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ПООЩРЕНИЕ И ЗАЩИТА ВСЕХ ПРАВ ЧЕЛОВЕКА, ГРАЖДАНСКИХ, ПОЛИТИЧЕСКИХ, ЭКОНОМИЧЕСКИХ, СОЦИАЛЬНЫХ И КУЛЬТУРНЫХ ПРАВ, ВКЛЮЧАЯ ПРАВО НА РАЗВИТИЕ

Доклад Специального докладчика по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видах обращения и наказания Манфреда Новака

МИССИЯ В ТОГО*

* Резюме доклада об этой миссии распространяется на всех официальных языках. Сам доклад содержится в приложении к резюме и распространяется на языке представления и на французском языке.

Резюме

Специальный докладчик по вопросу о пытках и других жестоких, бесчеловечных или унижающих достоинство видах обращения и наказания совершил поездку в Того 11-17 апреля 2007 года. Он выражает признательность правительству за оказанное ему всемерное содействие. В докладе рассматриваются юридические и фактологические аспекты, касающиеся положения в Того применительно к проблеме пыток и жестокого обращения.

Специальный докладчик отметил общую приверженность нынешнего правительства делу борьбы с пытками и значительные улучшения в этой связи за период с 2005 года в большинстве полицейских коммисариатов и постов жандармерии, которые он посетил, однако при этом он обнаружил доказательства жесткого обращения со стороны сотрудников правоохранительных органов, которое применялось в большинстве случаев во время допросов для целей получения признания. Он также заслушал заявления и показания задержанных относительно случаев избиения тюремными охранниками и другими заключенными как средства наказания. Он испытывает серьезную озабоченность в связи с тем, что подростки и дети подвергаются большей опасности стать жертвами телесных наказаний и жестокого обращения, нежели взрослые в тех случаях, когда они лишены свободы.

Что касается условий содержания под стражей в полиции и жандармерии, а также в большинстве тюрем, то, по мнению Специального докладчика, эти условия равносильны бесчеловечному обращению. В частности, он испытывает озабоченность по поводу крайней переполненности большинства тюрем, плачевных санитарно-гигиенических условий, качества пищи и рациона питания, а также ограниченного доступа к медицинскому обслуживанию.

Специальный докладчик выявил следующие основные причины такой ситуации: практически полная безнаказанность, вытекающая, в частности, из-за отсутствия в тоголезском законодательстве четко оформленного запрещения пыток; несовершенство системы уголовного правосудия; отсутствие гарантий против пыток, а также отсутствие независимых контрольных механизмов; привлечение военнослужащих к правоохранительной деятельности, а также нехватка ресурсов и коррупция.

В этой связи он рекомендует правительству Того принять меры с целью полного соблюдения своих обязательств по Конституции страны и международному праву прав человека. В частности, Специальный докладчик рекомендует правительству, при содействии международного сообщества, криминализировать пытки и вести борьбу с

безнаказанностью, совершенствовать существующие гарантии против пыток и обеспечивать их соблюдение, внедрять и укреплять механизмы реабилитационной юстиции и меры наказания, не связанные с лишением свободы, продолжать прилагать усилия по улучшению условий содержания под стражей, в частности, в плане предоставления медицинских услуг, обеспечивать недискриминационный характер системы уголовной юстиции на каждом процессуальном этапе, в частности путем борьбы с коррупцией. Кроме того, Специальный докладчик формулирует рекомендации, касающиеся предупреждения пыток, включая, в частности, необходимость установления четкой ответственности сотрудников правоохранительных органов за соответствующие действия и совершенствование системы их профессиональной подготовки.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT: MISSION TO TOGO (10-17 APRIL 2007)

CONTENTS

	Paragraphs	*Page*
Introduction	1 - 7	5
I. HISTORICAL CONTEXT	8	6
II. LEGAL FRAMEWORK	9 - 32	7
A. International level	9	7
B. Regional level	10	7
C. Domestic level	11 - 32	8
1. Constitutional protection of human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment	11 - 12	8
2. Provisions of the Criminal Code criminalizing torture	13 - 20	8
3. Safeguards against torture and ill-treatment during arrest and detention	21 - 29	10
4. Investigation of acts of torture	30 - 32	12
III. PRACTICE	33 - 59	13
A. Conditions in places of detention	33 - 45	13
B. The situation of torture and ill-treatment	46 - 52	16
C. Women and minors	53 - 59	17
IV. UNDERLYING CAUSES	60 - 79	19
A. Impunity	60 - 62	19
B. Deficiencies of the criminal justice system	63 - 69	20
C. Safeguards against torture, and independent monitoring	70 - 74	22
D. Involvement of the military in law-enforcement activities	75 - 76	24
E. Lack of resources and corruption	77 - 79	24
V. CONCLUSIONS AND RECOMMENDATIONS	80 - 118	25
Appendix		
Places of detention - individual cases		31

Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the Human Rights Council, Manfred Nowak, undertook a visit to Togo from 11 to 17 April 2007, at the invitation of the Government.

2. The purpose of the visit was twofold: to assess the situation of torture and ill-treatment in the country, and to offer assistance to the Government in its efforts to improve the administration of justice, including the police/gendarmerie and prison sector. The invitation of the Government to the Special Rapporteur illustrates the willingness of Togo to open itself up to independent and objective scrutiny of its human rights situation. He notes that the overwhelming majority of his interlocutors indicated that the situation has improved considerably since 2005. The Government at all levels assured him that Togo has left its past behind. He encourages the Government to implement the recommendations contained in this report with a view to further improving the situation of torture and ill-treatment.

3. The Special Rapporteur held meetings with the Prime Minister, the Minister for Foreign Affairs and African Integration, the Ministers of Human Rights and Democracy, Security, Justice, Social Action and Women's Promotion, a representative of the Defense Ministry, the Attorney General, the President and several members of the National Human Rights Commission.

4. He also met with non-governmental organizations and other civil society representatives. In addition, the Special Rapporteur held meetings with the International Committee of the Red Cross, the United Nations country team, including the United Nations Development Programme (UNDP), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Regional Centre for Peace and Disarmament in Africa (UNREC), United Nations Population Fund (UNFPA) and Food and Agriculture Organization of the United Nations (FAO), and with members of the diplomatic community in Lomé.

5. The Special Rapporteur wishes to thank the Ministry for Foreign Affairs and other authorities for their full cooperation He had unrestricted access to prisons and gendarmerie posts as well as police detention facilities without prior announcement and was able to conduct private interviews with detainees. In Lomé, he visited the civil prison and the special juvenile detention centre, the headquarters of the Gendarmerie, of the Judicial Police and of the National Intelligence Agency. In Notsé, he inspected the prison. In Kara, he visited the prison, and the Paratroopers' Military Camp (Camp Landja), where he regrets that he was initially prevented from entering the detention facilities and that some of his team members were severely threatened by soldiers. He also visited the anti-gang brigade of the gendarmerie and the police commissariat. In Pya, Anié, Sotouboua and Agbelouvé he inspected the gendarmerie posts. In

Sokodé, he visited the gendarmerie investigation unit and in Tsevié, the police station. He also met with the prosecutors in Sokodé and Tsevié.

6. On 12 September 2007, a preliminary version of this report was sent to the Government. On 11 December 2007 the Government provided detailed comments, which have been carefully studied and taken into account.

7. The Special Rapporteur expresses his appreciation to the Government for the full cooperation it extended to him during the visit. He further expresses his gratitude to the United Nations Resident Coordinator in Lomé, the Office of the High Commissioner for Human Rights in Lomé, and the entire United Nations team for the excellent assistance prior to and throughout the mission, including human rights officers, interpreters and drivers; Dr. Hans-Petter Hougen, forensic doctor of the University of Copenhagen; and Ms. Julia Kozma and Ms. Isabelle Tschan of the Ludwig Boltzmann Institute of Human Rights in Vienna.

I. HISTORICAL CONTEXT

8. Since gaining independence from France in 1960, much of Togo's post-colonial period has been characterized by military rule. When Colonel Gnassingbé Eyadema, who led the country ever since a 1967 coup, dissolved the Government in 1993, the European Union (EU) suspended aid under the Lomé Agreement. In 2004, the EU resumed dialogue on the Government's initiative, and in the process, the Government agreed to "22 undertakings" relating to the restoration of democracy and the reinforcement of respect for human rights.[1] However, upon Gnassingbé Eyadema's death in February 2005, his son, Faure Gnassingbé, was appointed President with the support of the military, and widespread international condemnation followed. Faure Gnassingbé agreed to hold presidential elections in April 2005. The election, in which the incumbent gained 60 percent of the vote, was overshadowed by a large-scale outbreak of street violence and major violations of human rights, such as arbitrary killings, disappearances and torture. A Special Envoy was sent by the United Nations High Commissioner for Human Rights

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[1] See Council of the European Union decision 2006/864/EC of 13 November 2006, *Official Journal of the European Union*, 1 December 2006. The following three undertakings are of particular importance to the mandate of the Special Rapporteur:

"Undertaking No. 2.1: Ensure that there are no instances of extrajudicial killings, torture or other forms of inhuman or degrading treatment on Togolese soil";

"Undertaking No. 2.4.Grant free access to lawyers and to humanitarian and Human rights NGOs, accompanied by a doctor of their choice,, to all detainees in all places of detention (prisons, gendarmerie and police posts etc.) allowing them to verify the absence of torture and other ill- treatment.";

"Undertaking No. 2.6: Take legal or disciplinary action against the known perpetrators of extrajudicial killings, acts of torture and inhuman and degrading treatment. This undertaking should also include the amendment of the corresponding legal and regulatory texts where it is necessary."

and established that almost 500 persons were killed.[2] Despite continued criticism levelled at the Government for its poor human rights record, particularly for not bringing the perpetrators of these massive human rights violations to justice, there have been some positive signs. In August 2006 the Government and all opposition parties signed a "Global Political Accord",[3] granting the opposition participation rights in the Government.

II. LEGAL FRAMEWORK

A. International level

9. The Special Rapporteur notes that Togo is a State party to the major United Nations human rights treaties prohibiting torture and ill-treatment, including the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC). With regard to the latter convention, Togo has ratified the Optional Protocol on the involvement of children in armed conflict, as well as the optional protocol on the sale of children, child prostitution and child pornography. Togo is a party to the First Optional Protocol to the ICCPR, concerning the right of individual petition, but not to the Second Protocol on the abolition of the death penalty. Togo has recognized the competence of the Committee against Torture to consider complaints from other States parties as well as from individuals by making the declaration under articles 21 and 22 of the Convention against Torture. Togo has signed, but not yet ratified the Optional Protocol to the Convention against Torture (OPCAT). Togo is also party to the Geneva Conventions of 12 August 1949 and to the Additional Protocols I and II. Togo is not a party to the Rome Statute of the International Criminal Court.

B. Regional level

10. Togo has ratified the African Charter on Human and Peoples' Rights and its Protocol on the establishment of an African Court on Human and Peoples´ Rights. Further, Togo is party to the African Charter on the Rights and Welfare of the Child. In addition, it has signed the Protocol to the Charter on Human and Peoples' Rights on the Rights of Women in Africa. As a member of the African Union, Togo is called upon to adhere to the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) adopted by the African Commission on Human and Peoples' Rights in 2002.

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[2] Report of the Special Envoy, Doudou Diène, endorsed by the High Commissioner ("La mission d'établissement des faits chargée de faire la lumière sur les violences et les allégations de violations des droits de l'homme survenues au Togo avant, pendant et après l'élection présidentielle du 24 avril 2005 » , of 29 August 2005); henceforth the « United Nations High Commissioner's Report ».

[3] Accord Politique Global, 20 August 2006

C. Domestic level

1. Constitutional protection of human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

11. The preamble, articles 50 and 140 of the Constitution of 14 October 1992 express the Togolese people's attachment to human rights and international legal instruments protecting human rights. According to article 50, "the rights and duties enshrined in the Universal Declaration of Human Rights and under other international human rights instruments ratified by Togo are deemed to be part of the Constitution". Article 140 specifies that all duly ratified or approved international instruments receive immediate national validity. In the event of a conflict between international treaties and national law, international treaties should take precedence. Thus, Togo applies a monist legal system. The Togolese Constitution contains in its chapter II a set of human rights, including the rights to freedom of movement (art. 22), freedom of thought, religion and expression (art. 25), freedom of the press (art. 26), and of freedom of association and peaceful demonstration (art. 30). Further, the Constitution grants some economic, social and cultural rights, such as, inter alia, the right to health (art. 34), the right to education for children (art. 35) and the right to work (art. 37).

12. More specifically, articles 13, 16 and 21 of the Constitution contain provisions relating to torture. Article 21 provides that: "The human person is sacred and inviolable. No one may be subjected to torture or other forms of cruel, inhuman or degrading treatment. No one may avoid a sentence for such violations by referring to the order of a superior or a public authority. Any individual or agent of the State guilty of carrying out such acts either on his own initiative or under orders shall be punished in accordance with the law. Any individual or agent of the State shall be relieved of the duty to obey orders when the order in question is a serious and clear violation of respect for human rights and public freedoms". Article 13 states that the State shall guarantee "physical and mental integrity, the life and security of all persons living on the territory. No one shall be arbitrarily detained or deprived of his life." Furthermore, article 16, paragraph 1, states that "all defendants and detainees must be given treatment that preserves their dignity and their physical and mental health and that assists in their social reintegration".

2. Provisions of the Criminal Code criminalizing torture

13. The Togolese Criminal Code (CC) of 1980, and the Code of Criminal Procedure (CPP) of 1983 - both predate the Constitution of 1992 - contain no provision defining and criminalizing torture as required by article 4 of the Convention against Torture. Some provisions of the Criminal Code (arts. 46, 47, 48 and 61) relate to "wilful violence", but they do not cover all aspects of torture, do not establish adequate penalties and are subject to statutes of limitations.

14. Article 46 of the Criminal Code reads as follows: "Anyone who wilfully commits violence against others shall be liable to a penalty of between two months' and two years' imprisonment, if the violence leaves the victim incapacitated for work for a period of between 10 days and three months". Article 47 provides that, under certain qualifying circumstances, the penalty may be increased to up to five years imprisonment. In case of unintentional death of the victim, according to article 48, the perpetrator can be punished by 5 to 10 or in certain cases 20 years imprisonment.

15. Articles 60 and 61 of the Togolese Criminal Code prohibit the deprivation of liberty, the use of violence against any person and define the corresponding punishments. According to article 150 of the Togolese Criminal Code, if such an offence is committed by a magistrate or public official in his/her function or by abuse of power, the penalty will double.

16. Articles 3 and 4 of Act No. 98-16 of 17 November 1998, supplementing the Togolese Criminal Code of 1980, prohibiting female genital mutilation, criminalize participation in female genital mutilation.

17. Article 14 of Act No. 91-14 of 9 July 1991, establishing special regulations for the Togolese police, provides that acts by the judicial are subject o disciplinary respectively criminal sanctions. Disciplinary action against security officers, according to article 37 of the Public Security Law of 1965, may result in lowering of rank for those under a certain rank, confiscation of salary for up to two months and prison or detention for up to two months. If a public official is convicted for having committed a felony, he or she also faces dismissal from service. However, a public official sentenced for a misdemeanour is not automatically dismissed.

18. The Togolese Criminal Code (arts. 17, 45, 222, 223, 233 and 234) still foresees capital punishment for a series of offences. However, according to State representatives before the United Nations Human Rights Committee, the Togolese courts have very seldom sentenced people to death.[4] The Special Rapporteur regrets that he has not received further detailed data/information on the latest death sentences and executions. He has, however, been informed that Togo is abolitionist in practice and that de jure abolition is being considered in the context of ongoing legislative reforms.

19. There is no provision in Togolese legislation prohibiting the expulsion, return (refoulement) or extradition of a person to another State when the risk exists that he or she might be tortured (non-refoulement). On the contrary, Togo is part of Sub-Regional Agreements[5] with neighbouring States, which allow for a person who has been convicted of an offence to be

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4 CCPR/C/TGO/2001/3, para. 108.

5 Quadripartite Agreements (Agreement on Police Cooperation; Agreement on Mutual Administrative Assistance in matters relating to Customs, Trade and Immigration; Extradition Treaty) signed by Benin, Ghana , Nigeria and Togo on 10 December 1984

returned by one of the signatory States, in complete disregard of any judicial procedure, since under the agreements the return of such persons is the sole responsibility of the police officers of the States concerned.[6]

20. With regard to corporal punishment, the Special Rapporteur was informed that, on 6 July 2007, taking into consideration the concerns expressed by the Committee on the Rights of the Child,[7] the National Assembly adopted the Child Code.[8] Its article 376 provides that: "Corporal punishment and any other form of violence or ill-treatment are prohibited in schools, vocational training centres and institutions".

3. Safeguards against torture and ill-treatment during arrest and detention

(a) Constitutional safeguards

21. Article 15 of the Constitution provides for habeas corpus. Article 16, paragraph 2, refers to the right of defendants or detainees to be examined by a physician of their choice and paragraph 3 of the same article establishes the right of all defendants to be assisted by counsel during the preliminary investigation. According to article 17 "each detained person shall be promptly informed of the charges against him/her" and Article 18 provides for the presumption of innocence.

(b) Criminal Code and Criminal Procedure Code

22. Article 52 of the Criminal Procedure Code (CCP) sets a time limit of 48 hours for police custody, which can be renewed once by another 48 hours by the State Prosecutor or the prosecuting judge, before detainees are to be brought before a judge. If the arrest took place at a distance from the Public Prosecutor's Office, the 48-hour period may be increased by another 24 hours, i.e. the time necessary to transport the person in custody to the competent judge. Article 1 of Law No. 87-05 of 26 May 1987 modifying Law No. 85-19 of 27 December 1985, completing article 52 of the Criminal Procedure Code, allows for police custody of eight days if the facts are particularly grave and complex and if the prolongation has been authorized by a prosecutor or a judge.

23. According to article 53 of the CCP, in each police and gendarmerie post where persons may be held in custody, a register must be kept. The register contains the complete identity of the person in custody, the reason for his/her detention, start and end of custody as well as the conditions of arrest. The register must be signed by the person held in custody.

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6 See also CAT/C/TGO/CO/1 para. 14.
7 CRC/C/15/Add.255, paras. 8 and 9.
8 Law no. 2007-017 of 6 July 2007.

24. Further, article 53, paragraph 3, establishes that the person held in custody may, upon his/her request or the request of his/her family, receive medical examination. Such examination, however, is subject to the approval of the Public Prosecutor's Office.

25. Although the presence of a lawyer is a constitutional right, the Code of Criminal Procedure does not contain any express provision on access to a lawyer. In order to fill this legal gap, the Government issued Circular No. 0222/MISD-CAB of 17 May 2004. According to the circular, "when there is reliable and consistent evidence that the commission of an offence can be imputed to an individual and this individual is taken into police custody, he or she may request the assistance of a lawyer from the moment he or she is taken into custody". Lawyers may at their request have a 15-minute interview with the accused as of the 24th hour of police custody. Following this interview, the lawyer enters the name of the accused, the date and reason for arrest as well as any other observations and comments in a special register at the respective police or gendarmerie station. According to the circular, lawyers have certain obligations, such as confidentiality. Furthermore, they are not allowed access to the detainees' cells. The actual investigation is conducted without the presence of the lawyer. When the period of police custody and the procedure are nearly complete, the senior police officer may allow the lawyer to interview the defendant for a second time, at the lawyer's request.[9]

26. Article 92 of the CCP requires that, upon appearing before a judge, the detainee be informed precisely of the charges that are held against him/her, about his/her right to remain silent, about his/her right to choose a defence lawyer, all of which has to be mentioned in a transcript. Nevertheless, Circular No. 0222/MISD-CAB does not contain a similar obligation for the arresting or investigating police or gendarmerie officers.

27. Section 7 of the CCP regulates pre-trial detention. Article 112 states that pre-trial detention is an extraordinary measure. According to article 113, a resident of Togo accused of a misdemeanour with a maximum penalty of two years may not be held longer than 10 days in pre-trial detention after his/her first presence before the investigating judge, if he/she has not yet been convicted for a crime or sentenced to imprisonment for more than three months without probation for an offence under national law. In general, a person held in pre-trial detention shall be released when the length of pre-trial detention has reached half of the maximum sanction foreseen and if the accused is a first offender. Articles 114 to 116 of the CCP regulate the release on bail upon request of the Public Prosecutor or the accused himself/herself.

28. Article 191 of the CCP states that "each month, each investigative judge's office shall post a notice of all cases under investigation with a note, for each case, of the date on which the most recent investigative measure was taken".

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[9] CAT/C/5/Add.33, para. 126.

29. Neither the Criminal Code nor the Criminal Procedure Code contain provisions requiring the invalidation of statements obtained as a result of torture.[10]

4. Investigation of acts of torture

(a) Complaints

30. One avenue through which to file a complaint is with the National Human Rights Commission (Commission nationale des droits de l'homme, or CNDH). This was the first national human rights institution to be created in Africa. Articles 156 to 158 of the Togolese Constitution of 2003 contain guarantees with regard to its independence and its functioning. It was established in 1987 and restructured in 2005[11] and on 31 May 2006. Its new members have taken up their functions in February 2007. According to the 2005 Law, the CNDH has the authority to initiate an investigation following a complaint from an individual or an NGO or at its own initiative.[12] The CNDH, at the request of its Chairperson or of one of its members, can act immediately on cases of human rights violations and may appoint a Special Rapporteur. The Special Rapporteur can issue recommendations to the CNDH. If the human rights violation continues, the CNDH will meet to examine the report submitted by the Special Rapporteur and take suitable measures to end the situation, having recourse in particular to the President of the National Assembly who will report it to the National Assembly; and/or the Head of State; or the Tribunals.

(b) Investigations of allegations of torture and ill-treatment

31. Senior law-enforcement officers, gendarmes and police officers who receive complaints of torture and ill-treatment are in charge of conducting the investigation. They can also launch preliminary investigations on their own initiative. Persons suspected of having committed crimes are brought before the State prosecutor. Pursuant to article 15 of the CCP, the State prosecutor, prosecuting judges, investigating judges as well as officers of the gendarmerie and the police are responsible for carrying out the investigations. In the summer of 2005, a special inspectorate (Inspection Générale) was created in the Ministry of Security, which is competent to receive individual complaints of torture or ill-treatment. According to the head of the inspectorate, it has so far not received any complaints relating to torture.

(c) Compensation

32. There are no provisions guaranteeing compensation for acts of torture in Togolese legislation. Neither is there any procedure for claiming compensation for acts of torture. The

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[10] CAT/C/TGO/CO/1, para. 24.
[11] Loi organique No. 2005-004 of 9 February 2005.
[12] Article 17 of Loi organique No. 2005-004.

general procedure for claiming compensation is based on articles 2 to 5 of the CCP and the Civil Code. Persons holding public authority incur civil liability for damages caused in their official function.[13] According to the Government, a judge, referring to the notion of violence as contained in the Code on Criminal Procedure, simultaneously decides whether to accord reparation to the victim. Moreover, the future Criminal Code, which will define and criminalize torture, will also provide for a compensation procedure for torture victims.

III. PRACTICE

A. Conditions of detention

1. Prisons

33. The Special Rapporteur visited three prisons: Lomé, Notsé and Kara. The men's quarters of Lomé and Notsé prisons are seriously overcrowded. He notes that the official capacity of Lomé prison is 800 persons, which, appears to be overstated given the size of the premises.[14] At the time of the Special Rapporteur's visit, 1,477 persons were detained in Lomé prison (for more details, see appendix). Therefore, the Special Rapporteur estimates that there are at least three times more persons in the civil prison of Lomé than it has the capacity to hold. He received indications that the prisons in Dapaong, Bassar and Sokodé are heavily overcrowded as well. The Special Rapporteur notes the Government's argument that the majority of the current prisoners are recidivists and that projects aiming at the construction of new prisons with the support of the European Union are being studied.

34. In Notsé prison's male section, where 124 detainees were held at the time of the Special Rapporteur's visit, there are four cells, of which one consists of a corridor of about 1 by 3 metres with three cells of 1 by 1.5 metres each. The Special Rapporteur was told that this cell housed 14 persons during the night. When he enquired how the space was distributed among prisoners, the prison administration indicated that these questions were dealt with by the "internal office", i.e. the prisoners' hierarchy. Whereas the "senior prisoners" (chiefs of yards) got special treatment and were allowed to sleep in the women's quarter when it was empty, it appeared that the weakest and most vulnerable prisoners were forced to sleep in the smallest cell, a clearly discriminatory practice.

35. The overcrowding clearly has repercussions in terms of hygiene and security. Detainees sleep in hot, foul-smelling and overcrowded cells, in which there is not enough space for every detainee to lie on their mats. No separate beds as required by international standards are available. Between 6 p.m. and 6 a.m. the detainees are locked in their cells, often without any

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[13] Article 149 of the Criminal Code.

[14] Amnesty International, in its briefing for the Committee against Torture of February 2004, estimates that the maximum capacity that would still guarantee minimum prison standards is 300 persons.

sanitary facilities, and consequently they use pots. Many interviewees complained about the fact that they were unable to protect themselves against mosquitoes at night. Prisoners with contagious illnesses in many instances are not separated from other prisoners.

36. Whereas in all prisons nurses provide day-to-day medical treatment, serious cases generally remain untreated if the detainee cannot provide the necessary funds (this is often the case with regard to foreigners). As a consequence, seriously ill persons are not hospitalized and receive inadequate medication in violation of international standards (e.g. a man from Bénin at Notsé prison who was found to be in urgent need of hospitalization by the accompanying doctor). The most common illnesses are malaria, headaches, stomach aches, diarrhoea, dermatosis (scabies, tinea), cough, flu, intestinal parasites, hernias, herpes and AIDS.

37. The Special Rapporteur received numerous complaints about the quality and quantity of the food. Generally, basic food consisting of "pâté", sometimes supplemented by beans and rarely by some fish, is provided only once per day. Other supplies depend on the family or on the solidarity of richer co-prisoners. Many prisoners indicated that, in order to receive the food that their families bring for them, they have to make payments to more "senior" fellow-prisoners or the prison administration. According to a recent report of the National Commission of Human Rights provided to the Special Rapporteur, some prisoners died from illnesses or starvation in 2005 and 2006.[15]

38. The Special Rapporteur considers that Kara prison, which has a large garden, where the prisoners can grow fruits and vegetables, could serve as an example in this regard. However, it is of concern that the assignment of plots is not transparent, that it is managed internally and that apparently prisoners do not enjoy equal access to these facilities.

39. The Special Rapporteur received information that the conditions had improved following the EU's PAUSEP (Programme d'appui d'urgence au secteur pénitentiaire) project which in some prisons was used to build visitors' rooms and sanitary facilities, to install water taps in cells, and to provide sleeping mats for prisoners, subsidized medical assistance and food supplies.

40. In violation of international standards, there is no separation whatsoever between pre-trial detainees and convicted prisoners in any of the three prisons visited by the Special Rapporteur. In these prisons, between 50 and 75 per cent of the prison population is awaiting trial.

41. In Kara prison, the Special Rapporteur discovered a cell holding three mentally ill prisoners and one cell with one mentally ill person. They all had to spend the whole day in their dark and dirty cells and did not receive any medical or psychiatric assistance.

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[15] Report of the National Commission of Human Rights (« Rapport de la visite des prisons et des autres lieux de détention, 22- 26 janvier 2007 »)

2. Gendarmerie and police custody[16]

42. In most police and gendarmerie custody facilities, detainees sleep on the concrete floor in hot and dark cells with little or no ventilation. Numerous detainees indicated that they are allowed to use the toilet only once a day (most often in the early morning) and that access to water for washing is extremely restricted – many of the persons the Special Rapporteur interviewed had not been able to take a shower for the entire period of their detention in police/gendarmerie custody, in some cases up to 10 days. Many gendarmerie and police posts do not have any sanitary facilities or these are not functional.

43. During gendarmerie and police custody the overwhelming majority of the detainees do not receive any food and therefore rely on food supplies from their families or fellow detainees who receive food from their families. Many interlocutors indicated that they do not have access to drinking water unless they pay for it.

44. The poor conditions are of particular concern because, in numerous cases witnessed by the Special Rapporteur, the time limit for police and gendarmerie custody (48 or 96 hours) had expired and had not been extended by the prosecutor as required by the law. This means that many detainees spend prolonged periods in appalling conditions without any legal basis. A large percentage of detainees spend more than the 96 hours – the maximum legal (time) period of police custody that can be authorized by the prosecutor - in detention, some of them even for two weeks.

3. Army camps

45. At the Paratroopers' Military Camp in Kara, the general conditions of detention were better than in police and gendarmerie custody facilities. However, detention in its tiny cells (112 by 90 cm) constitutes inhuman treatment. Whether the cells were used could not be verified because access by the Special Rapporteur was obstructed and delayed. He also regrets that members of his delegation were prevented by insults and threats from ensuring that nobody interfered with the place of detention and the detainees between his arrival at the camp and the moment when he had the possibility to actually inspect the cells. He is, therefore, unable to draw any conclusions from his interviews with detainees in the military camp.

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[16] According to information the Special Rapporteur received, outside of Lomé only about 5 per cent of the persons in custody are under police authority; he has not received figures for Lomé

B. Situation of torture and ill-treatment

1. Prisons

46. Whereas all interlocutors of the Special Rapporteur indicated that the number of beatings clearly has gone down, he has received allegations of beatings by guards, especially in Kara prison. In Lomé and Notsé, many of the interlocutors mentioned that, with the arrival of new prison administrators (*régisseurs*), the situation had improved considerably. However, in all prisons the Special Rapporteur was informed that it is often fellow-prisoners, notably the "chiefs of yard" ("CCs", which stands for "chefs de cour"), who either beat fellow prisoners themselves or order other prisoners to do so. Such incidents were reported in Notsé and Kara civil prisons in particular. These beatings serve either as punishment or as intimidation for newly arriving prisoners. It was also brought to the Special Rapporteur´s attention that in some prisons an "arrival fee" is collected by fellow-prisoners and that, if a prisoner could not pay, he would be subjected to beatings. The Government has informed the Special Rapporteur that the Deputy Prison Director in Kara who was beating detainees has been recalled to his unit and subjected to disciplinary sanctions by his superiors.

47. The prison directors implicitly admitted this situation by saying that the discipline within the prison was kept by the "*bureau interne*", i.e. the hierarchy of prisoners, and that the official prison administration only interfered with these internal affairs when things went "too far".

2. Gendarmerie and police custody

48. With regard to torture and ill-treatment by the police and the gendarmerie, the Special Rapporteur has received indications that the situation has also considerably improved since 2005. However, it would be wrong to say that cases of ill-treatment by gendarmerie and police officers are isolated. In most custody facilities visited by the Special Rapporteur, he found evidence of ill-treatment taking place on a day-to-day basis, primarily to extract confessions (most detainees reported that it stopped once they had signed the confession). Sometimes beatings were also used for the purpose of intimidation or punishment. In several cases the officers in charge admitted to occasionally using violence, especially when the detainee is suspected of having committed a grave crime or does not obey orders.

49. Most frequently detainees were beaten with *cordelettes* (a cord often used as belt), whips or wooden sticks on the head and various parts of their body, mostly the back and legs. Many were beaten on the soles of their feet. In some cases, gendarmes and police officers kicked detainees and/or pushed their hands, feet or faces down with their boots. In the headquarters of the judicial police in Lomé, detainees were reportedly forced to sit on a chair, with their hands cuffed behind the back of the chair. By putting his foot on the handcuffs the policeman then

pressed/pushed the detainee's hands and arms towards the floor, causing severe pain in the arms, shoulders and back. Several sources reported that threats were used to intimidate detainees.

50. The Special Rapporteur was also informed about a special gendarmerie order aimed at preventing suicides, which some officials (e.g. at the Sokodé gendarmerie detention facility) interpreted as requiring that inmates have to be naked day and night in their cells. However, according to the Government, the gendarmerie has never issued an order to detain persons naked during police custody. Forcing inmates to be naked constitutes degrading treatment. Others interpreted the order as allowing for the wearing of underwear only. No comparable instruction for the police seems to exist. Many of the detainees complained of the fact that they had to sleep either naked or in their underwear on the bare ground in stinking cells, which made them more vulnerable to mosquitoes.

51. It seems to be current practice to "ask" detainees to wipe and clean up the police/gendarmerie station, wash cars and motorbikes, which some perceived as humiliating. According to the Government, detainees only have to do the maintenance of the cells in which they are held. In some cases detainees were not allowed to be fully dressed while carrying out these tasks, which exacerbated the humiliation.

52. The Special Rapporteur witnessed one case of a person who had been shot in his back when he tried to escape after armed robbery, and where the medicine with which the hospital had provided the detainee had not been administered. This withholding of the medicine, according to the accompanying forensic doctor, might put the life of the detainee at risk because the wounds could become infected.

C. Women and minors

53. With regard to women in detention, the Special Rapporteur notes that the conditions in women's sections are considerably better than in the men's wings. However, apart from the overcrowding, most shortcomings concern also women's sections, especially those related to the quality and quantity of food, restricted access to sanitary facilities during the night and limited medical care. Neither prisons nor police and gendarmerie custody facilities employ any female guards, as required by international minimum standards (e.g. para. 53 of the Standard Minimum Rules for the Treatment of Prisoners). The Government indicated that this problem is being resolved through the creation of a special body of supervisors under the Ministry of Justice, which will be composed of female as well as male staff members.

54. Concerning violence against women resulting from entrenched adverse cultural norms, the Special Rapporteur shares the concern of the Committee on the Elimination of Discrimination

against Women (CEDAW),[17] in particular when it comes to female genital mutilation (FGM). He was informed about only one sentence, in 1998, under the 1998 Act No. 98-106, in which a woman who had performed FGM and the father of the victim were sentenced two 12 months imprisonment and a fine. He has also received reports that no data on the scale of the practice have been collected since a 1998 study, which found that in some parts of the country up to 33 per cent of the women might have undergone female genital mutilation.

55. As stated by the Committee on the Rights of the Child, Togo has no juvenile justice system compatible with the provisions and principles of the Convention,[18] which means that there is practically no alternative to detention of juveniles in conflict with the law and that no special safeguards are in place for persons under 18. The Government has indicated that the National Programme on the Modernization of the Judicial System, which is ongoing, envisages the creation of tribunals for minors in almost all jurisdictions of the country (for the time being there is only one, in Lomé). The establishment of a training centre for the justice system will allow for targeted training on juvenile justice.

56. According to the Government, in principle minors are always separated from adults in all prisons, especially at night. However, in many cases it turned out that minors were not separated from adults, e.g. in the Kara police commissariat and also in Notsé prison. In Kara prison, the juveniles had been held together with the adults until a few days before the Special Rapporteur's arrival. Although in the juveniles' section they were protected from abuse by adult detainees, they disliked it because there was no shade in the courtyard and they therefore could not go outside. They also indicated that, not only were they unable to attend any classes, they were also deprived of any books or other means of information and communication. The Government informed the Special Rapporteur that in Kara prison the creation of a shaded courtyard for minors has been ordered.

57. Often minors, sometimes even children, are put in detention instead of social care. In the police post of Kara the Special Rapporteur found a 13-year-old boy, who, at the time of the Special Rapporteur's visit, had been in detention for two nights because he had slept in a churchyard. He was also subjected to beatings when he claimed that he was Christian and the officers did not believe him.

58. At Kara prison, all of the juveniles in one cell had been beaten up on the same day. Prison security agents had forced them to lie down and beaten them with a tree branch on their buttocks to punish them.

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17 CEDAW/C/TGO/CO/5, paras. 14 **and** 18**.**

18 CRC/C/15/Add. 255, para. 74.

59. At the special juvenile detention centre in Lomé, where abandoned, trafficked and marginalized children, some younger than 10, are held together with young adults who have committed crimes, corporal punishment appears to be a routine practice. The Commander of the centre admitted to having recourse to beatings in severe cases of disobedience. This clearly violates the basic principles of the Convention on the Rights of the Child and other applicable international standards, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines).

IV. UNDERLYING CAUSES

A. Impunity

60. The Special Rapporteur would like to echo the recommendations issued by the Committee against Torture on 28 July 2006,[19] which asked for "urgent measures to incorporate in the Criminal Code a definition of torture in line with article 1 of the Convention, as well as provisions criminalizing acts of torture and establishing appropriate penalties for them". He has received assurances from the Government that this process is under way.[20] However, he would like to stress that criminalizing torture should be considered an absolute priority and that any further delays should be avoided.

61. The Special Rapporteur has not received information about a single case of anybody sentenced by a criminal court for having committed torture or ill-treatment in the past. He has not been informed of any functioning internal or external complaints mechanisms to which an alleged victim of torture or ill-treatment could have recourse, let alone one which the victims would trust. However, he heard about a hotline for victims under the prosecutor's office, which was functioning, but no further information was available.

62. Impunity is also of concern with regard to all acts of political violence committed over the years starting from 1958[21] and, in particular, regarding the events surrounding the 2005 elections, when torture and acts of violence were widespread, as documented by several inquiries. The Special Rapporteur has not received any information that, since then, any perpetrator has been brought to justice as recommended by the High Commissioner's 2005

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19 CAT/C/TGO/CO/1, para. 10.

20 According to the Government, certain draft texts, notably those aiming at bringing the Criminal Code into line with international standards with regard to war crimes, crimes against humanity, torture, terrorism and transnational crime are under consideration by the Ministry of Justice and will be the subject of an approval workshop in January 2008. The lack of funds to assure the functioning of the Commission on the Harmonization of Laws has contributed to the delays in finalizing these texts.

21 See Accord Politique Globale, 2.2.1.

report[22] and the report of the national enquiry commission. In this regard he would like to reiterate that the truth-justice-reconciliation triangle should constitute the central fundament of any sustainable settlement of the crisis in Togo.[23] He has learned with interest of the initiative of the Collectif d'associations contre l'impunité to file cases regarding violations of human rights in the election period with the courts and is looking forward to receiving information about its outcome. According to the Government, to resolve the problem of impunity, a Ministry in charge of Reconciliation and Ad hoc Institutions has been created under the Presidency. This ministerial body is responsible for the establishment of two commissions, one to promote measures to encourage nation-wide forgiveness and reconciliation and another one to shed light on acts of political violence committed in the past.

B. Deficiencies of the criminal justice system

63. The high percentage of pre-trial prisoners in places of detention (between 50 and 75 per cent of the prisoners in the prisons the Special Rapporteur visited, particularly alarming in Lomé, where out of 1,477 detainees only 352 had been convicted) illustrates that article 112 of the CCP, which states that pre-trial detention is an extraordinary measure, is not being enforced. The Special Rapporteur is of the opinion that the extensive recourse to pre-trial detention is contrary to the principle of the presumption of innocence and to the exceptional rule of deprivation of liberty laid down by international and domestic law. All phases of the criminal procedure are affected by severe shortcomings, which lead to unnecessary delays.

Police/gendarmerie

64. The first weak link is the police or gendarmerie, which are tasked with conducting the investigation, but often not given the tools to do so properly. Notably, they rarely have means of transport at their disposal, no money for fuel, no equipment to secure evidence and no forensic services. The lack of tools means that frequently, probably in the majority of the cases, confessions constitute the main evidence (unfortunately no statistics and not even estimates on the percentages are available). Another factor further weakening the efficacy of the criminal procedure is the unclear division of responsibility between the police and gendarmerie. Whereas the gendarmerie nominally operates mostly in rural areas, the Special Rapporteur was told that this distinction has been watered down and they often are active simultaneously in the same areas now (in particular in Lomé). Moreover, the fact that the gendarmerie is subordinated simultaneously to two ministries, on the one hand to the Ministry of Security and on the other hand to the Ministry of Defence, carries the risk that always comes with unclear command structures –nobody wants to take the responsibility.

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22 United Nations High Commissioner's Report, note 2, para 7.2.2.1.

23 Ibid.

Prosecutors

65. There are 12 prosecutors who cover the entire country. They are responsible for, inter alia, ensuring that the safeguards against torture, such as the 48-hour limit on police/gendarmerie custody and the proper keeping of the register, are respected. According to the Prosecutor General, to this end unannounced inspections of custody facilities are carried out regularly. However, the Special Rapporteur has found numerous detainees who had been in custody for much longer than the authorized period without any notification of the prosecutor. As a matter of fact, not only were the prosecutors not asked to extend the initial 48 hours of police/gendarmerie custody, but often people remained in custody for a week or even longer. According to the Government, additional staff will be assigned to the prosecutors, certain of whom will be in charge of conducting regular visits to places of gendarmerie and police custody. Moreover, in accordance with the future Criminal Code, persons held in custody will be automatically released if the relevant time periods are not respected.

The judiciary

66. Whereas the Special Rapporteur is aware of some reform efforts[24], he considers that, as of now, the judiciary is slow and inefficient. Many of the pre-trial prisoners interviewed had not been brought before a judge or seen a prosecutor in person even after several weeks or months of detention. Many were unaware of the status of their case even if they had been in detention for prolonged periods. The Special Rapporteur did not receive information about a single case, where the judiciary initiated an investigation into allegations of torture or rejected evidence because it had been obtained under torture, even when there was medical evidence proving that torture had been committed.

Lawyers

67. Very few of the detainees interviewed by the Special Rapporteur had seen a lawyer during custody and detention. The Special Rapporteur also learned that lawyers are often perceived as being involved in corrupt practices themselves. Also, they do not have the possibility to conduct private interviews with detainees, which severely hampers their ability to defend their clients. No legal-aid programme seems to be in place to provide persons accused of grave crimes with access to defence lawyers.

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[24] See the Programme national de modernisation de la justice for the period 2005 to 2010.

The penitentiary system

68. The staff-prisoner ratio is extremely low. The Special Rapporteur has been informed that, in the case of Lomé, 47 staff[25] manage a prison where almost 1,500 detainees are held. In Notsé prison, 8 staff members are responsible for 124 prisoners. Moreover, it appears that two parallel administrations, a "head of security" with his staff under the Ministry of Security on the one hand, and an "administrator" (*régisseur*) with his staff under the Ministry of Justice on the other, are in place. This contributes to the blurring of responsibility. Another major problem that the Special Rapporteur identified is the fact that in the prisons, authority is systematically delegated to what is referred to as the *bureau interne*, i.e. the hierarchy of prisoners, which necessarily leads to corruption, inter-prisoner violence and dependency of detainees on fellow prisoners.

Need for diversion and non-custodial punishment measures

69. The fact that the criminal justice system is evidently unable to cope with the current caseload, underlines the need for decriminalization and diversion, i.e. restorative justice mechanisms. In addition, credible alternatives to pre-trial custody, such as bail and supervision, and to imprisonment, such as community work, house arrest, verbal sanctions and conditional discharge, should be put in place or strengthened.[26] They have to be devised in a way that they are not perceived as soft options, but as real alternative measures of punishment by the judiciary and the public. Overall, the Special Rapporteur insists that detention should be a last resort and that the prisons available should be used for those persons who have been sentenced for committing grave crimes and who constitute a real danger to society, instead of locking up large numbers of persons in pre-trial detention. The Special Rapporteur notes with satisfaction that the use of punishments other than imprisonment is being considered.

C. Safeguards against torture, and independent monitoring

70. A series of safeguards are provided for by the Criminal Procedure Code, such as the 48-hour time limit for custody before approval by the prosecutor or the judge, the keeping of a register, etc. However, the Special Rapporteur has found that these safeguards are often not enforced. Whereas the law requires that the prosecutor extend the 48-hour period if there is the need to hold a person in police/gendarmerie custody longer, the Special Rapporteur has found numerous cases where this had not been done because police and gendarmerie officers try to use the time while a suspect is held in custody to "solve" criminal cases, inter alia by mediating between the victims of crime and the alleged offender. When the Special Rapporteur pointed out

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[25] Twenty (20) security guards from the Security Ministry, 13 administrative staff of the Ministry of Justice, 14 cooks and 2 medical staff (one nurse and one assistant). The Government has also decided to create a special team of 300 supervisors to be placed under the Ministry of Justice.

[26] In accordance with the United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules). For more details see also United Nations Office on Drugs and Crime "Handbook of basic principles and promising practices on alternatives to imprisonment", Criminal Justice Handbook Series. 2007.

that the maximum period of police custody had long expired, police and gendarmerie officers as well as prosecutors were fully aware that this practice was in contravention of the law and were willing to immediately release the persons concerned. In many cases, whereas almost all detainees are recorded in the "Cahier de garde", the "Cahier de garde à vue" (register) often does not reflect who was in detention and at what times. Also, there are sometimes disparities between the two registers, with the Cahier de garde reflecting the correct period and the Cahier de garde à vue indicating shorter periods. Further, in many of the police and gendarmerie posts visited the entries in the register were clearly made post-factum.

71. Prompt access to and continuous contact with defense lawyers is one of the most effective safeguards against torture. Circular No. 0222/MISD-CAB of 17 May 2004 allows for only minimal and ineffective legal representation. In particular, there is no guarantee that lawyers can speak to their clients in private from the moment of arrest. Other safeguards, such as the right to ask for a medical examination, are considerably restricted by unnecessary rules, such as the need for approval of the Prosecutor.

72. The implementation of these safeguards needs to be regularly controlled not only by governmental mechanisms (internal inspections, prosecutors, etc), but also by non-governmental independent monitors. Some non-governmental organizations, usually with charitable purpose, have access to places of detention on an ad hoc basis.[27] However, there is no national independent monitoring mechanism in place, which inspects and verifies conditions and treatment of detainees.[28] In this vein it is laudable that Togo has signed the Optional Protocol to the Convention against Torture, which foresees the establishment of an independent national mechanism entrusted with carrying out unannounced visits to all places of detention.

73. The Special Rapporteur notes that the National Human Rights Commission has been reformed and welcomes the first visits to places of detention it has undertaken in January 2007 and the report resulting from these visits. He would like to stress that it is of utmost importance that the Commission be adequately resourced and equipped to continue and further develop these efforts with a view to ensuring its contribution to a durable improvement of the treatment of persons in detention and custody.

74. Statistical data are a crucial tool for monitoring the criminal justice system, which allows the identification of trends and developments. Almost no statistics are available in Togo (e.g. on acquittal rates, cases of abuse of power, use of violence by State agents, on juvenile delinquency and violence against women), which risks undermining the State's ability to devise strategies to prevent and counter human rights violations. According to the Government, UNDP's Country

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[27] The International Committee of the Red Cross, by conducting regular visits to places of detention, plays a crucial role in pointing out issues that need to be addressed, but it is not a national mechanism and it does not render its reports public.

[28] See also CAT/C/TGO/CO/1, para. 21.

Programme, approved on 29 November 2007 in Lomé, provides for an integrated information management system to be progressively put in place, which will also include statistics.

D. Military involvement in law-enforcement activities

75. The Special Rapporteur is concerned about the interference of the military in law enforcement activities, e.g. in operations during demonstrations, but also in their participation in the organization and conduct of elections. It appears that no clear division of tasks and responsibilities between the various bodies is in place.

76. Furthermore, the militarized character of law enforcement agencies in general is of concern, as illustrated by the fact that the majority of the detainees referred to gendarmes as "soldiers". Also, the training system for all law-enforcement agents seems to be overly militarized, with emphasis on military skills and little preparation for the complex tasks of criminal investigation or maintenance of order.

E. Lack of resources and corruption

77. Many problems in detention facilities, such as the lack of adequate food, health care and minimum standards of hygiene are aggravated by the chronic lack of resources. The Special Rapporteur is also well aware that not only detainees suffer from the lack of resources: many staff of the police, the gendarmerie and the prisons raised the issue of their working conditions with the Special Rapporteur. Their offices are sometimes not in better shape than the cells where the detainees are held; sometimes they are even unusable. At times staff do not have access to proper sanitary facilities. Moreover, they indicated that they regularly have to work 24 hours without break and can never take holidays.

78. Whereas the Special Rapporteur appreciates that the lack of means poses considerable constraints on the criminal justice system, he would like to stress that it can never be invoked to excuse the fact that human beings spend several years in pre-trial detention, often only accused of petty crimes. The Special Rapporteur insists that all officials have to be aware that, from the moment of depriving a person of his or her liberty, the State is fully responsible for seeing that the fundamental rights of this person are respected.

79. The Special Rapporteur has received consistent allegations that corruption is deeply ingrained in the criminal justice system. Several sources indicated that at every stage, starting from the police and the judiciary to the detention centres and prisons, corruption is a quasi-institutionalized practice. In the prisons it impacts on the treatment, i.e. some detainees alleged that they have to pay in order not to be subjected to beatings upon arrival in the prisons. It was consistently reported that, in order to be able to receive visitors or food at prisons, the prisoner as well as the visitor have to pay bribes either to the prison administration or to fellow prisoners.

IV. CONCLUSIONS AND RECOMMENDATIONS

80. **The Special Rapporteur commends the Government for the many positive steps taken in the recent past, which have led to a considerable improvement of the situation. These steps include the commitment to and the partial implementation of the "22 undertakings" with the European Union, the establishment of an OHCHR field office in Togo and the concluding of the Global Political Accord. However, there remain several issues of concern.**

A. Conclusions

81. **Togolese criminal law does not contain an explicit definition and prohibition of torture in accordance with articles 1 and 4 of the Convention against Torture. Provisions of the Criminal Code regarding physical harm do not refer to the question of intention and the specific grounds for torture or ill-treatment; do not differentiate between private actors and public officials; do not cover the infliction of mental pain or suffering; and do not impose sanctions that reflect the gravity of the crime.**

82. **On the basis of interviews with detainees supported by forensic medical evidence and interviews with public officials, lawyers and representatives of NGOs, the Special Rapporteur concludes that, notwithstanding many positive developments since 2005, beatings and similar forms of ill-treatment still occur in the majority of detention places.**

83. **The Special Rapporteur notes with satisfaction that the situation with regard to ill-treatment in prisons has improved considerably since 2005. However, he found allegations and evidence of several cases of beatings by guards and other prisoners, i.e. as a means of punishment.**

84. **With regard to torture and ill-treatment by the police and the gendarmerie, the Special Rapporteur notes that some progress has been achieved and that he has not received serious allegations of torture since 2005. However, in most police *commissariats* and gendarmerie posts visited by the Special Rapporteur, he found persistent evidence of ill-treatment by law-enforcement officials, which was inflicted mostly during interrogation for the purpose of obtaining a confession, but also for reasons of punishment.**

85. **The Special Rapporteur is of the opinion that conditions in police and gendarmerie custody, but also in most prisons, amount to inhuman treatment. In particular, he is concerned about the severe overcrowding in most prisons, the deplorable sanitary situation, the quantity and quality of food, as well as the restricted access to medical services.**

86. **Safeguards against torture and ill-treatment are either insufficient or their implementation is not ensured. The Special Rapporteur is particularly concerned of the**

many instances where the 48-hour time limit for police/gendarmerie custody was not respected.

87. **He is very concerned that minors and children are at greater risk of corporal punishment and ill-treatment than adults in situations where they are deprived of their liberty. He is also concerned about the absence of a specialized juvenile justice system.**

88. **With regard to female genital mutilation, the Special Rapporteur welcomes the 1998 Act No. 98-106 prohibiting female genital mutilation and the awareness-raising campaigns conducted by several NGOs and the Ministry for Social Action and Women's Promotion. However, he has received credible reports that the practice and its social acceptance persist, and that effective mechanisms to enforce the prohibitions are virtually absent.**

89. **The Special Rapporteur concludes that there is an urgent need for reform of the entire criminal justice system in order to drastically reduce the extremely high number of pre-trial detainees. Whereas he welcomes the Government's efforts in this regard, he deplores the overly long periods of pre-trial detention.**

90. **The Special Rapporteur has also found that impunity with regard to perpetrators of torture and ill-treatment is almost total. Whereas he has received information that some prison and army officers have been subjected to disciplinary sanctions, not a single torture or ill-treatment case has been decided by a criminal court. He is particularly concerned about impunity with regard to the violence that occurred during the 2005 elections and before.**

91. **At all stages of the criminal justice cycle corruption is involved, all too often accompanied by discriminatory practices. Corruption in prisons, practised by prisoners and frequently with the consent of the prison authorities, leads to unequal access to essential goods and constitutes a violation of international norms.**

B. Recommendations

92. **He therefore recommends that the Government take further measures in order to fully implement its obligations under its Constitution and international human rights law. In particular, the Special Rapporteur recommends that the Government, with the assistance of the international community and OHCHR, should implement the following recommendations.**

Impunity

93. **The Government of Togo should criminalize torture in full accordance with article 4 and pursuant to the definition contained in article 1 of the Convention against Torture, and impose appropriate penalties.**

94. **It should fight impunity by introducing effective complaints mechanisms within places of detention leading to independent criminal investigations against perpetrators of torture and ill-treatment and to conduct thorough investigations into allegations of torture or ill-treatment *ex officio*; bring the perpetrators of torture or ill-treatment identified in the appendix to justice.**

95. **The Government should enact an explicit prohibition of corporal punishment and establish effective mechanisms to combat such practices;**

96. **With regard to minors, the Special Rapporteur reiterates the recommendations of the Committee on the Rights of the Child[29] that Togo should take effective legal and practical measures and raise awareness about the negative impact of corporal punishment on children.**

97. **The Government should establish effective mechanisms to enforce the prohibition of violence against women, including traditional practices such as female genital mutilation, continue to organize awareness-raising campaigns[30] and conduct a study to assess the prevalence of female genital mutilation in Togo.**

98. **The Government of Togo should support the National Human Rights Commission in its endeavours to become an effective player in the fight against torture and provide the necessary resources and training to the members and the staff of the Commission in order to enable them to process complaints.**

Safeguards

99. **The Government should improve existing safeguards against torture by introducing effective habeas corpus rules; ensure that existing safeguards such as the 48-hour time limit for police/gendarmerie custody are respected; ensure that every detainee undergoes an independent medical examination after arrest and after each transfer; ensure that a detainee's family is promptly informed about the arrest; and set up a legal-aid system for persons accused of grave crimes.**

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29 CRC/C/15/Add.255, para. 39.

30 CEDAW/C/TGO/CO/5, paras. 15 and 19.

100. **The Government should ensure that pre-trial detainees have prompt access to the judiciary and are at all times aware of their rights and the status of their case, introduce time limits on pre-trial detention and enforce them through regular independent inspections.**

101. **The Government should amend the law in order to ensure that no convictions are based on evidence obtained under torture and that confessions do not constitute the main basis for convictions; as a first step issue clear guidelines to the courts on these issues;**

Use alternatives to imprisonment

102. **The Government of Togo should divert minor cases from the criminal justice system through the use of restorative justice; introduce and strengthen alternatives to pre-trial detention and non-custodial measures of punishment; render the use of non-custodial measures obligatory unless there are compelling reasons for detention.**

Conditions of detention

103. **The Government of Togo should continue efforts to improve detention conditions, in particular with a view to providing health care; treat rather than punish the mentally ill and provide suitable safeguards to protect them from torture and ill-treatment; improve the quantity and quality of food, also through the creation of prison farms, access to which however, needs to be non-discriminatory.**

104. **The Government should separate pre-trial prisoners from convicts and train and deploy female personnel to women's sections of prisons and custody facilities.**

105. **Togo should ensure that detainees are not deprived of their clothes when in gendarmerie custody.**

106. **The Government of Togo should ensure that the criminal justice system is non-discriminatory at every stage; combat corruption, which disproportionately affects the poor, the vulnerable and minorities; and take effective measures against corruption by State agents, but also by senior members of the prison hierarchy.**

Prevention

107. **The Government should clarify the status of the gendarmerie and define clear responsibilities for the gendarmerie and the police; separate the military from internal law-enforcement functions; establish clear chains of command in prisons; and ensure that the prisons are managed by the authorities and not by the prisoner hierarchy.**

108. **The Government should improve training for law-enforcement and penitentiary personnel and mainstream human rights into the curricula.**

109. **The Government of Togo should ratify the Optional Protocol to the Convention against Torture, and establish effective national mechanisms to carry out unannounced visits to all places of detention.**

Juvenile justice

110. **With regard to juveniles, Togo should take immediate measures to ensure that deprivation of liberty is used only as a last resort and for the shortest appropriate period of time and in appropriate conditions.**

111. **Rather than holding them in detention, separate entities outside the criminal justice system should be set up to take care of orphans and marginalized children, e.g. trafficked and street children.**

112. **The Government should introduce a juvenile justice system with trained police, prosecutors and judges and establish relevant safeguards, especially legal aid.**[31]

Death penalty

113. **Togo should abolish the death penalty.**

Elections

114. **With regard to the elections held in October 2007, the Special Rapporteur welcomes the fact that they proceeded peacefully. He encourages the Government and political parties to continue to send strong signals to all stakeholders that torture and ill-treatment are unacceptable in an election context and that anybody who commits any act of violence will be held accountable. Elections should be conducted without any participation of the military.**

115. **The judiciary should speedily deal with the cases concerning alleged torture, ill-treatment as well as other human rights violations committed during the 2005 and earlier elections and bring the perpetrators to justice.**

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[31] See also CRC/C/15/Add.255, paras. 74 and 75.

Recommendation to the international community

116. **The Special Rapporteur requests the international community to support the reforms of the judicial, law-enforcement and prison systems of Togo, provided that the Government complies with the above recommendations.**

117. **The Special Rapporteur welcomes the commitment of the Government to respect the 22 undertakings agreed upon with the European Union; however, he calls on the EU to insist on complete implementation of these commitments.**

118. **He urges the international community to support OHCHR in its efforts to build national capacity to protect human rights in Togo and to assist the Government in designing policies to implement all earlier commitments in the area of human rights and the present recommendations.**

Appendix

PLACES OF DETENTION – INDIVIDUAL CASES

1. The Special Rapporteur conducted visits to detention facilities unannounced and was able to hold private interviews with detainees. If detainees requested confidentiality, their allegations are not contained in this appendix. The individual cases are based on allegations of detainees. In some cases, allegations of torture or ill-treatment were corroborated by medical evidence.

CIVIL PRISON, LOME

Visited on 13 April 2007

2. The official capacity of the Civil Prison in Lomé is 800. The size of the premises however, suggests that it cannot suitably accommodate that number. On the day of the visit, 1480 persons were detained in the prison. Three hundred and fifty five of them were convicted men (one of whom was sentenced to death), and 1086 of them were men in pre-trial detention. In the female wing, 39 women were detained. Six of them were convicted, and 33 of them were awaiting trial. One female minor was sharing a cell with adult female detainees.

3. **General conditions and treatment in detention.** The men's quarter was grossly overcrowded, with only a few guards. Nevertheless, the Special Rapporteur did not receive many reports about violent incidents. In particular, many of his interlocutors stressed that the situation had improved since the arrival of the new prison director. During the day, prisoners were allowed to stay in the heavily overcrowded courtyard. From 18.00 to 6.00, the detainees were locked in hot, overcrowded cells, of up to 100 persons. The cells had no beds and there was not enough space for every detainee to lie on the floor. During the night, detainees were not allowed to go to the toilet, but had to use pots. Access to water was granted at all times, but the Special Rapporteur received many complaints about the quality and quantity of food. He received only one allegation of corporal punishment by prison wards. Disciplinary punishment was administered in separate cells, where the prisoners to be punished were held during the daytime for up to one month, but no register of disciplinary punishment was being kept. At night, they returned to their original cells. There were no female guards. The prison had a medical unit, which is run by one male nurse. The separate sick ward with six beds was not functioning, allegedly because of insufficient security. Many prisoners complained about the lack of medicine and medical treatment.

4. **Emmanuel Okafo,** aged 28, Nigerian citizen, resident in Lomé. On 4 November 2006, he was arrested by the police and taken to a police station, where he was held for four days. There, he was suspended upside down with his hands and feet bound together and beaten with a wooden stick during interrogation. He reported the torture to the first judge to whom he was taken. On

10 November 2006 he was transferred to Lomé Civil Prison where he sleeps in an overcrowded cell together with 60 to 70 persons. The detainee reported that he had been suffering from malaria for two days, but had not been provided with medicine because he had no money to pay for it.

5. **Ibrahim Ahlassane**, aged 43, was arrested on 7 October 2004 in Lomé by the gendarmerie and immediately taken to Lomé Civil Prison. He found the detention conditions terrible, above all the overcrowding, the bad quality and insufficient quantity of food and the lack of medicine

6. **Gabriel Ahianyo Kodjeovi**, aged 43 years, was arrested on 15 December 2006 by the gendarmerie in Lomé, transferred to the prison on 16 December because he could not pay back his debt to a businesswoman. After three weeks, he was brought before a judge who refused to release him because he had no money to pay back his debt. He was held in a cell with 80 prisoners. His wife visited him once a week to bring food, but she had to pay 500 CFA in bribes to be allowed to visit. According to information received from the Government, Gabriel Ahianyo Kodjovi was released on 12 June 2007.

7. **Meme Agomuo**, aged 28, Nigerian citizen, was arrested on 29 June 1999 by the police in Lomé and held in custody for 29 days at the Direction de la Police Judiciaire. On 6 March 2007, he was sentenced to five years of imprisonment for complicity in robbery and “mafia-type crimes.” At the time of his sentencing, he had already spent almost 8 years in pre-trial detention and should thus have been released immediately following the judgment. He was told that he will soon be deported to Nigeria, but no action had been taken yet. The Government indicated that Meme Agomuo has been repatriated to his country on 2 May 2007

8. **Yiboe Atchou**, aged 39, was arrested and taken to the “Centre du Traitement de Renseignements” on 25 November 2005, where he spent three days with his hands handcuffed behind his back. He was forced to remove his clothes and [guards?] whipped him with a belt. On 19 December 2005, he was transferred to Lomé Civil Prison, where he experienced no more [physical?] violence.

9. **Dansomon Ayao** was arrested on 7 April 2007 by the gendarmerie and taken to the post of the “Service de Recherche et d'Investigation” (SRI), where he was handcuffed. He was put in a cell with eleven other persons for six days and was interrogated by the gendarmerie. Authorities did not notify his family for four days after his arrest. He confessed to the crime he was accused of and signed two statements. He was treated well by the gendarmerie and received two meals per day. On the day of the visit of the Special Rapporteur, he had just arrived at the prison. Since his arrest on 7 April, he had not seen a judge or a prosecutor, nor his lawyer.

10. **Agbeviade Camille,** aged 37, has been in detention at Lomé Civil Prison since 10 May 2002. He was found guilty of decapitating his brother and was sentenced to death on 5 Sept

2002. Prior to arriving at the prison, he had been held at Direction de la Police Judiciaire (DPJ) for one day. At the DPJ, he was beaten with a wooden stick. Upon his arrival in prison, he was detained handcuffed during one week in a cell, which he was not allowed to leave. He was then held in pre- trial detention in another cell with about sixty other detainees. Once convicted, he was transferred to yet another cell with 48 detainees. The prisoner complained about the quantity and quality of the food, but made no allegations of ill-treatment and indicated that there were no problems between prison inmates. His case was currently pending before the "Court the Cassation."

11. **Avé Diallo Amadu**, aged 40, citizen of Mali was arrested on 22 August 2002 in Lomé and taken to the Direction de la Police Judiciaire (DPJ), where he was kept in custody for two weeks. During this time he was beaten with a wooden stick. On 5 September 2002, he was transferred to Lomé Civil Prison, where he was held in pre-trial detention until 11 May 2005. On that day, he was found guilty of robbery and sentenced to 7 years' imprisonment. He was unable to contact his family in Mali and they were therefore not aware of his detention. The Government explained that the repeated attempts at finding out Mr. Diallo Amadou's address were not successful.

12. **Négou Kokau**, aged 36, citizen of Mali, has been in detention at Lomé Civil Prison since April 2001. On 8 March 2007, he was found guilty of complicity in robbery and was sentenced to 23 years' imprisonment. Prior to arriving at the prison, he was detained at the "Direction de Police Judiciaire" (DPJ) in Lomé for 45 days. There, officers suspended him from the ceiling, placed a rope around his neck and threatened to kill him by removing the chair on which he stood. Further, they struck his penis several times until he bled. Six months later, he was taken to a hospital where he received medical treatment, paid for by the present Prime Minister, who at the time was also detained at the prison. As a disciplinary punishment, he was transferred to a special cell, which he was not allowed to leave for one month.

II. SERVICE DES RECHERCHES ET DES INVESTIGATIONS DE LA GENDARMERIE (SRI), LOME

Visited on 16 April 2007

13. The "Service des Recherchers et des Investigations" (SRI), the main criminal investigation unit of the Gendarmerie, has one large, clean cell where 16 male detainees were kept in custody at the day of the visit. They had been held there for periods ranging between 4 and 14 days.

14. **General conditions and treatment in detention.** The detainees had to sleep directly on the floor. In principle, the cells were lit, but there were regular electricity cuts. There was enough water to shower, but no soap. They received insufficient food of poor quality and were therefore dependent on the food provided by their families. In addition, the detainees felt unprotected against mosquitoes and could only get mosquito nets by paying the gendarmes. The Special

Rapporteur received allegations of beatings with a “cordelette,” a cord often used as belt, during arrest and sometimes during interrogation. Several persons also alleged that gendarmes had stomped on their hands and feet with heavy boots. The main perpetrator was identified as Amadou Baca, described as a tall person with glasses who owned a big red motorcycle.

15. The detainees were kept inside the cell for 24 hours a day, except for those who swept the floor of the post early in the morning. Some of the detainees were also forced to clean the courtyard or to wash the gendarmes’ private motorcycles. Detainees were forced to remove all clothes except for their underwear. Only persons who did not have underwear were allowed to keep their trousers.

16. Upon the intervention of the Special Rapporteur, who criticized the fact that detainees were being held past the expiration of the legal time limit of 48 hours in police custody, nine persons were released on the same day.

17. **Vidjrzaku Michel**, aged 24, from Lomé, was arrested on 9 April 2007 by several soldiers, handcuffed and taken to the SRI. Upon arrival, a gendarme beat him all over his body using his hands and a “cordelette”. With his shoes, the gendarme trampled his stomach, neck and feet. Several soldiers watched him get ill-treated. Hoping that the ill- treatment would stop, he signed the statement prepared by the soldier. He informed the Special Rapporteur that he still felt pain from the beatings and trampling. He reported that the water quality was bad and that detainees had to pay for drinking water. His wife had been informed about his detention, but he had no lawyer and had not yet been brought before a judge. The allegations of ill- treatment were corroborated by medical evidence.

18. **Fokassi Salifou**, aged 44, has been in custody since 11 April 2007, accused of robbery. In order to extract his confession during a 30-minute interrogation, Baca Amadou beat him in his the office, located across from his cell.. The gendarme beat him with a “cordelette” on his naked body, arms, knees and head. As a result of the beatings, the detainee fell on his knees and sustained further injuries. These allegations were corroborated by medical evidence. The detainee informed the Special Rapporteur that the detainees were forced to clean the cars and motorbikes of the gendarmerie. Furthermore, detainees had to pay the gendarmes in order to get food.

19. **Vincent de Paul**, aged 23, Gabonese, has been in custody since 7 April 2007, accused of fraud. At the time of the Special Rapporteur’s visit, he suffered from a stomach ulcer and should have received special food. However, in reality, he only received leftovers from the gendarmes’ food. Upon arrival at the SRI, Amadou Baca beat him on his head with a “cordelette”. During his interrogation on 10 April 2007, the gendarme forced him to sit down and trampled his hands and fingers with his shoes for 10 minutes in order to extract a confession. He had also been forced to sweep the courtyard of the SRI.

20. **Ayegbemi Dossou**, aged 21, from Lomé, student, was arrested on 10 Aril 2007 by the gendarmerie on the beach. During the arrest, he was severely beaten with “cordelettes”, and the gendarmes used their boots to kick his back for about 30 minutes. He was then taken to the SRI. His allegations of ill- treatment were corroborated by medical evidence. He reported that he had to pay for drinking water and anti- mosquito protection and that he received one very poor quality meal per day.

21. **Lawson Florent**, aged 22, driver, was arrested on the beach by the gendarmerie under the command of Capitaine Amah on 10 April 2007. During the arrest, Amah beat him for 30 minutes with a cordelette and a wooden club. Upon arrival at the SRI, when he said that his stomach hurt, gendarmes kicked him in the stomach and continued the beatings. They injured the detainee’s face, near his eye, as well as his arms and legs. According to the forensic expert, the wounds were fully consistent with the alleged beating/whipping, and the pain in the stomach was consistent with the alleged kicking. The detainee had not received any medical treatment. In order to see a doctor, he needed to pay. He reported that the gendarmes forced detainees to clean their offices and cars.

22. **Ikwuagwu David**, aged 28, from Abia State, was arrested on 14 April 2007 at 17.30 at his house in Lomé, where he had been living for eleven years. Ten gendarmes came with two cars. He did not receive any food until his brother brought some at 15.00 on the following day. He reported that detainees had to stay in the cell all day and all night.

23. **Gnonato Komi Jean**, aged 36, was arrested on 11 April 2007 at 8.30, at the marketplace where he sold shoes. He is accused of obtaining his merchandise through illegal means. He was taken to the gendarmerie at 13.30. During the interrogation, which took place in a small room with a TV and 4 desks, across from the cell, one gendarme asked questions, while another used a "cordelette” to beat Jean’s body for 5 minutes. The officer in charge witnessed the beating.

24. **Adokovi Francois**, aged 37, was arrested in Lomé in the street on 11 April 2007 by three gendarmes, because he picked up the identity card of one of the gendarmes that fell on the floor. Immediately after his arrest, he was taken for 30 minutes to "Camp Tropicana," where he was severely beaten by six uniformed persons with "cordelettes" and rubber batons. Subsequently, he was transferred to the SRI for questioning. He reported that the detainees received the leftovers from gendarmes to eat. He himself was allowed to contact his family, which brings him food.

25. **Messigah Komlanvi**, aged 18, was arrested together with his friend on 10 April 2007 by private security officers in a factory. The security officers called the gendarmes, who came and took both to the SRI. He was not beaten or threatened by the gendarmes at the time of his arrest. When he was interrogated on the same day, he immediately confessed to the theft. In the evening, following the interrogation, a gendarme dressed in civilian clothes beat him and his friend with an elastic rubber baton with a diameter of approximately 2.5cm. He could not

estimate the length because the gendarme had tied it several times around his hand. He was beaten for several minutes and received about six to eight strikes on his back, while he was lying on the ground. After the beatings, the same gendarme that had interrogated him shouted at him to not steal anymore and forcefully stepped on his hands and feet with heavy shoes with iron fittings, while he was sitting on the floor. This caused him pain. His friend was subjected to similar ill-treatment. The ill-treatment took place in the interrogation room located on the ground floor opposite the cell window. He did not know the names of the perpetrators but would be able to recognize them. The allegations of ill- treatment were corroborated by medical evidence. Twice a day, the gendarmes gave the detainees rice and soup. The food caused him stomach pain. Sometimes the gendarmes kicked detainees who had not swept the floor well enough, especially when the Chief Commander was not present. If a detainee refused, he or she would be punished by beatings. He was kicked in the leg three days ago, but at the time of the Special Rapporteur's visit, it no longer hurt very much. His mother was informed of his arrest and detention.

26. **Akakpovi Kodjo**, aged 18, was arrested and taken to the SRI on 10 April 2007. On that same evening, one of the gendarmes beat him and his friend in the room across from the cell. They were forced to lie on the floor and were then beaten with a rubber "cordelette" with an iron core and a diameter measuring approximately 2.5cm. . This "cordelette" was very long and the gendarme had wrapped it around his hand. He received more than 15 blows on his body, mainly on his back. He was afraid that he would be hit in the face. They were beaten only for punishment and not to obtain a confession, since they were interrogated only the next morning, after sweeping the floor. Another gendarme, who was not wearing a uniform, stomped on both his hands and feet and ground his heavy shoes into them. After this ill-treatment, they were placed in the cell. The beating and stomping had been very painful, but he did not suffer from pain afterwards. According to the forensic expert, the scars in the shoulder area corroborate the allegations.

III. SPECIAL JUVENILE DETENTION CENTRE (Brigade des mineurs), LOME

Visited on 16 April 2007

27. On the day of the visit, 31 minors were detained at the Juvenile Detention Center. Four of them were girls. The minors were kept in this detention center for a maximum of six months. Abandoned, trafficked and marginalised children, some younger than ten years, were held together with young adults who have committed crimes.

28. **General conditions and treatment in detention**. The Juvenile Detention Centre was run like a prison. The children were locked in cells holding up to eight minors together. During the day, the children were permitted to do vocational training activities in a big room called "Workshop." . But the detention lacked any sace for games or sports activities. The children were allowed to shower once a day. Cases of sexual exploitation of the youngest children by

older detained minors were reported. Corporal punishment was regularly practiced. The chief of the institution, Abotsa Koffi Nyame, admitted that in some cases he saw no other way than using beatings and other kinds of corporal punishment, especially in cases of sexual exploitation. ("Si je ne sais plus quoi faire, car les petits sont parfois exploités sexuellement par les grands, je dois punir les grands.")

29. **R. T.,** aged about 8 years, did not know how many days he had spent in detention in this centre. He had been taken back to his mother in Tsévié by Terre des Hommes, but had returned to the centre one week later.

30. **K. A. A.**, aged 9, from Tsévié, was accused of having stolen money and had been in detention at the centre since 22 December 2006. He reported that the head of the institution beat the children if they did not behave well.

31. **K. K.** (f), aged 15, from Pya, indicated that she had come to Lomé to find work. A woman took her to the centre out of fear that a man could “take” her. She had been in detention in the centre since 10 April 2007. Her family did not know of her detention. She reported that the children were allowed to go to the toilet and shower only once per day. Violence among the detained children was very common. She was beaten by one of her cell- mates.

32. **Y. A.**, aged 16, has been in detention since 22 December 2006, accused of stealing empty cement bags from a soldier. He was first taken to the supervisor's office and then to the centre. He reported that two of the supervisors were not treating the children well. Sometimes minors were beaten in the office of the supervisor for punishment purposes. Sometimes they were forced to put their hands through the bars so they could be beaten. Two weeks earlier, he had received 26 strokes with a wooden baton because he had asked for money from a person from the university who had come to the center to bring presents.

33. **W. M. K.**, aged 11, from Agwo, has been in detention since 18 February 2007. He had been found by Terre des Hommes. When he tried to escape from the NGO, they took him to the centre. He was beaten frequently. He had been beaten with a wooden stick at the workshop the very morning of the Special Rapporteur's visit. On days prior to the visit, he had been hit twice on his head and five times on the soles of feet.

34. **A. D.**, aged 15, has been in detention for one month, accused of theft. He had been treated well, and had received food three times per day. The quality of the food was acceptable. His family did not come to visit him. He reported that if one of the children did not behavewell, e.g. if they fought other children, the child would be beaten with the flat hand on the back while bending forward. Another form of punishment was to make them crouch for one hour with bent knees, with their backs against the wall and their arms sprawled out (“fauteuil”). Sometimes this method was used six times a day for a full week. All the guards were involved in such

punishment measures. Additionally, the guards gave to the oldest boy in the cell the power to beat the other children. The Chief Commander of the institution did not allow maltreatment, but the children were beaten in his absence. He had received three strikes with the flat hand on his back one week ago.

35. **H. B.**, aged 17, has been in detention for five months because of theft. A judge had actually released him, but his father wanted him to stay in detention. In the centre, he had been beaten with a wooden stick called “plamato”, shaped like a large wooden spoon. He got four blows while lying on a bench in the workshop. Other children witnessed the beatings. He was punished for breaking a door when he tried to escape together with two other children five months ago.

36. **A. B.**, aged 15, informed the Special Rapporteur that the previous night, a boy in his cell had wanted to touch or kiss his penis. He refused, but was forced to let it happen. Other children of his cell reported the incident to the guards the next morning. The guards considered that he had made a mistake, and therefore he was punished. He received ten strokes with the wooden “plamato” on his back while lying on the bench in the workshop. He was wearing his cord trousers during the beatings. Other children as well as the woman who trained them in handicrafts were watching. Although the woman was nice, she could not intervene to stop the beating. The backs of his thighs were still tender and swollen, and he was still in pain. This had not been the first time that he was beaten. He could not recall how many times he had been beaten before. He also had to sit in the position called “fauteuil” for five minutes. The children were also beaten for minor errors, such as talking in the cells. All the guards were involved in administering the punishment. On average, one child per week was beaten. Even small children and girls were punished that way, without exception. The Commander did not beat the children himself but was aware that the guards did. This child’s “cell chief” was friendly and did not abuse the others.

IV. DIRECTION DE LA POLICE JUDICIAIRE (DPJ), LOME

Visited on 16 April 2007

37. Twenty-six detainees were held at the Direction de la Police Judiciaire (DPJ) on the day of the visit. The Deputy Chief, Assih Abalo, explained that most of the detainees had been in custody for three or four days, with the exception of three persons who had been detained at the DPJ for eight, nine and twelve days. The Prosecutor had given him permission, via telephone, to keep them in police custody longer than the 48-hour legal time limit.

38. **General conditions and treatment in detention.** The building was not suitable for detention. The persons were detained in five dark, dirty, hot and humid cells in a building without running water. They had no access to water for bathing and had to pay for drinking water (100 CFA for 1 liter and 1000 CFA for 5 containers). The conditions of the sanitary installations were appalling. Although it seemed that medicine for one injured detainee was

available, the nurse who could have administered it, was not on duty. Several cases of ill-treatment were reported.

39. **Kossi Gbogbotsi**, aged 38, Togolese, resident of Ougadougou, Burkina Faso. Accused of armed robbery and homicide of one person, he has been kept in custody at the DPJ since 11 April 2007. He was shot twice in the back and buttock during arrest. Consequently, he lost consciousness due to severe blood loss. The police took him to the hospital, where he received only superficial medical treatment. His wounds were cleaned, but no X – ray tests were given because no money was available to pay for it. After spending one night at the hospital, he was taken to the DPJ on the following day, where he was detained alone in a dark, humid and hot cell without ventilation. He was completely naked, his clothes having been taken away, and he had not received any food since his arrival at the DPJ, nor had he taken a shower. No further medical care had been provided. The allegations were corroborated by medical evidence. Following the interview, the Special Rapporteur and the forensic expert were shown the medicine the detainee had received at the hospital for further treatment (ampicillin and metronidazo for injection).

40. **Egloh Kossi Adodo**, aged 31, from Aného, accused of visa fraud, has been in custody at the DPJ since 10 April 2007. The detainees were allowed to relieve themselves only once a day, and the police woke them up at 04.00 every morning to do so.

41. **Koffi Melonkou**, aged 26, Ewé from Lomé, accused of breach of trust ("abus de confiance"), has been in custody since 14 April 2007. He reported that detainees did not have access to water. Consequently, there was no possibility to take a shower and there was not enough drinking water. Detainees did not receive any food but depended on their families for food supplies.

42. **Nestor Koukou Toffa**, aged 19, from Kodomé, accused of robbery and in custody since 12 April 2007. On 15 April 2007, he was forced to sit on a chair with his arms handcuffed behind the chair. The policemen inserted a wooden stick between the wrists and the handcuff and pulled it towards the floor, which caused severe pain in his arms, shoulders and back. He was forced to stay in this position for 30 minutes. The policemen beat him on the head and body with a wooden club with one broken end. Policemen beat him almost every day. The findings of the forensic expert were fully consistent with the alleged ill-treatment both regarding time and method. He further reported that detainees had to pay 100 CFA for one litre of water (for drinking and washing). The police had not provided him with any food, but his cell-mates sometimes did. His family was not informed about his detention at DPJ.

43. **Adjeglo Yawotsé Noamessi**, aged 30, was arrested at the fair "Togo 2000" at 16.00 on 4 April 2007 by four plainclothes officers. First he was taken to the Service des Passports and, later in the evening, to the Direction de Police Judiciaire (DPJ). He reported that the detainees

receive no food and no water to drink and bathe. If they want water, they have to pay 1000 CFA for five litres).

44. **Oneyka Madumdu**, aged 31, Nigerian, accused of theft, was beaten by a mob and struck on the head with a hammer. The police intervened and took him to the DPJ. He was not beaten in the police station, but he has not seen a doctor for the blows on his head. He had no friends or family in Togo.

45. **Mensah Dosseh**, aged 20, was arrested in the street by a police officer on 14 April 2007 and immediately taken to the DPJ. On 15 April 2007, the police removed him from the cell. He was forced to sit on a chair with his hands handcuffed behind the back of the chair. The policeman placed his foot on the handcuffs and stepped down, pressing his hands and arms towards the floor. The bruises and abrasions identified by the forensic expert corroborated these allegations. The police provided him with some food and water.

46. **Wov Kossi**, aged 28, was taken to the police by three civilians on 14 April 2007 at 7.00. He does not get any food and water to drink and says that there is no air and no ventilation in the cell. The detainees have only restricted access to the toilet. There is light in the cells but there are many electricity cuts. Only the shoes and belts are taken away from the detainees, and they are allowed to keep the rest of their clothes.

47. **Lawson Beovi Betou**, aged 38, was arrested in the morning of 9 April 2007 by four police officers in his office. Because he had not reported the death of an old security guard of the company, he was suspected of having killed him. He was interrogated the same day in an office by one of the four policemen who had arrested him. The police wanted him to confess to the murder. The police officer shouted at him. He did not insult him but tried to intimidate him. He was interrogated a second time on 11 April by the same officer, who again shouted at him. His wife was informed of his arrest and brings him food. He has not seen a lawyer, prosecutor or judge. The detainees are only allowed to go to the toilet once a day early in the morning. There is no water in the cell block. Detainees have to buy water from a boy who comes to the facilities.

VI. CIVIL PRISON, NOTSE

Visited on 13 April 2007

48. On the day of the visit, 124 persons were detained at the Civil Prison. 27 of them were convicted, the rest were in pre-trial detention.

49. **General conditions and treatment in detention** .The prison was fairly small and heavily overcrowded. There were two separate female and juvenile wings. The juvenile wing was empty at the time of the visit, although some two or three juveniles (one as young as 14) appeared to be present in the prison and indicated that they would prefer to be separated from the adults.

However, in the absence of female detainees, the female wing was used by the "Bureau Interne", i.e. the "Chef de Cour" (CC) and other prisoners to sleep (15 persons). From 18.00 to 6.00 the prisoners are kept in 3 cells holding 32, 32 and 31 persons each, and a smaller cell, where 14 persons are held. This cell consists of a narrow corridor and 3 "sub-cells" of about 1 x 1 meter, where 3 persons sleep. A very ill person from Benin was held in this cell. The examining doctor concluded that he was in urgent need of hospitalization. There were many medical problems in the prison, including hernias, cough, flea bites, and possibly tuberculosis. According to the prison director, it was the detainees who decided where they would sleep. Several detainees complained about the bad quality and insufficient quantity of the food. Access to appropriate medical treatment and medicine is severely restricted. There were numerous and consistent allegations of beatings of prisoners by the “Chef de Cour” and his assistants. Moreover, the hierarchy within the prison created by groups of inmates also fostered endemic corruption. For instance, visitors had to pay a certain amount of money to see the detainees. Some prisoners reported that one inmate had died on 15 August 2006 as a result of severe beatings by the former CC, who was subsequently sent to Atakpamé prison. However, another member of the Bureau Interne, who was also involved (Kololu Akotsaye), remained in Notsé as assistant CC. He was part of a group of prisoners who regularly beat fellow prisoners. The Government informed that, in the case of the detainee who died following beatings by the former CC, following the Special Rapporteur’s report, a case against the former CC has been opened.

50. **Abalo Alou**, aged 30, has been in detention since 12 April 2007. On that day, he was arrested by the gendarmerie and taken to the court immediately. He had no lawyer but was in contact with his family.

51. **Amerou Ousman**, aged 14, from Benin, accused of illegal business. On 15 February 2007, he was arrested by the police and kept in police custody for five days. On 15 April 2007, he was transferred to the prison. He receives food only once per day. He did not know the status of his case. He was brought before a judge some time ago, but had not been informed about the results.

52. **Segbedyi Ndedji**, aged 17, from the Préfecture Moyen Mono, accused of having stolen a chicken. He has been in detention at the Notsé prison for 5 months. Arrested by the gendarmerie he spent 9 days in police custody. He was given food for the first time after 6 days of detention. In prison he has never received any visit. He had no information about his case and had never seen a judge.

53. **Abalokodjio Siriak**, aged 32, from Notsé, accused of robbery of money. He has been detained at Notsé prison for one month. He was taken to the prison by the investigating judge. His wife brought food every day in the morning and in the evening, but he had to pay 200 CFA each time in order to receive it. .

54. **Orta Abao Aboluwe**, aged 22, deputy "Chef de Cour", accused of drug possession. He has been in detention at Notsé prison since 27 December 2006. Before that, he spent 6 days in custody at the gendarmerie at Ouhal, where he was slapped three times and deprived of food for the entire time of his detention. He reported that, prior to the arrival of the new "régisseur de prison", people were beaten. Furthermore, detainees who did not behave well were kept in solitary confinement for some time.

55. **Gia Ali**, aged 46, from Benin, herdsman. After having spent two days in custody at the gendarmerie of Notsé, he was taken to the prison two months ago. He suffered from an illness causing him respiratory distress and complained about skin rashes. He was paralyzed in both legs, although he had normal sensation in his legs. He had received a serum, but no other medical treatment. He was in need of hospitalisation, according to the examining doctor.

56. **Simbia Ferdinand**, aged 22, from Benin, was arrested on 30 September 2006 by the gendarmerie in Notsé. On the first day of his 7-day detention at the gendarmerie post, he was beaten for approximately five hours by the head of the gendarmerie post called the "Commissaire". Soldiers in combat uniform as well as civilians stood by and watched. The gendarme [chief?] ordered him to stand on his hands with his feet up against a wall. In this position he was beaten with a flat piece of wood on the soles of his feet for a prolonged time. When he could not endure the beatings any more, he confessed to having stolen a camera and money. Once he had confessed, he was not beaten any more. After this treatment, his foot soles were swollen and he was unable to walk. Now he no longer feels any effects nor do his soles show any marks. During his seven days at the gendarmerie post, he only received food once.

57. **Tonasse Vincent**, aged 28, was called to the gendarmerie with seven other persons on 16 February 2004 and accused of murder. He was held for four days and beaten with a long wooden club on his buttocks while he was lying face down. One gendarme held him down while another one beat him. Three other gendarmes were present during the beating. The gendarmes also rubbed red spices in his eyes, causing his vision to be sometimes impaired, even now. After he had been transferred to the prison, he was visited by the gendarmes once again and subjected to another beating. According to the forensic expert, the scars in the buttock area corroborate the allegations of beating with a club.

58. **Edah Sahoe**, aged 32, was arrested on 19 August 2005 in Notsé by villagers who took him to the gendarmerie, where five or six gendarmes were on duty. He remained in gendarmerie custody for 11 days. While he was there, his right arm was cuffed to his left ankle. In this position he was beaten with a long club and a belt. He received blows all over his body, but not on the head. He was not beaten on the soles of his feet. The maltreatment still causes occasional pain in his hip. The allegations of ill- treatment were corroborated by medical evidence. With the exception of the Chief of Brigade, all gendarmes at the post beat him, especially when they changed shifts in the mornings and the evenings. He was taken to the prison on 30 August 2005.

The only time he saw a judge was in November 2006. In the prison, the CC beat people when they did not pay him.

59. **Fest Awudi Kwame Atavi**, aged 45, was arrested on 10 August 2006. He was held for two weeks in the detention facilities of the Notsé Gendarmerie before he was taken to Notsé Prison on 23 August 2006, where he was beaten over 70 times by the CC because he had no money to pay him. He was kept in a cell that held 32 inmates. There was no fan in his cell and sometimes he was forced to fan other inmates. Although he was told by the doctor that he suffered from bilharzia, he did not receive any medicine.

60. **Eklou Abraham**, aged 31, physician, was arrested on 24 February 2006 by the Gendarmerie at Atchave and kept in custody for six days. During the first three days, he was severely beaten with a wooden baton for the purpose of extracting a confession. Then he was transferred to Notsé Prison, where conditions are harsh. Inmates have to pay an "entrance fee" of 15.000 CFA. If they do not pay or obey orders, they are punished by the CC and other chiefs of prisoners. He was also beaten on the day before the interview with the Special Rapporteur. The prison guards do not beat prisoners themselves and sometimes even protect them against the CC. Although he has spent more than one year in this prison, his family does not know that he is here. He could be released on bail, if he were allowed to contact his family.

VII. CIVIL PRISON, KARA

Visited on 13 April 2007

61. At the time of the visit, 341 detainees were held in Kara, 6 of them female and 10 of them minors. 178 were convicted prisoners, 163 were awaiting trial. Some detainees were allowed to work in agriculture and in workshops within the prison. However, it is unclear whether the prisoners benefit from the agricultural produce. The prison facilities are generally more spacious and less overcrowded than prisons in Lomé and Notsé. The conditions of detention for mentally ill detainees, however, were particularly appalling. According to the Government, one of these persons, Fama Baoubadi, has been released on 3 December 2007. Several prisoners were serving excessively long terms, several of them having spent over 30 years in prison. The SR received consistent allegations of routine beatings of detainees (including minors) by the Assistant Chief of Security. According to the prison's Chief of Security, Anbena-Batta'A Nawdbaraga, the Assistant Chief is called Edoh Dogbe and comes from Lomé.

62. **Kadcho Lelen**, aged 24, was arrested on 29 August 2005 and has been detained in Kara prison ever since. Approximately four months after his arrest, he was convicted by a court to three years' imprisonment. On the day of the Special Rapporteur's visit, he had been beaten by the Assistant Chief of Security. The minors were also beaten the same day. The Assistant Chief beats detainees almost on a daily basis. However, if the Chief of Security is present in the prison, the Assistant Chief refrains from beating them. Kadcho Lelen was probably beaten because he

had a fight with another prisoner. The Assistant Chief did not investigate the incident, and instead immediately ordered him to lie down on the floor in the inner large hall. He beat him two times with a big wooden club on the buttocks, while the other detainees watched. Thinking that he was only to receive two strikes, he tried to stand up, but the Assistant Chief then struck him two more times on his front side and left arm. One blow seriously hurt his left arm, which was visibly swollen and extremely sensitive to pressure. Pressure on his buttocks also caused him pain. The forensic expert concluded that the signs of violence (bruises, swelling) on his body were fresh (24 hours old or less). They were caused by moderate blunt force and were fully consistent with the alleged ill-treatment, both regarding time and method.

63. **Lokono Stanislas Eugene** aged 49, from Benin, was arrested in 1978 for murder. Later that year, a Togolese court convicted him to death, but the death sentence was commuted to life imprisonment three days later. Six other inmates of Kara prison had their death sentences commuted to life imprisonment. He has spent the last 29 years in Kara Prison. If somebody misbehaves in the prison, he or she is beaten. The last time he has been punished in such a way was two years ago. Several times he has seen that other detainees were beaten by the chief of prisoners (CC), a Kabyé who was only recently "appointed" by the prison management, as well as by guards. The guards frequently take fighting detainees out of the prison facilities and beat them on the buttocks with a club. Over the years, the frequency of beating has declined.

64. **Simari Kodjovi**, aged 45, was arrested on 12 April 2007 at the gendarmerie in Pya, where he had been ordered to present himself for allegedly having cut his neighbour's arm over a land issue. The neighbour had paid the police to issue an arrest warrant against him. He spent one night at the gendarmerie post, where the gendarmes interrogated him but did not touch him. He did not know how long he would have to stay in prison. When he arrived in Kara prison at about 16.00 on 13 April, the chief of prisoners (CC) talked to him and told him that he had to pay 2.500 CFA for appliances, such as light bulbs and soap. His wife will bring the money in small amounts. It did not occur to him that he could refuse to pay the "fee," because it was normal for everyone to pay a certain amount for soap.

65. **Kadissoli Abalbedue**, aged 27, accused of stealing food from a shop, was arrested by the gendarmerie of Pya on 8 January 2007, in his house in a village north of Kara. He was with his friend when the gendarmes, namely the Chief and the Deputy Chief of Brigade, arrived at his house. During the arrest, they beat him when he tried to defend himself. One gendarme held a gun to his neck and threatened to shoot him. His friend witnessed the beatings. He was taken to the gendarmerie post, where he shared a cell with two other detainees. The Chief of Brigade cuffed his hands and his legs together behind his back, so that his spine was painfully bent. He lay face down on the floor of the main office, with a chair placed over his upper backside and neck. He was left like this for thirty minutes. He was not beaten during this time. Other gendarmes were present. Later, the Chief of Brigade returned and again forced him to lie down

with his hands cuffed behind his back. His feet were no longer shackled. One of the gendarmes placed a chair over his thighs and sat on it. While in this position, several officers beat his back with wooden clubs measuring approximately 50cm in length and 4cm in diameter. They beat him for more than 30 minutes, causing him so much pain that he began to scream. The other detainees heard him. One gendarme held his legs while others held him from behind. They also beat the soles of his feet, until he confessed to stealing the food. He spent three days in the gendarmerie post. During that time he was always handcuffed. Every day, he was maltreated in a similar manner. On the second day, he was beaten with a rope belt usually worn by the gendarmes. The rope was of 1.5cm in diameter, and it was doubled for the beatings. The gendarmes continued to beat him, even after he had already confessed, because they thought he was lying and wanted to know where the stolen goods were hidden. He complained to the gendarmes about the condition of the cell, but was told that he had no right to complain. On 10 January, he was transferred to Kara prison. He was not maltreated in the prison. However, he has seen other detainees being beaten by the Assistant Chief of Security. The chief of prisoners (CC) had asked him about the scars on his back. He told a doctor, an American woman, about the beatings. She treated his wounds and said that it was not right to beat detainees, but that she had no authority to complain. He did not want to lodge an official complaint because he was afraid that, due to the corrupt system, he would receive a long prison sentence if he dared to speak up. The forensic expert found striped scars, which were consistent with the alleged whipping and concluded that the allegations were consistent with his findings.

66. **Essossinam Osalam**, aged 20, from Pya, was arrested on 3 January 2007 by gendarmes in Pya for attempted theft of spaghetti and wine. He was detained for seven days in the gendarmerie post of Pya, where he was beaten daily for one hour until his interrogators extracted a confession from him. The beating took place in the entrance hall of the gendarmerie post. He was forced to sit down with his hands cuffed behind his back. He was beaten by the Chief of Brigade with a "cordelette" as well as a wooden stick on his head and back. He was subjected to "falanga", which caused his feet to bleed heavily. On 10 January 2007 he was transferred to Kara Civil Prison, where he continued to feel pain and limped for the first week after arrival. Moreover, the beatings had broken one bone of his hand, which was not healing properly. The forensic medical expert found several scars and an incorrectly healed fracture and concluded that his findings were fully consistent with the alleged ill-treatment, both regarding time and methods.

67. **Bere Tchamdja**, female, unknown age, from Tchitchao, accused of murder, has been in preventive detention for five years in Kara Civil Prison. She had been ordered to come to the gendarmerie and was subsequently handed over to the justice system. She was produced three times before the "juge d'instruction," but she was not aware of any developments in her case. She received "pate" and sometimes fish to eat. She regularly receives visits from her children, as well as medical treatment if she demands it. According to the Government, Madame Béré

Tchamdja est en liberté provisoire depuis le 10 août ainsi que son enfant poursuivi dans la même affaire.

68. **Abi Essham**, female, aged 24, Kabiyé from Kara, was arrested on 8 January 2006 by the gendarmerie. The Chief of the gendarmerie beat her with a rope on her buttocks in order to force her to confess. While she was beaten she was only wearing her underpants. In the gendarmerie post there were two cells; however, the beatings took place in the office. The gendarme who beat her, still works at the gendarmerie post. She was detained in a cell separate from the men. On 12 January 2006, she was transferred to Kara Civil Prison, where she was treated well. On 6 February, she was sentenced to 24 months' imprisonment.

69. **10 minors between 15 and 17 years**, A. A., aged 17 , D. E., aged 17 , N. E., aged 16, A. F., aged 15 , B. K., aged 15 , K. K., aged 16 , P. S., unknown age, B. H., aged 17. Two of them spoke Peul and could not be interviewed.

70. Seven of them had been arrested in February and March respectively for theft of electric cables. At the gendarmerie, the conditions were terrible: everything was wet and full of urine because there were no toilets. During the interrogation, they were beaten with guns on their heads. The gendarmerie pretended that they were older than 18 years. They received flour, beans and rice but the food was of poor quality. Sometimes they threw it away and did not eat anything. The sauce in particular caused them stomach aches. On the morning of 13 April 2007, prison guards beat nine out of the ten to punish them. They lined up the minors in their cell, and the Assistant beat them with a branch, mainly on the buttocks. One of them put his hands over his buttocks in order to protect them. For this reason, his hand was injured. The majority of their families did not know that they were detained. One of them has spent 20 months in detention. Three of the families came to bring food. All of them were in preventive detention. They were detained together with the adult men until 9 April 2007, when the Minister of Justice visited the prison and ordered that they be detained separately. Sometimes they were afraid of the adults. Some attempted to harass them, but they stopped when the boys refused. This meant, however, that they would not give them money for food. If an adult man wanted to "caress" them, it cost 100 CFA. In the mornings, they were forced to throw out the urine and the faeces of all detainees in the cell or to do other jobs, such as cleaning. The medical findings of the forensic expert corroborated the alleged beatings.

VIII. COMMISSARIAT DE POLICE DE KARA

Visited on 14 April 2007

71. Within the Commissariat there are 7 cells for detainees. At the time of the visit of the Special Rapporteur, 4 detainees were detained: one man, one woman and two male minors. The male adult and the juveniles were not separated. The women's cell was located next to the men's cell and separated only by bars. Thus, the detainees could see and communicate with each other.

All detainees were fully dressed. In general, the conditions of detention were better than in most gendarmerie facilities visited by the Special Rapporteur.

72. **Dogocha Dieudonne**, aged 25, was arrested on 13 April 2007 at his home by the police for beating his wife. He had not yet been interrogated. The police had ordered him to pay money to his wife. He had not eaten since his arrival at the police station, at 4 p.m. the previous day, and when he asked for food, police officers told him it was not their job to provide it, but rather his family's. He was permitted to bathe and use toilet facilities.

73. **T. J.**, aged 13, was taken to the police station on 12 April 2007 by a private guard of a church where he was sleeping. The guard took his friend as well. On 13 April at 9 a.m., the police questioned him about his family, who did not know of his arrest. During the questioning, two police officers accused him of being an Animist, but he insisted that he was Christian. The officers became angry and ordered him out of the cell. Immediately outside the cell, they ordered him to lie down on the floor. One of the police officers beat him on the sole of his right foot with a wooden club 1m long and 3-4cm in diameter, which the officers keep in the entrance office beside the closet. He received two forceful strikes on the sole of his foot. The other officer then slapped him hard on the left cheek. He was crying and begged them to stop. His foot was not swollen after the maltreatment, but hurt so much that he was unable to walk properly. Pressure applied on the middle section of his foot still caused him pain. The officer who had beaten him was very tall. The other one was rather corpulent. He was given water but no food. He had eaten a small portion of old rice that was left by a former inmate.

74. **A. Y.**, aged 15, from Kara, was arrested on 12 April 2007 at 3 p.m. in a church, where he was sleeping. He had been at the church because he had argued with his brother at home. The arresting officer did not believe him and took him to the police post, where he was interrogated. He had received water, but not food. A policeman gave him 100 CFA to buy rice. His family did not know that he was in detention and he did not know the reasons for his arrest and detention.

75. **Tani Odile**, female, aged 23, from Daopaong, resident of Kara, arrived at the post on 13 April at 6 p.m. after a fight. She had been treated well but her family had not been informed of her detention. She had not eaten since she arrived at the Commissariat.

IX. ANTI-GANG GENDARMERIE POST, KARA

Visited on 14 April 2007

76. The Anti-Gang Gendarmerie Post has one cell, which was empty at the time of the Special Rapporteur's visit. According to the registry, the last person had been detained on 13 April 2007. The different columns for arrest, duration of detention, and transfer on the registry were written in the same handwriting and with the same pen, suggesting that the registry had been filled retroactively, only after the detainees were either freed or transferred to a prison. One entry

noting the release of a person on 21 March was written after an entry of a release on 22 March. The Special Rapporteur also noted footprints high up on the walls of various rooms within the gendarmerie post. The officer in charge, Bikoda Manwamou, claimed that the footprints had been left by the building's prior occupants, children housed by a society called "Free Togo." He claimed that the offices had not been repainted since the Anti-Gang unit had moved in, approximately 3 to 5 years ago.

X. CAMP MILITAIRE DE PARACHUTISTES, KARA

Visited on 14 April 2007

77. In the camp there are two different places of detention, one used for ordinary soldiers and one for higher ranking staff. Whether they were used or not could not be verified because access by the Special Rapporteur was delayed. Members of his delegation were prevented by insults and threats from ensuring that nobody interfered with the place of detention and the detainees between his arrival at the camp and the moment when he had the possibility to actually inspect the cells. He, therefore, is unable to draw any conclusions from his interviews with detainees in the military camp.

78. The facility for soldiers has two rooms as well as four small cells. The two smallest cells measure approximately 112x90cm and 225x83cm. According to the Commander, these cells are not in use any more. The detainees have to pay for their food. There was a shower and water to drink in the facilities. The detainees can consult a military doctor if they demanded it.

79. **Yaoula Anate**, aged 27, from Lamba, had been in detention for five days for slapping a young forester in the face. He did not know how long he would be detained for. His family was informed of his detention, and he could contact them without problems

80. **Horo Essowé**, aged 24, police officer employed to train new recruits, was arrested on 12 April 2004 for embezzlement of money. He had used the money to pay the hospital bills when his wife gave birth. He had to stay in detention until the end of the month, at which time he had to repay the money. He was given food, but not always at the appropriate time. He and the other inmate slept in the larger rooms but the small cells were also used for detention. Sometimes people were kept in these cells for 24 hours a day for up to a week. He was supposed to stay in one of the small cells, but gained the privilege of staying in a larger one because he knew one of the guards.

XI. POSTE DE GENDARMERIE DE PYA

Visited on 14 April 2007

81. The detention facilities consisted of two cells and a corridor, without anything on which to sit or sleep. Two men were detained at the time of the visit. The building was similar to what

detainees at Kara Civil prison, Essossinam Osalam and Kadissoli Abalbedue, had described to the Special Rapporteur. After confronting the Chief of the Commissariat, Dominique N. Nandja, with allegations of beatings in his brigade, he admitted that, in the cases of detainees who had escaped into the bush, he would sometimes beat the soles of their feet with wooden branches or batons, so they could not run away again. Only rarely would he beat detainees in the office. According to him, beating detainees excessively would cause too much bleeding; in this case the detainees would have to be taken to hospital. The advantage of beating the soles was, according to Nandja, that the soles did not bleed and the practice left no marks. In general, whether a detainee was handcuffed or not depended on his behavior. Also, he admitted to having detained Kozon Komlan longer than the legal period of time. The Special Rapporteur checked to see whether Essossinam Osalam (see above under Kara Civil Prison) was mentioned in the register. He found him in the "Cahier de garde" from 3 to 10 January. However, in the "Cahier de garde à vue", he was only registered between 8 and 10 January.

82. **Banagwe Ewoa**, aged 45, had been in detention since 13 April 2007 for stabbing his brother. The gendarmerie had arrested him in the street at around 3 p.m. and taken him to the post. His wife was providing him with food.

83. **Kozon Komlan**, aged 22, was arrested by the gendarmerie on 2 April 2007 for trafficking his sister in law's child to Nigeria. The arrest took place in the gendarmerie post of Adjengré, a village south of the Sokodé, where he had been ordered to present himself. After the Chief of Brigade of Pya had been notified of his arrest, he was transported to Pya, because the child's mother lived in Pya. He was interrogated but not beaten by the gendarmes in Pya. The interrogations were carried out by the Chief of Brigade in his office. He treated him correctly without violence. Once a day, he left the cell to sweep the office and the area around the post. One of the cells was used as a toilet, the other one for detention. The doors inside the cell tract were open. However, if a dangerous person had to be detained, he or she was locked into the cell and the others had to sleep on the floor of the corridor. Sometimes other detainees came for interrogation to the post, but he had not heard that anybody had been beaten. His brother, who was a soldier, brought him food. He could take a shower any time he wanted. He had not seen a judge or prosecutor.

XII. BRIGADE DE RECHERCHE ET D'INVESTIGATION DE LA GENDARMERIE, SOKODÉ

Visited on 14 April 2007

84. The detention facilities at the gendarmerie in Sokodé consisted of two cell blocks with four cells each. In the cells, there were small wooden benches. The facilities were very hot, completely dark and smelled bad. They were infested with mosquitoes and other insects. There was water to drink but not for showering or bathing. At the time of the visit, three men were detained. They were completely naked when the Special Rapporteur arrived. The Commander of

the Central Region Unit at Sokodé, Capitaine Ddntema Kr Cochaa, explained to the Special Rapporteur that the gendarmerie had received orders to strip people of their clothes and hold them in their underwear because of the risk of detainee suicide. The Commander was surprised that all three detainees were actually completely naked and not in their underwear. Regarding physical violence against detainees, he admitted that sometimes he could not control himself, especially in cases of grave crimes. He also acknowledged that officers could possibly be using force vis-à-vis perpetrators of robberies and burglaries, but that it was not a systematic practice. The detainees later told the Special Rapporteur that, while the Special Rapporteur was talking to the Commander, the gendarmes ordered the detainees not to tell him of any ill-treatment.

85. **Z. M.**, minor, exact age unknown, from Sokodé had been accused of drug possession. He had been arrested by soldiers on 13 April 2007. Upon his arrival at the gendarmerie post, four gendarmes beat him in the secretariat, where the typewriters were kept. They beat him with their hands and batons, one after the other, for a short period of time in order to extract a confession. The gendarmes also slapped him in the face. After he had been brought to the cell, he was forced to undress.

86. **Aledo Abdulai**, aged 18, from Daopaong, had been detained at the post since 1 April 2007. The gendarmes handcuffed him when he was brought to the post. The complete nakedness in which he and the others were being kept embarrassed him. At one point, he had a small amount of money, which he had given the gendarmes for food, but after his means where exhausted, he no longer received anything to eat.

87. **Amayi Béindoene**, aged 22, was captured by civilians on 12 April 2007 at 2.00 in Abatchang, accused of breaking into a house and stealing a chicken. The owner of the house took him to the village chief's dwelling, where they bound his ankles and hands with a nylon rope, his hands behind his back. They kept him in the village chief's house until noon, and then transferred him to the county chief in Bario. Shortly thereafter, he was taken to the gendarmerie post, where he arrived at around 13.00. At the secretariat, where the typewriters were stored, the gendarme who wrote the report questioned and whipped him. The officer used a short leather whip with two strings of cow leather. The whip was white and about 50cm long. During the whipping, his arms were bound behind his back and he was wearing a T-shirt. The gendarme beat him about six times on the back, causing him severe pain. He later suffered from headaches because of this treatment. He confessed to having stolen the chicken. He had not been maltreated on any other occasion. One of the detainees had 500 CFA to give to the gendarmes for food. Otherwise they would not get anything to eat. According to the forensic medical expert, the striped abrasions on Amayi Béindoene's back and arms were less than 24 hours old and typical for whipping. The findings thus confirm the alleged ill-treatment both regarding time and method.

88. Meeting with the Prosecutor of Sokodé region in the evening of 14 April 2007: The Prosecutor told the Special Rapporteur that he had not been aware that Amayi Béindoene had been detained at all. He had also not been informed of any request to extend the initial 48 hours of custody. According to the Prosecutor, such extensions have to be given in writing. Since the prosecutors have no influence on how the gendarmerie's performance is assessed, it often happens that people are kept without their knowledge. He informed the Special Rapporteur of two cases of torture he had heard about from the ICRC representative. In one of the cases, the person concerned had been suspended from barbed wire. The Prosecutor complied with the request of the Special Rapporteur to release Amayi Béindoene. The Special Rapporteur returned to the gendarmerie station and waited until the detainee was released at 20.30.

Gendarmerie Groupement SOTOUBOUA (Gendarmerie territoriale)
Visited on 15 April 2007

89. At the time of the visit, there was one male detainee at the gendarmerie post. The Chief of Brigade, Ago Palanga, informed the Special Rapporteur that detainees have to undress for suicide prevention. However, according to him, they were allowed to wear their underwear day and night.

90. **Olikoi Affouda Olivier**, aged 33 years, Beninese, was arrested on 14 April 2007 in Sotouboua at his workplace by employees of his business partner, who took him to the gendarmerie post immediately. He was interrogated but not physically abused. He was stripped completely naked and given his underwear only that same morning. Before that, he had been forced to sweep the floor of the post completely naked. An employee of his business partner provided him with food. Although there was a water tap in the cell area, he was not allowed to wash himself.

GENDARMERIE POST, ANIE
Visited on 15 April 2007

91. The detention facility consists of one small cell. Two male detainees were held at the post at the time of the visit. The Chief of the Post (CB), Agbenohevi Anani told the Special Rapporteur that the detainees could move freely in the gendarmerie station during the day. At night, they were locked into their cells. For suicide prevention they removed detainees' belts and watches but left on their clothes because there was nothing in the cells to which clothes could be attached. According to him, it was not a general gendarmerie rule to strip detainees of their clothes. Each CB decided how he or she wished to keep the detainees. The detainees receive food three times aday, either from their families or by the gendarmerie. Water for showers could be accessed only outside the post.

92. **D. M.**, age unknown, presumably a minor, Peul, sat outside the cell, on the floor of the interrogation room next to a motorbike, and alleged that he had been handcuffed to the motorbike all night long. An unofficial interpreter arrived during the visit of the Special Rapporteur to help with the translation of Peul into Ewé.

93. **Akete Nicolas**, age unknown, had just arrived at the post and was waiting for his interrogation to start. He had no complaints about the treatment.

GENDARMERIE POST, AGBELOUVE

Visited on 15 April 2007

94. **Kpara Kossi**, aged about 40, was arrested on the street on 12 April 2007 at 15.00 by gendarmes in Mochi, for complicity in the theft of a cow. First, he was taken to the gendarmerie post in Achawé, where he spent one night. On 13 April at 14.00, he was transferred to the gendarmerie post in Agbelouvé. He was not beaten in any of the posts. He was interrogated by the CB, but not threatened in any way. It was very dark and hot in the cell and he was not allowed to go out, except for in the mornings, when he was ordered to quickly empty the bucket he used as a toilet outside. He had not been able to wash himself since his arrival. His family provided him with food. He always wore his underwear. The cell was infested with mosquitoes and ants.

POLICE POST, TSEVIE

Visited on 15 April 2007

95. There were four male detainees in two cells and a number of empty cells. There was no bath and the toilet was outside the cell. Detainees were not allowed to use the toilet except for once a day, early in the morning. Inside the cell, there was only a bucket for urine. The cells had no electric light. The hygienic conditions were deplorable and the cells were infested with insects. However, the bars permitted certain ventilation. The detainees were allowed to keep their clothes on. No food was provided. Families had to bring them food, or guards bought something if the detainees could pay.

96. **Cheriff Koffi Sovon**, aged 22, said that he had been detained on 14 April. However, according to the register (“Cahier de garde à vue”), he had been in detention since 8 April. He was a driver of a motorcycle taxi and had caused an accident in which one person had died and another one was severely injured. After long discussions with the police officer and the arrival of the Prosecutor (Mr. Attivi-Cessi Toussaint), Cheriff Koffi Sovon was released because the legal time limit of police custody had expired. Later, Cheriff Koffi Sovon called the Special Rapporteur and informed him that he had been threatened by the police officers not to tell the Special Rapporteur that he had been in detention since 8 April.

97. **Agbenou Yao**, aged 26, was arrested by a female civilian on 14 April 2007 shortly before 14.00 in Davie. The woman, whom he owed money, ordered him to come with her to the police post. He arrived at the post at 14.00, where he was interrogated by the main officer, who told him that he would be released if he paid back the CFA 12.000. His wife had brought half the sum the same night. He was neither threatened nor physically harassed. He did not receive food until the following morning. The meal consisted of porridge brought by a family member of another detainee.

98. **F. K.**, aged 15, was arrested on Friday, 13 April 2007, between 7 and 8 p.m. in Tsevié by a young male civilian who accused him of having stolen petrol. He was taken to the police post. Since his arrival, he had not been interrogated. The Chief Commander came into his cell once but left before he had time to explain his case. The police officers sent somebody to buy food for the detainees, for which they had to pay themselves. His family was not aware of his arrest, and he was not allowed to call them. The duty officer agreed to release him because he had been detained for more than 48 hours.