the medical board and faculty and staff, and personnel representative (usually Director of HR). Hospitals are in principle both administratively and financially autonomous. They have their own budgets, which are a combination of a budget allocation from the state (reflected in the Annual Finance Law), and some own resources (significant in many cases). General technical and budgetary oversight are provided by the Ministry of Health and Ministry of Economy and Finance respectively. There is no contribution from the local budget. Recruitment of new personnel is constrained by the multiple ministries that are involved in the process, leading to senior positions often going unfilled for extended periods. Financial controllers are not embedded at the hospital level, but rather at the MEF, creating some delays in budget execution. Finally, there are also centrally determined limits on the payments for certain core services which creates cost recovery challenges for hospitals. Yet, within these constraints, hospitals deliver decentralized services, and respond directly to patients.

61. **In general ministries have not given serious consideration to transfer of competencies.** This is the case even in ministries which have a general vision of how such transfer of competencies might be organized (e.g. Ministry of Primary and Secondary Education). Other ministries such as Health and Public Hygiene, and Agriculture, Animal Production and Fisheries are for the view that existing service delivery arrangements are sufficiently decentralized and do not envision operationalizing the competencies enumerated in the current legislation. And more importantly, some ministries which have yet to reflect fully on the transfer of competencies are faced with an important challenge of rationalizing their current sphere of intervention in local development (e.g. Ministry of Cities, Urban Development Housing, and Ministry of Water Rural Infrastructure and Irrigation). This reflection is needed in order to minimize the duplication of roles and functions and crowding-out of newly elected commune governments.

E. Donor Support to Decentralization

62. **A range of donors are actively supporting the decentralization agenda in Togo through technical assistance, policy dialogue and investments.** Principle among these donors is UNDP which has worked closely with Government to develop a decentralization roadmap, GIZ and European Union who in partnership have provided extensive analytical TA to MATDCL and capacity building support to a subset of communes (examples cited in this note). The World Bank in addition to preparing this policy note, has an ongoing Infrastructure and Urban Development Project which undertakes urban investments in selected municipalities as well as local development capacity building support to urban communes. Other donors active on the agenda include, AFD, US, and KfW.

63. Donor coordination can be enhanced through the Donor Decentralization Working Group which is already in place. Such coordination will become increasingly important as government begins to

decentralize in earnest. To support the development of a robust intergovernmental system, coordinated donor support to Government will be needed across all dimensions of decentralization, especially on: (i) strengthening of administrative and technical capacities in communes; (ii) the design of a robust intergovernmental fiscal system; (iii) operationalizing sector decentralization; and (iv) harmonizing local investments for optimal service delivery and development impact.

IV. Conclusions and Recommendations

64. Despite a long history of legislative initiatives, decentralization in Togo remains in its infancy. The history of transfer of administrative, political, and fiscal powers from the central government to localities, especially communes is one of periodic reflection, followed by amended legislation which ultimately is not implemented or only partially.

65. The limited progress of the decentralization agenda over several decades has adversely affected the capacity and credibility of communes to serve as effective organs of local service delivery. Special delegations headed by presidents were appointed in 2001 and their composition in terms of specific persons appointed has largely remained the same, indicating a lack of attention to reinforcing and updating local service delivery, administrative, and technical capacities of communes for development.

66. This policy note has outlined a vast agenda of reforms which need to evolve for communes to effectively execute the mandate envisaged under the constitution and the current legal framework. It focuses almost exclusively on the strengthening of decentralization to communes, rather than to prefectures and regions which are also part of the subnational institutional landscape.

67. Given the low starting base and extent of the pending agenda, not all the needed reforms can be achieved in the short term and many actions will need to be phased. Below, the policy note summarizes some of the key recommended actions and reforms. They are organized into recommendations for the short term (0-12 months), and medium to long-term actions (12-24 months).

A. Recommended Immediate Actions (0-12 months)

68. Political Decentralization. To provide much needed impetus for decentralization, the Government of Togo could consider prioritizing the following:

- Clarify the roles and responsibilities of newly elected Mayors and Counsellors, including specifying residency requirements, remuneration, and detailed responsibilities.

69. Administrative Decentralization. The following actions could be considered in order to enhance administrative decentralization and ensure that commune administrations have adequate technical capacity to undertake their functions as soon as possible after elections:

- Assign Secretaries General to all 117 communes (i.e. to the additional 96 new communes) no later than September 30, 2019. Similar to the SGs of the existing 21 communes, these SGs should be assigned/transferred by MATDCL to communes to work directly under the jurisdiction of Mayors and Commune Councils.
- Formally recommend that all communes recruit Directors of Administration and Finance (DAFs) and Directors of Technical Services (DSTs); develop and disseminate detailed TORs for these

positions based on lessons from existing donor supported programs and experience from better staffed communes.

- Develop a staffing plan and strategy to support the 96 newest communes to mobilize core staff.
- Undertake an intergovernmental dialogue between central government and the local collectivities (including regions and prefectures), to clarify the competencies to be transferred, and to eliminate existing overlaps between levels.

70. **Fiscal Decentralization.** To provide new and existing communes with much needed resources to execute their current and future mandates, recruit needed staff, and implement communal development plans, three immediate actions are recommended:

- Reduce the lag between the month of revenue collection and notification of availability to communes by OTR and the Treasury from 4-5 months to a maximum of 30 days.
- Introduce a system of general-purpose, formula-based transfers to communes, adequate to the needs and mandates of communes.
- Introduce the formula-based central transfers to communes in the 2020 Annual Finance Law, with an annex that indicates the specific formula-based allocations for each of the 117 communes.

B. Recommended Actions for the Medium Term to Long Term (12-24 months)

71. **Political Decentralization.** The following actions are recommended to strengthen political decentralization over the medium term:

- Introduce public participation guidelines that strengthen the participatory methodology and processes to engage citizens in the elaboration of the commune development plan.
- Promote public meetings of the commune general assembly, at least quarterly, to encourage transparency and inform interested citizens on local government deliberations.

72. 76. **Administrative Decentralization.** To progressively build the necessary administrative capacity within communes to undertake both basic local development functions and to assume more sector functions over time, the following recommendations are offered:

- Undertake a capacity needs assessment for each commune that looks at human resources—technical, administrative capacities, fiduciary capacity (especially financial management)—as well as equipment and facilities requirements.
- Ensure that all 117 communes have the necessary core administrative staff to undertake their core functions – at least an SG, DST, DAF.
- Ensure that all communes have the required financial management and accounting systems including software, to facilitate expenditure management, budget execution, reporting, and public disclosure.
- Develop a robust M&E system and reporting mechanism for implementation of commune development plans, such that the central government can effectively track local development and reorient the National Development Plan (PND) and macro sector investments as needed.
- Engage with donors on a program of comprehensive support to the decentralization process that includes strengthening administrative and technical capacities of communes.
- Transfer the set of clarified commune competences in full to communes within 12-18 months after commune elections.

73. **Fiscal Decentralization.** To enhance the long-term fiscal capacity of communes, the following recommendations are offered for consideration:

- Reduce the lag between the month of revenue collection and notification of availability to communes by OTR and the Treasury progressively to not more than 48 hours (within 12-18 months); create an interconnected revenue mobilization platform which allows OTR to transfer resources mobilized directly to dedicated communal sub-accounts, simultaneously notifying Treasury and communes of transfer and availability of funds for use.
- Progressively increase the share of central government budget allocated to the formula-based general-purpose transfer to communes.
- Support communes to undertake an analysis of revenue mobilization potential, including a census of all properties, businesses and tax payers; once completed, use the taxpayer census to assess tax effort and revenue potential of communes.
- Make permanent the annex to the annual finance law annex that indicates share and amount of the central budget earmarked for transfers to communes, as well as the specific formula-based allocations for each of the 117 communes.