



**International Covenant on
Civil and Political Rights**

Distr.
GENERAL

CCPR/C/TGO/4
17 October 2009

ENGLISH
Original: FRENCH

Human Rights Committee

**Consideration of reports submitted by States
parties under article 40 of the Covenant**

Fourth periodic report of States parties

Togo*

[10 July 2009]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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Introduction

1. In November 2002, Togo submitted its third periodic report to the Human Rights Committee, in accordance with the provisions of article 40 of the International Covenant on Civil and Political Rights ("the Covenant") of 16 December 1966.
2. Further to the request of the United Nations Secretary-General, the Togolese Government hereby submits its fourth report.
3. The first part of this report contains a description of the evolution of the human rights situation, while the second part contains information on the domestic measures adopted to safeguard the rights and freedoms set out in the Covenant.

I. Evolution of Togo's political and institutional system: the situation of human rights

4. Wishing to renew relations of cooperation with the international community, the Togolese Government held consultations with the European Union.
5. Following those consultations, the Government entered, on 14 April 2004, into 22 commitments intended to lead to the strengthening of democratic institutions and respect for human rights and a State based on the rule of law, encouraging the full normalization of relations of cooperation between the two parties. These commitments fall into two main areas:
 - (a) The opening of an inclusive and credible dialogue to ensure full respect for democratic principles;
 - (b) Respect for human rights and public civil liberties.
6. Unfortunately, this burst of political, institutional and legal reforms, which was to have led to the early holding of legislative elections by the end of June 2005, was interrupted by the sudden death of President Gnassingbe Eyadema, which ushered in a new era of socio-political tension and unease marked by slippages in the field of human rights and fundamental freedoms.
7. For example, the presidential election process of 24 April 2005 was marked by numerous acts of violence, abuses, devastation, attacks on individuals and destruction of public and private property. This situation also resulted in movements of persons both inside and outside the country.
8. There has been a deterioration in the situation of human rights and public freedoms. On the basis of the conclusions and recommendations of the United Nations fact-finding mission of 2005 and of the independent special commission of inquiry, the Togolese Government resolved to take the necessary steps to enhance its efforts and measures to safeguard and protect human rights and fundamental freedoms. These include, in particular, making suitable arrangements to combat impunity and irresponsible attitudes, while encouraging a spirit of tolerance and respect for the law.
9. In accordance with the 22 commitments entered into and in order to maintain social peace, the Togolese Government started a national political dialogue which, with the assistance of President Blaise Compaoré of Burkina Faso, resulted in the signature of an agreement entitled "Global Political Accord".
10. Numerous reforms have been carried out by the Togolese Government, both from an institutional standpoint and to improve the situation of human rights. They include:

- Amendment of the Framework Law on the Organization and Operation of the Constitutional Court of 2004;
- Decriminalization of press offences in 2004;
- Revision of the mandate and statutes of the National Human Rights Commission (CNDH) ;
- Implementation of the national programme for the modernization of justice in 2005;
- Revision of the mandate and statutes of the High Audio-visual and Communications Authority (HAAC);
- Implementation of a national programme for the promotion and protection of human rights and a strategy for consolidating democracy and peace in 2007;
- Organization of free and transparent early legislative elections in 2007;
- Revision of the electoral code in 2007;
- Organization of national consultations in support of the truth, justice and reconciliation process in 2008;
- Organization of free legal consultations which helped to free several persons under arrest or in provisional detention in 2008 and 2009;
- Adoption of decree no. 2009-046/PR establishing the Truth, Justice and Reconciliation Commission on 25 February 2009
- Adoption of special status for judges of the Court of Audit in 2009.

11. With respect to detention, the Government, acting under the provisions of the Criminal Code and the Code of Criminal Procedure, has ordered officials of the prosecution service and investigating magistrates to carry out periodic visits to places of detention and to report on them to the Keeper of the Seals, Minister of Justice.

12. These periodic visits have led to the release of more than 400 persons detained without valid grounds, more than 700 detainees who had served half of their sentences and given serious pledges of social rehabilitation, and many accused persons who had served more than half of the maximum sentence in detention without having been brought before a court between June and December 2005.

13. To enable persons under arrest to obtain legal assistance from the twenty-fourth hour of their detention, the Minister of the Interior, Security and Decentralization issued circular no. 222/MISD-CAB, of 17 May 2004. This circular provided for the application of the provisions of article 16 of the Constitution of the Fourth Republic.

14. On 10 August 2005, an Inspectorate of Security Services responsible, inter alia, for monitoring conditions of detention and compliance with its duration, was established in the Ministry of Security. Within its competence, this body imposes disciplinary sanctions on officials who detain persons under arrest for longer than the legal limits without express permission from the Procurator-General or the judge responsible to extend the time-limit.

15. The same sanctions apply official carrying out acts of torture on detainees, without prejudice to criminal prosecution.

16. Under the programme of emergency support for the prison sector (PAUSEP), the Government, with the support of development partners, has started the refurbishment of 12 civil prisons, increasing the capacity of the Lomé civil prison and establishing quarters for minors in each civil prison.

17. So far as food is concerned, the Government, despite its limited means, is endeavouring to improve the quantity and quality of meals served to prisoners.

18. On 14 March 2006, the Government signed a convention with the International Committee of the Red Cross (CICR) providing that body with the possibility of making unannounced visits to any place of detention in order to ascertain the conditions under which detainees are being held and to report to the Government with a view to improving conditions of detention.

19. On 10 July 2006 the Togolese Government signed an agreement to establish an office of the United Nations Office of the High Commissioner for Human Rights (OHCHR) in Togo. This agreement was renewed on 31 July 2008.

20. The OHCHR office was opened in November 2006 with the aim of monitoring the human rights situation throughout the country and enhancing national capabilities in the sphere of the promotion and protection of human rights. Since then it has, inter alia, supported the authorities in fulfilling their international obligations, helped in the holding of early legislative elections in October 2007 and organized training sessions for national institutions working in the field of human rights, judges, the forces of order and security, the media and civil society.

II. Information on domestic measures to safeguard the rights and freedoms set out in the International Covenant on Civil and Political Rights

Article 1: The right of peoples to self-determination

21. Togo is committed to the principle of the right of peoples to self-determination. Each people should be master of its own destiny. The recognition of this universal principle heralded the independence of the States under colonial domination. Togo has always supported peoples struggling to accede to international sovereignty.

22. This is a recognized principle, albeit not one that is formally expressed in the Togolese Constitution. Under the provisions of article 50 of the Constitution international instruments ratified by Togo become an integral part of the Constitution.

The right of peoples freely to dispose of their natural wealth and resources

23. The freedom to dispose of its wealth contributes to the economic and social development of a people. In its national and international policy Togo respects that right.

24. At no time in its history has Togo ever violated the right of other peoples to the enjoyment of their wealth.

25. Togo fishes exclusively in its own national waters and exploits only the natural wealth situated in its own territory.

26. At the national level Togo believes firmly in the protection of private property. The provisions of the Covenant concerning the freedom to dispose of wealth do not appear as such in the Togolese Constitution, but they are taken into account by article 50 of the Constitution, which stipulates that “the rights and duties

enshrined in the Universal Declaration of Human Rights and in the international human rights instruments ratified by Togo shall be an integral part of this Constitution”.

Article 2: Ensuring the enjoyment by all Togolese citizens and foreigners of the rights recognized by the Covenant

27. Article 10 of the Constitution provides that all human beings have inherent, inalienable rights which the State is bound to respect and safeguard. No consideration of race, religion or property can be a ground for derogating from that requirement.

28. The Government works every day to give practical effect to these principles. The State's efforts in this field can be seen in training and civic education seminars held throughout the country to raise citizens' awareness of respect for all human rights.

29. Foreign nationals living in Togo are afforded the same protection. They move freely in the national territory, carry out commercial activities and are not subjected to any discrimination owing to their status as aliens.

The obligation to take steps to give effect to the rights recognized in the Covenant

30. Domestic legislation upholds human rights provisions, to which it gives a prominent place.

31. In Title II, the Constitution of the Fourth Republic sets out the right of all citizens (nationals and aliens) to enjoy all the rights recognized by the Covenant (art. 22). Enjoyment of these rights may be restricted only under a law "necessary for the protection of national security, public order, public health, morals or the fundamental rights and freedoms of others" (art.14).

32. The preamble of the Togolese Constitution stipulates that the Togolese State shall be committed to the protection of human rights as enshrined in the 1945 Charter of the United Nations, the 1948 Universal Declaration of Human Rights, the 1966 International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights and the 1981 African Charter on Human and People's Rights. In addition, Title II, subtitle I, of the Constitution is devoted entirely to rights and freedoms.

33. In order to enable all citizens, national and alien, to enjoy the same rights, the Togolese Government, in its preliminary draft of the criminal Code, amended Title II, Chapter 1, of the Criminal Code to add a section 11 entitled "war crimes and crimes against humanity", which penalizes the crime of apartheid in paragraph 4. Apartheid is regarded as a crime against humanity and is consequently not subject to statutory limitation. The crime of apartheid is punishable by life imprisonment or 30 years of penal servitude (arts. 81 and 82).

34. The amendment of Title II enabled offences relating to racial discrimination and infringements of women's and children's rights to be included in Chapter II. These are all measures adopted by the Government to guarantee enjoyment of the rights recognized by the Covenant to all citizens.

35. The Electoral Code (Act No. 2007-012 of 14 June 2007 amending Act No. 2000-007 of 5 April 2000, as amended by Act No. 2002-001 of 13 March 2002, Act No. 2003-001 of 7 February 2003, Act No. 2003-014 of 20 October 2003, Act No. 2005-001 of 21 January 2005 and Act No. 2007-009 of 7 February 2007 relating to the Criminal Code) contains provisions governing the organization of electoral campaigns and voting.

36. With respect to the presidential election of 2010, discussions are being held in the Permanent Framework for Dialogue and Consultation (CPDC), which was set up by decree of the Council of Ministers on 4 February 2009, on possible amendments to the Code.

37. Political parties are governed by Act No. 91-4 of 12 April 1991 containing a charter for political parties. They assist in the expression of citizens' political will and their civic training. In order to give them even more visibility, consultations were held by the Government during 2008 with a view to the adoption of a law on the status of the opposition. Discussions to that end are currently continuing in CPDC.

38. Freedom of the press is guaranteed by Act No. 98-004 of 11 February 1998, as amended by Act No. 200-06 of 23 February 2000, by Act No. 2002-026 of 25 September 2002, and by Act No. 2004-015 of 27 August 2004, on the Press Code.

39. However, the provisions relating to public freedoms have been incorporated into other texts (the Criminal Code, the Code of Criminal Procedure and the Individuals and Family Code).

40. In the final analysis, there can be no doubt that the provisions of international human rights instruments are taken into consideration in the Togolese Constitution. They may thus be invoked before Togolese courts, which are required to apply them, if they solely enunciate rights for citizens. On the other hand, those that stipulate that an act or a fact is an offence are brought into conformity with domestic law, which has to provide for the applicable punishments.

41. In addition, in order to give effect to the rights recognized by these instruments, the preliminary draft law amending the Criminal Code provides penalties for anyone infringing those rights or preventing their enjoyment.

Ensuring remedies; judgements and the execution of decisions taken in cases of violation

42. Concerning remedies, anyone who feels that he has been a victim of a human rights violation can turn to private human rights defence bodies, the National Human Rights Commission (CNDH), the Ministry of Human Rights, Consolidation of Democracy and Civic Training, or the courts.

43. The activities of bodies of the first three types are limited to mediation. It is for the courts to act to restore the victims' rights whenever violations are proven.

44. However, to enhance the efficiency of CNDH in its mission of protecting human rights, framework Act No. 96-12 of 11 December 1996 on its composition, organization and operation was amended and supplemented in 2005 by Act No. 2005-004 of 9 February 2005, which enabled CNDH, inter alia, to bring cases in which its mediation had been unsuccessful before the courts.

45. In addition, as Togo is a party to the Optional Protocol to the Covenant, individuals claiming to be victims of any violation of the rights enshrined in the Covenant are entitled to submit communications to the Human Rights Committee.

Article 3: The principle of non-discrimination on the ground of sex

46. The Togolese Constitution sets out the principle of the equality of men and women before the law. Under the provisions of article 11, "all human beings are equal in dignity and in rights. Men and women are equal before the law."

47. Since 2001, Togo has been engaged in the revision of the Individuals and Family Code of 1980 following the ratification of various international legal instruments relating to the protection of women's rights. The work of the various commissions set up for this purpose led in 2007 to the preparation of a preliminary draft law to revise the 1980 Code, containing provisions to rectify the sex-specific inequalities of all kinds that appear in it.

48. The proposed new provisions promote complementarity between the sexes and ensure that they have

the same chances and opportunities, while respecting individual and collective physiological, psychological and capability differences, within the family and communities.

49. These provisions, which are currently being approved, were endorsed in July 2007 by a workshop consisting of representatives of State institutions, civil society and religious communities.

50. With respect to children, the non-discrimination provisions are already taken into account by Act No. 2007-107 of 6 July 2007 containing the Children's Code, promulgated in July 2007.

51. In accordance with article 11 of the Togolese Constitution, the Children's Code states in article 5 that "discrimination based on race, ethnic origin, colour, sex, language, political or other opinions, national or social origin, wealth, birth, disability, state of health or any other status shall be prohibited". This general rule, as stated, is taken into account in all matters, particularly concerning the age of marriage and the child's nationality.

52. In the case of marriage, the age distinction made between men and women in article 43 of the Individuals and Family Code (CPF), which provides that "men may not marry before the age of 20 and women may not marry before the age of 17", no longer applies, because article 267 of the Children's Code now sets the age of marriage at 18 for both sexes. The president of the court or the divisional judge may nevertheless allow exceptions for serious reasons.

53. Various steps have been taken to promote gender equality. These include:

- The adoption in 2006 of the national gender strategy document;
- Inclusion of the gender dimension in the Interim Poverty Reduction Strategy Document (DISRP);
- Confirmation in October 2008 of the national policy for the promotion of gender equality and balance in Togo.

54. Despite all these measures, the country is facing difficulties in advancing the status of women and systematically integrating gender into the planning and development process.

55. Gender inequalities persist in various spheres. In education, for example, Togolese women have a higher rate of illiteracy that affects their quality of life. According to data from the Uniform Questionnaire of Basic Well-being Indicators (QUIBB), a survey carried out in 2006, the illiteracy rate in women is 55%. Most women receiving education rarely go beyond the secondary level. This is demonstrated by the fact that the parity index in the school year 2005-2006 was about 75% for the first cycle and 30% for the second cycle. These inequalities are even more marked at the higher level. Achieving parity in literacy requires enormous efforts by the State, as the gap between the sexes is so great.

56. This situation makes women's legal illiteracy worse and prevents them from being informed about all the favourable legal provisions contained in international, regional and national instruments. It also affects the poverty index in Togo. Although it is not possible to ascertain the long-term evolution of financial poverty in the country from available statistics, they nevertheless clearly show a critical development of per capita income per inhabitant and a tendency for poverty to become increasingly prevalent among women. Between 1991 and 2006, annual economic growth averaged 1.1%, much lower than the natural population growth, which is estimated at 2.4% per annum. This means that per capita income fell by almost 20% in this period. Recent surveys show that poverty affected 62% of the Togolese population and 74% of households in rural areas in 2006. The food price increases in 2008, natural disasters and the destruction of road infrastructures only made the situation worse; that in turn accentuated the extreme poverty of women, who are vulnerable because of their status and the negative effects of gender inequalities.

57. It is for this reason that, despite the identification in DISRP of actions to reduce gender inequalities, it was seen as urgent to include action to improve the socio-economic and legal situation of women in the Interim Priority Action Programme (PIAP).

Persistence of some provisions that discriminate against women

Institution of the husband as head of the family

58. Togolese positive law has enshrined the customary practice of installing a man as the head of the family (CPF, art. 101). This institution has discriminatory consequences for women in practice and in some legal provisions. In practice, it promotes men's monopoly on family decision-making:

(a) The family residence is a place which the spouses choose by agreement. If there is no agreement between the spouses, the choice of the family home lies with the husband, and the wife must live in the place which he chooses, unless it holds dangers for the woman and her children (CPF, art. 104). In the latter case, she may be authorized by a judge to have a residence for herself and her children;

(b) In the system of community of property, the husband is responsible for managing the common and personal property of the spouses (CPF, art. 359);

(c) The husband is allowed, in the interest of the family, to object to his wife holding a separate job (CPF, art. 109);

(d) A wage-earning woman, who is considered as a dependent, is subject to heavy taxation under the provisions of the General Tax Code, which grants tax relief only for men regarded as the head of the family. Moreover, a woman can declare her children and receive family allowances only if authorized by their father;

(e) A widower whose wife (as a permanent civil servant or employee in the private sector) was a member of the National Social Security Fund may only receive a widower's pension if he can prove that he is an invalid or that he was dependent on his wife during her lifetime;

(f) The exclusive exercise of parental authority by the father when a child is born outside wedlock;

(g) The coexistence of customary law and modern law in matters of succession;

(h) The possibility that a widow who has refused to submit to the rites of widowhood may be debarred from succession;

(i) The absence of provisions containing positive discrimination enabling women to take part in decision-making.

59. There is a legal vacuum in the Togolese Criminal Code concerning discrimination against women and all other acts infringing women's rights, including gender-specific violence.

60. Some types of sexual violence are covered and punished by the law on reproductive health and the new Labour Code. It is important that the Criminal Code, which is now being revised, should contain a title or chapter on discrimination, with some articles referring to those provisions.

61. Article 17, paragraph 2, of the Children's Code, which is based on article 32 of the Constitution, provides that "a child born of a Togolese mother or father shall be Togolese", ending the discrimination set forth in article 3 of the 1978 order containing the Togolese Nationality Code. Similarly, article 21 of the

Children's Code provides for the marriage of a Togolese child, whether male or female, to be given the same legal treatment concerning the acquisition of Togolese nationality by his or her spouse, which was not the case under article 6 of the Nationality Code.

62. The status of women is not only officially recognized by the Constitution of 14 October 1992 but also governed by legislative and regulatory texts that are constantly aimed at the promotion and protection of women's rights. These include:

- Act No. 2006-010 of 13 December 2006 containing the Labour Code;
- Act No. 2007-005 of 10 January 2007 on reproductive health;
- Act No. 2004-005 of 23 April 2004 on the social protection of disabled persons
- Act No. 2005-010 of 14 December 2005 on the protection of persons with regard to HIV/AIDS
- Act No. 98-16 of 17 November 1998 prohibiting female genital mutilation;
- Act No. 2007-017 of 6 July 2007 containing the Children's Code.

63. Thus, a raft of legal principles creating and protecting Togolese women's rights exists, which any woman can invoke and turn to, whether at the level of the family unit, education or professional life.

64. At the family level, the question of early marriage has been regulated by the Children's Code, which has raised the minimum age for marriage of girls from 17 to 18, in accordance with the provisions of the Convention on the Rights of the Child (Children' Code, art. 267). This article prohibits the marriage of children under the age of 18. The same applies to the CPF now being revised.

65. Marriage in Togo does not affect the legal capacity of a woman. The legislator has been careful to set the age of marriage at 18. Moreover, both future spouses must personally consent to the marriage. The absence of either of these conditions can validly be invoked as a ground for the marriage to be annulled. This shows Togo's determination to give women the status of citizens who are in control of their destiny.

66. Article 58 of the CPF goes further by limiting dowries to CFAF 10,000. This symbolic sum sets aside customary practices that turn dowries into a show of strength on the part of the husband, with excessive sums often being requested, and have the long-term effect of placing the woman in a position of dependence.

67. The CPF provides that a married woman has the right to exercise a profession. If there is objection on the part of her husband that is not justified by the family interest, she may be legally authorized to disregard it (art. 109). This principle implies not only that the woman's clear wishes are upheld and that she is not subjected to those of the man, but also that there is no discrimination with regard to her chosen profession.

68. In addition, although the husband remains the head of the family (art. 101), the wife in Togo works with him in the material and moral running of the home. She may even stand in for her husband as head of the family if he is absent or incapacitated. Parental authority, which is one of the essential prerogatives of the home, is exercised by both spouses and, even in the case of divorce, the wife has priority in the care of children up to the age of 7.

69. With respect to education, article 35 of the Togolese Constitution states that "the State shall recognize the right of children to education and shall create conditions conducive to this end". It also stipulates that "education is compulsory for children of both sexes up to the age of 15".

70. The initial measure to encourage and promote the education of girls was the adoption of inter-ministerial decree no. 058/MENR/METFP of 3 November 2000, which set the fees for public general education schools. This decree, which followed a Government decision, introduced positive discrimination in the payment of school fees in favour of girls by setting their fees on average at 72% of those for boys.

71. At all levels and in all spheres, the Togolese State grants the same opportunities for access to education and training to boys and to girls. However, because of sociological obstacles, the enrolment rate of girls remains below that of boys. The inequalities recorded in girl/boy ratios in the various educational cycles can be seen from the following statistics:

Table 1

Enrolment by general education cycle and sex, 2004 -2007

	2004-2005			2005-2006			2006-2007		
	Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
Primary	538 792	457 975	996 707	565 361	486 511	1 051 872	547 622	473 995	1 021 617
Secondary, first cycle	197 943	114 475	312 418	206 328	123 104	329 432	187 106	108 967	296 073
Secondary, second cycle	48 852	15 886	64 738	54 720	18 072	72 792	18 822	5 949	24 771
Total, general education	785 587	588 276	1 373 863	826 409	627 687	1 454 096	753 550	588 911	1 342 461

Source: Ministry of Primary and Secondary Education and Literacy (MEPSA) national yearbooks of school statistics, 2004-2005, 2005-2006 and 2006-2007.

Table 2

Enrolment in technical education

2002-2003			2003-2004			2004-2005		
Boys	Girls	Total	Boys	Girls	Total	Boys	Girls	Total
5 706	1 455	7 161	5 810	1 626	7 436	6 357	1 720	8 079

Source: Ministry of Technical Education and Vocational Training national yearbooks of technical education statistics, 2002-2003, 2003-2004 and 2004-2005.

Table 3

Number of students enrolled in Togolese universities, by country and sex

<i>Country/sex</i>	<i>Other countries</i>			<i>Togo</i>		
	<i>Boys</i>	<i>Girls</i>	<i>Total</i>	<i>Boys</i>	<i>Girls</i>	<i>Total</i>
Academic year 2004-2005	11 590	2 862	14 452	11 291	2 707	13 998
Academic year 2005-2006	16 627	4 321	20 948	16 328	4 170	20 498
Overall	39 437	9 818	49 255	38 549	9 347	47 896

Source: University of Lomé statistical yearbook.

72. *Comments :* over the three periods considered, the overall proportion of girls in general education is 43.28%, against 57.72% for boys. However, the percentage of girls rose by 0.35% between the first two years and by 0.7% between 2005-2006 and 2006-2007. There has therefore been a positive trend in the number of girls, even if the advance remains slight.

73. The first stage in the process of free education began in October 2008 with the abolition of school fees at the public pre-school and primary levels by decree no. 2008-129/PR of 2 October 2008. The results of this partial implementation will determine the pace and scope of the free education process in the future, and its impact on the enrolment of girls.

74. At the moment, this change in the operation of the educational system is not working without certain difficulties arising, in particular, from:

(a) Lack of preparation on the part of those involved (teachers, nursery and school principals and management staff) and social partners (parents' associations);

(b) Marked shortcomings in the implementation of ancillary measures, including:

- Allocation of operating loans;
- Recruitment and deployment of teaching staff in sufficient numbers;
- Extension of infrastructures.

75. At the professional level, Togolese women enjoy the same advantages as men. The collective inter-professional convention, the general civil service statutes and the Labour Code do not contain any provisions that discriminate against women.

76. The Labour Code sets favourable working hours for pregnant women. Childbirth may not be deemed to be a ground for breaking a contract, and wet nurses are entitled to one hour of rest during their working hours.

77. The general civil service statutes regulate the access of men and women to public service.

78. In practice, the Government's desire to promote employment for citizens of both sexes can be seen in the establishment in 1984 of recruitment competitions open to candidates of both sexes without distinction. Rules for the promotion, advancement and remuneration of male and female civil servants are based on egalitarian principles. Togolese women, for example, are entitled to receive the same salaries as men.

79. The same equality in law prevails with regard to access by citizens of both sexes to positions of high responsibility.

80. The number of women in decision-making positions in Togo is tiny. The participants in the national dialogue which led to the signature of the Global Political Accord on 20 August 2006 have pledged to work to ensure the fair representation of women in electoral processes and national political life. In this context, they are encouraging political parties to commit themselves to a minimum number of female candidates in elections. The following tables show the participation of women in public life.

Table 4

Participation of women in decision-making institutions and positions

<i>Decision -making position</i>	<i>Male</i>	<i>Female</i>	<i>Percentage</i>	<i>Total</i>
Minister	24	4	14.28	28
Deputy	72	9	11.11	81
Constitutional court	8	1	11.11	9
Procurator of the Republic	10	0		10
Magistrate	157	18	10.28	175
Higher Magistracy Council	8	1	1.11	9
National Human Rights Commission (CNDH)	15	2	11.76	17
High Audio-visual and Communications Authority (HAAC)	8	1	11.11	9
Ambassador and Chargé d'affaires	13	0		13
Prefects and Sub-prefects	34	0		34
Cabinet director	27	1	3.57	28
Public administration	20787	4493	17.77	25280
Cantonal Head	324	4	1.22	328
Village Head	4997	3	0.06	5000
Supreme Court	19	4	17.39	23
Independent National Electoral Commission (CENI)	16	3	33.33	19

Source: Various institutions, January 2009

Table 5

Number of civil servants, by sex

<i>Year</i>	<i>Men</i>	<i>Women</i>	<i>Total</i>	<i>Percentage of women</i>
2005	18.156	5 100	23 256	22
2006	16 205	4 371	20 756	21
2007	21 749	5 034	26 783	18
2008	26 792	5 877	32 669	17.99
May 2009	28 683	6 245	34 928	17.88

Source: Ministry of the Civil Service and Administrative Reform, Directorate of Personnel and Employment Data Management (DGIPE)

Table 6

Number of civil servants by year, category and sex, 2005-2008

<i>Category</i>	A1		A2		B		C		D		<i>Permanent staff</i>	
	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women	Men	Women
2005	1 703	229	2 764	435	5 129	1 520	2 090	731	1 708	656	2 170	974
2006	1 658	218	2 674	445	4 529	1 626	1 513	549	1 521	528	1 663	646
2007	2 343	290	3 471	565	4 947	1 460	3 525	922	2 313	629	1 691	550
2008	2 696	328	4 216	700	5 781	1 649	5 799	1 335	3 237	719	1 547	515

Source: Ministry of the Civil Service and Administrative Reform, Directorate of Personnel and Employment Data Management (DGIPE), June 2009

81. The proportion of women is low in the magistracy, medicine and higher education. Of 175 magistrates, for example, 18 are women.

82. One of the reasons for this weak representation stems from the fact that Togolese women prefer the informal sector. For example, they control most of the trade channels in Togo, and it is not rare to see young women with university diplomas going into that sector.

83. In practice, women merely need to be made aware of existing documents that favour them, and they only have to invoke them to derive benefit, with the help of the public authorities and the support of civil society.

84. It is in this context that awareness-raising road shows have been held throughout the country to enable women to become aware of their situation and to rectify it.

85. Departments of the Ministry of Social Action, Advancement of Women and Protection of Children and the Elderly, NGOs, associations and trade unions make people aware and encourage them to get away from the social and cultural problems that lie at the root of stereotypes. They organize broadcasts on official media and local radio promoting the image of women.

Articles 4 and 5: Derogations

86. Article 4 of the International Covenant on Civil and Political Rights entitles the States parties, in case of serious emergency, to make derogations in respect of certain rights. The Covenant also specifies the rights which are non-derogable. The Secretary-General of the United Nations must be notified of any derogations.

87. The Togolese Constitution does not specify the rights in respect of which derogations are permitted. However, article 14 states that the exercise of the rights and freedoms enshrined in the Constitution can be subject only to those restrictions expressly established law and necessary for the protection of national security, public order, public health, morality or the fundamental freedoms of others. Article 94 stipulates that a state of siege and a state of emergency shall be decreed by the President of the Republic in the Council of Ministers. The text provides that the conditions for the application of a state of siege and a state of emergency shall be determined by an organic law.

Article 6: Protection of the right to life

88. The right to life is sacrosanct and as such must be afforded the greatest protection. This right is not subject to derogation even if an exceptional emergency threatens the existence of the nation.

89. The Constitution sets out, in article 16, the principle that "The State shall have an obligation to guarantee the physical and mental integrity, life and safety of every person living on national territory. No one shall be deprived arbitrarily of life or liberty". Similarly, title II, chapter I, of the Togolese Criminal Code sanctions offences against life such and murder (arts. 44 and 45), threats even if they are not carried out (art. 50) and manslaughter (arts. 51-53).

90. The social and political disturbances that occurred in Togo during the presidential election of 24 April 2005 had a negative impact on respect for the right of life. It therefore became paramount and urgent to deal with matters relating to infringements of the right to life and impunity with an attitude of forgiveness and reconciliation, unifying and activating factors that are essential for the reconstruction of national unity, peace and social cohesion.

91. In this context of transition, combating infringements of the right to life and impunity must, if it is to be effective, be closely associated with the legitimate and urgent search for forgiveness and national reconciliation. It should not, however, be limited to righting the wrongs done to victims of political violence.

92. To achieve the positive results that are rightly expected, it must include action to instruct and to reform the consciences and reflexes of perpetrators of political violence, with the ultimate aim of changing their behaviour to ensure that such acts are not repeated now and in the future. In that context, the Government initiated national consultations supporting the process of truth, justice and reconciliation, with technical assistance from the Togo office of OHCHR in April 2008.

93. On the basis of the conclusions of those consultations, the Government on 18 February 2009 adopted, in the Council of Ministers, a decree establishing the Truth, Justice and Reconciliation Commission. This was one of the Government's priorities in improving political governance and social pacification.

Capital punishment

94. On 10 December 2008, the Government adopted, in the Council of Ministers, a draft law abolishing capital punishment in Togo, commuting all death sentences already pronounced and not yet carried out to life imprisonment. This draft law has been transmitted to the National Assembly for study and adoption. Togo intends thereby to formalize in fact the abolition that has already been observed for several years.

Article 7: Prohibition of physical or moral torture and cruel, inhuman or degrading treatment or punishment

95. The practice of torture is strictly forbidden. This is a provision which cannot be derogated from under any circumstances.

96. In Togo there can be no justification for practising torture. Togo is a party to the African Charter on Human and Peoples' Rights and in 1987 ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

97. Furthermore, in order to ensure a better guarantee of individuals' physical integrity, article 21 of the Constitution stipulates that "The human person is sacred and inviolable.

"No one may be subjected to torture or other forms of cruel, inhuman or degrading treatment.

"No one may avoid a sentence for such violations by referring to the order of a superior or a public authority.

"Any individual or agent of the State guilty of carrying out such acts either on his own initiative or under orders shall be punished in accordance with the law.

"Any individual or agent of the State shall be relieved of the duty to obey orders when the order in question is a serious and clear violation of respect for human rights and public freedoms."

98. Although Act No. 80-1 of 13 August 1988 establishing the Criminal Code does not expressly contain provisions on the suppression of torture, the preliminary draft law that has been approved to amend the Criminal Code has included the definition of torture as set out in article 1 of the Convention against Torture, proposed appropriate sanctions and put forward the concept of cruel, inhuman or degrading treatment or punishment. All these offences and their punishment are covered by section 12 entitled "Torture and other Ill-Treatment". A total of 11 articles are devoted to them. This incorporation of the definition of torture and the concept of cruel, inhuman or degrading treatment or punishment in the preliminary draft of the Criminal Code follows the determination to combat all forms of violence already stated in the Constitution of the Fourth Republic, which stipulates "Every person who is imprisoned or confined shall be treated in a manner that preserves his dignity and physical and mental well-being, and furthers his reintegration into society".

99. The above provisions mean that any person who commits such acts must be tried and sentenced by the competent courts.

100. In such matters, only the common law courts (in this case the correctional courts) are empowered to hear cases involving these offences.

101. While referring to the legal concept in criminal law that "there is no punishment without a text in law", which is set out in Togolese positive law in articles 1 and 2 of the Criminal Code, Togolese justice has not as yet encountered a typical case of torture.

102. However, there are many cases of voluntary violence which cannot be described as acts of torture or cruel, inhuman or degrading treatment. The adoption of the preliminary draft law amending the Criminal Code will enable decisions to be taken in these cases.

Article 8: Prohibition of slavery

103. Togo is a party to international norms prohibiting the slave trade and slavery. On 14 March 1990 Togo ratified the Convention to Suppress Human Trafficking and Exploitation of the Prostitution of Others.

104. There is no slave trade in Togo. In the Maritime and des Plateaux regions, however, there are practices in convents whereby children in particular undergo rites of initiation that are prejudicial to their development and physical integrity (Tronsi) that can be described as modern forms of slavery.

105. In order to enable children to receive education and to follow voodoo initiation rites in accordance with tradition, the Ministry of Social Action, Advancement of Women and Protection of Children and the Elderly in 2007 included heads of convents in discussions about the excessively long duration of these initiation ceremonies for children (three years). Through the action of local child protection committees, together with the open-minded attitude of heads of convents, initiation of children takes place during the school holidays over a period of 2-4 weeks, thereby enabling children to take part in voodoo initiation rites.

106. There is, nevertheless, domestic and external child trafficking in Togo, and the Government is seeking to eradicate it.

107. The Children's Code contains provisions relating to the prohibition and suppression of child trafficking. These stipulate that any process by which a child is recruited or abducted, transported, transferred, harboured or taken in, inside or outside the country, by one or more persons for the purpose of exploitation is an offence.

108. Under article 420 of the Children's Code, taking a child outside the country requires special authorization, procedures for which are laid down by a Council of Ministers decree. The measures taken must safeguard the higher interest of the child and respect his or her dignity. Similarly, the issue of a passport to a child requires authorization of the father and mother or the legal guardian.

109. Initially, Act No. 2005-009 of 3 August 2005 concerning child trafficking in Togo was adopted. In article 11, this law lays down a sentence of from 5 to 10 years in prison for traffickers and their accomplices and a fine of CFAF 5-10 million.

110. To facilitate the implementation of Act No. 2005-009 and make better use of all those involved in child protection, the Government started to train magistrates and social workers.

111. The National Network to Combat Child Trafficking in Togo (RELUTET) has established a support programme for children who are victims and for vulnerable children. This provides for:

(a) Awareness-raising activities, radio broadcasts, translation and simplification of the law of 3 August 2005;

(b) Training of teachers in the provisions of Act No. 2005-009 ;

(c) Establishment of child protection clubs in schools;

(d) Activities to identify and reintegrate children who have been victims of trafficking (about 1,200 reintegrated);

(e) Support for the trial of 11 child traffickers in 2007;

(f) Legal assistance for children exploited by traffickers.

112. Child prostitution and child pornography may result from child trafficking or sale of children. As well as bilateral international cooperation, some NGOs in Togo are in touch with several bodies working to the same end in other countries in Africa and throughout the world. Togolese children who have been victims of trafficking and are intercepted in other countries are put in touch with the Togolese authorities, which inform NGOs in Togo so that the reintegration process can begin. Even after reintegration, NGOs provide essential services for children to ensure their social rehabilitation and monitor their progress.

113. Similarly, children trafficked from other countries to Togo are rescued by the Togolese authorities which, with support from NGOs, organize their repatriation to their countries of origin.

114. In June 2005, two Togolese minors were sold for prostitution in Nigeria. Acting on information, the authorities repatriated and reintegrated these two victims. The culprits were arrested by the Nigerian security forces.

115. The training of all those involved to bring about a clear understanding, awareness-raising campaigns, campaigns publicizing the legal texts, orientation by the Ministry of Justice when courts reopen and circular notes to magistrates are other measures adopted to ensure effective implementation of the laws.

116. A subregional workshop on "Development of national and subregional strategies to combat child trafficking" attended by eight networks combating child trafficking and child labour in countries of West and Central Africa was organized in Lomé in November 2008. Its purpose was to strengthen cooperation between organizations of civil society in neighbouring countries, promote exchanges and capitalization and, lastly, establish a plan of action and common subregional advocacy arrangements.

117. Several other measures are being applied to prevent the abduction, sale or trafficking of children for whatever purpose. These include:

- The Convention on the Rights of the Child;
- The African Charter on the Rights and Welfare of the Child;
- The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- The Multilateral Cooperation Agreement to Combat Child Trafficking in West Africa, signed in Abidjan on 27 July 2005;
- The Multilateral Agreement against Trafficking in Persons, particularly Women and Children, in West and Central Africa, signed in 2006 in Abuja;
- The 1984 Quadripartite Agreement for Cooperation in Criminal Police Matters between Benin, Ghana, Nigeria and Togo;
- The Children's Code;
- The establishment of institutions to protect the rights of the child such as the National Committee for the Protection and Advancement of Children;

- Act No. 2005-009 of 3 August 2005 on trafficking of children in Togo;
- Simplification of the above law, its translation into local languages and dissemination of information about it;
- Awareness-raising and information campaigns by NGOs and associations;
- The pilot project to eradicate trafficking in 20 communities of the Centrale region;
- The project to eradicate transborder trafficking between Togo and Benin and Togo and Ghana;
- The regional project to combat child trafficking, labour and sexual exploitation;
- The establishment of watch committees in villages, training of unions of drivers, policemen and customs officers to detect cases of trafficking;
- Televised broadcasts and discussions, broadcasting of traffickers' trials.

118. Civilian associations working in the sphere of children's rights have taken the following action:

- Applications by some NGOs to bring civil proceedings against traffickers alongside victims;
- Launch by the Togolese Red Cross of a regional campaign to combat child trafficking in West Africa;
- Launch by the International Catholic Child Bureau (ICCB) of a project to combat child trafficking in West and Central Africa (Democratic Republic of Congo);
- Establishment of national institutions to protect the rights of the child, such as the National Committee for the Protection and Promotion of Children's Rights (CNE) and the National Commission for the Care and Social Reintegration of Child Victims of Trafficking (CNARSEVT), the Network of Centres for the Care and Social Reintegration of Child Victims of Exploitation (RESAEV), the Terre des Hommes Oasis Centre, the WAO-Afrique Centre of Hope, the Kékéli centre, etc.;
- The promulgation of the Children's Code and the setting up of a Directorate-General for Child Protection (DGPE);
- Initial training of judicial police officers in specific child protection issues;
- Strengthening by WAO-Afrique of the capabilities of about 50 police officers, customs officers and magistrates with respect to children's rights. The project to train military personnel in the promotion and protection of children's rights before, during and after conflicts has been extended to the forces of law and order. In addition, about 30 gendarmes and police officers were trained (from 23 June to 5 July 2008) in the rights of the child and the gathering of evidence and interrogation under the International Criminal Investigative Training Assistance Program of the United States State Department and Department of Justice;
- CNARSEVT and CNE, the Togolese Red Cross, NGOs, RESAEV, centres for the psycho-social care of child victims of violence and other organizations ensure good conditions for the rehabilitation of child victims of trafficking.

Articles 9 and 11: The right of everyone to freedom and security of the person

119. Everyone is entitled to have his security and liberty guaranteed. This encompasses the prohibition of arbitrary arrest (art. 15 of the Constitution).

120. The arrest, indictment and sentencing of defendants are regulated by the Criminal Code and Code of Criminal Procedure. Similarly, articles 15-20 of the 1992 Constitution lay down the conditions of arrest of persons accused of breaking the law. Article 19 provides for compensation for damage resulting from a miscarriage or malfunctioning of justice. This provision has never been applied, through litigants' ignorance of their rights or fear.

Prohibition of arbitrary arrest

121. Under article 15 of the Constitution, "No person shall be arbitrarily arrested or detained. Anyone detained without legal basis or beyond the maximum period allowed shall have the right to seek judicial intervention by the authority designated by law for that end, either at his own request or at the request of any interested party. The appropriate judicial authority shall immediately render an opinion regarding the legality or regularity of the confinement". In practice, such action is difficult because the text gives no indication of which judge is responsible for such cases. However, in the preliminary draft law on judicial organization, the president of the court acquires competence in the exercise of habeas corpus.

122. The conditions under which an individual may be questioned and arrested are laid down by the Code of Criminal Procedure. An individual may be arrested and charged only with good cause, namely a breach of the criminal law.

123. In Togolese law, charging is governed by article 92 of Act No.83-1 of 3 March 1983 containing the Code of Criminal Procedure. Arresting an individual for civil or commercial debt is formally prohibited. Despite the obligatory nature of article 92 of the Code, however, persons detained for offences associated with civil or commercial debt can be found in places of detention.

124. It must be borne in mind that for the most part offences such as breach of trust or fraud are presented by detainees as debt. The absence of an exhaustive list of contracts or conventions that may not be described as fraudulent sometimes leads officials or judicial police officers to misunderstand civil or commercial situations as criminal offences, describing them as fraud or breach of trust.

125. To rectify this shortcoming, a series of training programmes for judicial police officers and constables, both on the procedure for preliminary investigation and on techniques for the interpretation of texts and description of facts, is being conducted as part of the national programme for the modernization of the judicial system.

126. Judicial police officers and constables are not permitted to carry out arrests without a warrant unless the individual is caught *in flagrante delicto*. They must report any breach of the law to the procurator for their area of competence to await instructions on their conduct. In practice, however, these provisions are sometimes infringed. In such cases, the judge is informed and pronounces the procedure invalid.

Personal safety measures

127. The public authorities have had to take both preventive and repressive measures to ensure the safety of persons.

128. With regard to preventive measures, the public authorities have established district police stations and a special local police unit, and gendarmerie companies, brigades, squadrons and specialized units.

129. As a first step the district police stations were established by an order of 6 February 1995, replacing arrondissement police stations. Their mission is to organize day and night patrols. They have now been given some appropriate emergency response equipment thanks to international cooperation, albeit on a limited scale.

130. Lastly, the establishment of a special local police unit is based on the idea that the police force now has to be close to the population it must protect. This has led to the establishment of a special corps whose task it is to patrol certain public places. Similarly, daily joint patrols involving all the security forces have been organized as part of Operation Spider throughout the country.

131. As for repressive measures, action is taken as soon as an offence is committed, no matter how serious it may be. Over and above the powers of judicial police conferred on all police units (with the exception of those in charge of keeping the peace), the police now have two units specialized in investigating and controlling crime in the broad sense of the term.

132. There is now a crime control brigade whose task consists in investigating cases of *in flagrante delicto*. What is more, this unit operates throughout the city and responds to victims' requests, in particular those made by telephoning the police emergency services.

133. The work of the crime control brigade is complemented by that of the investigation and intervention brigade, which is based with the judicial police and consists of officers trained mainly in investigation and intervention techniques at crime scenes. This investigation mission makes it possible to infiltrate criminal networks as they are being set up and thus to forestall their actions.

134. Following these new provisions, current statistics show a considerable reduction in crime in Togo. In 2007, 228 cases of hold-ups and armed robbery and 1,103 cases of aggravated theft were recorded. In 2008, the corresponding figures were 79 and 881 respectively.

Article 10: The treatment of prisoners

135. The conditions of treatment of defendants and detainees, such as respect for their dignity and the rule regarding segregation of accused persons from convicted persons and adult prisoners from juvenile prisoners, are set out in the Constitution (arts. 16 and 17); order no. 488 of 1 September 1933 on the prison system in Togo (arts. 9, 10 and 16); and the decree of 30 November 1928 on the regulations pertaining to minors.

136. Today, with the Emergency Programme to Support the Prison Sector (PAUSEP), the rule of separation of minor detainees from adults is being respected through the establishment of minors' quarters in all detention centres. It should be noted that despite the absence of separate institutions for women, they have always been segregated from men. The only remaining handicap, which is currently being removed, is supervision of female detainees by men.

137. The coming recruitment of prison officers (during 2009) will take account of the need for female detainees to be supervised by female warders. The decree specifying the legal conditions governing supervisory personnel in the prison administration was adopted by the Council of Ministers on 14 January 2009.

138. In practice, the imprisonment and living conditions of prisoners and their preparation for returning to society are not properly ensured because of a lack of financial resources. The prison authorities often adduce financial problems as the reason for the difficulties in applying these various measures.

139. The conditions in places of detention during arrest (police and gendarmerie stations) or pre-trial detention (remand centres) may indeed appear troubling in the light of the recommendations in article 10 of the Covenant. There are two reasons for the failure to apply these provisions:

- Inadequate infrastructures and equipment for the prison population;
- The lack of training for prison warders in basic concepts of human rights. The new corps of prison wardens will be trained in these concepts and will thus be able to comply with the relevant provisions of the Covenant relating to the treatment of prisoners.

140. The programme for the modernization of the judicial system does cover the sector of detention centres, but it must be admitted that it will not be enough to resolve the problem of infrastructure and equipment.

141. The management team has been reinforced by providing prison administrations with five sociologists, two specialized educators, a civil administrator, two human resources officers and a health officer.

Article 14: Equality of citizens before the law

142. The principle of the equality of citizens before the law is guaranteed in Togolese legislation by article 11 of the Constitution, under which "Every human being shall enjoy equal dignity and be equal before the law".

The right to bring court proceedings

143. Article 1, paragraph 2, of the Code of Criminal Procedure provides that anyone who feels injured may bring court proceedings. For its part, the Code of Criminal Procedure states in article 3 that action is open to all those with a legitimate interest in the success or rejection of a claim.

144. Exercise of this right must, however, comply with the conditions pertaining to legal capacity and quality. Thus, minors and incapable adults may not themselves bring proceedings but may do so through their guardian or trustee. Similarly, no one may bring court proceedings if he is unable to invoke a personal and legitimate interest.

145. In practice, the sometimes exorbitant levels of bail set by judges in damages or direct summons cases discourage some litigants who may not be able to pay.

The presumption of innocence

146. Article 18 of the Constitution lays down the principle of presumption of innocence. The text stipulates that "Every accused or imprisoned person shall be presumed innocent until proved guilty, following a process that promises all guarantees necessary for his defence".

147. This concept underlies article 112 of the Code of Criminal Procedure, which states that pre-trial detention is an exceptional measure. It must however be admitted that in practice it is, rather, pre-trial detention that is the rule and freedom an exceptional measure. Thus, the presumption of innocence gives way to a "presumption of guilt".

148. The various forms of refresher training for magistrates resulting from the national programme for the modernization of the judicial system, and the strengthening of the powers of the Ministry of Justice with the appointment of Judicial and Prison Service Inspectors, will make it possible to monitor detentions and ensure compliance with the presumption of innocence and article 112 of the Code of Criminal Procedure.

149. In addition, the introduction of judges of freedoms and judges of the execution of sentences is a guarantee of respect for this constitutional principle.

The right to a defence

150. Everyone is entitled to defend his interests before the Togolese courts. Article 11 of Ordinance No. 78-35 of 7 September 1978, concerning the organization of the judicial system in Togo, specifies that: "In no case may anyone be tried without having been given the opportunity to put forward a defence. Lawyers have free access to all courts. Everyone shall be free to prepare his defence and to choose defence counsel."

151. Similarly, during the examination phase, the magistrate is obliged to inform the accused of his right to choose counsel (art. 92 of the Code of Criminal Procedure).

152. The assistance of a lawyer is compulsory in criminal cases (article 186 of the Code of Criminal Procedure). When the accused does not have the means to pay for the services of a lawyer, he is assigned one. As a precursor to this measure, legal aid sessions were organized in 2008 and 2009 for accused persons and defendants without financial means.

153. Some associations, including the Women, Democracy and Development Study and Action Group (GF2D), the Network to Combat Trafficking in Children in Togo (RELUTET) and the Collective of Associations against Impunity in Togo (CACIT), work for the defence by court-appointed lawyers of certain categories of detainees (they take part in realizing the rights of the defence). This will be strengthened with the establishment of court assistance to enable lawyers to deal with all cases seriously, whether they have been chosen by the defendant or assigned by the court. To ensure respect for the right to a defence, the Code of Criminal Procedure provides that the detainee or defendant has the last word.

154. Similarly, free legal assistance is sometimes provided to child victims of offences through NGOs. For example, with the financial support of UNICEF, ICCB provides free legal aid in its areas of activity in Lomé and in the south-eastern maritime region to child victims of violence and sexual exploitation identified by local protection committees and other persons under its integrated project for the protection of children's fundamental rights.

155. ICCB also provides systematic legal aid to minors who have committed offences and are apprehended by the brigade for minors from the examination stage up until judgement.

156. Another NGO, Terre des Hommes, provided free legal aid to 58 children in 2007. RELUTET offered assistance to 11 children in June 2007 and January 2008.

157. The international NGO Plan Togo supported the Togolese Government in assigning a lawyer to act in the Lomé court of first instance in three cases of rape of minors between January and April 2007.

Protecting the independence of the courts

158. The independence of the judiciary is established in article 113 of the Constitution.

159. The Togolese Government recognizes that the independence of the judiciary is a sine qua non for safeguarding human rights and democracy.

160. In this context, efforts have been made in recent years to increase the number of magistrates, who are trained by the National College of Administration in Lomé. This Government project is ongoing.

161. In order to ensure effective initial and further training, it is planned, under the national programme for modernization of the judicial system, to set up a Training Centre for judicial professions and to recruit 20 magistrates a year instead of 15 until 2010.

162. There are currently 175 magistrates in Togo. Plans for the construction of the future centre have already been approved and a pilot committee for the preparatory work has been established. Earlier, a group of magistrates who are members of the committee had visited the National Magistracy College in France.

163. The Government, aware that good training is not enough in itself to ensure the independence of magistrates, is currently embarking on a revision of the regulations governing magistrates to shelter them from all financial and material need. At the same time, there are plans for a programme to strengthen the operation of the Higher Magistracy Council, the body responsible for the advancement and discipline of magistrates.

164. The process of independence of the courts is enhanced by the approval and forthcoming adoption by the Council of Ministers of the regulations governing clerks of the court and prosecution secretaries.

165. The renovation or construction of courts and provision of working equipment and operating credits will help to strengthen their independence. Computerized data management also plays a part in the independence of magistrates and thus of the courts by making it possible for promotions and assignments to be made on the basis of competence and experience, respecting seniority, and not for extra-professional reasons.

The right of everyone to be tried within a reasonable period

166. Detainees and accused persons must be tried within time-limits that ensure the protection of human rights. This is a constitutional right set out in article 19, paragraph 1, of the Constitution of the Fourth Republic. The presumption of innocence which prevails in the Togolese indictment process requires detainees to be tried within a reasonable time.

167. Without defining the concept of "a reasonable time", the Code of Criminal Procedure specifies periods beyond which instruments of detention lose their validity and result in official release if the accused person has not yet been brought before the trial judge.

168. Article 273 of the Code of Criminal Procedure stipulates that if the detainee is placed in a remand centre by a committal order of the Procurator of the Republic, he must be brought before the trial judge within 48 hours, failing which he is considered to be in arbitrary detention.

169. Article 113 of the Code states that when the maximum sentence provided by law is less than two years' imprisonment an accused person domiciled in Togo may not be held for more than 10 days after his first appearance before the examining magistrate if he is a first offender. Paragraph 2 of that article provides that when the length of pre-trial detention reaches half of the maximum penalty incurred the detainee must be released. This article is being increasingly applied with the warning issued by the Keeper of the Seals, Minister of Justice, to magistrates and especially with the monitoring carried out by the Indictment Chamber.

170. The right of everyone to be tried with a reasonable period is implicitly invoked in articles 100, 101 and 108 of the Code of Criminal Procedure, which oblige the examining judge to question the accused person immediately, as soon as he is brought before him, or at least within 24 hours, failing which the accused is released.

171. To prevent a detainee from not knowing his fate for a long period, the Code of Criminal Procedure provides for statutory limitation of crimes and offences. For example, an offence becomes barred five years after it was committed if no trial has been held and no examination initiated. This period is extended by six months if an investigation has been started. Crimes become barred 10 years after they have been committed if no trial has been held and no investigation started. This period is extended by one year if an investigation has been started (Article 7 of the Code of Criminal Procedure). This does not apply to crimes against humanity and war crimes, which are not subject to any statute of limitations.

172. In the Assize Court, a verdict must be rendered within a reasonable time. Article 202 of the Code of Criminal Procedure stipulates that defendants must come to trial no later than six months after the order of committal for trial. In practice, this time-limit is always complied with.

173. It must be admitted that in practice most of these time-limits (except that for the Assize Court) are not complied with because of a lack of magistrates and the excessive workload of judges. The policy for the recruitment of magistrates followed by the Government of Togo since 1993 and strengthened by the national programme for the modernization of the judicial system now being pursued will enable the texts relating to trials of persons in conflict with the law to be respected in the near future. More importantly, the new article 400 of the preliminary draft law amending the Code of Criminal Procedure makes it possible to invoke the guarantees laid down in international humanitarian law, which the text makes paramount (article 400-4 concerning the right to be tried within a reasonable period).

Procedure applicable to minors

174. Togo adopted a new law (Act No. 2007-017) on the Children's Code on 6 July 2007. It includes all the provisions relating to criminal procedure specifically for minors that are scattered among several laws. This law lays down the age of civil and criminal responsibility and the age of criminal non-responsibility.

175. Minors under 14 are not criminally responsible (article 302 of the Children's Code). Minors over the age of 14 are tried before a special judge, the juvenile judge (Children's Code, art. 318).

176. The procedure for minors is governed by Title II, subtitle III, chapter I of the Children's Code. It guarantees protection of minors who have committed or are the victims of offences. The procedure for children committing offences is intended to protect them from the preliminary investigation up to the passing of the sentence, through the criminal mediation, the examination, the composition of the court, the duration of the trial and the possibility of appeal (Children's Code, arts. 300-338).

177. Children may appeal under a procedure that differs from that for adults with respect to the publicity given to the hearing.

178. To take the fragility of children into account, the Children's Code provides for their protection even in detention centres. Convicted minors must be segregated from adults if they cannot be held in separate establishments and may not be subjected to torture or to inhuman or degrading punishment or treatment (articles 347 and 348 of the Children's Code).

179. Lastly, the Children's Code provides, in articles 351 and 352, for private institutions to assist in the protection of children in conflict with the law by inviting the judge not to order pre-trial detention or imprisonment, but to place the child under close surveillance or in an educational establishment or home, or to place him in a family.

180. To promote compliance with this procedure, further training courses for judges dealing with cases involving minors have been organized under the programme for modernization of the judicial system. Similarly, the preliminary draft framework law on organization of the judiciary, currently under consideration by the Council of Ministers, establishes a children's court in each region which, because of the particular nature of the procedure for children, will be headed by judges trained in dealing with cases involving children (art. 87).

Article 15: Prohibition of retroactive conviction

181. The non-retroactivity of criminal convictions is enshrined in article 19, paragraph 2, of the Constitution of the Fourth Republic, which states that "No one shall be found guilty for acts that were not considered offences at the time they were committed".

182. This constitutional principle is repeated in articles 1 and 2 of the Criminal Code, which stipulate that "No one shall be subject to criminal penalties that were not provided for by law before the offence was committed" and "The judge shall impose a criminal penalty only to the extent that the act that is the subject of the proceedings was provided for and described by law".

183. The judge may in no case impose a criminal penalty for acts that were not considered offences at the time they were committed.

Article 16: The right to legal personality

184. Every individual is entitled to the recognition of his legal personality, which enables him to enjoy all his inherent rights as a human being. The right to legal personality implies the right to a name, descent, a domicile and a nationality.

185. This right is referred to in Titles I and II of order no. 80-16 of 31 January 1980 on the Individuals and Family Code. Articles 1 to 14 concern the right of everyone to a name and the various means of acquiring it, taking account of various kinds of descent. Articles 15 to 19 relate to domicile.

186. The right to nationality is enshrined in article 2 of the Nationality Code and article 32 of the Constitution. In the case of children, it is covered in articles 10 of 27 of the Children's Code.

187. It should, however, be noted that the acquisition of a certificate of nationality gives rise to enormous problems, since it requires a payment of CFAF 5,000.

188. As the needy are not exempt from the cost, they are in reality precluded from obtaining the certificate. This is a backward step in the exercise by everyone of the right to nationality, because the free issue of certificates was replaced by payment of a charge in 2008 following computerization of the process.

189. Another difficulty is centralization of issue in the capital, although certificates are delivered to each prefecture. The slowness with which applications made in the prefectures are sent to the capital discourages those living in remote areas.

Article 17: Protection of the family, the home and correspondence

190. In Togo family law is regulated by ordinance no. 80-16 of 31 January 1980, establishing the Individuals and Family Code. The Code includes provisions governing name, marriage, descent, matrimonial regimes, parental authority and inheritance.

191. The Individuals and Family Code deals extensively with problems involving the protection of women and children, but is silent on the protection of the elderly. This led to the establishment of a directorate in the Ministry of Social Action, Advancement of Women and Protection of Children and the Elderly. However, article 33 of the 1992 Constitution provides an encouraging solution by making it obligatory for the State to protect the rights of elderly persons.

192. The Togolese Criminal Code, for its part, lays down various penalties for non-observance of family law - for instance, offences against the family order (arts. 71-77) and offences against morality.

193. The protection of the home stems from article 28 of the Constitution of 14 October 1992, which stipulates: "The home shall be inviolable. It may be searched or inspected by the police only in the manner and under the conditions established by law".

194. In this connection, the Code of Criminal Procedure of 2 March 1983 prohibits the police authorities from conducting searches or inspections before 6 a.m. and after 8 p.m. (Code of Criminal Procedure, art. 48, paragraph 1). Paragraph 2 of that article lists the derogations from that prohibition, permitting searches or visits at any time of the day or night when seeking infringements against the security of the State or offences relating to the exploitation of immorality or the use or trafficking of drugs.

195. The same applies to hotels, restaurants, drink sales points, theatres, cinemas, dance halls and other places open to the public, which may be visited at night to detect any offences relating to the operation or to seek criminals.

196. Every citizen's right to confidentiality of correspondence is also safeguarded by the Constitution of 14 October 1992, more particularly by article 29. In addition, the Criminal Code of 13 August 1980 renders anyone who infringes the privacy of correspondence by acquainting himself by any means with its content, without the agreement of the addressee or the sender (art. 177, para.1), and anyone who has in any way organized interference with and tapping of private oral, optical, magnetic or other communications exchanged or received in a private place, without the agreement of the owner of that place, liable to imprisonment and a fine (art. 190, paras. 1-4).

197. The exceptions are those established by law or ordered by the public authorities, so that anyone guilty of misusing or abusing the powers attached to his public duties is liable to imprisonment of between two months and three years (art. 177, para.2).

Article 18: Freedom of conscience and religion

198. The State is aware of the importance of freedom of belief, as the 1992 Constitution had no hesitation in placing the Togolese people "under the protection of God" in the very first sentence of the Preamble.

199. Article 1 of the Constitution, which states that Togo is "a State based on law, secular, democratic and social", implies an absence of any constraint on an individual's practice of the religion of his choice.

200. Freedom of thought, conscience and religion is established in article 25 of the Constitution, which provides that "Everyone is entitled to freedom of thought, conscience, religion, worship, opinion and expression. These rights and freedoms shall be exercised with respect for the rules established by the law and the regulations". Today all religions are practised freely.

201. Accordingly, the Government considers freedom of religion to be a fundamental right that has to be protected. Overall, there are three main religious groups on Togolese territory: Animism, Christianity and Islam.

202. Religious beliefs are organized and practiced freely in compliance with the law. The same applies to philosophical orders. Worship and the expression of beliefs are conducted with respect for the State and its secularity. Religious faiths have the right to organize and to conduct their activities freely in compliance with the law.

203. Religious sects and organizations coexist peacefully and carry out intensive work on the ground. They enjoy freedom of demonstration that can be seen in the holding of services in both public and private premises and the organization of processions of the faithful through the country's towns.

204. Any religion may establish its own school. Citizens may attend Protestant, Islamic, Catholic or other schools as they wish. Similarly, members of the same household may freely practise different religions.

Article 19: Freedom of expression and freedom of the press

205. Freedom of expression and the press are guaranteed and protected by articles 25 and 26 of the Constitution respectively. However, it is Act No. 98-004/PR of 11 February 1998, establishing the Press and Communication Code, as amended and supplemented by Acts Nos. 2000/006/PR of 23 February 2000, 200/006/PR of 23 February 2000, 2002-06 of 25 September 2005 and 2004-15 of 27 August 2004, which forms the statutory framework regulating the exercise of press freedom.

206. These amendments completely decriminalize press offences and specify imprisonment only for crimes and offences against the internal or external security of the State, incitement to racial or ethnic hatred or appeals to the forces of order to abandon their duties to their country.

207. An independent constitutional body (the High Audio-visual and Communications Authority - HAAC) monitors respect for professional ethics in the media and equitable access by the political parties to the public media.

208. The composition of this body was revised in 2005 to make it more professional and impartial. It is now made up of press professionals and started its activities in September 2005. Framework Law No. 2004-021 of 15 December 2004 regulating this body stipulates in article 21, paragraph 1, that the High Authority has the task of safeguarding and ensuring the freedom and protection of the press and other mass media, respecting the principles laid down in article 3 of the Law (respect for the dignity of the human person, safeguarding peace, public order, national unity, the requirements of national defence, professional ethics in information and communication, etc.).

209. In its monitoring of radio and television broadcasts, HAAC has discovered various irregularities and excesses, and has taken disciplinary measures such as suspension of the licence to set up and broadcast for 15 days, provisional withdrawal of the certificate for irreverent conduct, denial of authority and refusal to comply with the elementary rules and regulations of journalism, final suspension of a journalist's editorials, notes, columns or reflections.

210. Just before the legislative elections in October 2007, several training workshops and seminars were held for journalists to ensure professional and responsible coverage, since the Government and its partners wanted the elections to be as transparent as possible. These included:

(a) The seminar for journalists on "Responsible journalism in the service of the electoral process: the media and the challenge of calming the legislative elections of 2007" (19-21 June 2007);

(b) The seminar on the contribution of the public media to the success of the legislative elections of 2007: Radio Module (4-15 June 2007), TV Module (6-14 July 2007);

(c) The immersion course in legislative and regulatory texts on media coverage of the electoral campaign (19-20 July 2007);

(d) The discussion days on editorial management during the electoral period (24-25 September 2007).

211. The Press Assistance Fund was set up in the 2009 budget and the Ministry of Communication, in cooperation with HAAC and press organizations, is currently preparing a preliminary draft decree setting out the conditions and procedures for distributing the Fund, which amounts to CFAF 350 million.

212. In December 2008 there were about 11 television stations, 70 radio stations and almost 200 publications, some of which appear, disappear and reappear because of financial difficulties.

Article 21: The right of assembly

213. Freedom of assembly and demonstration is enshrined in several texts. Article 30 of the Constitution of 14 October 1992 recognizes and guarantees freedom of assembly and peaceful demonstration conducted without instruments of violence, in conditions laid down by law.

214. In addition, the Electoral Code lays down the principle of freedom of electoral assemblies and demonstrations throughout the country. The exercise of this freedom is subject to the following conditions:

- Meetings and demonstrations may not take place on the public highway;
- They are prohibited between the hours of 10 p.m. and 6 a.m.;
- Notice of meetings and demonstrations must be made in writing to the office of the prefect or mayor at least eight hours in advance within the legal opening hours of administrative services (art. 88).

215. Under article 16 of the Political Parties Charter of 12 April 1991, in order to exercise public activities a political party is required to have legal personality. Such personality is acquired by declaring the political party to the Ministry of Territorial Administration, Decentralization and Local Communities.

216. However, when an activity degenerates into a breach of the peace, the Minister of the Interior may order a cessation. The decision is immediately notified to the party's representatives. The interim injunction judge must decide the case without delay. The party may petition the interim injunction judge to lift the order. If there is no notification, or if the interim injunction judge fails to give a verdict, the order thereby becomes null and void.

217. The Criminal Code of 13 August 1980 punishes demonstrations and meetings calculated to breach the peace or public order, damage public health or undermine the safety of property and persons, and authorizes the cessation of activities that degenerate into a breach of the peace (arts. 180 and 189).

Article 22: Freedom of association

218. The establishment of associations is governed by the French law of 1 July 1901, made applicable to Togo by decree no. 265/CAB of 8 April 1946. Freedom of association is guaranteed by article 30 of the Constitution. There has been an upsurge in associations established since the advent of democracy in Togo in 1990.

219. In December 2008 there were about 12,500 associations throughout the country. They include associations for the protection of human rights, religious associations, associations for the promotion of democracy, associations for development and associations for the promotion of education, science and culture.

220. Associations can be created simply by declaring them to the Ministry of Territorial Administration, Decentralization and Local Communities after depositing their statutes, by-laws, a list of members of the

executive board and a list of the founder members in four copies, together with a stamped envelope. They operate even before acknowledgement is received from the Ministry.

221. Article 4 of Decree No. 92-130/PMRT of 27 May 1992 specifies that the establishment in Togo of any international or foreign association claiming to be an NGO must be duly authorized by the competent authorities. The application for establishment in Togo must be addressed to the Ministry of Territorial Administration, Decentralization and Local Communities, which will make its decision known in an order in the event of approval, or by mere notification in the event of refusal (art. 5, Decree No. 92-130/PMRT).

222. Applications for recognition of NGO status, together with the approval of the Minister of the Interior and Security, must be addressed to the Ministry of Foreign Affairs and Regional Integration (Decree No. 92-130/PMRT, art. 8). The approval of the Ministry of Territorial Administration, Decentralization and Local Committees must be attached to the application.

223. National associations requesting recognition of NGO status must apply to the Ministry of Planning by submitting the approval issued by the Ministry of Territorial Administration, Decentralization and Local Communities. The Ministry of Planning will decide on the application by signing a programme agreement in the event of acceptance or mere notification in the event of refusal (Decree No. 92-130/PMRT, art. 7).

224. Act No. 91-4 of 12 April 1991 containing the political parties' charter governs the establishment of political parties. As of 26 May 2008, 93 political parties had been registered at the Ministry of Territorial Administration, Decentralization and Local Communities.

225. The difficulties which associations and NGOs face in obtaining acknowledgements and organizing meetings and demonstrations must not be interpreted either as a refusal by the Government to issue acknowledgements nor as a deliberate desire to restrict the enjoyment of these freedoms.

226. Working meetings with the competent departments of the Ministry of Security and Civil Protection will make it possible to reduce the waiting times of applicants for acknowledgements.

227. The Ministry of Territorial Administration is currently establishing a database on the nature, sphere of activity and reports on the activities of all associations operating in the country. This will simplify the declaration procedure for NGOs and associations, as systematic morality investigations will no longer be carried out for all associations.

228. This should not however be interpreted as an attempt by the authorities to deprive particular kinds of association of acknowledgements and thus of legal capacity. The system of notification that applies to the exercise of the above freedoms must not be interpreted as an open attempt to restrict their enjoyment.

229. The wish of Ministry officials to be informed stems from their desire to take appropriate measures in relation to demonstrations which, in addition to their peaceful character, may involve risks that are sometimes recognized breaches of public order and acts of vandalism.

230. Women, especially defenders of human rights, encounter difficulties in the exercise of their right to association. The weight of sociological and cultural factors is the determining factor in the obstacles facing women in carrying out their daily activities. A mindset that refuses to allow a place for women anywhere other than in the home lies at the heart of this situation.

231. The Government intends to change attitudes, and thereby to dismantle the prejudice and taboos shown towards women in society, by intensifying its awareness-raising, publicity, education and communication campaigns.

Article 23: Protection of the family

232. In Togo, marriage is possible only between a man and a woman aged 18. However, age dispensations can be granted by court authorization to those who have not reached the requisite age. This applies to emancipated minors and minors who have obtained authorization from their parents or persons with authority over them (Children's Code, arts. 234 and 235).

233. The consent of the spouses is a necessary condition for a valid marriage. Each spouse, even where he or she is a minor, must have personally consented to the marriage (art. 44 of the Individuals and Family Code). Consequently, where the consent of one or other of the two spouses has not been given or has been given as a result of violence or deception, the marriage is declared null and void.

234. Under article 81 of the Individuals and Family Code, the civil registrar is required to make sure that the spouses do consent by receiving from each party, when the marriage is celebrated, a declaration that he and she wish to become husband and wife. In practice, absence of consent by the spouses is rare. The purpose of requiring the mutual consent of the spouses under Togolese law is to proscribe forced marriages.

235. To produce legal effects a marriage must necessarily be conducted by a civil registrar.

Article 24: The protection of the child

236. There are a number of statutory provisions on the civil, social and penal protection of children:

- Social Security Code of 12 November 1973;
- Order of 26 December 1975 establishing a parents' association at each school for the primary, secondary and higher education levels;
- Individuals and Family Code of 31 January 1980;
- Criminal Code of 13 August 1980;
- Code of Criminal Procedure of 2 March 1983;
- Ordinance of 16 November 1988 on apprenticeship;
- Labour Code of 13 December 2006;
- Children's Code of 6 July 2007.

237. Because of children's vulnerability, they are afforded special protection by the legislator, including:

- Protection of child workers;
- Protection of children in a difficult situation or in danger;
- Protection of children who have committed, or are the victims of, an offence;
- Protection of children against all forms of violence.

Protection of child workers

238. The protection of child workers is ensured by articles 262-264 of the Children's Code.

239. Article 239 of the Children's Code states:

"Children of both sexes may not be employed by any company or carry out any kind of work, even on their own account, before the age of 15 except by decree of the Minister of Labour, acting on the advice of the National Labour Council and taking local circumstances and the work that may be required of them into account.

"Children above the age of 15 may carry out light work, to be specified by decree of the Minister of Labour, acting on the advice of the National Labour Council. This decree shall stipulate the conditions in which the work may be carried out".

240. Article 263 prohibits the employment of children in the worst forms of labour.

241. Under the provisions of article 264, the worst forms of child labour are:

(a) All forms of slavery or slavery-like practices such as the sale and trafficking of children, debt servitude and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children in order to use them in armed conflict;

(b) The use, recruitment or offering up of a child for purposes of prostitution, production of pornographic material or pornographic shows;

(c) The use, recruitment or offering up of a child for illicit activities, especially the production and trafficking of narcotic drugs as defined in the relevant international conventions:

(d) Work which, by its nature or conditions, is likely to damage the child's health, security or morality.

Protection of children in a difficult situation or in danger

242. Under article 276 of the Children's Code, the following are deemed to be difficult or dangerous situations that may threaten a child's health, development or physical, moral or mental integrity:

(a) The loss of a child's parents, leaving him or her without family support;

(b) Rescue, abandonment or discovery;

(c) Being exposed to negligence or vagrancy;

(d) Recognized and continuing lack of education and protection;

(e) Habitual maltreatment;

(f) Sexual exploitation of both boys and girls;

(g) Being exposed to sexual abuse;

(h) Being exposed to begging and its economic exploitation;

(i) Exploitation in organized crimes;

- (j) Being exposed to a conflict;
- (k) Being used in armed conflicts;
- (l) Being exposed to practices that have a negative impact on a child's health or are prejudicial to his or her life;
- (m) Failure of parents or those responsible for a child to ensure his or her protection and education.

243. Article 285 of the Children's Code states that the situation of a threatened child shall be brought before a children's judge at the request of:

- (a) The parents jointly or either one of them;
- (b) The child's guardian or person responsible for him;
- (c) The public prosecutor's office;
- (d) The social assistance department of a court of first instance or any other department responsible for child protection;
- (e) Any child defence or protection body;
- (f) The child himself;
- (g) Public or private institutions;
- (h) Individuals who have rescued an abandoned child.

244. The children's judge may order the following measures, for a specific period:

- (a) The child to be kept in his family under parental responsibility;
- (b) The child to be kept in his family and to make the department in charge of his or her case responsible for monitoring him and supporting and guiding the family;
- (c) The child to be subject to medical or psychological supervision and/or placed in a medical or psychological-educational establishment;
- (d) The child to be placed under guardianship or with a family or a public or private specialized school or an appropriate institution for education and protection or re-education;
- (e) The child to be placed in an appropriate training centre or school;
- (f) Provisional care and protection measures to be taken with respect to the child, when the judge is informed by public or private institutions or individuals who have rescued the child (Children's Code, art. 292).

245. In addition, as part of the reorganization of ministerial departments, the Government adopted decree no. 2008-090/PR of 29 July 2008 on the organization of ministerial departments, which establishes a directorate for assistance to children in difficulty within the Ministry responsible for child protection to provide assistance and advice to children in difficulty or danger. The decree also establishes a directorate of access to the law and justice within the Ministry of Justice.

246. This directorate is responsible for "monitoring, in association with departments of other administrations responsible for child protection, cases of children and legally incapable persons in judicial proceedings and taking part in educational and preventative missions for young delinquents or minors in danger". One of the divisions of this directorate of access to the law and justice, the youth protection division, is specifically responsible for:

- (a) Monitoring cases of children in judicial proceedings;
- (b) Helping young delinquents and minor victims during judicial proceedings or during execution of the court's verdict;
- (c) Preparing and coordinating methods for minors to be taken into court protection;
- (d) Carrying out studies and helping to draft legislation on the prevention and treatment of juvenile delinquency;
- (e) Advising and assisting, as needed, persons, establishments, departments and public or private bodies in carrying out care and educational measures ordered by the judicial authority;
- (f) Taking part in the determination and implementation of the policy for the training of staff in establishments for the judicial protection of children;
- (g) Providing administrative, financial and educational supervision of establishments and departments for the judicial protection of young people;
- (h) Studying all matters relating to the education of young delinquents and minors in moral danger.

Protection against acts of violence

247. Articles 353-423 of the Children's Code, Title II, subtitle IV, protect children against all forms of violence in the family, school or institutional environment.

248. The State protects children against all form of violence, including sexual abuse, physical or mental attacks or brutality, abandonment or negligence, and ill-treatment by the child's own parents or any other person having authority over the child or his care (art. 353).

249. Article 355 on the punishment of acts of violence against children provides that "when the persons referred to in article 353 have committed violence or assault against the person of a child aged under 15 they shall be punished by six months to five years' imprisonment if the violence or assault caused medically certified incapacity to work for between 10 days and three months". If no medically certified incapacity to work for more than 10 days is involved, the penalty is a fine of between CFAF 10,000 and 30,000 (art. 356).

250. However, where the violence is repeated or appears to be repetitive, the penalties are doubled (art. 356, para. 2). The penalties for physical or mental ill-treatment, corporal punishment and voluntary deprivation of care or food are listed in article 356.

251. It should be noted that, as part of measures for the protection of children against all breaches of their rights, the Ministry of Social Action, Advancement of Women and Protection of Children and the Elderly has launched the ALLO 111 referral helpline project. The results are already conclusive.

Protection of child offenders or children in conflict with the law

252. In order to protect children who have committed an offence or are suspected of having committed one or more offences, the Children's Code expressly states that no child who has been detained or imprisoned, arrested or deprived of his or her freedom shall be subjected to torture or inhuman or degrading treatment or punishment (art. 347).

253. It also stipulates that children who have committed an offence and been deprived of their freedom have the right to be treated with humanity and the respect due to the dignity of the human person, and in a manner that takes account of the needs of persons of their age.

254. The Code states that children capable of discernment have the right freely to express their opinions on all legal or administrative matters and procedures that concern them (art. 9). An important advance has been the carrying out of a survey of the state of justice for minors in Togo's judicial system with a view to achieving greater protection of children through a well-organized judicial system for minors.

255. The Children's Code provides for several alternative measures in place of imprisonment. These are:

- Returning the child to his parents, if dependable;
- Placing the child in an educational, vocational or health establishment;
- Criminal mediation, in which a non-professional mediator is appointed to achieve an agreed settlement.

256. Article 438 of the Code places the State under an obligation to set up appropriate social programmes to prevent ill-treatment in families and provide children and those responsible for them with the necessary support, and to initiate a procedure for judicial action and investigation to process and monitor the case.

257. In the courts, a convicted minor may appeal against his conviction directly, without any intermediary. In civil procedure, a minor must be represented by his mother and father or guardian. The French association La Voie de la Justice, based in Paris, has been providing free legal assistance to children in conflict with the law since October 2006.

258. From July 2007 to July 2008, ICCB helped 58 children who had been freed after appearing in court and sought the parents of 127 children. It provided psycho-social assistance to 267 children and followed up 468 children with a view to their vocational reintegration.

259. With regard to reception centres, boarders return to school or go to training centres for rehabilitation and reintegration, depending on their age. Some children are supervised by teachers in the community and undergo vocational training in mechanics, carpentry, masonry and dressmaking.

260. The Togolese Code of Criminal Procedure lays down procedures for minors in Title XI. The text sets the rules for:

- The examination procedure;
- Hearing before the judge of minors;
- Composition of the minors' court;
- Amending bodies;
- Procedures for appealing against judgements of the minors' court.

261. Together, these principles respect the dignity of children, their personal value and higher interest.

The right of the child to registry at birth and to a name

262. Concerning the right of a child to a family or patronymic name, it should be explained that the use of that name dates back to a German ordinance of 1909 which made the declaration of births and deaths compulsory.

263. That text was given limited effect by orders dated 17 November 1921 and 30 September 1926. Although order no. 384 of 21 April 1954 extended the scope of the order to the entire country, it must be pointed out that it is in decree No. 62-89 of 2 July 1962 reorganizing the civil registration system in Togo that the conditions for registration of births are set out and the principle of compulsory reporting of births, marriages and deaths affirmed.

264. Under article 12 of that decree, declarations of birth must be made no later than 30 days after the child's birth by one of the parents or by the doctor, midwife or any other person present at the birth.

265. Article 16 of the decree states that the declaration must be reconstituted if the registers are lost or totally or partially destroyed and if it would not be admitted by virtue of the expiry of the time-limit referred to in article 12.

266. By holding hearings in the community, the judge can draw up and issue residual judgements replacing birth certificates and can make parents and children aware of the importance of civil registration documents and reporting of births.

267. By way of illustration, the following are statistics for residual judgements issued by some courts:

- Sokodé court of first instance:
 - 2006: 3,327 residual judgements
 - 2007: 1,895 residual judgements
 - 2008: 306 residual judgements
- Sotouboua court of first instance:
 - 2006: 1,200 residual judgements
 - 2007: 1,700 residual judgements
 - 2008: 444 residual judgements.

268. The attribution of a family name is governed by provisions of Title I, subtitle I, chapter 1 of the Children's Code. This stipulates that the name is attributed by parentage or marriage, or by a civil registry official.

269. Concerning the attribution of the family name by parentage, the legislator recognizes three categories of child: a child born in wedlock, a child born outside wedlock and an adopted child.

270. Article 11 of the Children's Code states that a child born in wedlock shall bear the name of the father. If paternity is denied the child bears the name of the mother. A child born outside wedlock bears the

name of the parent from whom his descent is established: if it is established for both parents or for the father, he bears the name of the father. An adopted child takes the name of the adoptive parent. If both spouses adopt, the adopted child takes the name of the husband (Children's Code, art. 12).

271. Lastly, a child whose parentage has not been properly established takes the name given to him by the civil registry official to whom his birth or discovery was declared. The official must choose two names, the first of which serves as the family name (Family Code, art. 13).

The right of a child to nationality

272. A child's nationality is governed by the provisions of articles 17-21 of the Children's Code.

273. Under article 17 of law no. 2007-017 of 6 July 2007 on the Children's Code, a child born of Togolese parents is Togolese. A child born of a Togolese father or mother is Togolese.

274. Article 18 of the Code states that all children born in Togo of foreign parents have the right to obtain Togolese nationality by declaration on attaining their majority, provided they can show that they have been in Togo since the age of 16.

275. Under article 19 of the Children's Code, all children of unknown descent and under the age of five years discovered on Togolese territory, and all children born in Togo of parents whose descent is unknown have the right to acquire Togolese nationality.

276. Article 20 of the Children's Code stipulates that a child whose father has become Togolese automatically acquires Togolese nationality. However, the following are excluded:

(a) A child aged 16 who is married in accordance with the conditions set out in articles 267ff. of the Children's Code;

(b) A child who has served in the army of his country of origin;

(c) A child who has been served with an expulsion order or a compulsory residence order that has not been expressly revoked in the original terms;

(d) A child who has been sentenced to more than six months in prison for an intentional crime or offence.

277. Under the provisions of article 21 of the Children's Code, a foreign child who marries a Togolese can acquire Togolese nationality.

Article 25: The right to take part in the conduct of public affairs, the right to vote and be elected and the right to hold public office

278. The conduct of public affairs is a duty incumbent on all citizens, and they must participate in public affairs directly or indirectly. This right is affirmed in the Constitution (arts. 2 and 4, para. 1, of the Constitution).

279. However, the events of daily life do not indicate with any degree of certainty that all citizens actually do take part in the conduct of public affairs. Admittedly, all citizens are entitled to participate in the conduct of public affairs either directly or through the intermediary of elected representatives.

280. However, it is of more use to associate the population and civil society in the determination of all political, economic and social directions. Every Togolese citizen should at all times feel concerned by the nation's life.

The right to vote and be elected

The right to vote

281. The electorate consists of all Togolese citizens of either sex aged 18 or over, in full possession of their civic and political rights, registered on the electoral rolls and suffering none of the incapacities specified by law (Electoral Code, art. 51).

282. Article 52 of the Electoral Code states that a person may not vote unless he is:

- Registered on the electoral roll of the commune or prefecture of his domicile or residence;
- If living abroad, regularly registered on the electoral list in the consulate or embassy of the Republic of Togo in the country of his residence or, failing that, in the consulate responsible for the affairs of Togo in the country of his residence.

283. The following may not be registered on electoral rolls:

- Persons convicted of crimes;
- Persons sentenced to over six months' imprisonment (suspended or non-suspended), and where applicable to a fine, for theft, fraud, breach of trust, improper use of public funds, forgery and use of forgeries, corruption and influence peddling or acts of indecency;
- Persons in a state of contumacy;
- Incapable adults;
- Undischarged bankrupts who have been declared as such either by the Togolese courts or by judgements rendered abroad but enforceable in Togo;
- Persons prohibited by the courts from exercising the right to vote or to be elected in application of the legislation in force.

The right to be elected

284. In Togo, every citizen who meets the eligibility criteria set out in the Constitution and the Electoral Code may stand in presidential, legislative or local elections.

Presidential elections

285. The criteria for standing as a candidate in presidential elections are set out in the Constitution and the Electoral Code.

286. Under article 62 of the Constitution, all candidates in presidential elections must:

- Be Togolese nationals by birth;
- Be aged 35 or over on the date the candidacy was entered;

- Be in possession of all their civic and political rights;
- Produce a medical certificate certifying their physical and mental fitness signed by three sworn physicians appointed by the Supreme Court;
- Have been resident in Togo for 12 months.

287. The Electoral Code stipulates that a candidate in a presidential election must lodge a deposit, the amount of which is fixed by decree of the Council of Ministers on the joint proposal of CENI and the electoral administration, with the public treasury (art. 174);

288. A candidate must also be nominated by one or more political parties or a list bearing the signatures of at least 2,000 registered voters domiciled in 10 prefectures with at least 200 per prefecture (art. 170).

Legislative elections

289. The criteria for standing as a candidate in legislative elections are set out in articles 197-200 of the Electoral Code. These provide that a candidate must:

- Be aged 25 or over on the date of the election;
- Be a Togolese national by birth;
- Be able to read and write in French.

290. However, the following are debarred from standing in legislative elections:

- Persons deprived of their civic and political rights by decision of a court of law;
- Persons under legal tutelage;
- General secretaries and directors of ministers' private offices and directors-general of public utility services;
- Prefects, subprefects and general secretaries of prefectures;
- Labour inspectors;
- The pay-master general and heads of treasury and taxation departments and accountants and employees engaged in the assessment, collection and recovery of revenue or the payment of items of public expenditure;
- Directors of customs and heads of customs offices;
- Gendarmes and non-commissioned and commissioned officers in the gendarmerie;
- Police constables, police officers and police commissioners;
- Officers in the armed forces;
- Judges in courts and tribunals.

291. In the period from 2003 and 2009 there were two presidential elections, in 2003 and 2005, and early legislative elections in 2007.

The presidential election of 2003

292. There were seven candidates in the presidential election of 1 June 2003, called by election writ of the Council of Ministers:

- Eyadema Gnassingbe of the Rassemblement du Peuple Togolais (RPT);
- Bob Akitani of the Union des Forces de Changement (UFC);
- Yawovi Agboyibo of the Comité d'Action pour le Renouveau (CAR);
- Edem Kodjo of the Convergence Patriotique Panafricaine (CPP);
- Léopold Gnininvi of the Convention Démocratique des Peuples Africains (CDPA);
- Dahuku Pere of the Pacte Socialiste pour le Renouveau (PSR);
- Nicolas Lawson of the Parti du Renouveau et de la Rédemption (PRR).

293. The electoral campaign, which started two weeks before the vote, went off calmly and without violence throughout the country.

294. The conditions for the candidates' access to the public media and the media's coverage of their meetings were set by the High Audio-visual and Communications Authority (HAAC).

295. The 125 observers that were deployed throughout the country were unanimous in agreeing that the election of 1 June 2003 had gone "well, despite some difficulties observed in the distribution of voting cards, mainly in the commune of Lomé."

296. Following the vote, the Constitutional Court declared the candidate of the Rassemblement du Peuple Togolais elected with 59.13% of the votes cast. The other candidates obtained the following votes:

- Bob Akitanio of the UFC: 33.68%
- Yawovi Agboyibo of the CAR: 5.12%
- Dahuku Pere of the PSR: 2.20%
- Edem Kodjo of the CPP: 0.96%
- Nicolas Lawson of the PRR: 0.20%
- Léopold Gnininvi of the CDPA: 0.17%.

The presidential election of 2005

297. Following the death of the Head of State of 5 February 2005, the Togolese armed forces decided to confer power on Mr. Faure Gnassingbe. On 6 February, the National Assembly met in special session and amended the Constitution and the Electoral Code so as to enable Mr. Gnassingbe to complete the term of his late father.

298. The international community, however, invited the Togolese Government to re-establish constitutional legality or face sanctions. As a result, Mr. Gnassingbe resigned as President of the Republic. Parliament then elected Mr. Abbas Bonfo as President of the National Assembly to assume the functions of Acting President of the Republic.

299. By decree no. 2005-013/PR of 4 March 2005, the Government called an election for 24 April 2005 to elect the President of the Republic.

300. The electoral campaign preceding the vote of 24 April was marked by widespread violence, to the point where the Minister of the Interior, who is responsible for elections, on 22 April 2005 requested the Acting President of the Republic to suspend the electoral process then under way because of the risks of bloody confrontations that were looming.

301. Despite the Minister of the Interior's warning, the Acting President did not change the date of the election. The candidates authorized by the Constitutional Court to take part in the election were:

- Faure Gnassingbe of the Rassemblement du Peuple Togolais (RPT);
- Bob Akitani, the candidate of a coalition of five political parties: the Union des Forces de Changement (UFC), the Comité d'Action pour le Renouveau (CAR), the Convention Démocratique des Peuples Africains (CDPA), the Alliance de la Démocratie et le Développement Intégral (ADDI) and the Union pour la Démocratie Sociale (UDS-TOGO);
- Nicolas Lawson of the Parti du Renouveau et de la Rédemption (PRR);
- Harry Olympio of the Rassemblement pour le Soutien de la Démocratie et le Développement (RSDD).

302. Following the vote, CENI declared the candidate of the Rassemblement du Peuple Togolais, Faure Gnassingbe, provisionally elected with 60.15% of the votes cast. The other candidates obtained the following votes:

- Bob Akitani: 38.25%
- Nicolas Lawson: 1.04%
- Harry Olympio: 0.55%.

303. As soon as the results were announced, acts of violence occurred in several towns, causing loss of human life and very extensive material damage. These acts led to domestic displacement and the flight of refugees to neighbouring countries, including Benin and Ghana.

The early legislative elections of 14 October 2007

304. In accordance with the 22 commitments entered into by the Government on 14 April 2004 and in order to maintain social peace, the Head of State started the national political dialogue which, with the assistance of President Blaise Compaoré of Burkina Faso, resulted in the signature on 20 August 2006 of an agreement entitled "Global Political Accord".

305. In view of the determining role which had fallen to the National Assembly in maintaining the credibility of democratic institutions, carrying out constitutional reform and enabling the State based on law to take root, the parties to the dialogue pledged to establish the conditions for free, open and transparent elections. These were to take place in accordance with the provisions agreed by consensus within the electoral framework.

306. By decree no. 2007-094/PR of 30 August 2007, the Government called early legislative elections for 14 October 2007. A total of 2,122 candidates, representing 30 political parties and 395 lists of independent candidates, contested 81 seats as follows:

- 21 for the Maritime region;

- 22 for the Plateaux region;
- 11 for the Centrale region;
- 16 for the La Kara region;
- 11 for the Savanes region.

307. The following political parties took part in the vote:

- Le Rassemblement du peuple togolais (RPT);
- L'Union des forces de changement (UFC);
- L'Alliance démocratique pour la patrie (ALLIANCE);
- L'Alliance togolaise des démocrates (ATD);
- L'Alliance des démocrates pour le développement intégral (ADDI);
- Le Comité d'action pour le renouveau (CAR);
- La Convention démocratique des peuples africains (CDPA);
- La Convergence patriotique panafricaine (CPP);
- La Convention des Forces Nouvelles (CFN);
- Le parti Justice, vigilance, éducation, nationalisme, ténacité, optimisme (JUVENTO);
- Le Front africain pour la démocratie et le développement (FADD);
- Le Parti d'action pour le changement au Togo (PACT);
- Le Parti pour la démocratie et le renouveau (PDR);
- Le Pacte socialiste pour le renouveau (PSR);
- Le Parti démocratique panafricain (PDP);
- Le Mouvement citoyen pour la démocratie et le développement (MCD);
- Le Parti du renouveau et de la rédemption (PRR);
- Le Parti nationaliste travailliste pour le salut (PNTS);
- La Nouvelle dynamique populaire (PDP);
- La Nouvelle initiative pour le développement (NID);
- Jeunesse et dignité (JD);
- L'Union pour la démocratie et le progrès social (UDPS);
- L'Union des démocrates socialistes du Togo (UDS Togo);
- Le Mouvement des croyants pour l'égalité et la paix (MOCEP);
- Le Parti écologiste panafricain (PEP);
- L'Union populaire pour la République (UPR);
- L'Union des nationalistes pour le travail (UNT);

- Le Mouvement des Républicains centristes (MRC);
- Le Parti d'union pour la rénovation et le développement (PURD);
- Le Parti d'union pour la paix, la justice et le travail (UPAJUT).

308. The elections went off calmly throughout the country and no incidents were reported anywhere.

309. Following the vote, the Constitutional Court declared the following results:

- Eligible to vote: 2,974,718;
- Number of votes: 2,526,049;
- Invalid ballot papers: 181,941;
- Votes cast: 2,344,108;
- Rate of participation: 85 per cent.

310. The seats won were as follows:

- Le Rassemblement du peuple togolais (RPT): 50 out of 81
- L'Union des Forces de Changement (UFC): 27 out of 81
- Le Comité d'Action pour le Renouveau (CAR): 4 out of 81.

311. The elections were deemed to have been free, democratic and transparent by national and international observers.

The right to vote

312. Under article 5 of the Constitution of 14 October 1992, "Suffrage shall be universal, equal and secret. It may be direct or indirect. Under conditions specified by law, the electorate shall comprise all Togolese nationals of both sexes aged 18 and over who are entitled to enjoy full civil and political rights."

313. Elections are governed by Act No. 2007-012 of 14 June 2007 amending Act. No. 2000-007 of 5 April 2007, as amended by Act. No. 2002-01 of 13 March 2002, Act. No. 2003-01 of 7 February 2003, Act. No. 2003-014 of 20 October 2003, Act No. 2005-001 of 21 January 2005 and Act. No. 2007-009 of 7 February 2007 on the Electoral Code. A National Independent Electoral Commission (CENI) was set up under article 3 of the Electoral Code to organize and supervise elections and referenda.

314. CENI is made up of 19 members:

- 5 members appointed by the President's office;
- 10 members appointed by the opposition;
- 2 members appointed by civil society;
- 2 members appointed by the Government without the right to vote (Electoral Code, art.15).

Right of access to public employment

315. The Constitution, the general civil service statutes and the Labour Code proclaim the equal access of all citizens of both sexes to public and private employment, subject to conditions of physical aptitude and specific constraints (arts. 2 and 37).

316. The recognized principle for ensuring equal access of all citizens to public employment is by direct competition.

317. Direct competitions to recruit young civil servants and professional competitions to promote civil servants already in post are held periodically.

318. Special competitions are organized for recruitment in each division and common competitions are held for recruitment to divisions common to several departments.

319. Between 2003 and 2007, one general competition and five sectoral competitions were organized, resulting in the recruitment of 3,000 young graduates on previously determined criteria. The most recent competition, held on 1 and 2 August 2008, resulted in the recruitment 4,000 job applicants to the public administration.

320. Written and eligibility tests are supervised by a commission. Everything is done to ensure the reliability and secrecy of the tests (written and oral), which are corrected under the supervision of a jury appointed by decision of the Ministry of the Civil Service.

321. Recruitment on the basis of degrees may, however, exceptionally be possible for the needs of public service for certain citizens with particular diplomas, degrees, professional qualifications or skills that are rare.

322. The State gives pride of place to men. This is also true of the distribution of decision-making posts, which are overwhelmingly occupied by men.

323. The causes of this imbalance go far back. The most significant of them relates to the cultural obstacles which discourage the education of girls and the strengthening of their leadership.

324. The measures adopted by the authorities to establish free education in public nursery and primary schools, together with awareness-raising campaigns aimed at removing the last obstacles to mass education for girls, will enable the failings described above to be rectified.

Article 26: Equality before the law and the prohibition of discrimination

325. Togolese legislation guarantees equal protection for all citizens before the law and prohibits all forms of discrimination.

326. Under article 11 of the Constitution,

"Every human being shall enjoy equal dignity and equal rights.

"Men and women are equal before the law.

"No one shall be protected or disadvantaged because of his family, ethnic or regional origin, economic or social status, or political, religious, philosophic or other beliefs".

327. Article 39 of the Labour Code states: "No one may be barred from the recruitment procedure and no wage-earner may be punished or dismissed because of his origin, sex, morals, family situation, ethnic, national or racial affiliation, political opinions, activities in a trade union or co-operative or religious beliefs".

328. The Children's Code prohibits any discrimination based on race, ethnicity, colour, sex, language, religion, political or other opinions, national and social origin, wealth, birth, disability, state of health or any other status (art.5).

Article 27: Guarantees of the rights of minorities

329. Ethnic and religious minorities have the right to practise their religions, to give open expression to their cultural lives and to use their own language. The official language in Togo is French.

330. These rights derive from the freedom of religion and association recognized in the Togolese Constitution.

331. There are some 36 ethnic groups in Togo; the largest include the Ewé, the Kabyè, the Ouatchi and the Tem. Although these ethnic groups have specific features, Togo has no problems of minorities or dominant groups. We are well aware that the basis for the existence of a dominant group and a minority group consists of discriminatory practices raised to the rank of principles.

332. In Togo there is no ethnic group in a situation of domination or dependence. All Togolese citizens have an equal right of access to the public service, to education, to ownership of landed property, to health care, etc.

333. Togo has never officially received any special demands from groups claiming to be minority groups debarred from the enjoyment of their rights for these reasons.

334. The implementation of the programme to support decentralization will enable the level of development of the various regions to be harmonized so that all the ethnic groups scattered over the national territory may enjoy the fruits of development. Act No. 2007-011 of 13 March 2007 on decentralization and local freedoms has been promulgated as part of this programme.

CONCLUSION

335. This report sets out the Government's efforts in implementation of the International Covenant on Civil and Political Rights. In fact, human rights occupy an important place in Togo's legal, political and institutional systems.

336. The Togolese Constitution not only devotes many articles to human rights but also incorporates international human rights instruments ratified by Togo into the basic law.

337. The Togolese Government's commitment to implementing the Covenant's provisions is irreversible. Its desire to ensure effective guarantees of the rights proclaimed in the Covenant is unequivocal.

338. Thanks to the various measures taken to implement the provisions of the Covenant it is clear that the human rights situation has improved considerably.

339. Togo intends to continue its determined march to democracy and the consolidation of the State based on the rule of law, the condition *sine qua non* for the full realization of basic rights and public freedoms in accordance with the obligations assumed under treaties.

340. This is the report of the Togolese Government submitted in compliance with article 40 of the International Covenant on Civil and Political Rights.

Annex

List of members of the inter-ministerial Drafting Committee for initial and periodic reports on human rights

1. Ms. Nakpa POLO: Ministry of Human Rights, Consolidation of Democracy and Civic Training
2. Mr. Kokou MINEKPOR: Ministry of Human Rights, Consolidation of Democracy and Civic Training
3. Mr. Matozuwé AHA: Ministry of Human Rights, Consolidation of Democracy and Civic Training
4. Mr. Koffi Maxime ASSAH: Ministry of Foreign Affairs and Regional Integration
5. Mr. Sourou WOLOU: National Human Rights Commission
6. Mr. Gnazou N'DAAM: Ministry of Communication and Culture
7. Ms. Maggy GOEH-AKUE: Ministry of Communication and Culture
8. Commander Bamana BARAGOU: Ministry of Security and Civil Protection
9. Ms. Aquitème AZAMBO: Ministry of Social Action, Advancement of Women and Protection of Children and the Elderly
10. Mr. G. Gnanbi KODJO: Minister of Justice responsible for relations with institutions of the Republic
11. Mr. Amah LAÏSON: Ministry of Labour, Employment and Social Security
12. Mr. Koami DANYO: Ministry of Territorial Administration, Decentralization and Local Communities
13. Mr. Komlan Enyonam HEVI: Ministry of Primary and Secondary Education and Literacy;
14. Mr. Abalo AWI: Ministry of Social Action, Advancement of Women and Protection of Children and the Elderly

List of representatives of associations taking part in the preparation of this report

1. Ms. Antoinette MBROU: Women, Democracy and Development Study and Action Group (GF2D)
2. Mr. Kodjo AMOUZOU: Togolese Human Rights League
3. Mr. Théodore ADODODJI: Amnesty International Togo.

Resource person

Ms. Caroline OUAFFO WAFANG: Office of the United Nations High Commissioner for Human Rights, Togo Office
