



# REPUBLIC OF TOGO

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 26<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, OCTOBER/NOVEMBER 2016

### FOLLOW UP TO THE PREVIOUS REVIEW

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

#### National Human Rights Commission

Togo accepted recommendations aimed at strengthening the National Human Rights Commission.<sup>1</sup> Yet, in March 2016, the National Assembly adopted a law which enables the President of the Republic to appoint members of the Commission without parliamentary oversight, raising serious concerns about its independence. In 2012, the government falsified the report the Commission prepared following its investigation into torture claims made by Kpatcha Gnassingbé and his co-detainees.<sup>2</sup> In February 2012, President of the Commission Koffi Kounté received threats from the entourage of the Head of State after he refused to endorse the falsified report. Fearing reprisals, he took refuge in France.

#### Prison conditions

Despite the commitments made in 2011, prisons in Togo remain overcrowded and prison conditions fail to meet international human rights standards.<sup>3</sup> 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 did not have access to adequate medical care and were given only one meal a day. Also 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 2011, Togo considered recommendations to protect, respect and fulfil the right to freedom of expression to be already implemented or in the process of implementation.<sup>4</sup> 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 can be used to target those who express dissent and which carries prison terms. Journalists, human rights defenders and political activists continue to face

---

<sup>1</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Togo*, 14 December 2011, 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).

<sup>2</sup> 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 Court declared the Togolese state responsible for acts of torture and ordered reparations for the victims.

<sup>3</sup> A/HRC/19/10, recommendations 100.54 (Benin), 100.55 (Norway), 101.8 (Canada), 101.9 (Benin), 101.10 (Norway), 101.11 (Germany).

<sup>4</sup> A/HRC/19/10, recommendations 101.15 (Ghana), 101.16 (Australia), 101.17 (Slovenia), 101.18 (United Kingdom of Great Britain and Northern Ireland).

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.<sup>5</sup> However as detailed below, the definition of torture used in the Criminal Code is not in line with the definition in Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Amnesty International has reported cases of torture and other ill-treatment since Togo's last UPR (see below).

In March 2016, the National Assembly adopted a law establishing a national preventive mechanism within the National Human Rights Commission.<sup>6</sup> However, under this law the President is able 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 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.<sup>7</sup>

### **Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights**

Togo rejected recommendations to protect LGBTI rights during the first UPR cycle, including to repeal the provisions of its Criminal Code which criminalize same sex relationships and discriminate against LGBTI persons.<sup>8</sup> Since the 2011 review, respect for LGBTI rights has deteriorated. As detailed below, the revised Criminal Code not only retains provisions criminalizing consensual same-sex sexual relations, but also increases 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 commitments made in 2011 to tackle impunity,<sup>9</sup> 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 killings of protestors during the 2005 election violence and the torture of Kpatcha Gnassingbé and his co-detainees.

## **THE NATIONAL HUMAN RIGHTS FRAMEWORK**

### **Freedom of assembly and use of force**

The revised Criminal Code adopted in November 2015 further restricts the right to freedom of peaceful assembly.<sup>10</sup> It criminalizes the participation in 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

<sup>5</sup> A/HRC/19/10, recommendations 100.52 (Cape Verde), 101.4 (Mexico).

<sup>6</sup> A/HRC/19/10, recommendations 100.21 (France), and 100.23 (Benin).

<sup>7</sup> A/HRC/19/10, recommendation 100.53 (Chile).

<sup>8</sup> 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.

<sup>9</sup> A/HRC/19/10, recommendations 100.50 (Slovenia), 100.51 (Slovakia), 101.5 (Norway), 101.6 (Germany).

<sup>10</sup> A law adopted in May 2011 establishes the conditions for the exercise of the right to freedom of peaceful assembly. It significantly improved 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 created impermissible restrictions on the right to peaceful assembly. For instance, it does not clarify that the notification requirement is subjected to the principle of proportionality and should be required only for large meetings or those which affect traffic. It 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. See: Loi N°2011-010 du 16 mai 2011 fixant les conditions d'exercice de la liberté de réunion et de manifestation pacifiques publiques.

to five years' imprisonment if violence occurs during the assembly.<sup>11</sup> It holds the organizers and peaceful demonstrators responsible for the violent or criminal behaviour of other protestors and liable for any corporal or material damage caused.<sup>12</sup>

In March 2013, the government adopted a decree on maintaining and restoring public order which defines the legal framework on 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,<sup>13</sup> the decree falls short of international law and standards. For example, it does not clearly stipulate that security forces pursuing a lawful law enforcement objective should use non-violent means where at all possible. Rather it contains express provision for the security forces to use force and firearms for unlawful objectives, such as defending premises or goods.<sup>14</sup> It also fails to provide reporting requirements for when force is used.<sup>15</sup>

### **Freedom of expression**

Togolese law contains provisions which violate the right to freedom of expression,<sup>16</sup> and the legal framework has become more restrictive following legislative changes in 2013 and 2015.

The revised Criminal Code, adopted in November 2015, has introduced new crimes and harsher punishments. Punishments for defamation have been increased by up to 4 years' imprisonment and fines of up to CFA 4 million for repeated offences,<sup>17</sup> while offending public officials now carries penalties of up to 6-months' imprisonment and fines of up to CFA 2 million.<sup>18</sup> The revised Criminal Code has also created a new and ill-defined charge of publishing, broadcasting or reproducing "false news", with prison terms of up to 5 years.<sup>19</sup> It further criminalizes the uttering of seditious chants in public spaces or assemblies with penalties of up to two-months' imprisonment and fines of up to CFA 1 million.<sup>20</sup> Finally, it has created vaguely-worded terrorism-related charges, including financing terrorism,<sup>21</sup> publishing messages inciting terrorism,<sup>22</sup> and contributing to the commission of a terrorist act,<sup>23</sup> all of which could be used to repress dissent.

### **Torture and other ill-treatment**

In a major human rights development in domestic law, 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 Code<sup>24</sup> and the definitions are not in line with the Convention against Torture and Other Cruel,

---

<sup>11</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, articles 539, 540 and 541.

<sup>12</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 542.

<sup>13</sup> Décret N°2013 – 013 / PR du 6 mars 2013 portant réglementation du maintien et du rétablissement de l'ordre public, article 3.

<sup>14</sup> Décret N°2013 – 013 / PR du 6 mars 2013 portant réglementation du maintien et du rétablissement de l'ordre public, article 32.

<sup>15</sup> Under Togolese law, there is no independent oversight body mandated to investigate at least the most serious incidents involving the use of force by security forces, establish individual and command responsibility, as well as institutional failures and deficiencies.

<sup>16</sup> The Press and Communication Code adopted in 1998 already criminalized 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 used to repress dissent.

<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> The Criminal Code contains two distinct definitions of torture: in article 150 and 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 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."

Inhuman or Degrading Treatment or Punishment.<sup>25</sup> The revised Criminal Code does not establish the non-applicability of statutory limitations to the crime of torture; rather, the statute of limitation for torture is set to 25 years.<sup>26</sup>

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”,<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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 often arbitrarily banned or dispersed by the police, gendarmerie and armed forces using excessive force. Those who are perceived to be the organizers of such protests often face reprisals and arbitrary arrests.<sup>30</sup>

### **Restrictions on freedom of expression**

The authorities continue to curtail freedom of expression and to target journalists, human rights defenders and political

---

<sup>25</sup> 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.” This omission could be used by the state to avoid responsibility, particularly in the case of instigation, consent or acquiescence to torture.

<sup>26</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 105.

<sup>27</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 201 and 203.

<sup>28</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>29</sup> Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 394.

<sup>30</sup> Examples include:

- 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 security forces opened fire on peaceful demonstrators. As of March 2016, five men remain in prolonged detention in relation to these protests, including three who organized the demonstrations, even though they claim 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 and their relatives. See: 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/>.

- On 20 August 2015, in Lomé, the security forces used tear gas to disperse a peaceful demonstration of 100 people protesting against the rise of the cost of living. The gendarmerie arbitrarily arrested the three protest 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 released without charge. See: Amnesty International, Annual report 2015-16 (Index: POL10/2552/2016), available at: <https://www.amnesty.org/en/countries/africa/togo/report-togo/>.

- 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. 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 the wounding of the protesters and by-standers. See: 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/>.

activists who express dissent, particularly those perceived to undermine the interests of members of the government or the security forces.<sup>31</sup>

### **Torture and other ill-treatment**

Torture and other ill-treatment are regularly used by the security forces at the time of the arrest and during pre-trial detention to extract confessions or implicate defendants.<sup>32</sup>

### **Lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights**

LGBTI persons face harassment and arbitrary detention by the security forces on the basis of their real or perceived sexual orientation or gender identity and expression.<sup>33</sup> LGBTI rights activists often experience difficulties in registering

---

<sup>31</sup> Examples include:

- 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 the headquarters of the Research and Investigation Services and at the High Authority for Audiovisual and Communications on 18 and 26 August, respectively. See: Amnesty International, Annual report 2015-16 (Index: POL10/2552/2016), available at: <https://www.amnesty.org/en/countries/africa/togo/report-togo/>.
- 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. See: Amnesty International, Annual report 2014-15 (Index: POL10/0001/2015/), available at: <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>
- In August 2013, the authorities shut down *Radio Légende FM*, a month after the High Authority for Audiovisual and Communications suspended the station on the grounds that it broadcasted false information in the context of the legislative elections. See: Annual report 2014-15 (AI Index, POL10/0001/2015/), available at: <https://www.amnesty.org/en/documents/pol10/0001/2015/en/>.
- 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 agencies. See: Amnesty International, Annual report 2013 (Index: POL10/001/2013), available at: <https://www.amnesty.org/en/documents/pol10/001/2013/en/>.
- 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. See: Amnesty International, Annual report 2013 (Index: POL10/001/2013), available at: <https://www.amnesty.org/en/documents/pol10/001/2013/en/>.

<sup>32</sup> Examples include :

- 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 centers, causing open wounds on their backs, legs and hands. They were asked to sign statements which they did not understand. No one was held accountable for the ill-treatment they suffered. See: *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/>.
- 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 waterboarding 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 was held accountable for the torture he suffered. See: Amnesty International, Annual report 2014-15 (Index: POL10/0001/2015/), available at: [https://www.amnesty.org/en/documents/pol10/0001/2015/en](https://www.amnesty.org/en/documents/pol10/0001/2015/en/)
- 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 had been 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. See: Amnesty International, Annual report 2013 (Index: POL10/001/2013), available at: <https://www.amnesty.org/en/documents/pol10/001/2013/en/>.

<sup>33</sup> Examples include:

- 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>33</sup> 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 policemen 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 access a lawyer. He was released without charge after five days. No one was held accountable for the ill-treatment he was subjected to. The details of this case, including names, dates and places are withheld for reasons of security.
- 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. 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,

their organizations.<sup>34</sup>

### **Impunity for human rights violations**

A climate of impunity for human rights violations persists. Officers from the police, the gendarmerie and the armed forces regularly commit human rights violations with few repercussions.<sup>35</sup>

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. 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 submission, only one case has led to a successful prosecution, with a light sentence being handed down.<sup>36</sup>

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of Togo to:**

#### *National Human Rights Commission*

- Adopt measures to guarantee appropriate financial resources, full independence, and impartiality of the National Human Rights Commission, as Togo had accepted to do in 2011, including by amending the law adopted in March 2016 enabling the President to appoint the members of the Commission to ensure 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;
- Ensure the findings of the National Human Rights Commission are made publicly available.

---

on the way, one of them 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 left. No one was held accountable for the ill-treatment he was subjected to. The details of this case, including names, dates and places are withheld for reasons of security.

<sup>34</sup> In at least one case, officers of the Ministry of Territorial Administration refused to deliver registration certificates because they considered that the mandate of the organization set out in the registration form "challenged cultural and social norms". The details of this case, including names, dates and places are withheld for security reasons.

<sup>35</sup> Examples include:

- In July 2013, the ECOWAS Court ruled that the Togolese government was responsible for acts of torture of 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 Atakpamé, Amlamé and Lomé courts, none are known to have led to a successful prosecution.

<sup>36</sup> In April 2013, two people were killed when security forces shot live bullets at a crowd of protesters in the northern town of Dapaong. One of the victims, Anselme Sinandare Gounyanoua, was 12 years old. In June 2015, a police officer was found guilty of manslaughter over his killing and sentenced to a 36-month imprisonment with 10 month 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.

### *Prison conditions*

- Develop and implement a strategy to reduce prison overcrowding, as Togo had accepted to do in 2011, in particular by substituting detentions with non-custodial measures;
- Ensure that all persons deprived of their 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 Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, as Togo had accepted to do in 2011, in particular 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 the military in public order situations;
- Provide the security forces with sufficient resources to police large-scale or hostile demonstrations and counter-demonstrations and with effective training in the appropriate and differentiated use of force and weapons, including anti-riot equipment;
- Amend laws regulating the use of force, in particular Decree N° 2013-013 on maintaining and restoring public order, to bring them in line with international standards, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and revise the legal basis for the use of force and establish clear rules for the use of force by the security forces in the context of policing demonstrations;
- Ensure that 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 by removing provisions that criminalize 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 security forces, and to 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 of criminal responsibility 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 of 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 of 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, threats, harassment or attacks.

### *Torture and other ill-treatment*

- Amend the Criminal Code to bring the definition of torture in line with the definition set forth in Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as Togo had accepted to do in 2011, 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 2011, in particular by building in legal safeguards against torture, such as 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.

*Lesbian, gay, bisexual, transgender, and intersex rights*

- Repeal provisions of the Criminal Code criminalizing consensual same-sex sexual conduct and incitement to such 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 to benefit from the same rights and protection as other human rights defenders.

*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 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, in line with the UN Basic Principles on the Independence of the Judiciary;
- Fully and effectively implement the decisions of the Economic Community of West African States Court of Justice, including by releasing Kpatcha Gnassingbé and his co-detainees and providing them with full reparation for the harm suffered.