

# TOGO

## SHADOW REPORT TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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# INTRODUCTION

This shadow report contains background information in advance of the review of Togo's combined 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Periodic Report at the 62<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (hereafter, ACHPR) scheduled to be held in Nouakchott, Mauritania from 25 April to 9 May 2018.

This shadow report outlines a number of issues of concern relating to Togo's implementation of the Concluding Observations and Recommendations made by the ACHPR in 2012 following its review of the State's Combined 3rd, 4th and 5th Periodic Report. Amnesty International's report focuses on ongoing key concerns regarding the human rights situation in Togo, including torture and other ill-treatment, violations of the rights to freedom of expression, assembly and association, arbitrary detention, excessive use of force, and impunity.

Amnesty International is concerned that the government of Togo has failed to address several human rights concerns raised during the 2012 review by ACHPR and the overall human rights situation in the country has been deteriorating rapidly, especially since August 2017, as the authorities continue to crackdown on mass protests calling, amongst other things, for President Faure Gnassingbé to step down.

# FOLLOW-UP OF OBSERVATIONS AND RECOMMENDATIONS MADE IN 2012

In 2012, the ACHPR raised a number of concerns about the human rights situation in Togo and made several recommendations following its review of the State's Combined 3rd, 4th and 5th Periodic Report. The following sub-sections highlight key areas of concern where the government failed to ensure effective implementation of recommendations.

## PRISON CONDITIONS

The ACHPR recommended that the government *"[t]ake the necessary measures to improve detention conditions and increase the quantity of meals served to prisoners; to Respect the minimum regional and international acceptable standards for the accommodation of prisoners."*<sup>1</sup>

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<sup>1</sup> ACHPR, Concluding Observations and Recommendations on the Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo, 51st Ordinary Session, 18 April – 2 May 2012, Banjul, The Gambia para. 73.xv

Yet, as documented below, prisons remained overcrowded in Togo and prison conditions do not meet international standards.

### TORTURE AND OTHER ILL-TREATMENT

The ACHPR recommended that Togolese authorities should “enact legislation criminalizing the practice of torture”.<sup>2</sup> Encouragingly, “torture, cruel and inhuman treatment or punishment”, and “degrading treatment” have been criminalized in the revised Criminal Code adopted in 2015.<sup>3</sup> However, as detailed below, the definition of torture set out in the law fails to meet international standards.

### RIGHT TO FREEDOM OF ASSOCIATION

The ACHPR recommended that the Togolese authorities should “[e]xpeditely the issuing of authorization to NGOs, a process which presently takes unusually long.”<sup>4</sup> Yet, as detailed below, the authorities continue to fail to issue authorization to some associations, particularly when they are perceived to be critical of governmental policy. In addition, in 2016, the government of Togo has also introduced a bill to amend the existing legal framework governing associations that contains provisions which would unduly restrict the right to freedom of association.

### IMPUNITY

The ACHPR recommended that Togolese authorities should “[e]nsure that perpetrators of acts of torture are prosecuted.”<sup>5</sup> Yet, as detailed in the sections below, Togo has failed to bring suspected perpetrators of torture or unlawful killings to justice.

## LEGAL FRAMEWORK AND HUMAN RIGHTS CONCERNS

Since its last review, Togo has adopted several legislations which address some of the human rights concerns discussed above. However, other areas of concern within the existing domestic legal framework remain, particularly with regard to torture, violations of the rights to

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<sup>2</sup> ACHPR, Concluding Observations and Recommendations on the Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo, 51st Ordinary Session, 18 April – 2 May 2012, Banjul, The Gambia para. 73.v

<sup>3</sup> Loi N°2015- 010 du 24 novembre 2015 portant nouveau code pénal.

<sup>4</sup> ACHPR, Concluding Observations and Recommendations on the Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo, 51st Ordinary Session, 18 April – 2 May 2012, Banjul, The Gambia para. 73.ix

<sup>5</sup> ACHPR, Concluding Observations and Recommendations on the Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo, 51st Ordinary Session, 18 April – 2 May 2012, Banjul, The Gambia para. 73.v

freedom of peaceful assembly and association, excessive use of force, violations of the right to freedom of expression and LGBTI rights.

## NATIONAL HUMAN RIGHTS INSTITUTION

In March 2016, the National Assembly adopted a law establishing a National Preventive Mechanism against torture within the National Human Rights Commission. However, under this law the President is able to appoint some of its members without any parliamentary oversight, raising serious concerns about the ability of the national preventive mechanism to carry out its mandate independently and effectively. Contrary to the guidelines provided by the Sub-committee 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 budget.<sup>6</sup> This law is currently under review following a Constitutional Court decision in 2017 which found several of its provisions not in conformity with the Constitution of Togo.

In 2012, the government edited the report prepared by the National Human Rights Commission following its investigation into torture claims made by Kpatcha Gnassingbé and his co-detainees, watering down its findings.<sup>7</sup> 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 the falsified report. Fearing reprisals, Koffi Kounté took refuge in France.

### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- Adopt measures to guarantee appropriate financial resources, independence, and impartiality of the National Human Rights Commission including by ensuring the law adopted in March 2016 is amended to ensure that the nomination process of its members is transparent and subject to an independent parliamentary oversight;
- Promptly, thoroughly and impartially investigate allegations of falsification of the report of the National Human Rights Commission in 2012, including in relation to the specific case of Kpatcha Gnassingbé and his co-detainees, and bring anyone suspected to be responsible to justice as well as take appropriate measures to guarantee non-recurrence;
- Promptly, thoroughly and impartially investigate the threats made 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.

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<sup>6</sup> Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guidelines on national preventive mechanisms, CAT/OP/12/5, para. 32.

<sup>7</sup> Amnesty International, Annual report 2013 (Index: POL10/001/2013)

## TORTURE AND OTHER ILL-TREATMENT

The definitions of “cruel and inhuman treatment or punishment”, and “degrading treatment” set out in the 2015 law revising the Criminal Code restrict the scope of application of the charges to acts causing “grave mental or physical suffering” or “humiliation or grave debasement”<sup>8</sup>, instead of expanding these terms so as to extend the widest possible protection against abuses.

A law revising the Criminal Code was adopted in 2016 to remove statutes of limitations to the crime of torture, but failed to rectify the flaws in the definition.<sup>9</sup>

### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- 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 2016 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.

## FREEDOM OF ASSEMBLY AND USE OF FORCE

A law adopted in May 2011 significantly improved the legal framework governing assemblies, including by setting a requirement of notification rather than authorization and by providing exceptions for spontaneous assemblies. Despite these positive amendments, it placed impermissible restrictions on the right to peaceful assembly, including by failing to clarify that the notification requirement is subject to proportionality assessment; that it should only be required for large assemblies or those where a certain degree of disruption is anticipated, with a maximum recommended notice period requirement of, for example, 48 hours.<sup>10</sup> It also failed 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 further provided for a blanket ban on assemblies held before 6am and after 10pm.<sup>11</sup>

The revised Criminal Code, adopted in November 2015, further restricts the right to freedom

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<sup>8</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 201 and 203.

<sup>9</sup> Loi n°2016-027 du 11 octobre 2016 portant modification de la loi n°2015- 010 du 24 novembre 2015 portant nouveau code pénal

<sup>10</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, A/HRC/20/27, paras 28, 29 and 31.

ACHPR, Guidelines on Freedom of Association and Assembly in Africa, 2017, paras. 71-79.

<sup>11</sup> 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.



of peaceful assembly. It criminalizes the participation and organization of assemblies which have not been subject to the necessary administrative formalities, regardless of the size of the assembly, with sentences ranging from a fine of CFA 50,000 (approximately EUR 76) to five years' imprisonment.<sup>12</sup> It also provides that the organizers and peaceful demonstrators are responsible for any violent or criminal behaviour by other protestors and liable for any corporal or material damage caused.<sup>13</sup>

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 the decree clarifies that maintaining or restoring public order falls under civilian authority and that the use of force should be preceded by warnings,<sup>14</sup> the decree still falls short of international law and standards. For example, it does not contain a clear stipulation that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty and that the security forces pursuing a lawful law enforcement objective should use nonviolent means where at all possible. Rather it expressly provides that the security forces may use force and firearms for unlawful objectives, such as defending premises or goods.<sup>15</sup> 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 any use of force that results in injury or death. Arbitrary or abusive use of force by law enforcement officials is not punished as a criminal offence.

#### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- 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, particularly the ACHPR Guidelines on Policing Assemblies in Africa, including by clarifying that peaceful assemblies should not be banned and removing provisions criminalizing the organization of and participation in peaceful demonstrations;
- 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 and the ACHPR Guidelines on Policing Assemblies in Africa, 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 superior orders may not serve as an acceptable defence;

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<sup>12</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, articles 539, 540 and 541.

<sup>13</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 542.

<sup>14</sup> Décret N°2013 – 013 / PR du 6 mars 2013 portant réglementation du maintien et du rétablissement de l'ordre public, article 3.

<sup>15</sup> Décret N°2013 – 013 / PR du 6 mars 2013 portant réglementation du maintien et du rétablissement de l'ordre public, article 32.

- Establish an independent police oversight body, with adequate human and financial resources, and mandated to investigate serious human rights violations involving the use of force by the security forces, and establish individual and command responsibility, as well as identify institutional failures and areas of reform;

## FREEDOM OF EXPRESSION

The Togolese legal framework has become more restrictive following legislative changes in 2013 and 2015, which introduced provisions that violate the right to 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.<sup>16</sup> 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 (approximately EUR 6097) for repeated offences<sup>17</sup>, while offending public officials carries penalties of up to 6 months’ imprisonment and fines of up to CFA 2 million (approximately EUR 3048).<sup>18</sup>

The revised Code creates a new, imprecise and overly broad charge of publishing, broadcasting or reproducing “false news”, allowing the imposition of prison terms of up to five years.<sup>19</sup> 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 (approximately EUR 1524).<sup>20</sup> It also creates imprecise and overly broad definitions of terrorism related charges including for financing terrorism<sup>21</sup>, publishing messages inciting terrorism<sup>22</sup>, and contributing to the commission of a terrorist act.<sup>23</sup> Amnesty International is concerned that all of these charges could be used to target persons who express dissent and to harass and intimidate their relatives.

In February 2013, the National Assembly passed a law granting the High Authority for Audio-visual and Communications discretionary powers to impose sanctions on the media without recourse to the courts, prompting protests by journalist associations.<sup>24</sup> Encouragingly, the

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<sup>16</sup> Loi N° 98/004PR du 11 février 1998 portant Code de la presse et de la communication, articles 82, 86-88, 89, 90-98.

<sup>17</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, articles 290 – 296

<sup>18</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 301 – 302

<sup>19</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 665

<sup>20</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 552

<sup>21</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 739

<sup>22</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 747

<sup>23</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 750

<sup>24</sup> Loi organique adoptée le 19 février 2013, portant modification de la loi organique n° 2009-029 du 22 décembre 2009 relative à la Haute Autorité de l'Audiovisuel et de la Communication, ne sont pas conformes à la Constitution.

Constitutional Court ruled in March 2013 that six of the articles of this law were unconstitutional.<sup>25</sup>

#### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- 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.

### FREEDOM OF ASSOCIATION

The legal framework on association is set out in the 1901 law on contract of association.<sup>26</sup> On April 2016, the Council of Ministers of Togo adopted a bill on freedom of association which fails to meet international standards. For instance, the bill provided for a mandatory prior authorization requirement for “foreign or international associations”. The bill also stated that associations must respect national laws and morals, which could be used to further discriminate against LGBTI people, as consensual same sex sexual relations are criminalised under the criminal code, contrary to Togo's international human rights obligations and commitments. The bill also provided that associations may be dissolved on the basis of a decision of the Council of Ministers or the Minister of Territorial Administration in the case of “foreign and international associations”, without any recourse to an independent and impartial determination by court of law after a fair hearing. As of March 2018, the bill had not been adopted by Parliament.

#### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- Amend the 1901 law on association to bring it in line with international standards, including the ACHPR Guidelines on Freedom of Association and Assembly in Africa;
- Refrain from adopting or promulgating more restrictive legislation which may be used to further crack down on human rights defenders for the exercise of their rights and activities, including the 2016 bill on associations.

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

The revised Criminal Code of 2015 retains provisions which criminalize same-sex relationships and discriminate against LGBTI persons. It raises the applicable penalty for

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<sup>25</sup> Cour Constitutionnelle, Décision N° C-003/13 du 20 mars 2013

<sup>26</sup> Loi N°40-484 du 1er Juillet 1901 relative au contrat d'association

“unnatural acts between individuals of the same sex” up to three years’ imprisonment and/or a fine of up to CFA 3 million (approximately EUR 4573).<sup>27</sup> The revised Criminal Code also criminalizes “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 (approximately EUR 3048).<sup>28</sup> Amnesty International is concerned that these provisions 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 support to LGBTI individuals in Togo.<sup>29</sup>

#### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- Repeal the provisions of the Criminal Code which criminalize consensual same-sex sexual conduct and incitement to consensual same-sex sexual conduct.

## PERSISTENT HUMAN RIGHTS CONCERNS

### PRISON CONDITIONS AND DEATHS IN CUSTODY (ARTICLES 4 & 5)

A Criminal Code adopted in November 2015 introduced new measures such as community service, which if implemented effectively, have the potential to address the ongoing issue of severe congestion of prisons in Togo.

Despite this legislative reform, prisons in Togo remain overcrowded and prison conditions broadly fail to meet international human rights standards. According to the prison administration statistics for March 2018, 5,053 people were in various prisons in Togo, despite a total prison capacity of only 2,881 detainees.<sup>30</sup> The prison of Tsévié, for example, held 252 detainees despite its maximum capacity of 52. During prison visits in 2015 and 2016, detainees told Amnesty International that they did not have access to adequate medical care and were given only one meal a day. At least 180 people died in detention between 2012 and 2016, mostly from preventable or curable diseases, including malaria and intestinal infections.<sup>31</sup>

Further, despite the recommendations made by the ACHPR and Togo’s commitment in its

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<sup>27</sup> 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.

<sup>28</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 394

<sup>29</sup> During Last UPR several recommendations regarding LGBTI rights did not enjoy the support of Togo: N-131.8 (Australia), N-131.9 (Chile), N-131.10 (Mexico), N-131.11(France), N-131.12 (Slovenia) recommendations did not enjoy the support of Togo

<sup>30</sup> Togo has 12 prisons and 1 juvenile brigade.

<sup>31</sup> Prison administration statistics.

Universal Periodic Review (UPR) report to the United Nations Human Rights Council (HRC),<sup>32</sup> female prisoners are not guarded by female prison officers at all times, although female guards perform certain functions, such as body searches<sup>33</sup>.

**RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:**

- Develop and implement effective strategy to reduce prison overcrowding, including by substituting detention with non-custodial measures, further to the government's commitment at the HRC during the 2016 UPR review;
- Ensure that all persons deprived of liberty are held in humane conditions, including by ensuring that all detainees have access to sufficient food, drinkable water, adequate sanitary facilities and medical treatment in line with the UN Basic Principles for the Treatment of Prisoners, 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 and the ACHPR Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa.

## **CLAMPDOWN ON FREEDOM OF ASSEMBLY AND EXCESSIVE USE OF FORCE (ARTICLE 11)**

Peaceful assemblies organized by political parties or human rights defenders are often banned and violently dispersed by the police, gendarmerie and the armed forces, and their organizers often face reprisals and arbitrary arrests. As indicated in the ACHPR Guidelines on Policing Assemblies in Assembly, "As a general rule, the military should not be used to police assemblies and must only be used in exceptional circumstances and only if absolutely necessary."<sup>34</sup>

In November 2015, 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 remained in prolonged detention in relation to these protests, including four who organized the demonstrations, even though they claimed that they were not involved in any acts of violence. No members of the security forces suspected to be responsible for the killing or wounding of the protesters, by-standers

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<sup>32</sup> ACHPR, Concluding Observations and Recommendations on the Combined 3rd, 4th and 5th Periodic Report of the Republic of Togo, 51st Ordinary Session, 18 April – 2 May 2012, Banjul, The Gambia para. 73.ii

During last UPR session in 2016, Togolese authorities affirmed that "Since 2012, female prisoners are guarded by female prison officers" National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, UN Doc. A/HRC/WG.6/26/TGO/1, p .9

<sup>33</sup> Amnesty International, Togo: Human Rights - A long way to go: Amnesty International Submission to the UN Universal Periodic Review, October - November 2016 (Index: AFR 57/3852/2016), p. 4

<sup>34</sup> ACHPR Guidelines on Policing Assemblies in Africa, para. 3.2

or their relatives have yet to be brought to justice.<sup>35</sup>

On 28 February 2017, security forces used live ammunition to disperse a spontaneous protest against oil price rises in the capital, Lomé, killing one person and wounding several others.<sup>36</sup>

In June 2017, security forces repressed demonstrations organized by a University of Lomé Student Union, which called for improved living conditions. Video recordings of this incident, verified by Amnesty International, showed security force members, armed with shotguns, battering students on the ground with batons. Some students threw rocks at security forces. At least 19 students were arrested, 10 of whom were released shortly after being brought before the prosecutor. On 19 June, seven were released after the Tribunal of Lomé acquitted them of acts of rebellion and destruction of property. On 26 June, Foly Satchivi, President of the Togolese League of Student Rights, and Marius Amagbégnon, received a 12-month suspended prison sentence for aggravated disturbance of public order as the court considered them to be the organizers of the demonstration. After their release on 27 June, they appealed against their convictions. Several students told the court that they were beaten by security forces during their arrest and transfer.<sup>37</sup>

Between August and December 2017, various political opposition groups held mass demonstrations in major cities, some of which were marred with sporadic violent clashes between opposition groups and supporters of the ruling party. Security forces, including the armed forces, consistently dispersed these demonstrations with tear gas, batons, water cannons and live ammunition. They raided houses and places of prayer, beating people, including those who had not participated in demonstrations. At least 10 people were killed, including two members of the armed forces and three children aged between 11 and 14. Hundreds were injured, including members of the security forces. More than 200 people were arrested, including the Secretary General of the opposition Pan African National Party (PNP). At least 60 people were sentenced to prison terms of up to 60 months on charges including rebellion, wilful destruction, assault, violence against state officials, aggravated disruption of the public order and aggravated theft.<sup>38</sup>

#### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- 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 antiriot equipment;

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<sup>35</sup> Amnesty International, Togo: Les forces de sécurité ont tiré à bout portant sur des manifestants non armés à Mango ([Press release](#), 11 December 2015)

<sup>36</sup> Amnesty International, Togo: Un mort par balle et plusieurs blessés lors d'une manifestation dispersée par l'armée ([Press release](#), 1 March 2017)

<sup>37</sup> Amnesty International, Annual report 2017-2018 (Index: POL 10/6700/2018)

<sup>38</sup> Amnesty International, Togo: Les autorités doivent s'abstenir de tout recours injustifié ou excessif à la force lors des manifestations de l'opposition ([Press release](#), 6 September 2017)

Amnesty International, Togo: Un enfant de neuf ans tué par balle lors des manifestations ([Press release](#), 20 September 2017)

- Promptly, thoroughly and impartially investigate all allegations of excessive use of force by security forces 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.

## TORTURE AND OTHER ILL-TREATMENT (ARTICLE 5)

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.

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.<sup>39</sup>

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 held accountable for the ill-treatment they suffered.<sup>40</sup>

In June 2016, three police officers arrested Ibrahim Agriga at his home in Guerin Kouka. He was taken to a police station and beaten with batons on his buttocks and the soles of his feet to make him “confess” to a motorbike theft. He was released without charge after three days and filed a complaint with the tribunal of Guerin Kouka. To date, no investigation was known to have been initiated.<sup>41</sup>

About 20 people, including the general secretary of Parti National Panafricain (Panafrican National Party, PNP), arrested on 19 and 20 August 2017 in the context of demonstrations were subjected to ill-treatment during their arrest and custody at the SRI (Intelligence and Investigation Services), including beatings. They reported the ill-treatment they were subjected to the court, but no investigation has been initiated into this allegation and no one held to account.

### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- Give clear instructions to security forces to ensure that they always act in respect of regional and international human rights laws; they must, in particular, respect the right to life and the absolute prohibition of torture and other ill-treatment, in accordance with international and regional treaties;
- Ensure that all detainees in military and police custody have immediate and

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<sup>39</sup> Amnesty International, Annual report 2014-15 (Index: POL 10/0001/2015/)

<sup>40</sup> Amnesty International, Togo : Les forces de sécurité ont tiré à bout portant sur des manifestants non armés à Mango ([Press release](#), 11 December 2015)

<sup>41</sup> Amnesty International, Annual report 2016-17 (Index: POL 10/4800/2017)

unhindered access to families, lawyers, human rights organisations and medical care;

- Promptly, thoroughly and impartially investigate all allegations of torture and other ill-treatment and bring anyone suspected to be responsible to justice in a fair trial, as Togo had accepted to do in the 2016 UPR;
- Ensure that all victims of torture can benefit from all forms of redress, including measures of restitution, compensation, rehabilitation, satisfaction and guarantees that these violations will not be repeated.

## FREEDOM OF EXPRESSION (ARTICLE 9)

The authorities continue repress dissent by curtailing freedom of expression and attacking journalists, human rights defenders and political activists, particularly those perceived to undermine the interests of members of the government or the security forces. The government has closed media outlets and arrested community and opposition leaders for expressing dissent. Internet has been shut down for nine days in September 2017 amid opposition-led protests, disrupting the organization of peaceful protests and impeding the work of human rights defenders and journalists who were monitoring the protests.

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 broadcasted the documentary, were repeatedly summoned for questioning and asked to reveal their sources, including at the headquarters of the Research and Investigation Services and at the High Authority for Audiovisual and Communications (HAAC) on 18 and 26 August.<sup>42</sup>

On 6 February 2017, HAAC withdrew the frequency licenses of radio station CityFM and TV station La Chaîne du Futur for breaching licensing rules. The law establishing the HAAC does not provide any mechanism to appeal against such decisions before a court of law.<sup>43</sup>

On 7 February 2017, journalist Robert Kossi Avotor was beaten with batons and handcuffed by gendarmes to prevent him from photographing an eviction process in Lomé. He was detained and his photographs deleted, before being released on the same day without any charge. He filed a complaint with the prosecution services in Lomé to which he said he had received no response. On 22 February, the General Prosecutor issued a warning that anyone who reported on the attack on Robert Kossi Avotor would risk criminal prosecution for “disseminating false news”.<sup>44</sup>

On 12 October 2017, four human rights defenders, representatives of the movement Africans Rising, were prevented from leaving the country. They were questioned by the police for several hours, without access to a lawyer and their equipment, telephones and passports were seized during the arrest at their hotel. Their possessions were not returned until 17 October 2017. Local CSOs who had meetings with the delegation of Africans Rising were also questioned about their meetings.<sup>45</sup>

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<sup>42</sup> Amnesty International, Annual report 2015-16 (Index: POL10/2552/2016).

<sup>43</sup> Amnesty International, Togo: Le retrait des fréquences de deux médias est une attaque contre la liberté d'expression ([Press release](#), 6 February 2017)

<sup>44</sup> Amnesty International, Annual report 2017-2018 (Index: POL 10/6700/2018)

<sup>45</sup> Amnesty International, Togo: Security forces, political parties must exercise restraint after call for



On 23 January 2018, Atikpo Bob, a leader of the Mouvement Nubueke (Nubueke Movement), a pro-democracy movement, was arrested by the Service de Recherche et d'Investigation (Research and Investigation Service, SRI) agents before being taken to the civilian prison in Lomé. He was interrogated without a lawyer and charged with publishing false news and defamation for sharing a photomontage of the Minister of Security and Civilian Protection on social media. On 2 March, he was sentenced to 12 months in prison, with 9 months suspended. Two other members of Mouvement Nubueke are currently in detention without trial since October 2017. They have been charged with associating with criminals, disturbing public order, inciting a riot, violence and threats against public officials, arson and voluntary destruction of public property, illegal possession of military materials and complicity in the above-mentioned offences.<sup>46</sup>

**RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:**

- Immediately and unconditionally release all those arbitrarily detained solely for exercising their rights to freedom of expression;
- Refrain from blanket Internet cuts and disruption of telecommunication services;
- 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; and
- 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.

**FREEDOM OF ASSOCIATION (ARTICLE 10)**

Togolese authorities have in certain instances failed to deliver registration certificates to organisation who express dissent. Officers of the Ministry of Territorial Administration refused to issue registration certificates to a group of LGBTI activists claiming that the mandate of the organization as set out in the registration form “challenged cultural and social norms”.<sup>47</sup>

Another organization which provides assistance to victims of torture, Association des Victimes de Torture du Togo (Association for Victims of Torture in Togo-ASVITTO), has been waiting for receipt of registration from for more than five years, hindering its ability to raise funds, particularly from international donors.

**RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:**

- Guarantee full enjoyment of the right to association, including by issuing certificates of registration to all associations that have met the legal requirements in line with regional and international standards;
- Refrain from unwarranted interference with the activities of associations.

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fresh protests today ([Press release](#), 18 October 2017)

<sup>46</sup> Amnesty International, The authorities must put an end to the judicial harassment of prodemocracy activists and human rights defenders (Index: AFR 57/7906/2018)

<sup>47</sup> The details of this case, including names, dates and places are withheld for security reasons.

## LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND INTERSEX (LGBTI) RIGHTS (ARTICLE 2 & 3)

LGBTI people in Togo 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.<sup>48</sup> The police officers forced him to take off all his clothing, took videos and photographs and threatened to leak the images 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 during his entire detention. He was released without charge after five days.

Another gay man returning home in female clothing from a friend's house in 2014 was stopped by two members of the security forces and asked to produce identification.<sup>49</sup> 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 attempted to touch his chest 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 (approximately EUR 91), his handbag which contained his phone and some cash and left.

### RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:

- Respect, protect, promote, 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; and
- 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

A climate of impunity for human rights violations persists in Togo. Members of the police force, the gendarmerie and the armed forces regularly commit human rights violations with

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<sup>48</sup> The details of this case, including names, dates and places are withheld for security reasons.

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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 three of them, Kpatcha Gnassingbé, Atti Abi and Dontema Kokou remained in arbitrary detention as of March 2016. To date, no one has been held accountable for the torture that these individuals were subjected to.

In 25 April 2015, ECOWAS Court ruled that Togo subjected Pascal Bodjona, a Togolese politician and former member of the government, to arbitrary detention. It ordered Togo to pay him a compensation of 18 million CFA (approximately EUR 27440).<sup>50</sup> To date, the decision has not been enforced.

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 investigate the killings and identify those suspected of criminal responsibility for the deaths. Of the 72 complaints filed by the victims' families before the courts in Atakpamé, Amlamé and Lomé, none are known to have led to a successful prosecution.

In 2015 and 2016, the authorities told Amnesty International that disciplinary measures are taken against members of the security forces who commit human rights violations. However, the lack of transparency of these alleged 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 various human rights violations documented in this submission, Amnesty International is aware of only one case that has led to prosecution. 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 victims, Anselme Sinandare Gounyanoua, was only 12 years old.<sup>51</sup> 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 (approximately EUR 15244) 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 any indication 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

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<sup>50</sup> Amnesty International, Annual report 2015-16 (Index: POL10/2552/2016)

<sup>51</sup> Amnesty International, Annual report 2014-15 (Index: POL10/0001/2015)

to maintain public order.

**RECOMMENDATIONS TO THE TOGOLESE AUTHORITIES:**

- 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; and
- 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.



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