

TOGO

HUMAN RIGHTS - A LONG WAY TO GO

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CONTENTS

Executive Summary.....	2
Follow up to the previous review	2
International and regional human rights instruments	2
Cooperation with treaty bodies and special procedures.....	3
National human rights commission	3
Prison conditions.....	4
Freedom of expression.....	4
Torture and other ill-treatment	4
Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights	5
Impunity for human rights violations.....	5
The national human rights framework.....	5
Freedom of assembly and use of force	6
Freedom of expression.....	6
Torture and other ill-treatment	7
Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights	8
The human rights situation on the ground.....	8
Clampdown on freedom of assembly and excessive use of force	8
Restrictions on freedom of expression	9
Torture and other ill-treatment	10
Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights	11
Impunity for human rights violations.....	12
Recommendations for action by the State under review.....	13
Annex.....	17

EXECUTIVE SUMMARY

This document is based on a submission prepared for the Universal Periodic Review (UPR) of Togo in October-November 2016. In it, Amnesty International evaluates the implementation of recommendations made to Togo in the previous UPR in 2011, assesses the national human rights framework and human rights situation on the ground, and makes a number of recommendations to the government to strengthen the protection of human rights and address human rights violations.

Amnesty International regrets Togo's failure to implement several of its earlier UPR commitments, including to respect and protect the right to freedom of expression and to tackle the issue of impunity for human rights violations.

Amnesty International is also concerned about new laws that undermine the independence of the National Human Rights Commission and further restrict the right to freedom of expression; restrictions on the right to peaceful assembly and excessive use of force by the security forces, including the military, to disperse them; the definition of torture in the revised Criminal Code, which is not in line with international human rights standard, and the persistence of impunity for human rights violations. Poor prison conditions also remain a concern, as does the criminalization of consensual same-sex sexual relations.

FOLLOW UP TO THE PREVIOUS REVIEW

Since Togo's first UPR in 2011, the human rights situation has stagnated. The authorities have ignored or only partially implemented several of the recommendations and continue to repress dissent and to commit human rights violations with impunity.

INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

In response to recommendations accepted in 2011, Togo ratified the International Convention for the Protection of All Persons from Enforced Disappearance in July 2014¹ and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty in July 2015.² In October 2015 it also ratified the Arms Trade Treaty. However, it has failed to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women³ and the International Convention on the Protection

¹ Human Rights Council, *Human Rights Report of the Working Group on the Universal Periodic Review – Togo*, 14 December 2011, A/HRC/19/10, recommendations 100.1 (Spain), 100.2 (Uruguay), 100.3 (Argentina), 100.4 (France).

² A/HRC/19/10, recommendations 100.6 (Spain), 100.7 (Republic of Moldova), 100.8 (Uruguay), 100.9 (Argentina).

³ A/HRC/19/10, recommendations 102.1 (Brazil), 102.2 (Uruguay), 102.3 (United Kingdom of Great Britain and Northern Ireland), 102.4 (Hungary). Togo committed to ratifying the Optional Protocol *in Report of the Working Group on the Universal Periodic Review – Togo, Addendum*, A/HRC/19/10/Add.1.

of the Rights of All Migrant Workers and Members of Their Families,⁴ despite committing to do so in 2011. During its first UPR, Togo rejected the recommendations to ratify the Rome Statute of the International Criminal Court⁵ and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.⁶ Togo has not ratified other important regional human rights treaties such as the African Charter on Democracy, Elections and Governance.

COOPERATION WITH TREATY BODIES AND SPECIAL PROCEDURES

The government submitted its overdue report to the Committee on the Elimination of Racial Discrimination in 2015. However, despite the commitments made in 2011, it has failed to submit other overdue reports, including to the Human Rights Committee, the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities, and the African Commission on Human and Peoples' Rights.⁷

Togo has not extended a standing invitation to the Special Procedures as it committed to do in its last review.⁸ Togo facilitated a visit by the Special Rapporteur on the situation of human rights defenders in 2013. However, requests for visits by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on contemporary forms of slavery, and the Special Rapporteur on extreme poverty and human rights, have not been accepted.

Despite its commitment to cooperate fully with UN Special Procedures,⁹ the government has failed to act on their opinions and recommendations. In 2014, the Working Group on Arbitrary Detention (WGAD) concluded that the detention of Kpatcha Gnassingbé and six others was arbitrary and requested their immediate release.¹⁰ However, as of March 2016, they remained in detention. In 2012, the WGAD concluded that the detention of Sow Bertin Agba was arbitrary.¹¹ While Sow Bertin Agba was released on bail in 2013, no one was held accountable for the arbitrary detention and torture he was subjected to.

NATIONAL HUMAN RIGHTS COMMISSION

Togo accepted recommendations aimed at strengthening the National Human Rights Commission.¹² Yet, in March 2016, the National Assembly adopted a law to

⁴ A/HRC/19/10, recommendation 102.7 (Argentina). Togo committed to ratifying the Convention in *Report of the Working Group on the Universal Periodic Review – Togo, Addendum*, A/HRC/19/10/Add.1.

⁵ A/HRC/19/10, recommendations 103.1 (France), 103.2 (Uruguay), 103.3 (United Kingdom of Great Britain and Northern Ireland), 103.4 (Brazil), 103.5 (Slovakia).

⁶ A/HRC/19/10, recommendation 103.6 (Spain).

⁷ A/HRC/19/10, recommendations 100.33 (Senegal), 100.34 (Niger).

⁸ A/HRC/19/10, recommendations 102.8 (Spain), 102.9 (Uruguay), 102.10 (Latvia).

⁹ *Report of the Working Group on the Universal Periodic Review – Togo, Addendum*, A/HRC/19/10/Add.1, para 5.

¹⁰ Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session, 17–21 November 2014, No. 45/2014 (Togo), A/HRC/WGAD/2014/45.

¹¹ Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fifth session, 14–23 November 2012, No. 41/2012 (Togo), A/HRC/WGAD/2012/41, para 83-84.

¹² A/HRC/19/10, recommendations 100.14 (Spain), 100.15 (Republic of Moldova), 100.16 (Ghana), 100.17 (Slovenia), 100.18 (Hungary), 100.19 (United States of America), 100.20 (Nigeria).

enable the President of the Republic to appoint members of the Commission without parliamentary oversight, which raises serious concerns about its independence.

In 2012, the government falsified the report prepared by the Commission following its investigation into torture claims made by Kpatcha Gnassingbé and his co-detainees.¹³ In February 2012, Koffi Kounté, President of the Commission, received threats from the entourage of the Head of State after he refused to endorse the falsified report.

PRISON CONDITIONS

Despite the commitments made in 2011, prisons in Togo remain overcrowded and prison conditions fail to meet international human rights standards.¹⁴ According to prison administration statistics for February 2016, 4,523 people were in prison in Togo, despite a total prison capacity of only 2,720 detainees. During prison visits, detainees told Amnesty International that they were not able to access adequate medical care and were only given one meal a day. According to prison administration statistics, 157 people died in detention between 2012 and 2015, mostly from preventable or curable diseases, including malaria and intestinal infections. Female detainees are not guarded by female prison officers at all times, although female guards perform certain functions, such as body searches.

FREEDOM OF EXPRESSION

In the 2011 review, Togo considered recommendations to protect, respect and fulfil the right to freedom of expression to be already implemented or in the process of being implemented.¹⁵ Yet, as set out in the sections below, Togo has adopted laws which restrict the right to freedom of expression. For instance, the revised Criminal Code, adopted in 2015, creates a new and vaguely-worded charge of publishing, broadcasting or reproducing “false news”, which carries prison terms, and which can be used to target those who express dissent. Journalists, human rights defenders and political activists continue to face reprisals for exercising their right to freedom of expression.

TORTURE AND OTHER ILL-TREATMENT

In November 2015, Togo adopted a revised Criminal Code which criminalizes torture.¹⁶ However, as detailed in the sections below, its definition of torture is not in line with the definition set out in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Amnesty International has reported cases of torture and other ill-treatment since Togo's last UPR (see also below).

¹³ Kpatcha Gnassingbé, the half-brother of President Faure Gnassingbé, and six other men were convicted in 2011 of crimes against the state and rebellion in an unfair trial. The court used forced confessions extracted under torture to convict them. In November 2014, the UN Working Group on Arbitrary Detention declared their detention to be arbitrary and requested their immediate release. In July 2013, the ECOWAS Community Court of Justice declared the Togolese state responsible for acts of torture and ordered reparations for the victims.

¹⁴ A/HRC/19/10, recommendations 100.54 (Benin), 100.55 (Norway), 101.8 (Canada), 101.9 (Benin), 101.10 (Norway), 101.11 (Germany).

¹⁵ A/HRC/19/10, recommendations 101.15 (Ghana), 101.16 (Australia), 101.17 (Slovenia), 101.18 (United Kingdom of Great Britain and Northern Ireland).

¹⁶ A/HRC/19/10, recommendations 100.52 (Cape Verde), 101.4 (Mexico).

In March 2016, the National Assembly adopted a law establishing a national preventive mechanism within the National Human Rights Commission.¹⁷ However, the law undermines the independence of the Commission by enabling the President to appoint some of its members without parliamentary oversight, raising serious concerns about the ability of the national preventive mechanism to carry out its mandate independently. Contrary to the guidelines provided by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the law fails to clarify that the national preventive mechanism should be located within a separate unit or department, with its own staff and a separate budget.

Despite its commitment at the 2011 review, Togo has not revised its Criminal Procedure Code to build in legal safeguards against torture and other ill-treatment, including ensuring that detainees have access to a lawyer promptly after being deprived of their liberty.¹⁸

LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) RIGHTS

Togo rejected recommendations to protect LGBTI rights during its first UPR, including to repeal the provisions of its Criminal Code which criminalize same-sex relationships and discriminate against LGBTI people.¹⁹ Since the 2011 review, the situation for LGBTI persons has deteriorated. As detailed below, the revised Criminal Code not only retains provisions which criminalize consensual same-sex sexual relations, it also increases the penalties. Sexual orientation and gender identity are not included as prohibited grounds for discrimination. Since 2011, several people have been arbitrarily detained in Togo on the basis of their real or perceived sexual orientation or gender identity and expression.

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

Despite the commitments made in the 2011 review to tackle impunity,²⁰ Togo has failed to bring suspected perpetrators of torture or unlawful killings to justice. As detailed in the sections below, this includes but is not limited to the killing of protestors during the 2005 election violence and the torture of Kpatcha Gnassingbé and his co-detainees.

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Since 2011, Togo adopted legislation which addresses some human rights issues, while creating other areas of concern, particularly with regard to the right to freedom of peaceful assembly, the use of force, the right to freedom of expression,

¹⁷ A/HRC/19/10, recommendations 100.21 (France) and 100.23 (Benin).

¹⁸ A/HRC/19/10, recommendation 100.53 (Chile).

¹⁹ A/HRC/19/10, recommendations 103.7 (Canada), 103.8 (Argentina), 103.9 (Australia), 103.10 (Brazil) -103.11 (Spain). See Criminal Code (2008), article 88.

²⁰ A/HRC/19/10, recommendations 100.50 (Slovenia), 100.51 (Slovakia), 101.5 (Norway), 101.6 (Germany).

the right to physical integrity, and LGBTI rights.

FREEDOM OF ASSEMBLY AND USE OF FORCE

A law adopted in May 2011 establishes the conditions for the exercise of the right to freedom of peaceful assembly. It significantly improves the legal framework governing assemblies, including by setting a requirement of notification rather than authorization and by providing exceptions for spontaneous assemblies. However, it also places impermissible restrictions on the right to peaceful assembly, including by not clarifying that the notification requirement is subject to the principle of proportionality and for large meetings only or those which affect traffic. It also fails to clarify that when restrictions are necessary to protect public order, the authorities have a duty to consider the least restrictive measures available before prohibiting assemblies. The law also provides for a blanket ban on assemblies held before 6am and after 10pm.²¹

The revised Criminal Code, adopted in November 2015, further restricts the right to freedom of peaceful assembly. It criminalizes the participation and organization of assemblies which have not been subject to the necessary administrative formalities, independently of the size of the assembly, with sentences ranging from a fine of CFA 50,000 to five years' imprisonment if violence occurs.²² It holds the organizers and peaceful demonstrators responsible for any violent or criminal behaviour by other protestors and liable for any corporal or material damage caused.²³

In March 2013, the government adopted a decree on maintaining and restoring public order which defines the legal framework regarding the use of force. While it clarifies that maintaining or restoring public order falls under civilian authority and that the use of force should be preceded by warnings,²⁴ the decree falls short of international law and standards. For example, it does not contain a clear stipulation that the security forces pursuing a lawful law enforcement objective should use non-violent means where at all possible. Rather it expressly provides that the security forces may use force and firearms for unlawful objectives, such as defending the premises or goods.²⁵ It also fails to provide for reporting requirements when such force is used.

Under Togolese law, there is no independent oversight body mandated to investigate serious incidents involving the use of force by the security forces, in order to establish individual and command responsibility, as well as institutional failures and deficiencies.

FREEDOM OF EXPRESSION

The Togolese legal framework has become more restrictive following legislative changes in 2013 and 2015 and now contains provisions which violate the right to

²¹ Loi N°2011-010 du 16 mai 2011 fixant les conditions d'exercice de la liberté de réunion et de manifestation pacifiques publiques, article 17.

²² Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, articles 539, 540 and 541.

²³ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 542.

²⁴ Décret N°2013 – 013 / PR du 6 mars 2013 portant réglementation du maintien et du rétablissement de l'ordre public, article 3.

²⁵ Décret N°2013 – 013 / PR du 6 mars 2013 portant réglementation du maintien et du rétablissement de l'ordre public, article 32.

freedom of expression.

The Press and Communication Code, adopted in 1998, already criminalizes offending public officials, including with drawings, as well as broadcasting and publishing information “at variance with reality”, defamation (including against public officials) and incitement to commit crimes or offences. These charges are vaguely worded and are used to repress dissent.

The revised Criminal Code, adopted in November 2015, introduces new crimes and harsher punishments. Punishments for defamation have been increased to up to four years’ imprisonment and fines up to CFA 4 million for repeated offences,²⁶ while offending public officials carries penalties of up to 6 months’ imprisonment and fines of up to CFA 2 million.²⁷ The revised Code creates a new and ill-defined charge of publishing, broadcasting or reproducing “false news”, allowing the imposition of prison terms of up to five years.²⁸ The revised Code criminalizes uttering seditious chants in public spaces or assemblies, with penalties of up to two months’ imprisonment and fines of up to CFA 1 million.²⁹ It also creates terrorism-related charges which are vaguely worded, including for financing terrorism,³⁰ publishing messages inciting terrorism,³¹ and contributing to the commission of a terrorist act.³² All of these charges could be used to target persons who express dissent and their relatives.

In February 2013, the National Assembly passed a law granting the High Authority for Audiovisual and Communications discretionary powers to impose sanctions on the media without recourse to the courts, prompting protests by journalist associations. The Constitutional Court ruled one month later that six of the articles of this law were unconstitutional.

TORTURE AND OTHER ILL-TREATMENT

In a major human rights development in Togolese law “torture, cruel and inhuman treatment or punishment”, and “degrading treatment” have been criminalized in the revised Criminal Code. However, there are inconsistencies in how these terms are defined in the Code³³ and the definitions are not in line with the Convention

²⁶ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, articles 290 – 296.

²⁷ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 301 – 302.

²⁸ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 665.

²⁹ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 552.

³⁰ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 739.

³¹ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 747.

³² Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 750.

³³ The Criminal Code contains two distinct definitions of torture: one in article 150 and another in article 198. Article 150 defines torture as: “le fait d’infliger intentionnellement une douleur ou des souffrances aiguës, physiques ou mentales, à une personne se trouvant sous sa garde ou sous contrôle. L’acceptation de ce terme ne s’étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légales, inhérentes à ces sanctions ou occasionnées par elles. » Article 198, which is the closest to the definition set out in CAT defines torture as : « tout acte par lequel une douleur ou des souffrances aiguës, physiques ou mentales, sont intentionnellement infligées à une personne aux fins notamment d’obtenir d’elle ou d’une tierce personne des renseignements ou des aveux, de la punir d’un acte qu’elle ou une tierce personne a commis ou est soupçonnée d’avoir commis, de l’intimider ou de faire pression sur elle, ou d’intimider ou de faire pression sur une tierce personne, ou pour

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

For instance, “torture” as defined in Article 198 leaves out the part of the CAT definition which refers to pain or suffering “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.³⁴ This omission could be used by the state to avoid responsibility, particularly in the case of instigation, consent or acquiescence to torture. The revised Criminal Code also fails to establish the non-applicability of statutory limitations to the crime of torture. As a criminal offence, the statute of limitation for torture is set to 25 years.³⁵

The definitions of “cruel and inhuman treatment or punishment”, and “degrading treatment” restrict the scope of application of the charges to acts causing “grave mental or physical suffering” or “humiliation or grave debasement”,³⁶ instead of interpreting these terms so as to extend the widest possible protection against abuses.

LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) RIGHTS

The revised Criminal Code retains provisions which criminalize same-sex relationships and discriminate against LGBTI persons. It raises the applicable penalty to up to three years’ imprisonment and/or a fine of up to CFA 3 million.³⁷

The revised Criminal Code also criminalizes the incitement to gross indecency which, under the Code, includes sexual relations between consenting adults of the same sex, with a prison term of up to two years and/or a fine of up to CFA 2 million.³⁸ This provision could be used to target people because of their real or perceived sexual orientation or gender identity and expression or human rights defenders who provide guidance to LGBTI individuals in Togo.

THE HUMAN RIGHTS SITUATION ON THE GROUND

CLAMPDOWN ON FREEDOM OF ASSEMBLY AND EXCESSIVE USE OF FORCE

Peaceful assemblies organized by political parties or human rights defenders are

tout autre motif fondé sur une forme de discrimination quelle qu'elle soit. Ce terme ne s'étend pas à la douleur ou aux souffrances résultant uniquement de sanctions légitimes, inhérentes à ces sanctions ou occasionnées par elles. »

³⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Assembly resolution 39/46, 10 December 1984, art. 1.

³⁵ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 105.

³⁶ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 201 and 203.

³⁷ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, articles 392-393. In the previous version of the Criminal Code, the penalty was maximum three-years’ imprisonment and a fee of maximum CFA 500 000.

³⁸ Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 394.

often arbitrarily banned and dispersed by the police, gendarmerie or the armed forces while using excessive force. Those who are perceived to be the organizers of such protests often face reprisals and arbitrary arrests.

- In November 2015, the security forces killed seven people and wounded at least 117 others, including pregnant women and children, in Mango in northern Togo, during demonstrations against plans to create a nature reserve in the area. A policeman was killed on 26 November in clashes with protesters who resorted to violence after the security forces opened fire on peaceful demonstrators. As of March 2016, five men remain in prolonged detention in relation to these protests, including four who organized the demonstrations, even though they claim that they did not advocate violence. No members of the security forces have been held to account for the killing or wounding of the protesters, by-standers or their relatives.³⁹
- On 20 August 2015, the security forces used tear gas to disperse a peaceful demonstration in Lomé of 100 people protesting against the rise of the cost of living. The gendarmerie arbitrarily arrested the three organizers, including Kao Atcholi, a human rights defender leading the Association of Victims of Torture in Togo (ASVITTO). They were detained for a day and then released without charge.⁴⁰
- Gendarmes and the military fired live bullets at protesters on 25 March 2015 at a rally in the city of Gléi, 160km north of Lomé. At least 30 people, including a woman and a child, were wounded and at least one person died as a result the injuries he sustained. Gendarmes and soldiers charged at a crowd of 100 students, shooting live bullets and hitting them with batons. The students had gathered spontaneously to protest against exams being held despite the academic curriculum having been disrupted by protests throughout the year. No members of the security forces have been brought to court for wounding the protesters and by-standers.⁴¹

RESTRICTIONS ON FREEDOM OF EXPRESSION

The authorities continue to curtail freedom of expression and to target journalists, human rights defenders and political activists who express dissent, particularly those perceived to undermine the interests of members of the government or the security forces.

- In August 2015, Zeus Aziadouvo, a journalist who produced a documentary on prison conditions in Lomé, and Luc Abaki, director of private TV station *La Chaîne du Futur* which broadcast the documentary, were repeatedly summoned for questioning and asked to reveal their sources, including at

³⁹ For more information, see: Amnesty International, *Togo: Les forces de sécurité ont tiré à bout portant sur des manifestants non armés à Mango*, available at :

<<https://www.amnesty.org/en/countries/africa/togo/report-togo/>>

⁴⁰ For more information, see: Amnesty International, *Annual report 2015-16* (AI Index, POL 10/2552/2016).

⁴¹ For more information, see: Amnesty International, *Togo: Authorities must guarantee the right to demonstrate before the elections*, available on:

<<https://www.amnesty.org/en/latest/news/2015/04/togo-authorities-must-guarantee-the-right-to-demonstrate-before-the-elections/>>

the headquarters of the Research and Investigation Services and at the High Authority for Audiovisual and Communications on 18 and 26 August.⁴²

- In September 2013, Amah Olivier, President of *Association des Victimes de la Torture au Togo* (Association of Victims of Torture in Togo, ASVITTO), was arrested and charged with incitement to rebellion for speaking about the crackdown on demonstrations. He was released in February 2014 and fled the country fearing for his safety.⁴³
- In August 2013, the authorities shut down *Radio Légende FM* a month after the High Authority for Audiovisual and Communications suspended the radio station on the grounds that it broadcast false information in the context of the legislative elections.⁴⁴
- In October 2012, the security forces attacked Justin Anani, a journalist affiliated with the International Federation of Journalists, while he was covering a protest organized by the *Collectif Sauvons le Togo* (Save Togo, CST) movement, which was dispersed by force by law enforcement agents.⁴⁵
- In February 2012, Koffi Kounté, President of the National Human Rights Commission, received threats from the entourage of the Head of State after he refused to endorse a report known to have been falsified by the government. Fearing reprisals, Koffi Kounté took refuge in France.⁴⁶

TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment are regularly used by the security forces at the time of arrest and during pre-trial detention to extract confessions or implicate defendants.

- Several men arrested during protests in Mango in November 2015 were subjected to ill-treatment, including beatings with belts, batons and rifle butts at the time of their arrest and during transfers to different detention centres, causing open wounds on their backs, legs and hands. They were asked to sign statements which they did not understand. No one has been

⁴² For more information, see: Amnesty International, *Annual report 2015-16* (AI Index, POL10/2552/2016), available at:

<<https://www.amnesty.org/en/documents/pol10/2552/2016/en/>>

⁴³ For more information, see: Amnesty International, *Annual report 2014-15* (AI Index, POL10/0001/2015), available at:

<<https://www.amnesty.org/en/documents/pol10/0001/2015/en/>>

⁴⁴ For more information, see: Amnesty International, *Annual report 2014-15* (AI Index, POL10/0001/2015/), available at:

<<https://www.amnesty.org/en/documents/pol10/0001/2015/en/>>

⁴⁵ For more information, see: Amnesty International, *Annual report 2013* (AI Index, POL10/001/2013) , available at:

<<https://www.amnesty.org/en/documents/pol10/001/2013/en/>>

⁴⁶ For more information, see: Amnesty International, *Annual report 2013* (AI Index, POL10/001/2013) , available at:

<<https://www.amnesty.org/en/documents/pol10/001/2013/en/>>

held accountable for the ill-treatment they suffered.⁴⁷

- Mohamed Loum was arrested in January 2013 in relation to the fires which destroyed the markets in Lomé and Kara and beaten and subjected to water-boarding while in the custody of the gendarmerie. He was also subjected to prolonged restraint in handcuffs, often lasting 24 hours, and denied food and water. No one has been held accountable for the torture he suffered.⁴⁸
- In April 2012, four students, three of whom were members of the National Union of Togolese Pupils and Students, were ill-treated during their arrest and detention in the civil prison of Kara. They were charged with “incitement to rebellion” for organizing a meeting to discuss the government’s promise to allocate scholarships, but were released without trial one month later. No one was held accountable for the ill-treatment they suffered.⁴⁹

LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) RIGHTS

LGBTI people face harassment and arbitrary detention by the security forces on the basis of their real or perceived sexual orientation or gender identity and expression.

- A gay man who was returning home from a party wearing female clothing was arrested by two police officers in 2014 and detained without charge for five days in a police station.⁵⁰ The police officers asked him to take off all his clothes in order to confirm his gender. They took videos and photographs and threatened to leak them to the press if he did not comply with their instructions. He was told he was in detention to “teach him a lesson”. The police officers insulted him and repeatedly asked him to put on make-up and dance in his dress in front of other detainees and police officers. His family and a local human rights group were able to visit him on the third day of his detention, but he did not have access to a lawyer. He was released without charge after five days. No one has been held accountable for the ill-treatment he was subjected to.
- A gay man returning home in female clothing from a friend’s house was stopped by two members of the security forces and asked to produce identification.⁵¹ Concerned that he would be arrested on the basis of his sexual orientation if the security forces found out he was a man, he responded he did not have his identification paper with him. The two officers escorted him home on a motorbike and, on the way, one of them

⁴⁷ For more information, see: Amnesty International, *Togo: Les forces de sécurité ont tiré à bout portant sur des manifestants non armés à Mango*, available at :

<<https://www.amnesty.org/en/countries/africa/togo/report-togo/>>

⁴⁸ For more information, see: Amnesty International, *Annual report 2014-15* (AI Index, POL 10/0001/2015/).

⁴⁹ For more information, see: Amnesty International, *Annual report 2013* (AI Index, POL 10/001/2013).

⁵⁰ The details of this case, including names, dates and places are withheld for security reasons.

⁵¹ The details of this case, including names, dates and places are withheld for security reasons.

attempted to touch his breasts and genitals. When they arrived at his family home, his family told the officers about his gender. The officers slapped him in the face and took photos as they asked him to undress in front of his relatives. They threatened the family that they would arrest him if they did not give them money. They took CFA 60,000, his handbag which contained a phone and some cash, and then left. No one was held accountable for the ill-treatment he was subjected to.

LGBTI rights activists often experience difficulties in registering their organizations. In at least such one case, officers of the Ministry of Territorial Administration refused to deliver registration certificates when they considered that the mandate of the organization as set out in the registration form “challenged cultural and social norms”.⁵²

IMPUNITY FOR HUMAN RIGHTS VIOLATIONS

A climate of impunity for human rights violations persists. Officers of the police force, the gendarmerie and the armed forces regularly commit human rights violations with few repercussions.

- In July 2013, the Economic Community of West African States (ECOWAS) Community Court of Justice ruled that the Togolese government was responsible for acts of torture inflicted on Kpatcha Gnassingbé and his co-detainees and ordered reparations for the victims. The seven men received part of the financial compensation, but remain in arbitrary detention as of March 2016. No one has been brought to court for the torture they were subjected to.
- More than ten years after nearly 500 people died during political violence in the context of the presidential election on 24 April 2005, the authorities have taken no steps to identify those suspected of criminal responsibility for the deaths. Of the 72 complaints filed by the victims’ families with the courts in Atakpamé, Amlamé and Lomé, none are known to have led to a successful prosecution.

The authorities maintain that disciplinary measures are taken against members of the security forces who commit human rights violations. However, the lack of transparency of the disciplinary process makes it impossible to determine who has been sanctioned, on what grounds, and whether the sanction was commensurate with the seriousness of the offence committed. In practice, the disciplinary process constitutes an obstacle to justice as the decision to open a judicial process depends on the conclusion of the disciplinary council.

Of the human rights violations documented in this document, only one case has led to a successful prosecution, with a light sentence being handed down.

- In April 2013, two people were killed when the security forces shot live bullets at a crowd of protesters in the northern town of Dapaong. One of the

⁵² The details of this case, including names, dates and places are withheld for security reasons.

victims, Anselme Sinandare Gounyanoua, was only 12 years old.⁵³ In June 2015, a police officer was found guilty of manslaughter and sentenced to a 36-month's imprisonment with a 10 months' suspended sentence. The Court ordered the government to pay the family of the victim CFA 10 million as compensation. However, the decision failed to establish full accountability at all relevant levels. The Court granted the accused extenuating circumstances as the security forces were facing "furious protestors", without demonstrating that the conditions to use firearms were met. Furthermore, it failed to hold the superior officers and the command hierarchy accountable for breaches of national and international standards on the use of force, despite acknowledging that the police used assault rifles, shot live ammunition and threw rocks at protesters in an operation to maintain public order.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Togo to:

International human rights instruments

- Ratify the African Charter on Democracy, Elections and Governance; the Rome Statute of the International Criminal Court; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

Cooperation with the UN treaty bodies and Special Procedures

- Submit all overdue reports to the Human Rights Committee, the Committee on the Rights of the Child, the Committee on the Rights of Persons with Disabilities, and the African Commission on Human and Peoples' Rights;
- Extend a standing invitation to the UN Special Procedures, and facilitate visits to Togo by the Working Group on Arbitrary Detention; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; and the Special Rapporteur on the independence of judges and lawyers;
- Fully and effectively implement recommendations by the UN treaty bodies and Special Procedures, including releasing Kpatcha Gnassingbé and his co-detainees, as requested by the Working Group on Arbitrary Detention.

National Human Rights Commission

- Adopt measures to guarantee appropriate financial resources, full

⁵³ For more information, see: Amnesty International, *Annual report 2014-15* (AI Index, POL10/0001/2015), available at:
<<https://www.amnesty.org/en/documents/pol10/0001/2015/en/>>

independence, and impartiality of the National Human Rights Commission, as Togo had accepted to do in the 2011 UPR, including by amending the law adopted in March 2016, which enables the President of the Republic to appoint members of the Commission, to ensure that the nomination process is transparent and subject to independent oversight;

- Promptly, thoroughly and impartially investigate the allegations that the government falsified the report of the National Human Rights Commission in 2012 in relation to the case of Kpatcha Gnassingbé and his co-detainees, and hold anyone suspected of having falsified the report to account and take appropriate measures to guarantee non-recurrence;
- Promptly, thoroughly and impartially investigate the threats against the President of the National Human Rights Commission in 2012 and bring anyone suspected to be responsible to justice in a fair trial;
- Ensure the findings of the National Human Rights Commission are made available to the public.

Prison conditions

- Develop and implement a strategy to reduce prison overcrowding, as Togo had accepted to do in the 2011 UPR, particularly by substituting detention with non-custodial measures;
- Ensure that all persons deprived of liberty are held in humane conditions, including in line with the UN Basic Principles for the Treatment of Prisoners and the Standard Minimum Rules for the Treatment of Prisoners and the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, as Togo had accepted to do in the 2011 UPR, particularly by ensuring that all detainees have access to sufficient food and drinkable water, adequate sanitary facilities and medical treatment.

Freedom of assembly and use of force

- Prohibit the deployment of military armed forces in public order situations;
- Provide the security forces with sufficient resources to police large scale or hostile demonstrations and counter-demonstrations and effective training in the appropriate and differentiated use of force and weapons, including anti-riot equipment;
- Amend laws regulating the use of force, particularly Decree N° 2013-013 on maintaining and restoring public order, to bring them in line with international standards, such as the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including by revising the legal basis for the use of force and establishing clear rules for the use of force by the security forces in the context of policing demonstrations;
- Ensure arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence and clarify that orders may not serve as an acceptable defence;
- Amend laws which violate the right to freedom of peaceful assembly, such as the Criminal Code and Law N°2011-010 on freedom of assembly and public and peaceful demonstrations, to bring them in line with international and regional human rights standards, including by clarifying that peaceful assemblies should not be banned unless less restrictive measures have

proved inefficient, and removing provisions criminalizing the organization of and participation in peaceful demonstrations;

- Establish an independent oversight body with adequate human and financial resources and mandated to investigate serious incidents involving the use of force by the security forces, and establish individual and command responsibility, as well as institutional failures and deficiencies;
- Promptly, thoroughly and impartially investigate all allegations of excessive use of force and bring anyone suspected to be responsible to justice in a fair trial, including superior officers if they have failed to prevent the arbitrary use of force when they had an opportunity to do so.

Freedom of expression

- Amend laws which violate the right to freedom of expression, such as the Criminal Code and the Press and Communication Code, to bring them in line with international and regional human rights standards, including by decriminalizing defamation, offending public officials, publishing, broadcasting or reproducing “false news”, hurling seditious chants, and by providing clearer definitions terrorism related charges;
- Adopt and implement legislation to protect and facilitate the work of human rights defenders, journalists and bloggers, including a freedom of information law and a law to provide legal recognition and protection to human rights defenders;
- Ensure that all Togolese, including journalists, opposition leaders, real or perceived government opponents, and human rights defenders, are able to freely exercise their right to freedom of expression without fear of arrest, detention, intimidation, threats, harassment or attacks;
- Promptly, thoroughly and impartially investigate all allegations of arbitrary arrest and detention, intimidation, threats, harassment and attacks against human rights defenders, journalists or anyone expressing dissent, and bring anyone suspected to be responsible to justice in a fair trial.

Torture and other ill-treatment

- Amend the Criminal Code to bring the definition of torture in line with the definition set out in Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as Togo had accepted to do in the 2011 UPR, and abolish the statute of limitation currently applicable to the offence of torture;
- Amend the Criminal Code to make all other cruel, inhuman or degrading treatment or punishment a punishable offence independently of its gravity;
- Amend the Criminal Procedure Code to bring it in line with international standards, as Togo had accepted to do in the 2011 UPR, particularly with a view to build in legal safeguards against torture, such as upholding the right to legal counsel as soon as the person is deprived of liberty and substituting pre-trial detentions with non-custodial measures unless strictly necessary;
- Amend the law adopted in March 2016 establishing the national preventive mechanism to guarantee its independence and to bring it in line with the guidelines provided by Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including by clarifying that the mechanism will have appropriate and dedicated financial

and human resources;

- Promptly, thoroughly and impartially investigate all allegations of torture and ill-treatment and bring anyone suspected to be responsible to justice in a fair trial, as Togo had accepted to do in the 2011 UPR.

LGBTI rights

- Repeal the provisions of the Criminal Code which criminalize consensual same-sex sexual conduct and incitement to consensual same-sex sexual conduct;
- Protect, respect and fulfil human rights for all, regardless of sexual orientation or gender identity and expression;
- Ensure LGBTI rights defenders are able to register their organizations without undue delays and benefit from the same rights and protection as other human rights defenders;
- Promptly, thoroughly and impartially investigate all allegations of attacks, arbitrary arrest and detention of persons on the basis of their real or perceived sexual orientation or gender identity and expression and bring anyone suspected to be responsible to justice in a fair trial.

Impunity for human rights violations

- Promptly, thoroughly and impartially investigate all allegations of human rights violations and bring suspected perpetrators to justice in fair trials, independently of disciplinary sanctions or disciplinary processes, in particular with regard to the violations that occurred during the 2005 election;
- Put in place measures to safeguard the independence of the judiciary, particularly in relation to the security forces, in line with the UN Basic Principles on the Independence of the Judiciary;
- Fully and effectively implement the decisions of the ECOWAS Community Court of Justice, including by releasing Kpatcha Gnassingbé and his co-detainees and providing them with full reparation for the harm suffered.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

- Amnesty International, *Annual report 2015-16* (AI Index, POL 10/2552/2016), available at:
<<https://www.amnesty.org/en/documents/pol10/2552/2016/en/>>
- Amnesty International, *Togo : Les personnes arrêtées en relation avec les incendies de 2013 doivent bénéficier d'un procès équitable dans les plus brefs délais*, available at:
<<https://www.amnesty.org/fr/latest/news/2016/01/togo-les-personnes-arretees-en-relation-avec-les-incendies-de-2013-doivent-beneficier-dun-proces-equitable-dans-les-plus-brefs-delais/>>
- Amnesty International, *Togo : Les forces de sécurité ont tiré à bout portant sur des manifestants non armés à Mango*, available at:
<<https://www.amnesty.org/en/countries/africa/togo/report-togo/>>
- Amnesty International, *Togo : Il faut juger ou libérer un homme politique en détention depuis plus d'un an*, available at:
<<https://www.amnesty.org/fr/latest/news/2015/10/togohommepolitique/>>
- Amnesty International, *Togo: one decade of impunity* (AI Index: AFR 57/1508/2015), available at:
<<https://www.amnesty.org/en/documents/afr57/1508/2015/en/>>
- Amnesty International, *Togo: Authorities must guarantee the right to demonstrate before the elections*, available at:
<<https://www.amnesty.org/en/latest/news/2015/04/togo-authorities-must-guarantee-the-right-to-demonstrate-before-the-elections/>>
- Amnesty International, *Annual report 2014-15* (AI Index, POL10/0001/2015), available at:
<<https://www.amnesty.org/en/documents/pol10/0001/2015/en/>>
- Amnesty International, *Togo: Excessive use of force and death in custody* (AI Index: AFR 57/002/2013), available at:
<<https://www.amnesty.org/en/documents/afr57/002/2013/en/>>
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- Amnesty International, *Togo: students arrested at demo risk torture* (AI Index: AFR 57/002/2012), available at:
<<https://www.amnesty.org/en/documents/afr57/002/2012/en/>>
- Amnesty International, *Togo: the authorities censor a report denouncing torture* (AI Index: AFR 57/001/2012), available at:
<<https://www.amnesty.org/en/documents/afr57/001/2012/en/>>
- Amnesty International, *Togo : Communication au Comité contre la Torture* (AI Index: AFR 57/005/2012), available at:
<<https://www.amnesty.org/fr/documents/afr57/005/2012/fr/>>