



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Report submitted by Togo under article 29 (1) of
the Convention, due in 2016*, ****

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** The annex to the present report is circulated as received, in the language of submission only.



Introduction

1. Togo became a party to the International Convention for the Protection of All Persons from Enforced Disappearance on 21 July 2014.
2. In accordance with article 29 of the Convention, each State party undertakes to submit to the Committee on Enforced Disappearances, through the Secretary-General of the United Nations, a report on the measures it has taken to give effect to its obligations under the Convention.
3. Pursuant to this article, Togo is hereby submitting its initial report on the implementation of the Convention. To this end, Togo has set up the Interministerial Committee for the Preparation of Initial and Periodic Human Rights Reports, which supports the Government in drafting reports and following up on recommendations on human rights, including those related to enforced disappearance.
4. Under the coordination of the ministry responsible for human rights, the report was drawn up in accordance with the guidelines established for this purpose and following a participatory, inclusive and transparent process, in two phases. The first phase involved the collection of information from various actors. The second phase consisted in the organization of workshops for the report's technical validation by the Interministerial Committee, of enrichment workshops held by resource persons and of a national validation workshop involving the National Human Rights Commission, other government institutions and civil society organizations working in the field of human rights. The report was drawn up also with technical support from the Office of the United Nations High Commissioner for Human Rights (OHCHR).
5. It contains information on the tangible steps taken to implement the Convention, including the main legislative, judicial, administrative and other measures adopted for its implementation.
6. The report is divided in two parts. The first part deals with the general legal framework prohibiting enforced disappearance, while the second part is devoted to information specific to articles 1 to 25 of the Convention.

I. General legal framework prohibiting enforced disappearance

7. The general legal framework for combating enforced disappearance can be assessed at both the national and international level.

A. National legal framework

8. The national legal framework draws on constitutional, criminal and administrative provisions for the protection of human rights, including the right not to be subjected to enforced disappearance.
9. Thus, the Constitution of 14 October 1992 establishes a general regime of recognition of individual rights and freedoms and of criminal liability for inhuman or degrading treatment, including enforced disappearance. The Constitution includes the following provisions:

Article 10: Every human being has inalienable and imprescriptible rights. Safeguarding these rights is the goal of every human community. The State has an obligation to respect, guarantee and protect them.

Article 13: The State has an obligation to guarantee the physical and mental integrity, life and safety of every person living in the national territory. No one may be arbitrarily deprived of his or her liberty. No one may be deprived of the right to life. The death penalty and life imprisonment are prohibited.

Article 14: The exercise of the rights and freedoms guaranteed by this Constitution may be subject to restrictions only expressly provided for by law and necessary for

the protection of national security, public order, public health, morality or the fundamental rights and freedoms of others.

Article 15: No one may be arbitrarily arrested or detained. Any persons detained without a 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 their own request or at the request of any interested party. The judicial authority shall rule without delay on the legality and regularity of the detention.

Article 16: All defendants or detainees must be given treatment that preserves their dignity and their physical and mental health and that assists in their social reintegration. No one has the right to prevent accused persons or detainees from being examined by a doctor of their choice. All accused persons have the right to assistance of counsel at the preliminary investigation stage.

Article 18: Every accused or imprisoned person shall be presumed innocent until proved guilty, following a process ensuring all guarantees necessary for the person's defence. The judiciary, as the body tasked with safeguarding individual liberty, shall ensure respect for this principle under the conditions stipulated by law.

Article 19: ... Damages resulting from a miscarriage of justice or from the abnormal administration of justice shall give rise to compensation payable by the State, in accordance with the law.

Article 20: No one may be subjected to monitoring or security measures, except in cases provided for by law.

Article 21: The human person is sacred and inviolable. No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No one may avoid a penalty for such violations by referring to the order of a superior or a public authority. Any individuals or agents of the State guilty of carrying out such acts either on their own initiative or under orders shall be punished in accordance with the law. Any individuals or agents of the State shall be released from the duty to obey an order when such an order constitutes a grave and manifest violation of respect for human rights and public freedoms.

10. In addition, the new Criminal Code sets out the general principle of attempted action, co-perpetration and complicity in crimes and misdemeanours. These principles apply in cases of enforced disappearance.

11. Under the terms of article 46 of the new Criminal Code, an attempted crime or misdemeanour is punishable in the same way as a completed offence if the act has been initiated and has only been suspended or has failed to take effect due to circumstances beyond the perpetrator's control.

12. Articles 47 to 52 of the new Criminal Code deal with co-perpetration and complicity.

13. Article 47 reads: "A co-perpetrator of an offence is anyone who, without personally committing the offence, participates with or in agreement with the perpetrator in its commission. An individual's lack of a quality or circumstance personally necessary to the commission of the offence shall not prevent the person from being a co-perpetrator when the person knowingly and willingly participates in committing the offence." Under article 48, people are considered as accomplices to the offence if they knowingly have: (1) given information or instructions to commit the offence, or instigated the commission of the offence by means of gifts, promises, threats, abuse of authority or power, conspiracy or criminal subterfuge; (2) procured instruments, weapons, vehicles or any other means useful to the preparation or commission of the offence or supporting the impunity of the perpetrators; or (3) knowingly aided or abetted, directly or indirectly, the perpetrators or co-perpetrators of the offence, in actions preparing, facilitating or committing the offence.

14. As for article 49, it states that any co-perpetrator or accomplice of a crime or misdemeanour is also criminally liable for any offence whose commission was a foreseeable consequence of the concerted action or the complicity. Article 50 specifies that if several perpetrators act together and in concert, they are each liable to the penalties for the offence that has been committed. None may avail themselves of the exceptions, excuses or

immunities of the others. According to article 51, a co-perpetrator or accomplice to a crime or misdemeanour is punished by the same penalties and security measures as the principal perpetrator of the crime or misdemeanour, except when the law provides otherwise. Article 52 reads: “Any individual who knowingly and unequivocally incites a third party by one of the means listed in article 48 to commit a crime or misdemeanour shall be punished as the perpetrator of the crime or misdemeanour, even if it has not been attempted or committed. The same applies to persons who organize or direct the commission of the offence.”

15. In addition, articles 149, 150 and 151 of the new Criminal Code define enforced disappearance, classify it as an act constituting a crime against humanity within the meaning of international law and provide for penalties.

16. Article 149 of the new Criminal Code makes enforced disappearance a crime against humanity: “Any of the following acts shall constitute a crime against humanity, in time of peace or in time of war, if the act is committed as part of a widespread or systematic attack directed against any civilian population or against an unarmed population, in the event of internal conflict: ... (5) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law ... (9) Enforced disappearance of persons.”

17. For the purposes of the preceding article, enforced disappearance is defined by article 150-10 as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge that such persons have been deprived of their liberty, or to give information on their fate or whereabouts, with the intention of removing them from the protection of the law for a prolonged period.” It is penalized as a crime against humanity in accordance with article 151, which provides that “Crimes against humanity are punishable by a prison sentence of between 30 and 50 years and a fine of 20 million to 50 million CFA francs (CFAF), depending on their seriousness and the perpetrator’s personal situation.”

B. International legal framework

18. Togo is a party to the following international instruments:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights, since 24 May 1984
- Convention on the Rights of the Child, since 1 August 1990
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, since 14 November 2008
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, since 18 November 1987, and its Optional Protocol, since 20 July 2010
- International Convention for the Protection of All Persons from Enforced Disappearance, since 21 July 2014
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, since 2020

C. Hierarchy of norms

19. As regards the place of the Convention in the domestic legal order, kindly refer to the second part of the common core document, which gives information on the legal and institutional framework for the protection and promotion of human rights.

D. Applicability of the Convention before the courts

20. With regard to the invocable quality of the Convention before the courts and administrative authorities and its direct applicability by them, article 50 of the Constitution

of 14 October 1992 states that “the rights and duties set out in the Universal Declaration of Human Rights and in the international human rights instruments ratified by Togo shall form an integral part of this Constitution”. Under this constitutional provision, the Convention may be invoked and applied by the courts or administrative authorities.

II. Information in relation to each of the articles of the Convention

Article 1

Absolute prohibition of enforced disappearance

21. The Criminal Code, specifically in articles 149 and 150, prohibits enforced disappearance “in times of peace or war”. Consequently, enforced disappearance can never be justified.

Article 2

Definition of enforced disappearance

22. Article 150 of the new Criminal Code defines enforced disappearance as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, the State or a political organization, followed by a refusal to acknowledge that such persons have been deprived of their liberty, or to give information on their fate or whereabouts, with the intention of removing them from the protection of the law for a prolonged period”.

23. However, this definition is applicable only in the case of a crime against humanity. Outside this framework, it is the provisions relating to infringements of personal freedom, and specifically articles 283 to 288 of the new Criminal Code, that apply. These articles read:

Article 283: Any person who arrests or detains a person, without a decision of the competent authority, except in cases provided for by law, or abducts or forcibly confines a person in any place, shall be liable to: (1) imprisonment for 3 to 5 years if the detention, arrest or illegal confinement lasts more than a month; or (2) imprisonment for 1 to 3 years if the detention, arrest or illegal confinement lasts less than a month.

Article 284: Any person who knowingly lends or provides a premises for the purposes of detention or illegal confinement shall be liable to the same penalties as the perpetrator of the detention or illegal confinement.

Article 285: Perpetrators of the acts provided for in articles 283 and 284 shall be liable to 5 to 10 years’ imprisonment when the victim is a child under the age of 18 years.

Article 286: Perpetrators of the acts provided for in articles 283 and 284 shall be liable to 20 to 30 years’ imprisonment if: (1) they commit acts of torture, barbarism or violence against the victim; (2) the illegal confinement or detention is carried out to facilitate, prepare or commit an offence against property, to commit blackmail or to obtain a ransom; or (3) the illegal confinement or detention is carried out for the purposes of early or forced marriage, mystical or ritual practices or any other illegal purpose.

Article 287: Those responsible for illegal confinement or detention resulting in the death of the victim shall be liable to the maximum term of imprisonment. The same penalties shall apply to the perpetrators of illegal confinement or detention for the purposes of facilitating the harvesting of organs.

Article 288: Perpetrators of or accomplices to illegal confinement or detention shall benefit from extenuating circumstances, as provided for in article 36 ff., when they unconditionally release the victim unharmed before the end of the second day following the arrest, illegal confinement or detention.

Article 3

Investigation

24. Any person who arrests, detains or holds a person, without a decision by the competent authority and except in cases provided for by law, or abducts or confines a person in any place whatsoever, will be punished in accordance with article 283 of the new Criminal Code, referred to above. When such acts are committed by individuals or groups acting without the authorization, support or acquiescence of the State, they will be prosecuted in accordance with articles 283 to 288 of the new Criminal Code.

Article 4

Criminalization

25. The new Criminal Code classifies enforced disappearance as a crime against humanity, in line with international law (see articles 149 and 151 of the Code, which set out the general legal framework for the prohibition of enforced disappearance).

26. Article 150 of the Code defines enforced disappearance separately in order to distinguish it from other related yet distinct offences, such as child abduction, arbitrary arrest, arbitrary deprivation of liberty, torture and deprivation of life, or other similar offences covered elsewhere in the Code. The Code does not, however, define enforced disappearance as an autonomous offence, as called for in article 2 of the Convention.

27. The Code also provides individual definitions of analogous offences in articles 283 to 288 on infringement of personal freedom, as cited above. The same applies to article 198 on torture, and articles 378 ff. of the Children's Code, which deal with child abduction.

28. With regard to torture, article 198 of the Criminal Code states that: "The term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on persons for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

29. With regard to child abduction, articles 378 ff. of the Children's Code read as follows:

Article 378: Anyone who, contrary to the will of the persons exercising parental authority, except by lawful order of the public authority, has led away, hijacked, abducted or removed a child from the place where those with authority over the child had placed the child, shall be subject to between 1 and 5 years' imprisonment.

Article 379: The penalty shall be raised to between 5 and 10 years' imprisonment if the child was under 15 years of age, or if the child was the victim of abuse or violence resulting in a medically certified incapacity to work lasting more than 10 days.

Article 380: When the illegal confinement or abduction was carried out with the aim of obtaining a ransom, the perpetrators shall be subject to between 10 and 20 years' imprisonment. If the illegal confinement or abduction results in the death of the child, the perpetrators shall be subject to life imprisonment." (Life imprisonment has been replaced by fixed-term imprisonment under the new Criminal Code).

Article 381: When the illegal confinement was carried out in order to facilitate the removal of an organ, the guilty party shall be subject to life imprisonment.

Article 382: The perpetrators or accomplices of any instance of child abduction or removal shall benefit from reduced penalties if they allow the unconditional return of the unharmed child to the child's family or to a public official.

Article 383: When the conditions set out in article 382 are met, the sentence may be reduced as follows:

- (a) In the case of a crime punishable by life imprisonment, the sentence shall not exceed 5 years' imprisonment;
- (b) In the case of any other crime, the sentence shall not exceed 2 years' imprisonment;
- (c) In the case of a misdemeanour, the sentence shall not exceed 6 months' imprisonment.

Article 384: If the perpetrators of the illegal confinement abuse the child, the penalties provided for in article 355 of the present law shall be doubled.

Article 386: Anyone who, contrary to the will of the persons exercising parental authority, except by lawful order of the public authority, has abducted or removed a child from the place where those with authority over the child had placed the child, to a location outside the national territory, will be subject to between 1 and 5 years' imprisonment.

Article 5

Crimes against humanity

30. The new Criminal Code classifies enforced disappearance as a crime against humanity, in line with international law (see articles 149 and 151 of the Code, in section I, above, on the general legal framework prohibiting enforced disappearance).

31. During its review of the current Criminal Code in force, Togo may establish enforced disappearance as a separate offence and may provide for mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive, or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance. The same applies to aggravating circumstances, when the disappeared person has died or is particularly vulnerable.

32. In view of the seriousness of enforced disappearance as described above, and with reference to article 7 of the Code of Criminal Procedure, the statute of limitations for the offence of enforced disappearance may be set at 10 years, as a minimum. It is clear, however, that enforced disappearance will be viewed as a continuous offence, for which the statute of limitations starts only at the end of the offence.

Article 6

Criminal responsibility

33. The general system of criminal responsibility applicable to torture and inhuman or degrading treatment, including enforced disappearance, is set out in article 21 of the Constitution and in articles 46 to 52 and 149 to 151 of the new Criminal Code (see section I, above, on the general legal framework for prohibiting of enforced disappearance).

34. Article 21 (e) of the Constitution provides that any individual or agent of the State will be released from the duty to obey an order when such order constitutes a grave and manifest violation of respect for human rights and public freedoms. The article stipulates the following: "The human person is sacred and inviolable. No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No one may avoid a penalty for such violations by referring to the order of a superior or a public authority. Any individuals or agents of the State guilty of carrying out such acts either on their own initiative or under orders shall be punished in accordance with the law. Any individuals or agents of the State shall be released from the duty to obey an order when such an order constitutes a grave and manifest violation of respect for human rights and public freedoms."

35. In addition, article 157 of the Criminal Code provides that:

Representatives of the State, including military leaders and other hierarchical superiors, members of organizations and institutions, and private individuals or groupings who commit or are accessories to, directly incite the commission of, or are part of a conspiracy to commit any of the offences in question shall bear individual criminal responsibility and be liable to the penalties established for those offences.

Military leaders and other hierarchical superiors bear criminal responsibility for crimes committed by forces or subordinates under their effective authority and control if:

- (1) They knew or, given the circumstances, should have known that the crime was going to be or was being committed, or deliberately disregarded information which clearly indicated this;
- (2) They failed to take all necessary and reasonable measures within their power to prevent or repress the commission of the crime or to submit the matter to the competent authorities for investigation and prosecution;
- (3) The crimes concerned activities that were within their effective responsibility and control.

36. Article 160 (3) of the new Criminal Code states that any order made by a superior to commit a crime against humanity is manifestly illegal and that such an order does not exonerate the executor from responsibility. Consequently, it is prohibited to invoke superior orders, including orders of military authorities, as justification for an enforced disappearance, which is defined as a crime against humanity.

37. This article states the following:

The responsibility of persons who commit one of the offences provided for in the present chapter cannot be excluded solely because the act they committed was prescribed or authorized by legislative or regulatory provisions or was authorized by a legitimate authority. An order issued by a legitimate authority does not relieve a person of responsibility for the crimes provided for in the present chapter unless: (a) the person was under a legal obligation to obey orders of the Government or the superior in question; (b) the person did not know that the order was unlawful; and (c) the order was not manifestly unlawful. These three conditions are cumulative. For the purposes of this article, orders to commit genocide or crimes against humanity are deemed to be manifestly unlawful.

38. Within the meaning of this article, orders to commit genocide or crimes against humanity are deemed to be manifestly unlawful. It is thus clear that the concept of “due obedience” as a criminal law defence has no impact on the effective implementation of this prohibition.

39. Although there are provisions in national law dealing with the issue of enforced disappearance, there have been no judicial decisions in this area.

40. As to whether the public authorities’ position on the concept of “due obedience” as a criminal law defence has an impact on the effective implementation of this prohibition, since the Constitution is the supreme law of the land (art. 21), nothing prohibited therein can be permitted by laws of lesser rank. Given that enforced disappearance is not yet defined as an autonomous offence in the national legislation, it is not possible to provide a comparison of the regimes applicable to enforced disappearance as a crime against humanity.

Article 7

Applicable penalties

41. The Criminal Code classifies enforced disappearance as one of the constituent elements of crimes against humanity. Crimes against humanity are punishable by a prison sentence of between 30 and 50 years and a fine of CFAF 20 million to 50 million, depending on their seriousness and the perpetrator’s personal situation, under article 151 of the Code.

42. Article 29 of Act No. 2007-010 of 1 March 2007, the Armed Forces General Regulations Act, stipulates that:

Military personnel shall be subject to the provisions of ordinary criminal law. Without prejudice to any potential criminal penalties, misconduct on the part of military personnel shall put them at risk of:

- (1) Disciplinary punishments, as determined by the general disciplinary rules for the armed forces;
- (2) Professional consequences, as laid down by decree, which may include the partial or total withdrawal of a professional qualification, either temporarily or permanently;
- (3) Statutory penalties, as provided for in articles 63 and 64 of the present Act.

43. Article 63 stipulates that “the penalties referred to in article 29 (3), applicable to recruits, are as follows: debarment from promotion; demotion by one or more grades, classes or categories; or termination of contract.

44. Article 66 of the same Act stipulates that:

The statutory penalties applicable to military personnel are as follows:

- (1) Debarment from promotion;
- (2) Demotion by one or more grades, classes or categories;
- (3) Removal from active service without pay;
- (4) Temporary suspension without pay for between 1 and 6 months;
- (5) Discharge from the army as a disciplinary measure.

45. The maximum penalty applicable to an offence of enforced disappearance constituting a crime against humanity is 50 years’ imprisonment and CFAF 50 million (new Criminal Code, art. 151).

46. When the Togolese law is amended to criminalize the act of enforced disappearance as an autonomous offence, specific aggravating and mitigating circumstances will be stipulated.

Article 8

Statute of limitations

47. A joint reading of articles 149 (9) and 164 of the new Criminal Code indicates that enforced disappearance, as defined by the national legislation, is easily associated with crimes against humanity and that such crimes are not subject to a statute of limitations. Article 164 establishes that genocide, war crimes, crimes against humanity and crimes of apartheid are not subject to a statute of limitations. As these crimes are not covered by the statute of limitations, no specific measures have been taken with regard to determining when the time limit for appeal begins to run.

Article 9

Jurisdiction of the State

48. Article 6 of the new Criminal Code states that criminal law is applicable to any offence committed in Togolese territory, including:

- The land area delimited by the borders of Togo
- The territorial waters of Togo
- The airspace over the land area and territorial waters of Togo
- Ships and aircraft registered in accordance with Togolese law and fixed platforms located on the continental shelf of Togo

49. In addition, Togolese criminal law is applicable to any crime committed abroad by a Togolese national.

50. It is also applicable to any offence committed abroad by a Togolese national if the act is also punishable by the law of the country in which it was committed, unless otherwise provided (new Criminal Code, art. 9 (1)–(3)). The same is true if accused persons acquire Togolese nationality only after the commission of the act for which they are prosecuted.

51. Togolese criminal law is applicable to any offence committed by a Togolese or foreign national outside the national territory if the victim was of Togolese nationality at the time of the offence (new Criminal Code, art. 10). It also applies to foreign nationals who, outside of the national territory, are found to be authors of or accomplices in offences against State security or in forging the State seal or the State’s legal tender when they have been arrested in Togo or have been duly extradited (new Criminal Code, art. 11).

52. It should be noted that Togo has not yet had a case of enforced disappearance requiring it to submit a request for extradition from a State party. Likewise, Togo has yet to receive a request to extradite an alleged perpetrator of enforced disappearance. In Togo, the international instrument applicable to ensure jurisdiction for acts of enforced disappearance is the Economic Community of West African States Convention on Mutual Assistance in Criminal Matters.

Article 10

Pretrial detention

53. Articles 112 ff. of the Code of Criminal Procedure deal with the pretrial detention of any accused person in the national territory.

54. In practice, any foreign nationals in pretrial detention in Togo, irrespective of the grounds, have the right to assistance from their consulate or from any other authority in their country. They are able to communicate with their consular authorities.

Article 11

Obligation to extradite or prosecute

55. Regarding the legal framework enabling national courts to exercise universal jurisdiction over the offence of enforced disappearance, Togolese criminal law is applicable to any offence committed in Togolese territory, as defined in article 6 of the new Criminal Code and established in article 9 of the Convention.

56. Furthermore, in accordance with article 7 (2) of the Convention, Togolese criminal law applies in the following cases:

- When the Togolese authorities have been asked to intervene
- When the offence has undermined public order
- When the perpetrator or victim of the offence is a Togolese national

57. The competent authorities responsible for applying the law in the various cases are the judicial authorities of the criminal justice system.

58. With regard to measures guaranteeing the alleged offender’s right to a fair trial at all stages of the proceedings, it should be noted that, under article 16 (3) of the Constitution, “all accused persons have the right to the assistance of counsel at the preliminary investigation stage”.

59. Moreover, article 18 of the Constitution provides that: “All accused or imprisoned persons shall be presumed innocent until proved guilty in a trial ensuring all guarantees necessary for their defence. The judiciary, as the body tasked with safeguarding individual liberty, shall ensure respect for this principle under the conditions stipulated by law.”

60. With regard to evidence, the general principle of law applies. No distinction is made between Togolese and foreign nationals in the provisions of the Code of Criminal Procedure

relating to evidence or in the penalties contained in the Criminal Code. In other words, these instruments are applied without distinction.

61. Under ordinary law, and in accordance with the Code of Criminal Procedure, the following authorities are competent to carry out investigations, irrespective of the type of offence, including alleged enforced disappearance:

- Criminal investigation officers
- Public prosecutor
- Investigating judge

62. In addition, when members of the defence and security forces or similar entities are involved, under the new Code of Military Justice, the military judicial authorities are competent to carry out investigations and prosecutions. These authorities are:

- Military criminal investigation police
- Military prosecutor
- Military investigating judge

63. Article 48 of the new Code of Military Justice states that the following are subject to the jurisdiction of the military courts:

- (1) Members of the Togolese armed forces and security personnel under the authority of the ministry responsible for security who are on active duty, on detachment, on non-active duty or serving in special positions;
- (2) Persons of similar status;
- (3) Members of the operational reserve; and
- (4) Prisoners of war.

Article 12

Reporting and investigation

64. Individuals who allege that a person has been subjected to enforced disappearance have access to reporting mechanisms. Such mechanisms are both jurisdictional and non-jurisdictional.

65. Jurisdictional mechanisms are ordinary and military tribunals and courts. The complainant may refer the matter to the subregional body, the Court of Justice of the Economic Community of West African States.

66. The non-jurisdictional mechanisms are the National Human Rights Commission and human rights organizations. Cases may also be brought before the Committee on Enforced Disappearances.

67. To clarify a case and establish the facts concerning the enforced disappearance, it is the person with an interest in the case who files a complaint against X with law enforcement officials. The latter then open an investigation into the matter and inform the public prosecutor of their findings, for further action. The law allows the public prosecutor's office to take up a case on its own initiative.

68. Togo provides guarantees ensuring that complainants, their representatives, witnesses and any other persons who are participating in the investigation, prosecution and trial are protected against all ill-treatment or intimidation. These include articles 245 to 247 of the new Criminal Code, relating to threats, and articles 526 ff. of the Code, relating to obstruction of justice.

69. Threats are defined in article 245 of the Code as: "acts of intimidation whereby one person, by whatever means, inspires in another the fear of physical or moral violence against his or her person, family, property or interests". Article 246 states that any person guilty of making a threat is punishable by: (1) a prison sentence of between 3 and 5 years or a fine of

between CFAF 100,000 and 500,000, or both, in the case of a death threat; or (2) a prison sentence of between 1 and 3 years or a fine of between CFAF 100,000 and 500,000, or both, if the threat is made to impose an order or condition involving the commission or allowance of an act which is illegal or harmful to others. Under article 247, the punishments are between 6 months' and 2 years' imprisonment or a fine of between CFAF 100,000 and 500,000 for threats not accompanied by any order or condition.

70. Regarding obstruction of justice, article 526 of the Code reads:

The following also constitute obstruction of justice: (1) using physical force, threats or intimidation, or the promise, offer or granting of an undue advantage in order to obtain false testimony or prevent testimony or the presentation of evidence in proceedings relating to the offence committed; (2) using physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the offence committed; (3) slowing down or causing the slowing down of legal proceedings in order to delay legal proceedings brought against oneself or another person, in return for any benefit promised or offered by that person or another person; (4) failing to comply with a judicial or administrative injunction not to leave the country, regardless of whether such a departure is legal or illegal; and (5) leaving the country, legally or otherwise, in order to avoid criminal or administrative proceedings.

71. Under article 527 of the Code, any person found guilty of obstruction of justice is punished by a prison sentence of between 1 and 3 years or a fine of between CFAF 100,000 and 3,000,000, or both. Article 528 provides that it is also obstruction of justice to carry on, or cause to be carried on, works on a building or the transfer or use of the building in breach of a court order suspending such works.

72. Under article 529, any person who, in breach of a court order suspending work on a building, carries on the execution of said work, or causes it to be carried on, is punished by a prison sentence of between 1 and 3 years or a fine of between CFAF 100,000 and 3,000,000, or both. If the court deems it necessary, it may order the demolition of works undertaken illegally.

Article 13 Extradition

73. Togo has not concluded treaties with other States explicitly stating that enforced disappearance is a ground for extradition.

74. However, the Extradition Treaty signed between Benin, Ghana, Nigeria and Togo on 10 December 1984 as part of Quadripartite Agreements, and the Economic Community of West African States Convention on Extradition, adopted on 6 August 1994 in Abuja, are applicable when an extradition request is made. Under the terms of these two texts, all misdemeanours and felonies may lead to extradition, except when the extradition request is based on political motives or on race, religion or nationality, or when the accused will be subjected to cruel, inhuman or degrading treatment or punishment (Extradition Treaty, art. 4; Economic Community of West African States Convention on Extradition, arts. 4 and 5).

75. Article 23 of the Constitution reads: "Foreign nationals may be expelled or extradited from the national territory only by virtue of a decision in accordance with the law and must be given the opportunity to defend themselves before the competent judicial authority". The authority that decides on extradition requests is the judicial authority.

Article 14 Mutual legal assistance

76. Togo has not signed any treaties and has no specific provisions on mutual legal assistance in matters of enforced disappearance. Consequently, there are no concrete examples of such mutual legal assistance or cooperation with other States that are not parties to the Convention. Even though Togo has not concluded a treaty dealing specifically with

mutual legal assistance in matters of enforced disappearance, the multilateral texts cited in the sections on articles 12 and 13 may nevertheless be applied in this area. Cooperation with other States not party to the Convention can be undertaken on the basis of the United Nations Convention against Transnational Organized Crime.

Article 15

International cooperation

77. Togo has not concluded any new agreements dealing specifically with assistance for victims of enforced disappearance. However, Togo is a party to other agreements or conventions providing for international cooperation, including legal assistance, mutual legal assistance and extradition (see the information provided in the sections on articles 12, 13 and 14 of the Convention).

Article 16

Principle of non-refoulement

78. Under article 208 (1) and (2) of the new Criminal Code, no one may be expelled, returned or extradited to a State where there are serious grounds for believing that he or she will be subjected to torture, other inhuman or degrading treatment or the death penalty. In determining whether there are such grounds, all relevant considerations, including, when applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights, are taken into account.

79. Under article 20 of Act No. 2016-021 of 24 August 2016 on the status of refugees in Togo, no refugees or asylum-seekers may be subjected to refoulement that would force them to return to their country of origin or to move to a territory where their life, physical integrity or freedoms would be threatened for one of the reasons enumerated in article 2 of the Act.

80. The judicial authority decides on extradition and expulsion requests, while the administrative authority takes decisions in cases of return and refoulement. Pursuant to article 36 of Act No. 2019-009 of 12 August 2019 on internal security, for urgent measures, the Minister of Territorial Administration requests the minister responsible for security to take action. The article establishes that: "Subject to the provisions applicable to members of the diplomatic and consular corps, the Minister of Territorial Administration may, after consulting the Minister of Security, order by decree the expulsion from Togolese territory of any foreigner who presents a risk of grave breach of public order within the meaning of article 28 of the present Act."

81. As for the type of training received by government officials responsible for the expulsion, return and extradition of foreign nationals, it should be noted that training modules on human rights, on international humanitarian law, on general and special criminal law, on criminal procedure, on women's and children's rights and on the conventions, as well as on document identification, are taught at the academies of the defence and security forces.

Article 17

Prohibition of incommunicado detention

82. There is no specific provision on incommunicado or unofficial detention; all detention is carried out in accordance with the law and is recorded in a register.

83. All national detention facilities are known and accessible. These include police stations, local police squads, prisons, the Zébé psychiatric centre and the Centre for Children's Access to Justice and the Legal System.

84. As regards the conditions under which deprivation of liberty may be ordered and specifying which authorities may do so, it should be noted that when there is serious and corroborating evidence that an offence has been committed, the alleged offenders may be deprived of their liberty. This can take the form of police custody ordered by a criminal

investigation officer, pretrial detention ordered by the public prosecutor or investigating judge or imprisonment after conviction by a court.

85. At the administrative level, article 29 of the Internal Security Act provides that the Minister of Territorial Administration, after consulting the minister responsible for security, may impose house arrest on any persons when there are serious grounds for believing that, through their behaviour, comments or relations, they are likely to commit or facilitate the commission of one of the acts enumerated in article 28 of the Act. Articles 32 to 34 read:

Article 32: The police and gendarmerie may check the identity of or stop any person on the street who might represent a threat to public security, in order to prevent serious disturbances of public order within the meaning of article 28, above. The same checks may also be carried out in the vehicle or any other means of transport used by the person.

Article 33: The Minister of Territorial Administration, or a governor or prefect with delegated authority, may order collective stops and controls on the streets or elsewhere to prevent serious disturbances of public order within the meaning of article 28, above.

Article 34: Persons arrested under articles 32 and 33, above, may be held for a period not exceeding 24 hours. At the end of this period, they shall either be released or, when the nature of the criminal offence so warrants, placed in police custody. The local public prosecutor shall be immediately informed of the detention.

86. With regard to provisions on the immediate notification of and contact with lawyers, doctors and relatives and, in the case of foreign nationals, notification of consular authorities, it should be noted that all accused persons and detainees must be treated in a manner that preserves their dignity and physical and mental health and promotes their social reintegration. No one has the right to prevent accused persons or detainees from being examined by a doctor of their choice. All accused persons have the right to assistance of counsel at the preliminary investigation stage (Constitution, art. 16). Article 94 (1) of the Code of Criminal Procedure states that accused persons in detention may, immediately after their first appearance, freely communicate with their counsel. No restrictions may be placed on this right at any time during detention, either before or after trial.

87. In addition, in keeping with the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (the Luanda Guidelines), accused persons are to be notified of their rights, which are specified in the police custody registers. In accordance with the registers, all persons in pretrial detention or serving sentences are free to communicate with and receive visits from their family and counsel. Registers of inmates are regularly updated. These include police logs, detention registers, transfer logs and disciplinary records.

88. Foreign nationals in pretrial detention or serving sentences in Togo are able to communicate with and receive visits from the consular authorities of their country of origin.

89. In addition, Organic Act No. 2018-006 of 20 June 2018 on the composition, organization and functioning of the National Human Rights Commission assigns new responsibilities to the Commission. In line with its preventive mission, the Commission, as the national mechanism for the prevention of torture (related to the Subcommittee on Prevention of Torture), carries out regular unannounced visits to all places of deprivation of liberty. In addition to this State institution, human rights organizations make regular visits to prisons and other places of detention.

90. Other bodies, such as the public prosecutor's office and the security services inspectorate, carry out inspections at places of deprivation of liberty.

91. There are also a number of administrative mechanisms for prison inspections. These include the Judicial and Prison Services Inspectorate, whose remit is the control and inspection of prisons and all of their inmates. The Inspectorate is a department of the Ministry of Justice.

92. The guarantees enabling any person with a legitimate interest to challenge the lawfulness of a detention are set out in article 15 of the Constitution, which gives "any interested party" the possibility of filing a complaint with the judicial authorities in the event

of arbitrary detention or prolonged police custody. In such cases, the judicial authority must rule without delay on the legality and regularity of the detention (Constitution, art. 15 (2)).

Article 18

Information on detained persons

93. In keeping with the Luanda Guidelines, police custody registers include all the information required under article 17 (3) of the Convention. Article 17 of the Constitution stipulates that persons deprived of their liberty must be made aware of the charges against them.

Article 19

Protection of personal data

94. Matters relating to expert assessments are covered in articles 131 to 142 of the Code of Criminal Procedure. These articles read as follows:

Article 131: Any investigating or trial court may, if a technical question arises, either at the request of the public prosecutor's office, *ex officio*, or at the request of the parties, order an expert assessment. When investigating judges consider that a request for an expert assessment should not be granted, they shall provide a reasoned decision. The experts shall carry out their work under the supervision of the investigating judge or the judge appointed for this purpose by the court that ordered the assessment.

Article 132: The experts shall be chosen from a list drawn up at the beginning of each year by the Court of Appeal. In exceptional cases, and by reasoned decision, the courts may choose experts who are not on the list.

Article 133: The remit of the experts, which shall be restricted to examining technical issues, shall be specified in the decision ordering the assessment.

Article 134: When expert assessments are ordered by investigating judges, they shall notify the public prosecutor's office and the parties, specifying the names and qualifications of the experts and their terms of reference. This decision shall not be subject to appeal. However, within three days of the notification, the public prosecutor's office and the parties may present their observations informally. These observations may concern either the choice or the remit of the appointed experts.

Article 135: Assessments shall in principle be entrusted to a single expert. However, when the question submitted for assessment concerns the merits of a case, the investigating judge, acting either *ex officio* or at the request of the public prosecutor's office or of any interested party, may appoint two experts.

Article 136: When they are registered on the list provided for in article 132, experts shall take an oath before the Court of Appeal to fulfil their mandate, report on their findings and give their opinion upon their honour and conscience. The oath may be taken in writing. Experts shall not have to renew their oath each time they are appointed. Experts not on the list shall take the oath provided for in the previous paragraph before the investigating judge or the court that ordered the evaluation each time they are appointed. This formality shall be recorded in a report signed by the competent judge, the expert and the court clerk. Should the expert be unable to attend, the oath may be made in writing and appended to the case file.

Article 137: All decisions to appoint one or more experts shall set a deadline for discharging the mandate. If special reasons so require, the deadline may be extended at the request of the experts and by reasoned decision issued by the judge who appointed them. Experts who fail to submit a report within the allotted time may be replaced immediately and shall report on the investigations they have conducted thus far. They shall also return, within 48 hours, any objects, items and documents provided to them for the completion of their mandate. They may also be subject to disciplinary measures, up to and including disbarment, and shall be liable to a fine of

CFAF 5,000 to 15,000 imposed by the judge or court that appointed them, on the recommendation of the public prosecutor. Experts shall fulfil their mandate in cooperation with the investigating judge; they shall keep the investigating judge informed of their activities so that the investigating judge can take any necessary measures at all times. Investigating judges, in the course of their activities, may always, if deemed useful, request assistance from the experts.

Article 138: In accordance with article 78 (3), the investigating judge, before forwarding sealed evidence to the experts, shall present the sealed evidence to the accused, alongside the minutes specially drawn up to record the handover. The experts shall mention in their report any opening or reopening of the seals and shall draw up an inventory of them.

Article 139: Experts may receive statements from persons other than the accused to obtain information necessary for the discharge of their mandate. If they deem it necessary to hear the accused, unless the judge exceptionally issues a reasoned delegation of authority, the hearing shall be conducted in the experts' presence by the investigating judge, observing in all cases the forms and conditions stipulated in article 96. Accused persons may, however, waive their right under this provision, by express declaration before the investigating judge, and provide the experts, in the presence of counsel, with the explanations necessary for the discharge of their mandate. The accused may also, by written declaration submitted to the experts and appended to their report, waive the assistance of counsel for one or more hearings. However, the doctors responsible for examining accused persons may ask them any questions necessary for their purposes, without the judge or counsel being present.

Article 140: In the course of the expert assessment, the parties may ask the requesting court to enjoin the experts to carry out specific inquiries or interview any named person who may be able to provide them with technical information.

Article 141: On completion of their activities, the experts shall draw up a report describing their activities and findings. The experts shall certify that they have personally carried out or supervised the tasks entrusted to them and shall sign their report. If they have differing opinions or reservations about the joint findings, they may each provide reasoned statements of their opinions or reservations. The report and seals, or their remnants, shall be deposited with the clerk of the investigating court that ordered the assessment; a record of the deposit shall be kept.

Article 142: The investigating judge shall summon the interested parties and inform them of the experts' findings, in keeping with article 96; the investigating judge shall receive their statements and set a limit of eight days during which they have the opportunity to present observations or formulate requests, in particular for the purposes of further assessment or a counter-assessment. When such requests are rejected, the investigating judge shall give a reasoned decision, after notifying the public prosecutor's office, except in the case of courts with a reduced staff, when notification shall be optional.

95. In addition, on 29 October 2019 Togo adopted Act No. 2019-014, the Personal Data Protection Act. Article 16 of the Act deals with the principles of purpose, relevance and retention. Under this article, personal data may be collected only for specified, explicit and legitimate purposes and may not be further processed in a manner incompatible with these purposes. The data must be appropriate, relevant and not excessive in relation to the purposes for which they were collected and subsequently processed. They must be kept for no longer than necessary for such purposes. Beyond this period, data may be retained only for the specific purpose of processing for historical, statistical or research purposes, in accordance with legal provisions.

96. Article 91 deals with misuse. It stipulates that: "Anyone who, while possessing personal data for the purpose of recording, classifying, or transmitting the data or for any other type of processing, misuses such data for purposes other than those defined in the legislative and regulatory provisions, in a decision of the Personal Data Protection Authority authorizing automated processing or in the statements made prior to processing, shall be liable to a penalty of imprisonment for 1 to 5 years or a fine of CFAF 5 million to 25 million,

or both.” Under article 92, anyone who, in the course of recording, classifying, transmitting or otherwise processing personal data whose disclosure would have the effect of harming the reputation of the person concerned or breaching the person’s privacy, discloses the data to an unentitled third party without the authorization of the person concerned, is liable to a penalty of imprisonment for 1 to 5 years or a fine of CFAF 1 million to 10 million, or both. When the disclosure described above is the result of recklessness or negligence, the person responsible is liable to a penalty of imprisonment for 6 months to 2 years or a fine of CFAF 500,000 to 2 million, or both.

97. Article 21 of the Act prohibits the processing of sensitive data. It prohibits the collection and processing of data revealing a person’s racial or ethnic origin, parentage, political opinions, religious or philosophical beliefs, trade union membership or sex life, their genetic data and, more generally, data on their state of health. There are exceptions, however. Under article 22, the prohibition does not apply to the processing of personal data when: (1) the persons concerned have plainly made the data public; (2) the persons concerned have given their written consent to processing in accordance with the applicable legislation; (3) processing is necessary in order to protect the vital interests of the persons concerned or another person or if the persons concerned are physically or legally unable to give consent; (4) processing is necessary for the establishment, exercise or defence of claims in legal proceedings. However, genetic data may be processed only to verify a genetic link for evidentiary purposes in legal proceedings, to identify a person or to prevent or punish a specific criminal offence; (5) a legal proceeding or a criminal investigation has been initiated; (6) processing is in the public interest, for instance, for historical, statistical, scientific or cultural purposes; (7) processing is necessary for the execution of a contract to which the person concerned is a party or for the execution of pre-contractual measures taken at the request of the person concerned during the pre-contractual period; (8) processing is necessary to comply with a legal or regulatory obligation of the person responsible for the processing; or (9) processing is necessary for the conduct of a public interest project, is carried out by a public authority or is assigned by a public authority to the person responsible for processing or to a third party to whom the data are disclosed.

Article 20

Restrictions on the right to information

98. Article 23 of the Personal Data Protection Act deals with data relating to offences. It stipulates that data relating to offences, criminal convictions and security measures may be processed only by: (1) courts, public authorities and legal persons managing a public service, acting within the scope of their legal powers; or (2) officers of the court, for the strict purpose of carrying out the duties entrusted to them by law.

Article 21

Release from custody

99. Act No. 2019-015 of 30 October 2019 on the Organization Code, in articles 70 and 78, makes provision for the post of sentence enforcement judge. Under article 70: “The court of major jurisdiction (*tribunal de grande instance*) shall be composed of the bench and the public prosecutor’s office. The bench shall be composed of ... one or more investigating judges”. Article 78 states:

Regarding sentence enforcement, the sentence enforcement judge and division shall be responsible, in accordance with the Code of Criminal Procedure, for the establishment of the main terms for the enforcement of custodial sentences and specific sentences restricting freedom, and for the management and oversight of such sentences, to facilitate the convicted person’s integration or reintegration into society. The sentence enforcement division shall sit as a collegial panel of three judges appointed in accordance with articles 70 and 72 of the present Code. Decisions by the sentence enforcement judge and division may be appealed to the enforcement division of the competent Court of Appeal.

100. In practice, places of detention have registers making it possible to verify with certainty that detainees have been released.

101. The authorities competent to oversee releases in accordance with the national legislation and applicable international law are the officers of the investigative police, in particular public prosecutors or their deputies, investigating judges, gendarmerie officers, gendarmerie station chiefs, police commissioners and police station chiefs, non-commissioned gendarmerie officers, police officers and auxiliary police officers.

Article 22

Measures to prevent and impose sanctions for breaches of the principle of legality of detention and of the obligation to register deprivation of liberty

102. Articles 13 (2), 15, 16, 17 and 19 of the Constitution prohibit illegal deprivation of liberty.

103. These articles establish that all persons have the right in any matter to have their case heard and decided equitably within a reasonable period by an independent and impartial court. No one may be convicted of actions which, at the time of their commission, were not recognized by law as an offence. Except in the cases provided for by law, no one may be investigated for or convicted of acts attributed to others. Damages resulting from a miscarriage of justice or from the abnormal administration of justice give rise to compensation payable by the State, in accordance with the law (art. 19). The State has an obligation to guarantee the physical and mental integrity, life and safety of every person living in the national territory. No persons may be arbitrarily deprived of their liberty. No persons may be deprived of their life. The death penalty and life imprisonment are prohibited (art. 13). No one may be arbitrarily arrested or detained. Any persons detained without a legal basis or beyond the maximum period allowed has the right to seek judicial intervention by the authority designated by law for that end, either at their own request or at the request of any interested party. The judicial authority must rule without delay on the legality and regularity of the detention (art. 15). All defendants or detainees must be given treatment that preserves their dignity and their physical and mental health and that assists in their social reintegration. No one has the right to prevent accused persons or detainees from being examined by a doctor of their choice. All accused persons have the right to assistance of counsel at the preliminary investigation stage (art. 16). Arrested persons have the right to be immediately informed of the charges against them (art. 17).

104. Concerning the obligation to record the deprivation of liberty, article 53 of the Code of Criminal Procedure requires police officers to keep a special register in which all information pertaining to the admission and release of persons deprived of liberty is recorded. It stipulates that:

A special register shall be kept at all police premises where persons may be held in police custody, showing the first and last names of all persons held in custody, the date and time of their admission and the date and time of their release. The entries shall be signed by the persons concerned and, if they refuse or are unable to sign, it shall be noted in the register. The register referred to in the previous paragraph shall be produced at the request of the public prosecutor or the judge assigned by the public prosecutor's office. Persons held in police custody may undergo a medical examination at their own request or at the request of a family member, following approval by the public prosecutor's office.

In addition to these provisions, unannounced checks are carried out by judges, the National Human Rights Commission and human rights organizations.

105. Depending on the case, administrative and disciplinary sanctions are provided for in the Act on the special status of police personnel. Under article 55 of the Act, acts falling into the following categories are always deemed to be disciplinary offences: failure to obey instructions, breach of dress codes or codes of conduct, insubordination, gross negligence, professional misconduct and violations of honour, duty and integrity.

106. Without prejudice to possible criminal penalties, any disciplinary offence exposes the person who committed it to disciplinary action. The hierarchical supervisor assesses the seriousness of the misconduct and imposes or recommends an appropriate penalty. The penalty must be reasoned (art. 56). Under article 57, the Director General of the National Police has the power to overturn disciplinary sanctions imposed by the staff. Article 58 states that: “The range of disciplinary sanctions comprises, in order of increasing strictness, three categories:

- Category 1 – 1. Reprimand; 2. Extra day of service; 3. Confinement to barracks; 4. Confinement to a cell; 5. Prison or close arrest; 6. Suspension for a period of 1 to 7 days
- Category 2 – 1. Written warning; 2. Reprimand with annotation in the person’s record; 3. Suspension for a period of 8 to 20 days
- Category 3 – 1. Delayed promotion for one year; 2. Relegation in step; 3. Suspension for a period of 3 or 6 months; 4. Debarment from promotion; 5. Demotion; 6. Discharge without suspension of pension rights; 7. Discharge with suspension of pension rights”

107. These disciplinary and administrative penalties do not preclude the application of criminal sanctions in cases of unlawful detention. Articles 279 to 288 of the new Criminal Code, on infringements of personal freedom, read:

Article 279: Persons holding public authority by virtue of their title or functions who, acting in the exercise of their functions or using their title or functions, knowingly order or commit an action aimed at illegally depriving other persons of their liberty, shall be liable to imprisonment of 1 to 5 years or a fine of CFAF 1 million to 5 million, or both. When the unlawful deprivation of liberty consists of detention for more than seven days, the penalty shall be imprisonment for 3 to 5 years and a fine of CFAF 3 million to 5 million.

Article 280: Persons holding public authority by virtue of their title or functions who, in the exercise or as a result of their functions or mandate, have knowledge of an unlawful deprivation of liberty and wilfully refrain from putting an end to it if they have the power to do so, or, if they do not, refrain from causing the competent authority to intervene, shall be liable to imprisonment for 1 to 3 years or a fine of CFAF 1 million to 3 million, or both. The same penalty shall be applicable when persons referred to in the previous paragraph wilfully refrain either from carrying out the necessary checks if they have the power to do so or, if not, from referring the complaint to the competent authority when the deprivation of liberty, recognized as unlawful, has continued.

Article 281: Any prison official who receives or detains a person without a warrant, judgment or detention order drawn up in accordance with the law, or who unduly prolongs a detention, shall be liable to imprisonment for 1 to 5 years or a fine of CFAF 1 million to 5 million, or both.

Article 282: The director of a psychiatric treatment centre or accredited care centre who illegally receives or detains a hospitalized person shall be liable to imprisonment for 1 to 5 years or a fine of CFAF 1 million to 5 million, or both.

Article 283: Any person who arrests or detains a person, without a decision of the competent authority, except in cases provided for by law, or abducts or forcibly confines a person anywhere shall be liable to: (1) imprisonment for 3 to 5 years if the detention, arrest or illegal confinement lasted more than a month; or (2) imprisonment for 1 to 3 years if the detention, arrest or illegal confinement lasted less than a month.

Article 284: Any person who knowingly lends or provides a premises for the purposes of detention or illegal confinement shall be liable to the same penalties as the perpetrator of the detention or illegal confinement.

Article 285: Perpetrators of the acts provided for in articles 283 and 284 shall be liable to 5 to 10 years’ imprisonment when the victim is a child under the age of 18 years.

Article 286: Perpetrators of the acts provided for in articles 283 and 284 shall be liable to 20 to 30 years' imprisonment if: (1) they committed acts of torture, barbarism or violence against the victim; (2) the illegal confinement or detention was carried out to facilitate, prepare or commit an offence against property, to commit blackmail or to obtain a ransom; or (3) the illegal confinement or detention was carried out for the purposes of early or forced marriage, mystical or ritual practices or any other illegal purpose.

Article 287: Those responsible for illegal confinement or detention resulting in the death of the victim shall be liable to the maximum term of imprisonment. The same penalties shall apply to the perpetrators of illegal confinement or detention for the purposes of facilitating the harvesting of organs.

Article 288: Perpetrators of or accomplices to illegal confinement or detention shall benefit from extenuating circumstances, as provided for in article 36 ff., when they have unconditionally released the victim unharmed before the end of the second day following the arrest, illegal confinement or detention.

108. These criminal penalties are without prejudice to the imposition of disciplinary and administrative penalties.

Article 23

Training

109. Continuous training is provided by training personnel on a yearly, as-needed basis at all levels. The training programmes for the various forces include modules on human rights, international humanitarian law, general and special criminal law, criminal procedure, women's and children's rights, the conventions and document identification.

110. At this stage, there is no legislation specific to enforced disappearance explicitly providing that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited and that persons who refuse to obey such orders will not be punished. However, article 42 of the Act on the special status of the national police contains provisions in this area. The article reads:

Police officers, whatever their rank, shall be at the service of the nation and the Government. They shall obey the orders of their superiors within the limits established in the laws and regulations of the Republic. They shall be responsible for the orders that they give and for carrying out the tasks assigned to them. Subordinates shall bear personal responsibility for the execution of manifestly illegal orders given by their superiors. The personal responsibility of the subordinate shall not absolve the responsibility of the superior officer. That can only occur if the person is accused of a personal fault."

Article 24

Rights of victims

111. As regards how the broad definition of "victim" is reflected in domestic law, thus including the disappeared person and any individual who has suffered harm as the direct result of the enforced disappearance, it should be noted that the definition under article 150-10 of the new Criminal Code covers only direct victims of enforced disappearance. However, the general principles of law allow indirect victims (such as successors) to institute the criminal proceedings available to victims.

112. In addition, article 2 of the Code of Criminal Procedure states that the Code's provisions apply to all legal proceedings, enforcement proceedings and appeals commenced after its publication.

113. Any person who claims to have suffered injury as a result of a felony or misdemeanour may, by filing a complaint, bring criminal indemnification proceedings before the competent investigating judge (art. 68).

114. Furthermore, there are mechanisms in place to ensure the right to know the truth on the circumstances of the enforced disappearance and the fate of the disappeared person. These are the National Human Rights Commission, the courts and the criminal investigation police. Lawyers and victims have access to the case files held by the investigating judge.

115. There are also mechanisms to conduct investigations, locate victims and, in the case of death, locate, respect and return their remains to relatives. Articles 13 and 14 of the Code of Criminal Procedure state that until an inquiry is launched, the criminal investigation police are responsible, according to the distinctions established in Title I, for recording breaches of criminal law, gathering evidence and searching for the perpetrators (art. 13). Once an inquiry has been initiated, they perform the tasks entrusted to them by the investigating judges and comply with their requests (art. 14).

116. In addition, victims can receive compensation based on civil liability. Children who would be victims of enforced disappearance would be deemed to be at risk and thus eligible for the rehabilitation programmes offered to children in difficult situations. These programmes include:

- Legal assistance
- Psychological and medical assistance
- Social and vocational integration (schooling and vocational training)
- Administrative assistance (help with obtaining identity documents)
- Tracing of the biological families of child victims for family reunification

117. Other rehabilitation programmes include:

- Psychological support for women victims at counselling centres
- Social reintegration
- Support for victims in the creation of income-generating activities

118. The 1901 Act on freedom of association guarantees the right of victims to form associations addressing the problem of enforced disappearance and to participate in their activities.

Article 25

Children

119. Children are protected against abduction and illegal confinement under articles 378 ff. of the Children's Code. The penalties incurred by potential perpetrators range from 1 to 20 years' imprisonment.

120. Mechanisms to search for and return missing children to their families fall within the remit of the criminal investigation police and the child protection system.

121. Cooperation with other States in the search for or identification of children of disappeared parents is possible within the framework of international and community judicial cooperation.

122. With regard to national legislation and procedures guaranteeing that the best interests of the child will be a primary consideration in all actions concerning children, whether undertaken by public institutions, courts of law, administrative authorities or legislative bodies, it should be noted that the principle of the best interests of the child is established in articles 4 and 8 of the Children's Code. Article 4 defines the best interests of the child, and article 8 states that the best interests of the child must be considered in all actions or decisions concerning children, whether taken by parents, courts, administrative authorities or legislative bodies. This principle applies in all child protection cases.

123. Furthermore, article 9 of the Children's Code enables children who are capable of forming their own views to have the right to express those views freely on all matters affecting them, either by themselves or through another person or institution. This article

states that “in any legal proceedings or matters involving children capable of forming their own views, such views shall be taken into account, either directly or through an impartial representative or an organization for the protection or defence of children’s rights”. Child protection organizations include children’s advisory councils at the national, regional and prefectural levels and associations for children and youth.

Annex

[French only]

Liste des participants à l'élaboration du rapport initial de la République togolaise sur la mise en œuvre de la Convention internationale pour la protection de toutes les personnes contre les disparitions forcées

Monsieur AKPAOU Abdou Gafaou, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Madame NAYKPAGAH B.B.B.N. Ikadri, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République ;

Madame AYITE Akouvi, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République ;

Monsieur ETSE Komi, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République ;

Madame HOUNYO Afi épouse KLIKO, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République ;

Monsieur TCHEDRE-TCHACOROUDOU Mamah-Sani, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République ;

Monsieur KOUSSETOU Mongonawè, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République ;

Monsieur BOUKARI Abdoul Nassirou, Ministère des droits de l'homme, de la formation à la citoyenneté et des relations avec les institutions de la République ;

Commissaire principal ABI Kéméya-Abalo, Ministère de la sécurité et de la protection civile, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Commissaire SALASSI Zarifou, Ministère de la sécurité et de la protection civile ;

Lieutenant-colonel BIAO ADZA Akomola, Ministère des Armées, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur KODJO Gnambi Garba, Ministère de la justice et de la législation, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur IDDRISSOU B.K. Moustafa, Ministère de la justice et de la législation, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur PALI Koffi, Ministère de la justice et de la législation, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur ADJIBOGOU Akomotè, Ministère du développement à la base, de l'artisanat et de la jeunesse, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur AGAMA Yawo L., Commission nationale des droits de l'homme, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur AMADOU Séidou, Commission nationale des droits de l'homme ;

Madame TOGNI Ahoefa, Ministère du commerce, de l'industrie, du développement du secteur privé et de la promotion de la consommation locale, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur DOUMASHIE T. Novinyo, Ministère du commerce, de l'industrie, du développement du secteur privé et de la promotion de la consommation locale, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur ATTA D. Issfa, Ministère de l'environnement, du développement durable et de la protection de la nature, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur AGBOKA Francis-Olivier Nowoayé, Ministère de la communication et des médias, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur BARBAKOUA Pihame, Ministère de la planification, du développement et de la coopération, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Madame KOLANI Kiyiebe, Ministère des infrastructures et des transports, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur KONDO Kandalé, Ministère de l'action sociale, de la promotion de la femme et de l'alphabétisation, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Madame KPEMSI Abidé, Ministère de l'action sociale, de la promotion de la femme et de l'alphabétisation ;

Monsieur AMAGBEGNON Kinhodé, Ministère de l'action sociale, de la promotion de la femme et de l'alphabétisation ;

Monsieur TELOU Sodou M., Ministère de l'administration territoriale, de la décentralisation et des collectivités locales, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur NAMESSI Hodabalo, Ministère de l'économie numérique et de la transformation digitale, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur BAKAÏ Bawilou, Ministère de la fonction publique, du travail, de la réforme administrative et de la protection sociale ;

Monsieur N'BALAKI Passimswé, Ministère de l'agriculture, de la production animale et halieutique, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Madame AKONTOM Yawa, Ministère de la santé, de l'hygiène publique et de l'accès universel aux soins, membre de la Commission interministérielle de rédaction des rapports et de suivi des recommandations sur les droits de l'homme (CIRR) ;

Monsieur NAMBIEMA Fousseni , Ministère de la santé, de l'hygiène publique et de l'accès universel aux soins ;

Madame KAGNI Dédé Akofa, Ministère des affaires étrangères, de l'intégration africaine et des Togolais de l'extérieur ;

Monsieur DJIMBILLA Moussa, Secrétariat général du Gouvernement ;

Monsieur OLOUDE Adébayo, Institut National de la Statistique et des Études Économiques et Démographiques (INSEED) du Togo ;

Monsieur LASSEY Adjevi-Zan, Amnesty International Togo ;

Monsieur TALAKI Atiyomtè, Haute autorité de prévention et de lutte contre la corruption et les infractions assimilées (HAPLUCIA) ;

Madame TASSOU Marina M., Haute autorité de l'audiovisuel et de la communication ;

Monsieur AGBA Anani K ., Cours des comptes ;

Madame MBROU Antoinette, Haut-Commissariat à la Réconciliation et au Renforcement de l'Unité Nationale (HCRRUN) ;

Monsieur MASSASSABA Kpanté, Centre de Documentation et de Formation sur les Droits de l'Homme (CDFDH) ;

Monsieur KPAKOU Panis Roger, Collectif des Associations Contre l'Impunité au Togo (CACIT).
