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£TOGO

@Impunity for human rights violators at a time of reform

I. INTRODUCTION

Throughout 1991 human rights featured prominently on the political agenda in Togo. During the first months, there were increasing demands that reforms which had been promised following demonstrations in late 1990 should be introduced without delay. Some of those involved in making these demands themselves became victims of human rights violations; for example, two people were shot dead while trying to topple a statue of President Gnassingbé Eyadéma. After initially refusing to introduce reforms, the government eventually responded to pressure by announcing an amnesty for all political prisoners, ending the one-party state and legalising political parties, and agreeing to hold a National Conference. The conference was held from July until August 1991. As well as discussing the country's political future and deciding on transitional arrangements until elections scheduled for 1992, this gathering of nearly 1000 people, which declared itself sovereign, examined human rights violations in the past, in which the army in particular had been implicated. It heard new testimonies about a variety of abuses, confirming that human rights had been repeatedly violated in a pattern of arbitrary detention, torture and extrajudicial executions. The conference called on President Eyadéma, who has remained head of State during the transitional period, to bring to justice those suspected of perpetrating the violations.

Later in the year elements of the army, which largely remained loyal to President Eyadéma, made several attempts to destabilise the transitional government appointed by the National Conference. After surviving an assault on his residence by the armed forces and being briefly detained, Prime Minister Joseph Kokou Koffigoh agreed with President Eyadéma to form a new transitional government incorporating members of the President's former ruling party. The increased influence of President Eyadéma and the army in the new transitional government appears to be preventing it from investigating the revelations about past human rights abuses, which army spokesmen have described as fabrications and lies. Amnesty International is urging the Togolese government to investigate past human rights violations thoroughly, to bring to justice those responsible and to introduce reforms to prevent any repetition of similar abuses in the future.

Many aspects of the pattern of human rights violations in Togo in the past were described in an Amnesty International report published in June 1986, *Togo: Political Imprisonment and Torture*, describing the long-term detention of government opponents without trial or after unfair trials, the use of torture, and suspicious deaths in detention. Amnesty International is also now making a series of recommendations to the Togolese government to improve respect for human rights in the future.

II. POLITICAL CONTEXT - DEMANDS FOR CHANGE AND CURRENT SITUATION

Demands for a multi-party political system started receiving public attention in Togo in August 1990 when 13 pro-democracy activists were arrested for distributing leaflets calling for such a change. Eleven of them were released uncharged a week later, but at least four of those arrested were tortured with electric shocks, whipped and beaten while they were held incommunicado in the custody of the *Sûreté nationale*, the national security police. The remaining two, Logo Dossouvi and Doglo Agbelenko, were sentenced in October 1990 to five years' imprisonment for slander and inciting the army to revolt against the government. The two, who appeared to be prisoners of conscience, were released one week after sentencing by order of President Eyadéma.

On 5 October 1990, the day Logo Dossouvi and Doglo Agbelenko were tried, there were violent demonstrations in Lomé, the capital, after the security forces violently dispersed crowds of people who had gathered peacefully to call for multi-party democracy and the release of the two imprisoned activists. Government vehicles and some police stations were destroyed, several people were reportedly killed and at least 170 demonstrators were arrested. After initial government claims that the unrest was inspired by foreigners, all those detained were released uncharged in late October 1990.

Following the demonstrations, the government announced that a commission would review the Constitution and that a new draft constitution would be submitted to a referendum by the end of 1991. President Eyadéma later announced that the one-party state would be replaced by a multi-party political system.

In the context of growing opposition to President Eyadéma's government, 1991 began with street protests and strikes. Student and opposition movements and the powerful market women all expressed their dissatisfaction that the promised reforms had not been implemented and called for the resignation of President Eyadéma.

On 14 March 1991 several recently created, although not officially recognized, political groups formed an organisation called the *Front des associations pour le renouveau* (FAR),

Front of Associations for Renewal. A joint demand was made for a general amnesty for all exiled government opponents, a national conference to discuss the country's political future, and the immediate introduction of a multi-party political system. More demonstrations, strikes and riots took place and on 5 April 1991 soldiers opened fire on demonstrators who were trying to topple a statue of President Eyadéma, killing two of them.

Following discussions with a delegation from the *Front des associations pour le renouveau* and student representatives, President Eyadéma agreed to their demands and on 10 April the government declared an amnesty. As a result, all political prisoners were released, including in particular some 20 arrested and convicted after an attempted coup in September 1986. The government also made the creation of political parties legal and accepted the principle of holding a national conference. The next day, following further demonstrations, the bodies of 28 people who had recently been killed were discovered in the Bè lagoon near Lomé (see photographs on page 19). Despite official claims that the 28 had been killed by ordinary criminals, an investigation by the *Commission Nationale des Droits de l'Homme* (CNDH), National Human Rights Commission, concluded in July that the demonstrators who had died had been victims of extrajudicial executions by the security forces (see page 9 below).

Protests continued throughout April and May 1991 and it was not until mid-June that a date was agreed for the National Conference which opened in July and lasted until late August. The conference declared itself to be a sovereign body, suspended the constitution, assumed all legislative powers and granted immunity from prosecution to all participants. The following day, the government temporarily suspended its participation in protest. When the National Conference announced its decision in August 1991 to transfer most of President Eyadéma's powers to the prime minister of a transitional government, who was to be appointed by the conference and hold power until elections in June 1992, President Eyadéma's government reacted by temporarily suspending the National Conference and the army encircled the building where it was held. However, after negotiations the conference continued and elected Joseph Kokou Koffigoh, a lawyer and President of the *Ligue Togolaise des Droits de l'Homme* (LTDH), Togolese Human Rights League, as Prime Minister. A few days later, President Eyadéma signed a decree confirming Joseph Kokou Koffigoh in office.

The LTDH is one of many non-governmental organizations dealing with human rights, which have emerged since mid-1990. The LTDH and others have worked on behalf of individual victims of human rights abuses, while some, like the *Association pour la Promotion de l'Etat de Droit* (APED), Association for the Promotion of the Rule of Law, led by Maître Djovi Gally, have dealt with the question at a level of institutional reform. Maître Gally played a prominent role in the national conference, as second deputy Rapporteur, and in December 1991 he was appointed Minister for Human Rights in Prime Minister Koffigoh's new government.

During October 1991 there were two apparent attempts to challenge the Transitional Government by force. On 1 October a unit of the army took over the radio station and announced the dissolution of the government, and on 8 October a group of soldiers from the Presidential Guard apparently tried to kidnap Prime Minister Koffigoh. Both attempts failed to change the composition or status of the government. On 28 November, shortly after the *Haut Conseil de la République* (HCR), High Council of the Republic, announced that the former ruling party, the *Rassemblement du Peuple Togolais* (RPT), Rally of the Togolese People, was to be banned, army units again intervened to declare the end of the transitional government. In a public statement, former Minister of Defence General Mawulikplimi Ameyi spoke out in support of President Eyadéma, announced that the transitional government was dissolved and all decisions taken by the national conference were annulled, but said that authorized political parties could continue to function and that the draft constitution would remain in effect. There followed several days of negotiations between Prime Minister Koffigoh and President Eyadéma about the political future of the country. However, on 3 December the army launched an assault on the Prime Minister's residence and announced that the Prime Minister had been detained; he was later taken to the Presidential residence to meet with President Eyadéma. Other leading political figures connected with the transitional government were ordered to report to army headquarters and many fled the country or went into hiding to avoid arrest. An announcement was eventually made that Prime Minister Koffigoh was going to form a new government of national unity, which was finally announced on 30 December 1991. It included some members of the former ruling party, the RPT, one of whom became Minister of the Interior - a post he held under President Eyadéma until mid-1991; a former Procurator General was given responsibility for military affairs within the Ministry of Defence. The new government's programme includes a plan for a further amnesty, said to be intended to "facilitate the process of national reconciliation", to ensure the return of discipline within the army and to restore its political neutrality. It is unclear what this will mean in practice, but fears have been expressed that it could grant impunity to soldiers responsible for killing or torturing prisoners or others in the past, and have the effect of making the armed forces unaccountable for their actions. Prime Minister Koffigoh has appealed to all those who fled Togo in order to avoid arrest to return and support the work of the new government.

III. REVELATIONS ABOUT PAST HUMAN RIGHTS ABUSES

When General Eyadéma became President of the Republic in 1967 he promised democratic elections within three months and appointed a committee to draft a new constitution to be put to popular referendum. The committee's report was not published and in 1969 President Eyadéma established a new political movement, the RPT, which was the only political party

allowed by law until 1991. During this time President Eyadéma and his party ruled every aspect of political life, determining when and how opponents would be imprisoned for political reasons, often without reference to judicial institutions.

In June 1986 Amnesty International published a report, *Togo: Political Imprisonment and Torture*, which described a pattern of abuse in the first half of the 1980s, in particular the long-term detention of government opponents without trial or after unfair trials, the use of torture and cases of deaths in detention. It called for urgent government action to end human rights abuses, the release of all prisoners of conscience, the release or trial of uncharged political detainees, and action to prevent torture. Despite several visits to Togo between 1977 and 1985, Amnesty International representatives had been expelled from Togo earlier in 1986 when they arrived to seek information about the progress of a commission of inquiry into allegations of torture. In 1987, the government took significant steps towards improving respect for human rights: it ratified both the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol of the International Covenant on Civil and Political Rights¹, and it established the *Commission Nationale des Droits de l'Homme*, CNDH, National Human Rights Commission.

From 1988 until 1991 human rights violations continued to be reported, though with much less frequency than before 1987, and were the subject of investigation by the National Human Rights Commission. However, it was noticeable that there were no judicial proceedings against those responsible for human rights violations. It appeared, moreover, that the National Human Rights Commission was unable to investigate certain cases. Amnesty International representatives were able to visit the country again in 1989, when they visited a group of political prisoners convicted of violent offences in 1986. These prisoners had been held permanently in hand-cuffs since their arrest and the authorities agreed to unfetter them.

The question of human rights received much attention in 1991, when the National Conference examined the record of the previous 24 years of President Eyadéma's rule. This included the presentation of numerous testimonies by victims of human rights violations, which revealed new evidence on the scale of human rights abuses. New details came to light about the conditions of detention at a particularly notorious prison, the *Centre de réinsertion sociale* (CRS), Centre for Social Reintegration, at Kaza; the circumstances in which former Vice-President Idrissou Antoine Méatchi died in 1984; violations which occurred at Pya, President Eyadéma's home area; and extrajudicial executions and arbitrary detentions in and around game parks near Sansanne Mango, in the far north of the country.

¹Togo ratified the International Covenant on Civil and Political Rights on 24 May 1984.

A. Extrajudicial executions and deaths in detention at Kaza

In 1985 a new detention centre, the CRS, was built at Kaza, a village between Kazaboua and Agombio in central Togo. It was ostensibly a place where recidivists, convicted criminals who had returned to crime after completing their previous sentence, would be rehabilitated to return to an active life within society. However, the CRS was used as a prison, where many prisoners, some of them held for political reasons, were held without charge or trial. The CRS was run by the armed forces who administered deliberately harsh treatment to punish inmates; the Ministry of Justice, which was charged with responsibility for prisoners elsewhere in the country, exercised no control over the centre.

One former prisoner testified to the National Conference that he had become blind after being forced to stare directly at the sun and as a result of a poor diet; others who survived had become paralysed and emerged from their imprisonment looking skeletal (see photograph on page 20). Many detainees died from exhausting hard labour, ill-treatment or medical neglect; others were reported to have been extrajudicially executed.

Former detainees described to the conference how they were met by soldiers some 20 kilometres away from the prison, then stripped naked and beaten. By the time they arrived at Kaza, they were exhausted and injured but then subjected to searches and further beating. All detainees were forced to undertake hard physical labour such as collecting firewood, making charcoal or growing vegetables for the guards to sell, and carrying waste buckets from the cells into the surrounding bush each day. If any of the waste was spilled, the carrier was forced to roll in the spilled excrement and urine. In the event that prisoners fainted while working, they were further punished and humiliated until they resumed work. In addition, some prisoners were subjected to torture. They were forced to run, dance and sing while carrying tree trunks, to stare at the sun for two or three hours, or to walk on their knees while carrying heavy weights. Medical treatment was not made available to most prisoners.

Many former prisoners said they had witnessed the killing of a particular inmate in 1988, Issifou Yao. He was apparently killed in front of all the other detainees in October 1988 for having shown his wounds to a visiting Prefect (provincial governor). Another inmate, Amega Komi, was killed in the fields in February 1989: he had been made to do especially hard labour, apparently on suspicion that he had written an article to send to the Paris-based magazine *Jeune Afrique*. When exhausted from the work, he was killed by a soldier who kicked and crushed his testicles.

B. The death through starvation of former Vice-President Idrissou Antoine Méatchi

Idrissou Antoine Méatchi, who was Vice-President of Togo from 1963 until 1966, was arrested in June 1982, ostensibly in connection with the alleged mismanagement of public funds 10 years earlier. However, it seems the real reason for his arrest and execution was his perceived opposition to President Eyadéma. Testimony given before the conference confirmed information made public by Amnesty International in 1985 that he had been ill-treated and deliberately denied food and water until he died in March 1984. According to people who gave testimony in public in July 1991, Idrissou Antoine Méatchi and three others were transferred in handcuffs under heavy guard from Lomé's Civil Prison in November 1983 to a prison in Sansanne Mango in the north of the country. On arrival, the security around their cells was reinforced to prevent their escape and, on 18 January 1984, the prisoners were informed by the prison director that the government had ordered that they should be kept in their cells without food. A few days later they were offered sandwiches, on the pretext that the kitchen staff had left, but refused to eat them, fearing that they had been poisoned. Their starvation diet continued. Some received food smuggled in by other detainees, but the close surveillance on Idrissou Antoine Méatchi's cell meant he received virtually no food or water at all. He died two months after his arrival at the prison, on 25 March 1984. The prison director announced that he had died of a heart attack. The three others who had arrived with Idrissou Antoine Méatchi were taken off their starvation diet and received half rations for the rest of their detention. In April 1985 Amnesty International representatives visiting Togo raised the case with the authorities, urging them to investigate the circumstances of Méatchi's death. The government claimed that Idrissou Antoine Méatchi had died of natural causes after falling ill in prison. They declared that no judicial inquiry had been carried out as his death had not occurred in suspicious circumstances.

C. Human rights violations in connection with the designation of game parks in northern Togo

New information also came to light in 1991 about extrajudicial executions and arbitrary detentions in the vicinity of the Kéran game park in northern Togo near Sansanne Mango, where the security forces operated a "shoot-to-kill" policy against people entering the park. The parks, declared by the government to be "national parks", cover large ill-defined areas and are apparently used for hunting by senior government and army officials. Villagers who used to live in the designated areas have been forcibly and brutally removed from their homes with no official help to reestablish their communities elsewhere.

According to former soldiers who had served in the game-parks, soldiers were evidently under instructions during the mid-1980s to kill poachers; those who detained suspected poachers instead of killing them were said to have been punished themselves. In 1984 a group of armed poachers was found in the game park near the banks of the Oti river. Soldiers patrolling the area encircled the poachers and, according to one of the poachers, opened fire without warning, killing several of them. All but one of the wounded were taken back to a military camp and five were reportedly killed by the officer in charge. The remaining person was kept captive, but the soldier concerned was reprimanded for not having killed him. Other reports from 1984 concern the shooting from a helicopter of people found collecting firewood in the national parks. All these incidents were described, both in private and public, by members of the Togolese Armed Forces. In one case, described to the National Conference in July 1991, six men who returned to the area to collect corn-stalks and other materials from their former houses were severely beaten by soldiers.

More recently, in February 1990, dozens of villagers were detained and tortured by soldiers during an attempt to forcibly resettle villagers living near a game park in northern Togo. The victims, including a number of elderly inhabitants from the villages of Koloware and Mparatao, were apparently accused of hunting in a game reserve. The National Human Rights Commission was informed and carried out an investigation, submitting a report to President Eyadéma which apparently confirmed that villagers had been unlawfully detained and tortured. As a result, the President reportedly ordered the release of two villagers who remained in detention, and also decided that some of the victims should be compensated and that the officer in charge of the soldiers responsible should be demoted.

In the most recent incident described at the conference, Kolani Tinandji was killed by five soldiers on 20 December 1990 while fishing with his 13-year-old son. The boy, Outiemboua, was taken to the Civil Prison at Sansanne Mango and held without charge until the National Human Rights Commission obtained his release in February 1991.

D. Human rights violations in President Eyadéma's home village

Serious human rights violations at Pya, President Eyadéma's home area in central Togo, were also criticized at the conference. These violations were said to have occurred over a period of 15 years since at least 1976. Local people accused of practising sorcery were arrested and punished by local traditional chiefs, without reference to the courts. Some were apparently drowned or beaten to death while others were arbitrarily banished to Mandouri, a town in a remote region near the country's northern border, in some cases for up to 12 years. There, such prisoners had been forced to report regularly to the local governor and police chiefs and to work for them virtually without payment. The National Human Rights Commission investigated some

of their cases in February 1991. As a result, restrictions were lifted and an unspecified number of people were allowed to leave Mandouri.

IV. Human rights abuses in 1991 - Extrajudicial executions at the Bè lagoon - April 1991

On 11 April 1991, the bodies of 28 people were retrieved from the Bè lagoon, near to the capital, Lomé. The deaths occurred after weeks of demonstrations and followed a demonstration organized in the area of Bè on 10 April 1991. The demonstrators were confronted by soldiers who apparently encircled the crowd on a bridge from which the only escape was the lagoon. Many evidently jumped or were pushed into the water and died. The government denied any responsibility and initially claimed that the 28 corpses were of people murdered by criminals. However, demonstrators who suspected that the security forces were responsible transported the bodies to the US Embassy in central Lomé to protest at the killings and to demand President Eyadéma's resignation. The National Human Rights Commission started an investigation, contacting a pathologist to examine the bodies in order to determine the cause of the deaths.

In July 1991 the National Human Rights Commission issued a report on its findings, concluding that the 28 deaths had occurred in two different sets of circumstances. Firstly, some of the demonstrators who jumped into the lagoon were deliberately prevented by soldiers from getting out. As a result of beatings and teargas, or being unable to swim, some fell back into the lagoon and drowned. Others who were able to swim far enough to escape the attention of the soldiers survived. Secondly, some of the demonstrators were actually arrested and taken to places of detention in Lomé. However, they were subsequently tortured to death or deliberately killed and their bodies were then dumped in the lagoon. The National Human Rights Commission concluded that members of the Togolese army were responsible for the killings and had written to President Eyadéma calling on him to find out and make known the identities of those individuals responsible for the deaths. The National Human Rights Commission report added that if no information was forthcoming, it would hold President Eyadéma, as head of the army, responsible for the actions of the soldiers. The National Human Rights Commission reported that no reply had been received from President Eyadéma. Other sources have questioned whether the bodies were indeed of people killed by the army on the causeway over the Bè lagoon, suggesting that many more of the victims had been killed elsewhere by the army and then dumped in the lagoon.

The National Conference joined the National Human Rights Commission and Amnesty International in calling on President Eyadéma to bring the perpetrators of the lagoon killings to justice. However, not only have no proceedings begun, but the President is known to have taken no action at all either to identify the commanders or soldiers responsible for the killings and to

bring them to justice, or to modify the procedures and practices of the armed forces in order to prevent a repetition of the killings.

V. AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE GOVERNMENT OF TOGO

The 1991 National Conference brought important new information to the attention of the public and the authorities about human rights violations committed in the past, as have investigations by the National Human Rights Commission. All the abuses which have been revealed constitute offences against Togolese law, as well as against international human rights standards. Nevertheless, not only have the President and the government failed to take action in response, but the independent prosecuting authority responsible for initiating criminal investigations and prosecutions wherever crimes are known to have occurred, the Procuracy, has also been inactive. This is because the rule of law has in effect been suspended: over many years it has been hi-jacked and manipulated by those in power, with the result that institutions such as the Procuracy are subordinate to those in power instead of independent of them.

Both during and since the National Conference there has been a political struggle between those loyal to President Eyadéma and those who support the Prime Minister's transitional government. One of the elements of this struggle has been disagreement between those wanting to proceed with judicial prosecutions and compensation for victims of human rights violations and those wanting to avoid any further examination of the past, ostensibly on the grounds that this will avoid conflict and bring about national reconciliation. In Amnesty International's experience, a failure to investigate past abuses and bring those responsible to justice increases the chances of human rights violations recurring, both because torturers and killers are still at large and may once again be in a position where they have custody of prisoners or the power to kill, and because the measures necessary to prevent abuses are not identified and implemented.

A. The need for thorough investigation of past human rights abuses

Amnesty International has noted that in recent years there have been dramatic political changes in various regions of the world, often accompanied by an increased awareness of the need to respect human rights. Many countries, like Togo, have established institutions aimed at the promotion and protection of human rights. However, notwithstanding these welcome developments, persistent patterns of human rights violations are still occurring in many countries throughout the world. Amnesty International believes that the phenomenon of *impunity*, or exemption from punishment, is one of the main factors contributing to these continuing violations.

In this respect, the recommendations made by Amnesty International in a statement to the Sub-Commission on 20 August 1991 are directly relevant to Togo at the moment.

"International standards clearly require states to undertake proper investigations into human rights violations and to ensure that those responsible are brought to justice. The adequate investigation of human rights abuses is essential if the full truth is to emerge. Victims, their relatives and society at large all have a vital interest in knowing the truth about past crimes. Similarly, bringing the perpetrators to justice is not only important in respect of the individual case, but also sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable. When investigations are not pursued and the perpetrators are not held to account, a self-perpetuating cycle of violence is set in motion resulting in continuing violations of human rights cloaked by impunity.

"Impunity negates the values of truth and justice and leads to the occurrence of further violations. If this cycle is ever to be broken, Amnesty International believes that all governments, including successor governments, must undertake certain fundamental responsibilities:

"First, there should be thorough investigations into allegations of human rights violations. The object of such investigations should be to determine individual and collective responsibility and to provide a full account of the truth to the victim, their relatives and society. Investigations must be undertaken by impartial institutions, independent of the security forces, and must be granted the necessary authority and resources for their task. The results of such investigations should be made public.

"Second, those responsible for human rights violations must be brought to justice whether they are officials of a past or current government and regardless of whether they are members of the security forces or unofficial paramilitary groups. Alleged perpetrators should be brought to trial and such trials should conclude with a clear verdict of guilt or innocence. Although Amnesty International takes no position on the nature of the sentence, the systematic imposition of penalties that bear little relationship to the seriousness of the offences brings the judicial process into disrepute and does not serve to deter further violations. It is, of course, also important that such trials are conducted in full conformity with internationally-recognized standards and that the defendants are not subjected to torture or to the death penalty.

"Third, amnesty laws which have the effect of preventing the emergence of the truth and subsequent accountability before the law should not be

acceptable, whether effected by those responsible for the violations or by successor governments. However, Amnesty International takes no position regarding the granting of post-conviction pardons once the truth is known and the judicial process has been completed."

B. The need for reforms to prevent future abuses of human rights

In 1987 Togo took several steps towards eradicating human rights violations, which were welcomed by Amnesty International. Togo signed the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, notably acknowledging under Article 22 the competence of the UN Committee against Torture to consider individual complaints of violations against the Convention. Togo also ratified the Optional Protocol of the United Nations International Covenant on Civil and Political Rights (having ratified the Covenant itself in 1984). The National Human Rights Commission was set up at the same time to investigate reports of human rights violations. Amnesty International welcomed these positive developments. It is now urging the government of Togo to implement all the articles of these international standards to prevent the use of torture, arbitrary detentions and extrajudicial executions. In particular, Amnesty International is urging the government of Togo to take the following steps.

1. Action Against Torture

- ! Officially condemn the use of torture and make it clear to all law-enforcement personnel that torture will not be tolerated under any circumstances.
- ! Limit incommunicado detention, as it is often during this period when detainees are completely at the mercy of their interrogators and guards that torture takes place. In order to prevent torture, it is vital that all prisoners be brought before a judicial authority promptly after being taken into custody, and that relatives, lawyers and doctors have prompt and regular access to them (these are in any case recognized as basic human rights).
- ! End secret detention. All prisoners should be held in publicly recognized places of imprisonment and accurate information about their whereabouts should be made available to relatives and lawyers.
- ! The authorities should organize independent, impartial and effective investigations into all complaints and reports of torture. Those found responsible as a result of such investigations should be brought to justice.

- ! Ensure that any political detainees facing trial have the benefit of a fair and public trial with full access to defence counsel.

2. Action Against Arbitrary Detention - the importance of the Courts and Procuracy

In addition to these specific measures against torture, Amnesty International is also urging the Togolese authorities to reform detention procedures in order to ensure that international standards for the protection of prisoners are upheld, notably the United Nations Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment, adopted by the UN General Assembly in December 1988. Amnesty International is particularly concerned that the government of Togo should implement the safeguards embodied in a series of principles quoted below, which require that all detainees are referred to court or to a judicial authority within a short time of their arrest and that detainees have the right to challenge the lawfulness of their detention. They are intended to prevent government officials or the security forces themselves imprisoning suspects on their own authority, as has often been the case in Togo.

- ! Principle 4 states: "Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be the subject to the effective control of, a judicial or other authority."

In contrast with this principle, in many cases in Togo detainees have been held in "*garde à vue*" detention for weeks or months without having their cases referred to the Procuracy or courts.

- ! Principle 11 is divided into three parts:

- "1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.
- "2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.
- "3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention."

! Principle 32 states:

- "1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.
- "2. The proceedings referred to in paragraph 1 shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority."

3. Ensuring that all detained or imprisoned persons are aware of their rights

This principle requires that all detainees should be informed of their rights shortly after arrest and is intended, among others, to protect detainees against ill-treatment.

! Principle 13 states: "Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights."

Another of the principles requires that the failure of the authorities to comply with Principle 13 by informing detainees of their rights when obtaining evidence should be taken into account when the courts or others have to decide which evidence is admissible against an accused person, so that statements made by prisoners who are not informed of their rights should be ruled inadmissible by courts.

4. Ensuring that an inquiry is made into all cases involving a detainee's death or "disappearance"

This principle details the steps to be taken when someone dies or "disappears" in custody. It is intended to ensure that responsibility for the death or "disappearance" is established as a step towards preventing further incidents. The independent investigation which is required would also indicate to those dealing with prisoners that no such abuses will be tolerated. Investigations should be carried out as a matter of routine by a judicial authority, such as a *juge d'instruction* (examining judge) every time a prisoner dies in custody or a person is killed by the security forces. In the past, deaths in custody in Togo have generally not been properly investigated.

! Principle 34 states:

"Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation."

5. Preventing Extrajudicial Executions

International standards require governments to take action to prevent extrajudicial executions or other unlawful killings by members of their security forces. In the past three years the UN has adopted important new standards in this domain, requiring governments to carry out independent inquiries when there are reports of extrajudicial executions² and to establish strict limitations on when force and firearms can be used by their security forces³, generally allowing lethal force to be used only when lives are at stake and as a last resort. Basic to these standards is the principle that those who give soldiers or others the wherewithal to use a gun or other coercive force must give detailed instructions on when force may be used and, indeed, when certain types of force may not be used; for example, not opening fire with live ammunition on a crowd of peaceful but unauthorized demonstrators⁴.

² ECOSOC Resolution 1989/65 of 24 May 1989 adopting the Principles on the effective prevention and investigation of extra-legal, arbitrary and summary executions.

³ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders on 7 September 1990 and welcomed by the UN General Assembly in Resolution 45/121 on 14 December 1990.

⁴ Articles 12 - 14 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials concern the policing of unlawful assemblies and say:

"12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

"13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent

International standards attach considerable importance to effective investigations being carried out in response to reports not only of extrajudicial executions, but also torture and other abuses. Some of the characteristics of proper investigations are referred to below.

Investigations can take two different forms: firstly, a permanent institution of inquiry, such as the National Human Rights Commission; and secondly specific inquiries into particular incidents or reports of abuse, such as a judicial commission or a board of inquiry. The existence of a permanent institution obviates the need for a government decision to order an inquiry into particular allegations, so long as the institution is able to take action itself to initiate an inquiry.

necessary.

"14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9."

Principle 9 stipulates in turn:

"9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme measures are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

Principle 11 describes the guidelines which the authorities are under an obligation to provide:

"Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty."

Investigations to establish the facts and recommend remedies are an essential way of coming to terms with the reality of human rights abuses and modifying the behaviour of the agencies responsible.

The main objective of a complaints machinery is to establish whether a human rights violation has occurred. This is not the same thing as a criminal investigation to establish beyond reasonable doubt who committed an offence, which in many cases may be referred to a subsequent investigation. The different aims and levels of evidence required means that there are many circumstances when it would not be appropriate for investigations into allegations of human rights abuse to be conducted by those who are used to ordinary criminal investigations, such as members of the Procuracy.

The investigating body must, however constituted, be independent and be able to demonstrate its independence, for example from the security forces whose activities it is investigating. The personal safety of investigators must be ensured. It should be capable of acting on its own initiative, without having to receive formal complaints, wherever there is good reason to believe a human rights violation has taken place. Evidently, to do so, it must have adequate staff and resources to carry out its investigations.

The investigating body should have the authority and power to obtain all information necessary to its inquiry, including the authority to subpoena witnesses, records and documents and conduct on-site investigations in places of imprisonment. It should have the power to ensure the protection of witnesses and should make these powers known. It should have available to it any relevant medical documentation, for example the results of examinations by doctors after a complaint of torture is made or after a suspicious death.

The investigation should be speedy if it is to serve the causes of justice and deterrence. It should issue a public report as soon as possible after the conclusion of its work, containing its findings, conclusions and recommendations in full. It should not be sufficient for an investigation to conclude whether an abuse of human rights has occurred or not, but it should also assess what modifications of procedure or personnel are required to prevent the abuse recurring. These requirements remain vital even if it is long after an event which was not investigated at the time.

In all cases, the government's response to an inquiry's findings, conclusions and recommendations should also be made public. It is such a response which has been completely lacking since the National Human Rights Commission submitted its report to President Eyadéma about the April 1991 Bè lagoon killings. The absence of any response, just like the failure of the prosecuting authorities to open investigations into other cases of human rights violations in the past, indicates that those in government are unwilling or unable to uphold the rule of law and to protect human rights.

The body of a suspected victim of a security force extrajudicial execution is dragged from a lagoon where 27 more bodies were discovered.

Other bodies dragged from the Bè lagoon.

A prisoner in skeletal state as a result of his detention at the CRS detention centre in Kaza.

