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增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

人权维护者处境问题特别报告员

玛格丽特·塞卡格亚的报告 *

增 编

对多哥访问 **

(2008年7月28日至8月4日)

* 推迟提交。

** 本报告的内容提要以所有正式语文分发。载于内容提要附件中的报告本身只以英文和法文分发。

内 容 提 要

人权维护者处境问题特别报告员于 2008 年 7 月 28 日至 8 月 4 日对多哥进行了一次国别访问。在访问期间，她会见了高级政府官员以及广大人权维护者。访问的目的是，按照《人权维护者宣言》确立的原则对人权维护者的处境进行评估。

在导言部分（一）之后的第二部分中，特别报告员介绍了多哥人权维护者的一般工作环境。自 2005 年以来，多哥一直处于政治过渡过程中，因此，增进和保护人权的前景正在改善。

在第三部分中，特别报告员记述了多哥增进和保护人权的法律和机构框架。她对为确保人权维护者有一个有利的工作环境所采取的一系列主动行动表示欢迎。但她感到遗憾的是，没有为采取这些行动的机构分配足够的资金。

在第四部分中，特别报告员详细报告了目前多哥人权维护者的合法活动所面临的挑战。她指出，人权维护者首先必须实现他们自己内部的团结和协调。其他挑战包括当局对人权维护者的偏见（当局将他们视为属于政治反对派）、女性人权维护者的境遇及其工作所固有的困难、无故拖延发放非政府组织的登记证书、非法限制行使和平集会自由、言论和表达自由、对过去发生的对人权维护者的侵犯不予惩罚。

最后，在第五部分中，特别报告员提出了供多哥政府考虑的结论和建议。

Annex

**REPORT OF THE SPECIAL RAPPORTEUR ON THE SITUATION
OF HUMAN RIGHTS DEFENDERS ON HER VISIT TO TOGO
(28 July-4 August 2008)**

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I. INTRODUCTION

1. Pursuant to General Assembly resolution 60/251 and Human Rights Council resolution 7/8, the Special Rapporteur on the situation of human rights defenders conducted an official visit to Togo from 28 July to 4 August 2008, at the invitation of the Government of Togo. She was accompanied by Mrs Reine Alapini-Gansou, Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights. The joint visit between the United Nations (UN) and African Union Special Rapporteurs was the first of its kind by United Nations Special Procedures.¹

2. The purpose of the visit was to assess the situation of human rights defenders in Togo in light of the principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (hereinafter "the Declaration on human rights defenders" or "the Declaration"). An examination of the legal framework in the country, the institutional policies, and the mechanisms for promotion and protection of human rights were of particular importance to this assessment.

3. The Special Rapporteur would like to renew her sympathy to the Government and people of Togo for the human casualties, the displacement of the population, the loss of property and the destruction of infrastructure caused by the major floods that affected the country shortly before the start of her visit.

4. The Special Rapporteur would like to thank the Government of Togo for the cooperation extended to her in preparation of, and during, her mission. During her visit, she was able to meet with the President; the Prime Minister; the Minister for Foreign Affairs; the Minister of Justice; the Minister for Security and Civil Protection; the Secretary-General and his staff of the Ministry of Human Rights and Consolidation of Democracy; the Prosecuting Attorney; the Director of the Prison Administration; the President and other members of the High Authority for Audiovisual and Communication; the Vice-President and other members of the National Human Rights Commission; the Chairperson and members of the Parliamentary Human Rights Commission; the Head of the Bar Association; a former Prime Minister; and the leaders of the three main political parties in Togo. The Special Rapporteur regrets that she was unable to meet the Minister of Territorial Administration and the President of the Constitutional Court, or their respective staff, despite repeated requests.

5. In addition to Lomé, the Special Rapporteur visited Kpalimé (Kloto prefecture) and Aneho (Lakes prefecture) where she met with the respective prefects and other local authorities. Because of the floods, the Special Rapporteur was unable to access Kara and other localities in the North as initially planned.

¹ The views expressed in the report are shared by the Special Rapporteur on human rights defenders of the African Commission, but only bind presently the United Nations Special Rapporteur on the situation of human rights defenders.

6. Throughout her stay in Togo, the Special Rapporteur met a large segment of the civil society and human rights defenders engaged in the promotion and protection of a wide range of civil, political, economic, social and cultural rights. These included members of non-governmental organizations, women human rights defenders, journalists, trade unionists, and lawyers.

7. The Special Rapporteur thanks all organizations and individuals who worked hard to coordinate her meetings with the defenders community. In particular, she thanks the Representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Togo, and staff, for the excellent support provided in organizing the visit as well as the United Nations Resident Coordinator, Heads of United Nations and regional agencies, and representatives of diplomatic missions with whom she held meetings.

II. GENERAL CONTEXT IN WHICH HUMAN RIGHTS DEFENDERS OPERATE: A COUNTRY IN POLITICAL TRANSITION

8. Following the death of President Eyadema Gnassingbé in February 2005, his son, Faure Gnassingbé, was appointed President with the support of the military. Condemnation by the international community ensued, and Mr. Faure Gnassingbé agreed to hold presidential elections in April 2005. He was elected President with 60 per cent of the vote, but the elections were marred by a large-scale outbreak of street violence and major violations of human rights, such as arbitrary killings, disappearances and torture.

9. In June 2005, the High Commissioner for Human Rights decided to establish a mission of enquiry to look into allegations of human rights violations in Togo committed from 5 February to 5 May 2005. The mission was headed by a Special Envoy appointed by the High Commissioner, who assessed the human rights issues arising from the conduct of the presidential elections of April 2005, verified reports of alleged violations, compiled information on the nature, causes and perpetrators of these violations, and prepared a report with recommendations aimed at combating impunity for human rights violations and on actions to prevent future violence in general.

10. In September 2005, OHCHR published the mission's report, which emphasized the need to put an end to the culture of impunity that had prevailed during the 38 years of reign of the former President of Togo. According to the reports, between 400 and 500 people were reportedly killed and thousands wounded in Togo, and State authorities shoulder most of the blame. The mission, *inter alia*, recommended: that the principles of truth, justice and reconciliation must constitute the central foundation of all programmes addressing the crisis in Togo; the total reorganization of the judicial system; the sending of a high level (UN/Economic Community of West African States (ECOWAS)) mission to emphasize the centrality of the human rights issue to the crisis in Togo; and in-depth reform of the army to make it republican and apolitical.² In November 2006,

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", 29 August 2005).

OHCHR established a country office to assist the Government in designing policies to implement these recommendations, and more generally, to help build national capacities to protect human rights.

11. In August 2006, the Government of Togo and all opposition parties signed a Global Political Agreement, granting the opposition participation rights in the Government. In section 2.2, all signatories to the Agreement acknowledged that impunity for acts of political violence is a severe problem that Togo always experienced. They agreed that all major actors in Togo, in particular political parties and organizations of the civil society, contribute actively to its eradication. Finally, they agreed to establish two commissions: the first one will be tasked with shedding light on acts of political violence committed in the past, and examine ways and means to appease/soothe victims; the second one will propose measures to favour forgiveness/pardon and reconciliation.³ On 28 July 2007, in relation to the establishment of the two aforementioned commissions, President Faure Gnassingbé called for wide consultations among the civil society, religious authorities, traditional leaders and other major actors to seek their views on this matter. On 15 April 2008, President Faure Gnassingbé launched the national consultations in the presence of members of the Government, all prefects, members of the Parliament, traditional leaders, representatives of the civil society and members of the international community.

12. In July 2008, a report on the findings of the national consultations was produced by OHCHR Togo.⁴ It concludes that there is a real demand for truth, justice (including reparation), and reconciliation, and that Togo has a duty to meet this demand, because of the expectations of the population and Togo's international human rights commitments. The report recommends that (a) the Government of Togo must take into consideration the qualitative findings of these consultations when establishing judicial and non-judicial mechanisms aimed at combating impunity in Togo; (b) because of the cost of the commissions, references to experiences in other countries and for the sake of efficiency, only one Truth and Reconciliation Commission with two subcommissions should be recommended, in accordance with the spirit of the Global Political Agreement; (c) in order not to exclude any victims of political violence, the period 1958-2005 could be taken into consideration by the Commission; and (d) the Government must take all adequate measures to guarantee the security of witnesses, victims and alleged perpetrators, and must involve civil society in the search for solutions to questions pertaining to the fight against impunity.

13. Presently, the international community plays a significant role in assisting the Government of Togo in fulfilling its obligations under international human rights law. The European Union has been technically and financially assisting the country in the course of its reforms through the 22 commitments on democracy and human rights made by the Government of Togo

³ Accord Politique Global, 20 August 2006.

⁴ Appui au Processus Vérité, Justice et Réconciliation - Consultations Nationales au Togo, Rapport Final, juillet 2008.

in April 2004.⁵ In 2007, ECOWAS put pressure on the Government to allow members of the civil society to monitor the parliamentary elections. Finally, the International Organization of the Francophonie (IOF), through its Observatory on Human Rights and Democracy, has been monitoring the human rights situation in the country.

14. Togo is, therefore, a country in political transition and, as a consequence, the prospects for the promotion and protection of human rights are improving. The next presidential elections, to be held in 2010, will be a decisive test for the Government's will to uphold the basic principles of democracy and human rights.

III. LEGAL AND INSTITUTIONAL FRAMEWORK FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

A. Legal framework

1. Domestic level

(a) Constitution

15. The Preamble, articles 50 and 140 of the Constitution of the Fourth Republic of Togo adopted in 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.

16. The Togolese Constitution encompasses in its chapter II a set of human rights, including the right to equal treatment before the law (art. 11 (1) (2)), the right to be free from discriminatory treatment based upon any grounds whatsoever (art. 11 (3)), the right to life and to physical and mental integrity (article 13), the right to liberty and security of person (art. 15), the rights to freedom of movement (art. 22), freedom of thought, conscience, religion, cult, opinion and expression (art. 25), freedom of the press (art. 26), and freedom of association and peaceful demonstration (art. 30). Furthermore, 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), the right to work (art. 37), and the right to strike (art. 39).

(b) 1901 Act on Freedom of Association and Assembly

17. Law No. 40-484 of 1 July 1901, inherited from the French legal system and applicable in Togo since 1946, is the core domestic text governing the exercise of the right to freedom of association and assembly. This law establishes a regime of declaration in relation to the legal

⁵ Council of the European Union decision 2006/863/EC of 13 November 2006, *Official Journal of the European Union*, 1 December 2006.

existence of non-governmental organizations (NGOs). NGOs may start activities on the ground once they have filed their statutes with the Ministry of Territorial Administration. Legal personality is granted to them upon delivery of a registration certificate (“*récipissé*”) by the same Ministry.

(c) 2004 Press Code

18. In 2004, Togo adopted a new press code (Code de la Presse, Law No. 2004-015 of 27 August 2004). This code is reportedly more favourable to the work of journalists as it decriminalizes the press offence related to defamation.

2. Regional level

19. Togo has ratified the African Charter on Human and Peoples’ Rights in 1998, and its Protocol on the establishment of an African Court on Human and Peoples’ Rights. Further, Togo is a party to the African Charter on the Rights and Welfare of the Child, and has signed the Protocol to the Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

20. Togo participated in the First Organization of African Unity Ministerial Conference on Human Rights in Africa, held from 12 to 16 April 1999 in Grand Bay, Mauritius. At the end of the conference, the Grand Bay Declaration and Plan of Action were adopted. Article 19 of the Declaration states that “[t]he Conference notes that the adoption of the UN Declaration on the Protection of Human Rights Defenders by the 54th Session of the [then] UN Commission on Human Rights marks a significant turning point, and calls on African governments to take appropriate steps to implement the Declaration in Africa”.

21. Togo further participated in the First African Union Ministerial Conference on Human Rights in Africa meeting on 8 May 2003 in Kigali, Rwanda, at the end of which the Kigali Declaration was adopted. Article 28 of the Declaration provides that “[t]he Conference ... [r]ecognizes the important role of civil society organizations (CSOs) in general, and human rights defenders in particular, in the promotion and protection of human rights in Africa; calls upon Member States and regional institutions to protect them and encourage the participation of CSOs in decision-making processes with the aim of consolidating participatory democracy and sustainable development; and underscores the need for CSOs to be independent and transparent”.

22. The International Organization of the Francophonie (IOF), to which Togo is a member State, adopted the 2000 Bamako Declaration. Article 4 (D) (23) states that the IOF commits to “establish, generalize and strengthen national institutions of promotion of human rights, consultative or not, and to support the creation within national administrations structures dedicated to human rights, as well as the work of human rights defenders”.

23. In 2006, the IOF further adopted the Saint-Boniface Declaration. Article 31 of the Declaration states that Ministers and Heads of State French-speaking delegations “commit to promoting the work of human rights defenders and to ensuring their protection”.

3. International level

24. As at August 2008, Togo is a State party to the major United Nations human rights treaties, including the International Covenant on Civil and Political Rights and its First Optional Protocol

concerning the right of individual petition; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all forms of Racial Discrimination; the Convention on the Elimination of all forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Togo has signed but not yet ratified); and the Convention on the Rights of the Child and Optional Protocol on the involvement of children in armed conflict as well as Optional Protocol on the sale of children, child prostitution and child pornography.

25. Togo has signed the Optional Protocol to the Convention against Torture, the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

26. Togo is also a 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. Institutional framework

1. Ministry for Human Rights and Consolidation of Democracy

27. In the Minister's absence (away to head the Togolese delegation before the Committee on the Elimination of all forms of Racial Discrimination), the Special Rapporteur met with the Secretary-General of the Ministry who apprised her on its work since its establishment in 1992.

28. The Ministry is mandated to: (a) promote and protect human rights, together with other ministries and institutions; (b) implement international human rights instruments ratified by Togo; and (c) ensure that citizens have access to information, training and sensitization on their rights, as well as popularize international instruments. The Ministry has reportedly organized a series of seminars, workshops, round tables, and sensitization tours in that respect. In December 2007, 14 lecturers toured high schools to present the Universal Declaration of Human Rights to students.

29. In 2007, the Ministry elaborated, in collaboration with partners, a 4-year national plan of action and programmes of promotion and protection of human rights, with a series of short and long-term objectives. The five pillars of this plan are: (a) to improve the institutional and operational normative framework; (b) to educate citizens on human rights; (c) to establish a national documentation and information centre; (d) to reinforce national capacities; and (e) to reinforce collaborative mechanisms with partners. NGOs are reportedly the prime partners of the Ministry in advancing this plan. This plan was endorsed, with a large majority, by the Council of Ministers on 7 May 2007. A management unit and a piloting committee, composed of representatives of the Government, the legislative, the judiciary, the civil society, and the donor community, are in charge of monitoring the implementation of this plan. The Ministry is currently seeking funding for its plan.

30. In addition, a civil society unit has been established within the Ministry. This unit is mandated to design a consultation framework with representatives of civil society; provide legal assistance to human rights defenders; and seek, whenever possible, the involvement of human rights defenders in activities of promotion of human rights. To this end, the unit holds periodic meetings with NGOs to assess the partnership. The Special Rapporteur enquired whether the unit

has raised awareness on the Declaration on human rights defenders. The Secretary-General responded that no popularization activity of the Declaration has yet been undertaken. However, within the context of the sixtieth anniversary of the Universal Declaration of Human Rights and the tenth anniversary of the Declaration on human rights defenders, a series of activities aimed at promoting human rights and raising the profile of human rights defenders will take place, including a workshop on human rights defenders in October and a national tour in November presenting several international human rights instruments, including the Declaration on Human Rights Defenders.

31. The Special Rapporteur was further informed that an inter-ministerial committee led by the Ministry, and of which the National Human Rights Commission is a member, is tasked with drafting reports for submission to United Nations treaty bodies and to the Human Rights Council on the Universal Periodic Review.⁶ The committee acknowledges a reporting backlog, which is reportedly imputable to a lack of training of its members on how to draft these reports in a satisfactory manner. In July 2008, OHCHR-Togo delivered training on drafting skills to members of the committee, and co-developed with the committee a plan of action to deal with the backlog.

32. The Special Rapporteur welcomes the work and series of initiatives undertaken by the Ministry, but regrets that it lacks resources. It is imperative that a more important budget be allocated to the Ministry so as to enable it to fulfil its mandate.

2. Law enforcement authorities

33. The Special Rapporteur met with the Minister of Security and Civilian Protection, and was briefed on the activities of the Ministry to which the police and the gendarmerie are attached. The Ministry is reportedly engaged in civil protection activities, notably linked to natural disaster. According to the Minister, the security situation in Togo is now satisfactory. If somebody complains to the Ministry for Human Rights and Consolidation of Democracy about a human rights violation, agents of the Ministry of Security will investigate the allegations. The Minister mentioned a general training on human rights for security forces posted in the country and to be deployed in United Nations peacekeeping missions. However, it appears that no training on the work of human rights defenders and on the Declaration on human rights defenders has been undertaken. The Special Rapporteur believes that sensitization to security forces on the work of human rights defenders is essential so as to make the environment of defenders more enabling.

34. The Special Rapporteur met with the Military Chief Commander and Heads of ground, navy and air forces. The two priorities of the military are to fight criminality and provide United Nations peacekeeping forces with soldiers. Currently, Togolese soldiers are serving in United Nations peacekeeping missions in Haiti, Côte d'Ivoire and in Sudan's Darfur region. In February 2007, the Parliament passed a law on the statutes of the Togolese armed forces. The law foresees that the army operates within the law, and that its role in the country is non-political. It does not address the accountability of security forces accused of human rights violations. The Special Rapporteur was further informed that since 1996, soldiers have been trained on

⁶ Togo will be reviewed at the twelfth session of the Human Rights Council in 2011.

international humanitarian law, most recently in 2007 and 2008. They have also received training on international human rights law, in cooperation with OHCHR-Togo, in 2007 and 2008. However, specific training on human rights defenders is yet to be conducted. The Special Rapporteur reiterates her call on the military to organize such training in the near future, which it agreed to do so.

3. Parliamentary Human Rights Commission

35. The Special Rapporteur met with the President of Parliament, the President of the Parliamentary Human Rights Commission (PHRC) and some of its members.

36. The PHRC is tasked with verifying that each draft bill pertinent to human rights conforms with international human rights instruments. The PHRC also sensitizes members of Parliament on human rights.

37. The PHRC has a steering committee composed of a member of the National Human Rights Commission, a member of the Togolese Coalition of Human Rights and a member of the Bar Association. It provides expertise on a range of human rights issues to members of the Commission, who are not human rights specialists.

38. In February 2008, the PHRC was briefed by OHCHR-Togo and the Inter-Parliamentary Union (ITU) on the “role of Parliaments in the implementation of international and regional human rights instruments”. The objective of the seminar was to familiarize members of Parliament with these instruments to enable them to guarantee the full application of basic human rights of Togolese citizens. A follow-up seminar was organized by OHCHR and ITU in the fall 2008.

39. The President of the PHRC stressed the good synergies with the Ministry for Human Rights and Consolidation of Democracy and the National Human Rights Commission. Each time an activity is organized by the Commission, the participation of the Ministry and the National Commission is actively sought.

40. The Special Rapporteur welcomes the work of the PHRC, and takes note of the request made by the Commission to have its capacity strengthened. She calls on the Commission to continue its activities, and to propose an increase of the budget of the Ministry for Human Rights and Consolidation of Democracy.

4. Judicial system

41. The Special Rapporteur was received by the Minister of Justice who introduced the judicial reform currently undertaken within the context of modernization of the justice system. In 2004, a diagnostic of the justice system was made, and the following problems were identified: lack of independence of the judiciary; limited access to justice by citizens; and insufficient capacity of magistrates. In August 2005, a five-year reform programme (2006-2011), financed by the United Nations Development Programme, the European Union and France, was adopted.

42. The six pillars of the judicial reform are: (1) strengthening the capacity of the judiciary to dispense justice, to ensure the fulfilment of the reform, and strengthening the capacity of prison administration; (2) modernizing judicial law, i.e. reforming the codes (civil, civil procedure and penal), and special legislations; (3) reinforcing the capacity of jurisdictions at first (25 courts) and superior levels (two appeal courts and one supreme court); (4) reforming the training of magistrates by establishing a training centre for magistrates, and making libraries available to them; (5) ensuring proper jurisdictional control of the activities of the State by establishing effective administrative jurisdictions and an audit court; and (6) ensuring a better access to justice for citizens by popularizing jurisdictional instruments and offering itinerant justice.

43. The implementation of the reform will be made possible by: (1) establishing a unit in charge of its supervision; (2) restructuring the Ministry of Justice; (3) rehabilitating the buildings hosting courts and justice services; and (4) establishing a national commission of modernization of the justice system which goal is to adopt the 18 core judicial texts.

44. The Special Rapporteur welcomes this critical reform. Independence of the judiciary is vital for ensuring an environment conducive to the work of human rights defenders. However, she expresses concern at reports of ongoing internal and external pressure on magistrates at first level from magistrates from the superior level and high rank officials, instructing them to dispense justice in a certain manner on a number of cases. Reports of direct and indirect intimidation against magistrates in rural areas, and reports of nepotism in the nomination and promotion of magistrates were further brought to the attention of the Special Rapporteur (magistrates from a certain ethnic group are favoured to others who may have better performed).

45. The Special Rapporteur further regrets that, so far, there has reportedly been no training for magistrates and judicial officers on the Declaration on human rights defenders. Such training is of utmost importance to sensitize magistrates and judicial officers on the work of defenders.

5. National Human Rights Commission

46. The Special Rapporteur met the Vice-President as well as several members of the National Human Rights Commission (*Commission Nationale des Droits de l'Homme* - CNDH). She was apprised of the work of the CNDH, and how it discharges its mandate.

47. The CNDH was officially inaugurated on 21 October 1987, but it ceased to exist four years later following the events that hampered democracy. In 1996, the CNDH was revived to bring it into line with article 152 of the Constitution. In 1999, the CNDH was accredited with A(r)-status, regarding its compliance with the Paris Principles, by the International Coordination Committee of National Institutions (ICC). In 2000, the reservation was removed, and in 2007, the A-status was confirmed by the ICC.

48. CNDH's composition, organization and functions are provided under Organic Act No. 96-12 of 11 December 1996, as amended and completed by Organic Act No. 2005-004 of 9 February 2005. According to article 3, the CNDH is composed of 17 members elected by an absolute majority by the National Assembly, including 2 persons proposed by the National Assembly; 1 magistrate; 1 lawyer; 1 law faculty professor; 1 doctor; 1 women rights activist; 2 human rights activists; 1 child rights activist; 2 trade unionists; 1 traditional chief; 3 eminent

persons from a religious cult (catholic, protestant and Muslim); and 1 eminent person from the Togolese Red Cross and the Togolese Red Crescent. The duration of the mandate of the members of the CNDH is four years which can be renewed (art. 4). The current CNDH Bureau was elected on 23 February 2007, with Mr. Kounté Koffi as President.

49. According to article 2, the main functions of the CNDH are: (a) to ensure the protection and defence of human rights in Togo; (b) to promote human rights by any means, in particular to examine and recommend to the public authorities all proposals related to human rights in order to have them adopted, to give opinions in the field of human rights, to organize seminars and conferences on human rights, to organize awareness-raising campaigns on human rights for the general public; and (c) to investigate cases of violations of human rights.

50. Regarding the investigation function, any person who deems himself to have been a victim of a human rights violation may file a petition with the CNDH. The petition can also be filed by a third person or by an NGO. The CNDH also has the authority to initiate an investigation on its own initiative. 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 so-called “Special Rapporteur”. The “Special Rapporteur” can issue recommendations to the CNDH. If the human rights violation continues, the CNDH will meet at once to examine the report submitted by the “Special Rapporteur” and take all measures likely to end the situation.

51. In September 2007, the CNDH organized a workshop entitled “What collaboration for the protection of human rights of human rights defenders?”. It further held a round table for sensitizing State authorities and other actors, including NGOs, on the role of human rights defenders in monitoring elections. During these meetings, the CNDH noted that some members of the civil society requested the CNDH to design a consultative framework, undertake joint activities with NGOs with regard to campaigning, sensitizing and training on human rights, and exchange expertise on a range of human rights issues. These members would further like the CNDH to create a bank of information on human rights, and make it available to all human rights activists.

52. The CNDH has also acted in some instances as a mediator in conflicts between human rights defenders and law enforcement authorities as well as the High Authority for Audiovisual and Communication.⁷ Finally, with regard to the violence surrounding the death of the former President, the CNDH constituted a working group in charge of investigating serious human rights violations.

53. The Special Rapporteur was informed that there are ongoing discussions within the CNDH to establish a human rights defenders focal point whose tasks would include: raising awareness on international and regional human rights instruments pertaining to the work of human rights defenders; ensuring that national legislation is in conformity with these instruments; offering legal assistance to human rights defenders; making recommendations to the Government, Parliament and other State institutions with regard to the situation of human rights defenders,

⁷ See paragraphs 84 and 87.

and following up on these recommendations; and investigating human rights violations against defenders. The Special Rapporteur expresses her full support to this initiative which she believes will enhance the protection of human rights defenders, and their visibility within the State apparatus and the civil society.

54. The Special Rapporteur was also told that a draft bill calling on the inclusion of references to the Declaration on human rights defenders in national legislation is currently being prepared by the CNDH. The CNDH will then ask the Minister for Human Rights and Consolidation of Democracy to push for the draft bill to be adopted by the Parliament in the near future. The Special Rapporteur expresses her full support to this positive initiative.

55. However, the Special Rapporteur was informed that the CNDH suffers from a chronic lack of funding. The Government is reportedly the CNDH's only donor, and not enough funds are reportedly allocated to the work of the CNDH. The Special Rapporteur calls on the Government to increase the funds of the CNDH, and in the meantime encourages the CNDH to look for other sources of sponsorship.

56. The Special Rapporteur also noted that the CNDH lacks visibility within the State apparatus and some parts of the civil society. Furthermore, from her discussions with various stakeholders, the Special Rapporteur observed a fairly widespread misconception of the CNDH's role by State authorities and the civil society. A number of State officials see the CNDH as belonging to the civil society, and several members of the civil society see the CNDH as a direct emanation of the Government, lacking independence and impartiality.

6. High Authority for Audiovisual and Communication

57. The Special Rapporteur held a meeting with the President of the High Authority for Audiovisual and Communication (HAAC), and seven of its members. She was apprised of the statutes and work of the body. According to article 1 of the organic law of No. 2004-021 of 15 December 2004, HAAC is an "independent institution vis-à-vis administrative authorities, political power, political parties, associations and lobbying groups". HAAC is composed of nine members: four are appointed by the President, and five are elected by the National Assembly, including two from a list proposed by organizations which are most representative of the profession of journalists and technicians of communication (art. 5 of Law 2004-021). Their mandate is five years renewable (art. 7).

58. According to article 21 of Law 2004-021, HAAC's mission is to "guarantee and ensure freedom and protection of the press and other means of mass communication while respecting [inter alia, human dignity, public order and national unity, and ethics regarding information and communication]". HAAC further ensures "respect for the pluralist expression of schools of thoughts in written communication and the audiovisual, particularly in relation with political information" (art. 22). HAAC is competent for "granting installation and broadcast licences to private television channels and radio stations" (art. 23). To fulfil its mission, HAAC may "request any information from administrations, persons and corporate entity so as to ensure that they respect their obligations; [HAAC may further] conduct enquiries and studies with these persons and corporate entity" (art. 36).

59. Article 53 details the range of sanctions at HAAC's disposal. In case of non-respect of HAAC's recommendations and formal demands, HAAC may impose a financial penalty, the provisional or definitive suspension of a programme or a part of the programme, the suspension of the authorization of broadcasting for a month maximum, the reduction of the length of the authorization within the limit of one year, and the removal of the authorization with or without the seizure of the antenna. In case of exceptional circumstances or breach of public order, the suspension of a programme, a part of the programme or of the authorization is pronounced by order of the President of the Tribunal and the President of HAAC. The suspension of a programme or a part of the programme may concern both official and private medias. Article 54 states that the decisions of HAAC may be appealed before the administrative chamber of the Supreme Court.

60. While the Special Rapporteur acknowledges the practice of regulatory bodies in relation to the media, she however raises concern about the lack of clarity regarding the guiding procedure of HAAC. She believes that in a number of instances, HAAC has arbitrarily sanctioned journalists in the exercise of their right to freedom of opinion and expression.⁸

IV. CURRENT CHALLENGES FACED BY HUMAN RIGHTS DEFENDERS

A. Overview of the civil society in Togo

61. In the course of her visit, the Special Rapporteur had the opportunity to engage actively with members of civil society. Meetings were organized in the capital, in Kpalimé and in Aneho, during which human rights defenders were able to voice their concerns.

62. Human rights defenders in Togo are active in the field of civil and political rights, and also with respect to economic, social and cultural rights (adequate housing, land, peasants, health, HIV/AIDS, education, development/reduction of poverty, water sanitation, etc.). Most of the defenders' activities are concentrated in the capital. Defenders in the countryside are less visible and aware of their rights and the opportunities offered to them.

63. On 18 July 2000, 11 non-governmental organizations (NGOs) decided to establish a network of organizations to facilitate their work in promoting and protecting human rights. The Togolese Coalition of Human Rights Defenders (*Coalition Togolaise des Défenseurs des Droits Humains*, CTDDH) was born in April 2002 in Lomé. The CTDDH is now composed of 17 NGOs. Its mission is to ensure that all the necessary measures pertaining to the protection of human rights defenders are fully implemented, and to provide, in case of need, medical, psychological, social and judicial support to human rights defenders.

64. While the Special Rapporteur welcomes the creation of the CTDDH, she regrets that the civil society in Togo at large is fragmented and lacks coordination when advocating respect for human rights. The polarization of defenders' activities and the denial of legitimacy to a number

⁸ See paragraphs 86 and 87.

of NGOs perceived as backing governmental policies fuels suspicion and lack of trust among the NGO community. This is certainly detrimental to an environment conducive to the work of human rights defenders.

65. The Special Rapporteur expresses serious concern about the ongoing stigmatization, by some authorities, tribal leaders and a part of the population, of defenders who are seen as belonging to the political opposition. She heard credible reports that some authorities refused to give legitimacy to the work of human rights defenders because they assimilated their work to political activism. This misperception, more acute outside the capital, generates a climate of mistrust between the State authorities and human rights defenders, and must be tackled seriously. Local authorities must be sensitized on the work of human rights defenders.

66. As a consequence, some local authorities and tribal leaders have reportedly impeded the work of NGOs, notably with respect to their access to certain areas in the country by requiring reportedly unnecessary ministerial authorizations. Moreover, it was reported that during a meeting in December 2007, members of the Togolese section of Amnesty International were informed by the chief of the special delegation of Kara that they should not rely on local law enforcement authorities to provide them with protection in the course of their activities.

B. Plight of women human rights defenders

67. During her visit, the Special Rapporteur met with several women human rights defenders active in the promotion and protection of women's rights in Togo. She held meetings with, among others, members of GF2D (Working Group on Women, Democracy and Development), WILDAF (Women in Law and Development in Africa), the German Service of Development, and the Friedrich Ebert Stiftung. The Special Rapporteur was truly impressed by their courage and remarkable commitment in promoting and defending women's rights.

68. Women human rights defenders in Togo have been active on sensitizing all local actors, including tribal leaders, on national, regional and international human rights instruments pertaining to the protection of women's rights, and they have facilitated the access of women to these instruments. They have called on authorities to revise the reportedly discriminatory provisions of the code of personal and family law (*code des personnes et de la famille*) (notably the removal of article 391 governing the regime of inheritance for women), and to create an inter-ministerial committee to enable the perception of pensions for widows and orphans. They have highlighted the need of adopting specific penal legislation to fight violence against women, and have created medical and psychological clinics for women and children victims of sexual and gender-based violence.

69. Women human rights defenders have also worked on strengthening legal assistance to women. To this end, the Centre of Research, Information and Training for Women (*Centre de Recherche, d'Information et de Formation pour la Femme*, CRIFF) was established in 1994 in Lomé and functions as: (a) a legal clinic opened to women (the first one in Togo) where they can obtain legal advice on their rights and how to redress violations of their rights; (b) a training centre for paralegal officers who act as intermediates between legal practitioners and the

population: they are 580 in all Togolese prefectures and have popularized key provisions of the code of personal and family law; CRIFF has also trained civic education officers who have helped women to understand their rights better; and (c) a documentation and research centre on women's issues. Other centres were established in Tsévié, Atakpamé, Kara, Bafilo and Kpalimé.

70. However, women defenders continue to face a series of challenges in their daily activities. First and foremost, women defenders are vulnerable to criticism and ostracism among their own families and communities. They are labelled as, inter alia, “bad mothers” and “family breakers”. Relatives of women defenders, such as spouses and children, are also the subjects of mockery. Women defenders further encounter discrimination within the organization or trade union they operate as their male colleagues often treat them with condescendence.

71. Hostility against female paralegal officers led to the closure of the CRIFF centre in Kara following threats received against these officers from tribal leaders and local authorities. Similar threats were reported in other rural parts of the country. The Special Rapporteur notes that it is becoming increasingly difficult for women defenders to operate safely in rural areas. Local authorities seem to do too little to investigate and prosecute the authors of the threats and other acts of intimidation.

72. Other difficulties reported to the Special Rapporteur include the scarcity of funding and resources for the centres run by women defenders (funding is provided by partners in development) as well as a lack of synergies between women's organizations which fail to come up with a common strategy. Finally, a loss of momentum among women defenders was flagged as a growing number of women defenders are losing impetus because of a reported lack of improvement of the situation of women on the ground.

73. The Special Rapporteur expresses her full support to the commendable work of women defenders in Togo, and raises serious concern about the series of challenges they face in their legitimate activities. She highlights that women defenders need “specific and enhanced protection as well as targeted and deliberate efforts to make the environment in which they operate a safer, more enabling and accepting one”.⁹

C. Illegitimate restriction on the exercise of the right to freedom of association

74. Another hurdle largely reported to the Special Rapporteur is the systematic delay by the Ministry of Territorial Administration in delivering the registration certificate (“récépissé”) to NGOs. Such delay is problematic in that NGOs are required by donors to produce this certificate in order to receive funding from them. Besides, without this certificate, NGOs cannot file a complaint before a court. Some NGOs are even prevented from operating outside the capital in the absence of this certificate.

⁹ Report of the Special Rapporteur on the situation of human rights defenders to the General Assembly (A/63/288), 14 August 2008, para. 34.

75. During the last meeting between the civil society unit of the Ministry for Human Rights and Consolidation of Democracy and representatives of the civil society, the issue of the registration certificate and other administrative hurdles was reportedly debated. The unit recommended to defenders, when faced with such problems, to inform it, and it committed to follow up with the Ministry of Territorial Administration on this issue. To this date, only one organization has contacted the Ministry for Human Rights in that respect, and a letter by this Ministry was addressed to the Ministry of Territorial Administration in order to convey a meeting so as to find a long-term solution. The Special Rapporteur welcomes this positive initiative, and encourages other organizations to use this leverage.

76. The Special Rapporteur regrets that she was not able in the course of her visit to draw the attention of the Minister of Territorial Administration or his staff to this serious issue because of the mobilization of the Ministry to respond effectively to the crisis caused by the floods. Nevertheless, she hopes that the Minister will take appropriate measures to address this serious issue.

D. Illegitimate restrictions to the exercise of the right to freedom of peaceful assembly

77. During meetings with human rights defenders in the capital and prefectures, the Special Rapporteur was informed that their exercise of the right to freedom of peaceful assembly has proved to be problematic on several occasions. In accordance with the 1901 Act on Freedom of Association and Assembly, such exercise in Togo is governed by a regime of notification, i.e. the organizers must inform law enforcement authorities of their intent to hold a demonstration, which may refuse it if the demonstration is considered a threat to law and public order.

78. In September 2007, the Confederation of trade union workers of Togo (*Confédération Syndicales des Travailleurs du Togo*) intended to organize a peaceful march in Lomé to protest against the high cost of living. During the last preparatory meeting with all the authorities concerned, a high level official reportedly arrived and strongly advised the organizers to cancel the march because the Government had received information that some individuals would try to infiltrate the march and vandalize public and private infrastructure, and that the police would be unable to ensure security of the public. To this date, the march has not taken place yet. The society of Togolese consumers tried to organize a similar march on 9 February and 15 March 2008, and was faced with the same refusal. Other human rights defenders planned to organize a peaceful demonstration for criticizing the Government's policy on HIV/AIDS issues, but they were too strongly dissuaded to undertake it.

79. In Kpalimé, human rights defenders raised concern about the difficulty to organize demonstrations or public events. They reportedly need to seek the permission of the gendarmerie first, which is contrary to the principle of the aforementioned declaration. Then, the gendarmes reportedly sit in the first row as to intimidate the audience and the speakers. It seems even more difficult to organize public events involving youths, such as debates on human rights, because such events are reportedly seen by local authorities as constituting a potential threat to public order.

80. The Special Rapporteur expresses concern about the reported limitations to the exercise of the right to freedom of peaceful assembly. She stresses that “the right to protest is an essential element of the right to participation in any democratic dispensation and restrictions imposed on this right must be closely scrutinized with respect to their necessity and reasonableness ... [A] peaceful assembly that is threatened with violence should [not] itself be prohibited, [but] rather be assured of protection in accordance with State responsibility”.¹⁰

E. Illegitimate restrictions to the exercise of the right to freedom of opinion and expression

81. The Special Rapporteur held a meeting with professionals of the media who highlighted cases of assault and threats against journalists, and illegitimate restrictions to the exercise of their right to freedom of opinion and expression by HAAC, when advocating for human rights and good governance.

82. On 17 May 2007, Mr. Gautier Tekpor, a journalist at radio Kanal FM, was reportedly attacked by police officers wearing uniforms and driving a police car. This attack shocked the defenders community in Togo which got mobilized to obtain justice. However, despite several convocations of Mr. Tekpor by the Head of the Togolese armed forces, no arrest was undertaken and the perpetrators remain free.

83. During the counting of votes of the legislative elections of 14 October 2007, Mr. Sylvio Combey of Radio Nostalgie, who wanted to interview the president of the Local Independent Electoral Commission of Lomé who reportedly left the poll station through the window with the results of the elections, was threatened by this authority to be arrested.

84. Mr. Carlos Ketohou, journalist and director of the *Indépendant Express*, and his colleague Mr. Carmel Max, were convoked by HAAC in the presence of two army officers, following the publication in the edition dated 2 October 2007 of an article entitled “The soldier who ‘stole’ the ballot box makes revelations and makes a call”. The article contained information on the soldier who was filmed while taking away a ballot box during the presidential elections in April 2005. The journalist was asked to produce the recording of the interview with the soldier, the picture of the interviewee, and all the evidence enabling HAAC and the military to authenticate the source, before 19 October 2007, otherwise the army would “act accordingly”. On 6 November 2007, Mr. Ketohou solicited the intervention of the CNDH to mediate in this case. On 14 November 2007, Mr. Ketohou, the military, and the CNDH met at the HAAC premises in order to discuss the evidence in the case. No solution was found, and the case was brought before a judicial court. The case is reportedly still pending.

85. In Aneho, human rights defenders expressed their distrust in local authorities when exercising their right to freedom of opinion and expression, and often censor themselves. For instance, they feared to criticize the increase of the price of cement.

¹⁰ Report of the former Special Representative of the Secretary-General on the situation of human rights defenders to the General Assembly (A/61/312), 5 September 2006, para. 56.

86. Human rights defenders further reported a curtailing of their freedom of opinion and expression by the HAAC in some instances. On 19 February 2008, HAAC suspended definitively the journalist activities of Mr. Daniel Lawson-Drackey, journalist at Nana FM, a private radio station in Lomé, because the programmes of Mr. Lawson-Drackey were reportedly in breach of the principles of respect of human dignity and ethics with regard to information and communication. This decision was rejected by the Independent Journalist of Togo trade union which believed that the decision resulted from an erroneous interpretation of the Press Code. On 21 February, Mr. Lawson-Drackey filed a petition before the CNDH, which considered HAAC's decision to be abusive as it failed to produce any evidence of the substantive elements justifying the alleged violation, and recommended the HAAC to lift the definitive suspension of the journalistic activities of Mr. Lawson-Drackey.¹¹

87. In July 2008, HAAC suspended Radio Lumière following the broadcast of a show on good governance during which listeners were calling to participate in the debate. The journalists were later convoked by HAAC. Upon arrival at HAAC's premises, accompanied by members of the CNDH, they were informed that the meeting was cancelled.

88. The Special Rapporteur acknowledges the lack of professionalism of a number of Togolese journalists who often cover news in a sensationalist way. She advised journalists to enhance the credibility of the profession by conducting investigative journalism. Nevertheless, she wants to stress that, HAAC, when reviewing journalists' work, must balance carefully freedom of opinion and expression with ethics. To this end, the Special Rapporteur reminds HAAC of article 6 of the Declaration on Human Rights Defenders, which states that "[e]veryone has the right, individually and in association with others: (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters".¹²

F. Obligation to address impunity for abuses against defenders

89. A major concern conveyed by human rights defenders to the Special Rapporteur is the question of impunity for violations committed against human rights defenders.

90. The Special Rapporteur stresses that justice is crucial for sustaining peace and encouraging and uplifting the work of human rights defenders. She expresses her support to the process of national consultations and to its outcome - the final report prepared by OHCHR Togo - and welcomes the will of the Government to implement the recommendations laid down in this

¹¹ Opinion of the CNDH of 4 March 2008.

¹² Declaration on human rights defenders, A/RES/53/144, art. 6.

report. In particular, she notes recommendation 6 (2) of the report which states that “[t]he Government ... must involve the civil society in the search of solutions to questions pertaining to the fight against impunity”.¹³

91. The Special Rapporteur stresses that it is of utmost importance that the Truth and Reconciliation Commission to be established addresses seriously and thoroughly all violations committed against human rights defenders: its credibility will be at stake. To this end, the Special Rapporteur reminds the authorities that “[i]n the exercise of human rights and fundamental freedoms ... everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights”.¹⁴

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

92. **Since 2005, Togo has been engaged in a process of political transition and, as a consequence, the prospects for the promotion and protection of human rights are improving. The legal and institutional framework for the promotion and protection of human rights enables human rights defenders to operate in a satisfactory way. In particular, the Minister for Human Rights and Consolidation of Democracy and the National Commission for Human Rights are the two most supportive institutions of the work of human rights defenders. However, both entities suffer from insufficient funding, which may impact on the situation of human rights defenders.**

93. **Despite the above-mentioned framework, human rights defenders in Togo remain faced with a series of challenges that impede their legitimate activities. They must first achieve unity and coordination within the defenders community. Other challenges include the stigmatization of defenders by authorities who see them as belonging to the political opposition, the plight of women defenders and the difficulties inherent to their work, unjustified delays in delivering registration certificates to NGOs, illegitimate restrictions on the exercise of the rights to freedom of peaceful assembly and freedom of opinion and expression, and impunity for past abuses against human rights defenders.**

94. **The 2010 presidential elections generate fear and anxiety among the human rights defenders community. The Government of Togo will have to fully allow human rights defenders to monitor these elections, which will echo its commitment to the principles of democracy and human rights.**

¹³ Appui au Processus Vérité, Justice et Réconciliation - Consultations Nationales au Togo, Rapport Final, juillet 2008.

¹⁴ Declaration on human rights defenders, A/RES/53/144, art. 9 (1).

95. **The Special Rapporteur looks forward to a constructive dialogue with the Government of Togo on the situation of human rights defenders in all parts of the country. She calls on OHCHR Togo, United Nations agencies and other international actors to continue assisting the Government of Togo in fulfilling its human rights obligations, and therefore ensuring a better environment for human rights defenders.**

B. Recommendations

Recommendations for the consideration of the Government and relevant State actors

96. **Take concrete steps to give legitimacy to human rights defenders - within the capital and in the regions - by removing the stigmatization of being accused of affiliation to political parties.**

97. **Continue to ensure that human rights defenders operate within a conducive environment.**

98. **Enhance the capacity of human rights defenders.**

99. **Speed up the delivery of the registration certificate to NGOs in order to facilitate their activities.**

100. **Translate the Declaration on human rights defenders in Kabye, Ewe and other main local languages.**

101. **Recognize the legitimate work of women human rights defenders, acknowledge it as human rights work, ensure the removal of all obstacles that impede their work, and take proactive measures to support such work.**

102. **Strengthen the capacity and the visibility of the Ministry of Human Rights and Consolidation of Democracy and the National Human Rights Commission.**

103. **Support financially the four-year national plan of action and programmes of promotion and protection of human rights elaborated by the Ministry of Human Rights and Consolidation of Democracy.**

104. **Sensitize the police, gendarmerie and military officers as well as judicial and prosecution officials on the role and activities of human rights defenders and the National Human Rights Commission.**

105. **Support the draft Bill calling on the inclusion of references to the Declaration on human rights defenders in national legislation prepared by the CNDH. The Ministry for Human Rights and Consolidation of Democracy and the Parliamentary Human Rights Commission must support the law before the Parliament.**

106. **Ensure that HAAC lays out the criteria under which the activities of various organizations are assessed and that its actions are fair and transparent.**

107. For HAAC, the Minister of Communication and other specialized institutions: engage in capacity (notably training on journalist ethics) and confidence-building activities for journalists.

108. Invite the United Nations Special Rapporteur on the independence of justice and lawyers to monitor closely the progress of the reform as to ensure that it will have a real impact on the judiciary.

109. Make the fight against impunity for violations against human rights defenders a priority. The Truth and Reconciliation Commission must address seriously and thoroughly all violations committed against human rights defenders.

110. Implement the Global Political Agreement, in particular the provisions on the respect for human rights.

111. Fully involve human rights defenders in the reconciliation process.

112. Fully involve human rights defenders in the monitoring of the 2010 presidential elections.

Recommendations for the consideration of the international community and donors

113. Support the transition process until the end and continue supporting human rights defenders, both in terms of funding and capacity-building.

Recommendations for the consideration of human rights defenders

114. End the fragmentation of the human rights defenders community and come up with a single strong voice.

115. Improve coordinating networks aimed at strengthening the protection of defenders, particularly those outside the capital.

116. Recognize the work of women human rights defenders, and empower them.

117. Expand capacity among defenders in the capital and in the regions to make full use of the existing national, regional and international human rights mechanisms and institutions.

Recommendations for the consideration of all stakeholders

118. Carry out countrywide civic education to enhance the appreciation of the activities of human rights defenders.

119. Disseminate the Declaration on Human Rights Defenders and the Universal Declaration of Human Rights within the context of their 10th and 60th anniversary respectively.