



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Visit to Togo conducted 1 to 10 December 2014:
findings and recommendations for the State party**

Report of the Subcommittee*, **

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the State party on 10 December 2015. On 10 February 2017, the State party requested the Subcommittee to publish its report, in line with article 16 (2) of the Optional Protocol.

** The annexes to the present report are distributed in the original language only.



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I. Introduction

1. The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment carried out its first regular visit to Togo from 1 to 10 December 2014, in accordance with the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. During its visit, the delegation met with the Togolese authorities, including the Prime Minister, Mr. Arthème Ahoomey-Zunu, as well as with the National Human Rights Commission and civil society representatives.
2. The Subcommittee visited 25 places of deprivation of liberty in the towns of Lomé, Atakpamé, Kara, Mango, Tsévié, Notsé and Aného, including police stations, gendarmeries, prisons, military camps, the psychiatric hospital in Aného, the Cabano Unit of Sylvanus Olympio University Hospital in Lomé and the Juvenile Division in Lomé. The visits made in the five different regions enabled the delegation to gain a representative overview of conditions in the country, leading it to conclude that the situation of persons deprived of their liberty in Togo was of serious concern.
3. The delegation was made up of the following Subcommittee members: Mr. Fortuné Gaetan Zongo (head of delegation), Mr. Paul Lam Shang Leen, Mr. Victor Madrigal-Borloz and Ms. Catherine Paulet. The Subcommittee members were assisted by five staff members of the Office of the United Nations High Commissioner for Human Rights (OHCHR), including two security officers.
4. At the conclusion of the visit, on 10 December, the Subcommittee gave an oral presentation of its preliminary, confidential observations to the Togolese authorities. In the present report, the Subcommittee presents its findings and recommendations regarding the prevention of the torture and ill-treatment of persons deprived of their liberty in the State party. The generic term “ill-treatment” is used to refer to any form of cruel, inhuman or degrading treatment or punishment.
5. **The Subcommittee requests the Togolese authorities to reply to this report within six months of the date of its transmission, giving a full account of the actions they have taken to fulfil the recommendations contained herein.**
6. **The report will remain confidential until such time as the Togolese authorities decide to make it public, as stipulated in article 16 (2) of the Optional Protocol. The Subcommittee wishes to draw the State party’s attention to the possibility of applying for funding from the Special Fund established in accordance with article 26 of the Optional Protocol, for specific projects to implement the recommendations contained in this report, on condition that the report has been made public.**
7. **The Subcommittee recommends that Togo consider publishing this report in accordance with article 16 (2) of the Optional Protocol.**
8. The Subcommittee regrets the considerable delay in presenting the report to the State party.

II. Facilitation of the visit and cooperation

9. The Subcommittee wishes to express its gratitude to the Togolese authorities for the high-level meetings held during the visit and for the information provided. It should be noted, however, that most of the requested documents, including the draft criminal code, the bill on the national preventive mechanism and the necessary credentials, were provided during meetings when the visit was already under way. The delegation was therefore unable to take those texts into consideration when preparing for the visit.
10. The Subcommittee wishes to thank the Togolese authorities for their cooperation during the visit. Access to places of deprivation of liberty was consistently facilitated and the staff involved cooperated constructively. The Subcommittee regrets, however, that it

had to wait more than an hour for access to the National Intelligence Agency in Lomé and the Central Gendarmerie in Kara, which disrupted its schedule of visits.

11. The Subcommittee notes with appreciation the frank and constructive dialogue established with the authorities during the end-of-mission meeting, and it acknowledges the commitment made at the highest levels of government for addressing the shortcomings found.

12. The Subcommittee wishes to extend warm thanks to the OHCHR Country Office in Togo, in particular to Ms. Ige Olatokunbo, for the assistance provided and for helping to make the visit a success.

III. Key challenges and recommendations

13. The Subcommittee takes note of the positive developments in Togo with regard to policies, programmes and initiatives, in particular the reform of the National Intelligence Agency, the training of prison guards and of new criminal investigation police officers, and the undertaking of health system reforms.

14. The Subcommittee observes, however, that because such measures are insufficient, torture and ill-treatment continue to be prevalent, and are exacerbated by a number of troubling structural and systemic problems linked to substandard conditions of detention, serious gaps in the provision of health services, low levels of compliance with fundamental safeguards and impunity.

A. Allegations of torture and ill-treatment

1. Police and gendarmerie

15. During conversations held with persons deprived of their liberty, the Subcommittee heard allegations of torture and ill-treatment of persons held in custody in police stations and gendarmeries with a view to extracting confessions or meting out punishment for the acts committed. These allegations refer to severe beatings with the use of clubs and cords, as well as threats of slitting individuals' throats with a machete in order to extract confessions.

16. The Subcommittee reports that in offices serving as interrogation rooms in four of the police stations visited, the delegation found such instruments as machetes and other knives, wooden sticks, clubs and tongs. The Subcommittee stresses that such instruments, which may be used to inflict torture and ill-treatment, should never be kept in areas used for the interrogation of suspects. If confiscated during an investigation, they must be stored as evidence, sealed and inventoried, in strict accordance with the administrative rules for handling criminal evidence.

17. During a visit to one of the gendarmeries, the Subcommittee noted that persons in custody were naked — a measure described as protecting them against the risk of suicide. The Subcommittee maintains that this treatment is contrary to the principle of respect for human dignity.

18. The Subcommittee recommends that police staff and prison guards be given regular, clear and unequivocal instructions to the effect that the prohibition of any form of torture and ill-treatment is absolute and mandatory, and that an impartial inquiry must be initiated systematically and without delay in any case where there are reasonable grounds to believe that torture or ill-treatment may have been committed. The Code of Criminal Procedure must stipulate that statements obtained under torture are not admissible and must require judges to initiate an inquiry every time such allegations are brought to their attention and to prosecute the perpetrators of torture or ill-treatment.

2. Prisons

19. With regard to prisons, the Subcommittee has received allegations of ill-treatment which most often resulted from disciplinary measures inflicted by other prisoners who are part of the internal administration, as punishment for stealing, fighting or attempting to escape, etc. These punishments take a number of forms, including solitary confinement in a punishment cell without access to sanitary facilities, sometimes for several days; beatings; and prolonged solitary confinement.

20. **The Subcommittee recommends that the State party establish a mechanism allowing any persons deprived of their liberty to file a complaint about torture or ill-treatment, and that it include the investigation of any such complaints as part of the visiting mechanisms to be established. The Subcommittee also recommends that the mechanism provide for prompt, independent and impartial investigation of all such complaints, in accordance with articles 12 and 13 of the Convention against Torture.**

B. Conditions of detention

1. In prisons

21. Based on the visits it conducted, the delegation concluded that the conditions of detention in prisons, which have been known to the competent authorities in particular since the presentation in 2007 of the report by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/7/3/Add.5), remain the same. The Subcommittee considers that such conditions are a form of inhuman and degrading treatment, and that some of these conditions might even be considered acts of torture, insofar as the competent authorities are fully aware of them.

22. The delegation found deplorable conditions of detention in all the prisons visited. The dilapidated facilities date from the colonial era. They are poorly maintained and totally inadequate as places of deprivation of liberty. In most cases the cells are poorly ventilated and can thus become extremely hot, at times above 40°C. The lighting in the cells is faulty or even non-existent, as, for example, in Mango, where the prison has no electricity.

23. In the majority of cases, the sanitary facilities, latrines and showers are decaying and dirty. The condition of the cells depends on the initiative taken by the detainees and on their access to cleaning products, provided by their visitors. No personal hygiene products are distributed to the prisoners by the prison administration; the prisoners must rely on their families to supply them with such products. If they receive no visits, they must ask for assistance from fellow prisoners or buy the products from the yard chiefs.

24. The prisons do not have adequate means of transport to provide for legally authorized transportation of prisoners whenever it is necessary, even in cases of medical or other emergencies.

25. All the prisons have disciplinary cells, which are often dirty, run-down and rarely used. In Notsé, the three disciplinary cells (1.19 m by 1.4 m), and the corridor leading to it (76.8 cm by 2.60 m) are used as detention cells; 13 individuals were being held in them on the day of the visit.

26. As for food, the prison administration serves prisoners one daily meal, which always consists of cornmeal or beans with sauce. If they wish to eat more, prisoners must rely on their families' help. The situation of disadvantaged persons, often referred to as "visitless", is especially worrisome.

27. **The Subcommittee reiterates the recommendations formulated by the Committee against Torture in 2012 (CAT/C/TGO/CO/2) and by the Special Rapporteur on torture in 2007 (A/HRC/7/3/Add.5) and invites the State party to act on them. In that respect, although the Subcommittee recommends the completion of the new prison facility that was under construction at the time of the visit, it invites the State party to take immediate measures to ensure that the conditions of all persons deprived of liberty are brought into line with international standards, including the**

United Nations Standard Minimum Rules for the Treatment of Prisoners, rather than building new prisons.

28. The visiting arrangements vary from one detention centre to another in terms of schedules and conditions. There are no standard rules in this area. Most of the prisons, including in Lomé and Notsé, impose an entry fee, which prevents the poorest families from visiting their relatives.

29. **The Subcommittee urges the Togolese authorities to respect the fundamental right of prisoners to communicate with their families and to receive visits,¹ especially from family members, without the payment of fees.**

Prison overcrowding

30. Prison overcrowding is a major concern and affects the overall conditions of detention. The overcrowding rate was as high as 250 per cent in Notsé, 300 per cent in Lomé and 400 per cent in Atakpamé. The delegation witnessed the situation of certain prisoners in Lomé, Notsé and Tsévié, for example, who had a sleeping space measuring at most 0.30 m² per person. In such circumstances, many must sit or stand all night and clearly cannot sleep. In other prisons, the prisoners sleep directly on the floor or at best on simple mats. This situation is linked with the exceedingly high number of persons held in pretrial detention, which sometimes goes on for several years for minor offences. The Subcommittee considers that such a degree of overcrowding is tantamount to cruel, inhuman and degrading treatment, or even a form of torture, when it is lasting and accompanied by the absence of the minimum acceptable physical conditions, and takes place with the full knowledge of the State authorities.

31. The overcrowding is all the more intolerable as all the prisons visited contained both shockingly overcrowded cells and others of the same size with far fewer inmates, the latter type being available in return for a certain sum paid to the yard chief or an in-house committee. There are also large spaces reserved for single individuals on the basis of their political profiles. The placement of detainees in cells where conditions are less appalling is therefore not decided on the basis of objective, official criteria. The overcrowding and the arbitrary nature of cell assignments increases tensions between prisoners as well as between prisoners and prison staff.

32. **The Subcommittee recommends that the State party urgently take the following system-wide measures to rapidly redress the significant problem of prison overcrowding:**

(a) **Using pretrial detention only in cases of the most serious offences and routinely making use of alternatives to deprivation of liberty in other cases, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);**

(b) **Monitoring by the courts of persons in pretrial detention to ensure that they are not held for longer than is legally permissible. In this regard, the Subcommittee recommends an immediate review of all cases of persons held in pretrial detention. The cases of convicted persons must also be monitored by the courts on an ongoing basis to ensure compliance with the rules for the duration of deprivation of liberty;**

(c) **Immediately releasing anyone who has been in pretrial detention for a period equal to or greater than the maximum possible prison sentence for the offence that led to the person's detention.**

¹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 19; United Nations Standard Minimum Rules for the Treatment of Prisoners, rules 58, 60 and 61.

Prison activities

33. Most prisoners are not permitted any form of organized physical or intellectual activity, whether for relaxation, work, professional training or education. The activities that do exist are held sporadically and the criteria for access to them vary from prison to prison. According to the persons interviewed, prisoners must sometimes buy the right to participate in activities. Artisanal and agricultural products produced in some of the prisons are sold to other prisoners or to visitors. The Subcommittee is particularly concerned about the situation of prisoners who are serving long sentences and who, instead of having privileged access to activities because of their situation, are excluded for “security reasons”.

34. The Subcommittee recommends that the State party offer prisoners a minimum level of activities, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, including prisoners who are serving long sentences. The State party must encourage prison labour with a view to training and rehabilitating prisoners and must ensure that prisoners receive reasonable remuneration for their work.

Prison regime

35. Prisoners are mixed together indiscriminately in overpopulated cells and are subject to the same regime, regardless of whether they have been accused, are on trial or have been convicted.

36. The prison authorities have handed over the command and control of the prison regime and life inside the prison to the prisoners. The result is an arbitrary system that is not beholden to any set of common rules and thus varies from prison to prison. It is possible to buy and sell “privileges” such as the option of living in a less crowded cell, sleeping in the best part of a cell, using a guard’s cell phone, or buying cigarettes, toilet paper and hygiene products. Prices reported by prisoners vary from prison to prison, but the practice is widespread and conducive to abuse and in some cases even corruption.

37. The State party should urgently adopt regulations for all places of detention that conform to the relevant international standards. The State party should also eliminate all forms of corruption that might arise from these practices, punish the perpetrators and inform all prisoners and their families of their rights.

Internal administration

38. In all the places of detention visited, the internal administration of the prison was entrusted to the prisoners themselves, following a well-established hierarchy of cell bosses and a yard chief assisted by deputies. In some cases, prison guards do not even enter the prison itself and leave its day-to-day management, including access to the cells, entirely to the inmates. The cell bosses and yard chiefs of each prison thus enjoy considerable privileges during their stay in prison.

39. The Subcommittee found that the lack of supervision by prison authorities means that the strongest or richest prisoners hold the power and wield it arbitrarily over the weakest and poorest prisoners. This self-administration generally means that any relationship between inmates and the prison authorities passes through, and is filtered by, the cell bosses and yard chiefs, making it impossible for inmates to file complaints against them. In addition, discipline and disciplinary sanctions are meted out by the prisoners, which is a source of abuse, ill-treatment and corruption. Discipline should remain at all times in the hands of the prison authorities, and should be carried out with the associated safeguards, which include ensuring that it is administered transparently, that all punishments are recorded and that inmates are able to challenge them.

40. A certain amount of self-management can be beneficial for prisoners if it does not take the place of the responsibilities of the prison administration in general and of the prison warden in particular. However, a self-management system that is unsupervised by the prison authorities is not acceptable.

41. The Subcommittee recommends that no authority to impose disciplinary measures must be granted to persons who are not members of the prison

administration, which must carry out every task using its authority and taking action on the basis of a clear, effective procedure.

2. In gendarmeries and police stations

42. The delegation found the cells in police stations and gendarmeries unhealthy. Some receive no daylight and most have poor lighting. The detainees are not fed; they have to give money for food and water to the police officers or gendarmes, who then purchase it for them. In this context, the situation of persons without families or resources is of particular concern.

43. There are no cells for women in police stations or in gendarmeries, and women are obliged to remain in the corridors under the watch of police officers or gendarmes, even at night. There are no cells for minors, who are held in the same cells as adults while in custody.

44. The Subcommittee recommends that the State party bring the physical conditions of gendarmeries and police stations into conformity with the relevant international standards, including the Standard Minimum Rules for the Treatment of Prisoners. The Subcommittee thus recommends that the State party ensure that the hygiene, lighting and ventilation are satisfactory, that the detainees have access to drinking water and are given sufficient food of adequate quality, that guards include persons of both sexes and that separate cells be provided for women and minors.

C. Health

Health situation in prisons and in the Cabano Unit

45. At the time of its visit, the Subcommittee found the health situation in Togolese prisons alarming. The extreme overcrowding is a breeding ground for scabies, dysentery and pulmonary infections, in addition to tuberculosis, HIV and hepatitis, not to mention the psychological impact of such living conditions and the frequent exposure to violence between detainees. In the prison in Lomé, the delegation was told that over 60 per cent of the prisoners had malaria and that one in five was infected with scabies.

46. The Subcommittee also noted that the prisoners were not given medical check-ups on arrival and that access to treatment was not ensured. With the relative exception of Lomé, none of the infirmaries in the prisons that were visited had at least a nurse; nor did they offer regular consultations with general practitioners or specialists. In the prisons of Notsé and Kara, for instance, there was no nurse or doctor on site at the time of the visit. In emergencies, prisoners were transported to a nearby hospital or to the Cabano Unit at the University Hospital in Lomé, at the expense of their families, or were handcuffed to a prison guard's personal motorcycle.

47. The secure national hospital unit, the Cabano Unit of the University Hospital in Lomé, is constantly overcrowded (with 66 patients for 27 beds on the day of the visit). This does not allow for a satisfactory medical intake or for follow-up care — especially not for female patients, since they are not given beds. On the day of the visit, the four women who had come to consult the doctor had to wait their turn outside and were not permitted to stay inside under any circumstances. Medical care and treatment were provided by the hospital's cardiology unit during the day on weekdays, and at all other times by the on-call service for the entire hospital. A short time before, three military nurses had begun taking daily and weekly shifts on duty.

48. The situation of disadvantaged prisoners who cannot pay the costs of treatment is extremely worrisome because treatment, even when urgent, is provided solely in exchange for payment. The shortage of appropriate treatment owing to lack of funding sources other than non-governmental organizations (NGOs) and some targeted programmes (for tuberculosis and HIV, etc.) is directly reflected in the high number of deaths (in Lomé, for instance, 31 prisoners died in 2012, 23 in 2013 and 18 in 2014, as at late November), many of which could have been avoided with appropriate treatment.

49. **The Subcommittee reminds the Government of Togo that it must ensure access to medical services by detained persons, in accordance with the Standard Minimum Rules for the Treatment of Prisoners. It recommends that the State party take the necessary measures to ensure that every prison has regular access to the services of a qualified medical doctor, who should examine each prisoner as soon as possible after his or her admission and monitor the physical and mental health of prisoners, in particular by creating medical files for each of them.**

50. **The Subcommittee recommends that the Cabano Unit be fully renovated, that the total number of beds be adapted to need, that beds be specifically reserved for women and minors and that prisoners with contagious diseases be effectively isolated. In addition, the Subcommittee recommends increasing the medical presence in the Cabano Unit by assigning a full-time medical doctor to it.**

51. **The Subcommittee recommends that the State party ensure access to medical care for all prisoners, including indigent ones. It urges the State party to consider incorporating medical care for the prison population into the health-care reform under way, and in particular to consider broadening the social protection scheme to include prisons.**

Zébé Psychiatric Hospital

52. The Subcommittee visited Zébé Psychiatric Hospital, the only psychiatric hospital in the country. The hospital was overcrowded (166 patients for 136 beds on the day of the visit), but the physical conditions were acceptable in terms of cleanliness, the maintenance of the premises and available space. The Subcommittee also noted with satisfaction that the hospital administration and the head doctor were working on diversifying services by creating an ambulatory consultation and treatment clinic — a welcome alternative to hospitalization — in the city centre of Lomé. That said, the number of psychiatrists (one) and medical assistants (three) was clearly inadequate.

53. The Subcommittee notes that no allegations of ill-treatment were heard during the interviews and that visits from families were encouraged.

54. The Subcommittee nevertheless points out that most of the patients were hospitalized without their consent: at the time of the visit, fewer than a dozen were there at their own request. Most patients had been hospitalized at the request of their families, while around 15 were there by order of the State prosecutor for breaches of the peace or because a judge had decreed that detention was not appropriate.

55. The Subcommittee also notes that solitary confinement (sometimes coupled with forcible administration of medication) is frequent and not adequately monitored or documented; it is imposed without guidelines and is not recorded in a special register or systematically noted in the individual's medical file.

56. A relatively broad range of services is provided, including individual- and group-based care. The Subcommittee is nevertheless concerned that 60 per cent of patients are disadvantaged persons who cannot pay for medical care. Although the hospital covers their costs, causing a structural budgetary deficit, it can provide them with only a very limited range of basic medical treatment.

57. The Subcommittee is concerned about the lack of legal safeguards, in particular the lack of a periodic review of involuntary hospitalizations, the absence of appeal mechanisms and complaint procedures and the lack of a regular inspection of the premises by the judicial or administrative authorities.

58. **The Subcommittee requests that the State party ensure that the legislative reform under way will include a review of involuntary hospitalization measures and that it reconsider the legal status of persons who have committed a criminal offence and were suffering from mental problems at different stages of the criminal proceedings.**

59. **The Subcommittee also recommends allocating sufficient human and financial resources to the mental health sector, recruiting more psychiatrists, adopting a mental**

health policy in keeping with the obligations resulting from the State party's ratification in 2011 of the Convention on the Rights of Persons with Disabilities and formulating a relevant national strategy.

60. The Subcommittee recommends that a mechanism for the periodic review of involuntary hospitalizations be set up immediately at Zébé Psychiatric Hospital.

61. In addition, solitary confinement aimed at controlling agitated and aggressive patients should be applied on the basis of clear procedures and should be systematically monitored and documented.

D. Fundamental safeguards

1. In prisons, police stations and gendarmeries

62. The delegation found grave violations of fundamental safeguards in most of the places of detention it visited. The Subcommittee would like to highlight several issues in the paragraphs below.

Detention registers

63. The current record-keeping system does not guarantee protection against torture or cruel, inhuman or degrading treatment. During its visits to places of deprivation of liberty, the Subcommittee found that information was documented haphazardly.

64. The Subcommittee noted inconsistencies as well as an overall lack of rigour in record-keeping. In addition, information regarding a detainee is often divided up among various kinds of registers, thus posing a serious obstacle to achieving a full understanding of the detainee's situation. Except in the Kara "anti-gang" gendarmerie, where the Subcommittee noted with satisfaction that a data management system called for by the Code of Criminal Procedure allowed for computerized handling of fingerprints and photographs, the record-keeping system is manual, unreliable and not computerized.

65. The Subcommittee noted with regret that the registers did not mention visits by family members or lawyers, the health status of the detainee or any information about consular protection for foreign prisoners. Nor did they mention persons considered vulnerable for example on the basis of a physical or mental disability. In other cases, such basic records as records of deaths, transfers to hospitals or other prisons, disciplinary measures and visits from the judicial authorities were not always available.

66. As far as police station registers are concerned, in violation of article 53 of the Code of Criminal Procedure, the arrival and departure times of persons taken into custody are not always recorded, making it difficult to monitor whether the legal limits on periods of pretrial detention are respected.

67. **The Subcommittee reminds the State party that it must keep rigorous, thorough records. All information regarding the detention of a given individual, such as extension of custody, medical check-ups, transfers, visits from the judicial authorities, family visits and deaths, as well as any related measures taken, should be systematically noted in the registers. In addition, the Subcommittee invites the competent authorities to carefully monitor record-keeping on a regular basis.**

68. **The Subcommittee recommends that the State party establish a standardized, centralized and computerized system, to be used throughout Togo, so as to facilitate effective monitoring of the legality of pretrial detention.**

Duration of custody and pretrial detention

69. Article 52 of the Togolese Code of Criminal Procedure stipulates that the length of custody is 48 hours. That period can be extended for 48 additional hours when authorized by the State prosecutor or the investigating judge and can be increased by 24 hours or more if the arrest takes place elsewhere than the public prosecutor's office, to account for the time needed to bring the person held in police custody before the competent judge.

70. The Subcommittee is concerned that the custody of arrested persons is often arbitrarily extended in police stations and gendarmeries. These extensions are carried out without official authorization, and monitoring is impossible, since the records do not indicate the date or hour of the start and expected end of the custody, nor do they bear the detainee's signature. The Subcommittee wonders about the handling of cases in which a person is arrested on a Friday but cannot be brought before the prosecutor or the prosecution service during the weekend, with the exception of the Lomé prosecution service, which keeps weekend hours.

71. As for the length of pretrial detention, the Subcommittee learned from conversations with detainees that some had not been informed of the date of their next appearance before the courts and did not have a copy of their detention orders. The delegation checked their claims against the detention registers, in which the date of the detention, but not the date of the court ruling, had been recorded. The officers in charge of filling out the registers also told the Subcommittee that the detention order issued by the judge never contains the date of the next appearance or judgment, which is known neither by the detainees nor by the prison administration.

72. The Subcommittee reminds the State party that the legal length of custody and the procedures for extending the length of custody must be strictly observed by police officers and gendarmes and that the judicial authorities are responsible for the regular and effective monitoring of custody, as well as the prompt improvement of record-keeping.

73. The Subcommittee also reminds the State party that, in accordance with article 112 of the Togolese Code of Criminal Procedure, the use of pretrial detention must be exceptional. In this regard, the Subcommittee recommends that the State party take alternative measures in the case of minor offences and strengthen its judicial monitoring system.

74. The Subcommittee also recommends that the State party require the judicial authorities to explicitly state in the detention order the date of the next court appearance, of the trial or of the ruling and ensure that the detainee and the prison administration are systematically given access to this information.

Right to a medical examination

75. In the light of the consistent lack of medical registers in the police stations and gendarmeries and the Subcommittee's interviews with staff and persons in custody, the Subcommittee has concluded that medical examinations conducted at the request of persons in custody or of their families, as provided in article 53² of the Code of Criminal Procedure, are not carried out in practice. The conditions and means allowing such persons to request medical examinations constitute a fundamental guarantee for the prevention of torture and other ill-treatment.

76. The Subcommittee recommends that the State party ensure that a medical examination and routine care is provided for each person placed in custody.

Right to be informed of one's rights and the grounds for one's arrest

77. The persons interviewed by the Subcommittee indicated that they had been informed of the grounds for their arrest, in conformity with article 17 of the Togolese Constitution. However, those same persons had been given no information or explanation about their rights. The Subcommittee also noted the absence of related noticeboards or informational posters in gendarmeries and police stations. Although the provisions on custody contained in the Code of Criminal Procedure do not require prisoners to be informed of their rights, such notification is one of the fundamental safeguards that the State party must provide to every detainee.

² Code of Criminal Procedure, art. 53: "The person held in custody may receive a medical examination at his or her own request or at the request of a member of the family, following approval by the prosecution office."

78. **The Subcommittee recommends that the State party take all necessary measures to ensure that all detained persons are immediately informed of their rights in a language that they are able to understand. The Subcommittee also recommends that the criminal investigation police and State officials receive regular training on respect for due process and for human rights more generally. The Subcommittee recommends that information on the rights of arrested persons be posted in all police stations and gendarmeries.**

Right to inform a third party of one's detention and visiting rights in prisons

79. In police stations and gendarmeries, the right of persons in pretrial detention to communicate immediately after their arrest with their family or with a friend is generally not guaranteed.

80. In prisons, the Subcommittee learned that visits by family and friends of accused and convicted persons require the payment of a visit ticket whose price is set arbitrarily by the prison authorities even though they have obtained prior authorization for the visit from the investigating judge.

81. **The Subcommittee recommends that the State party take all necessary measures to ensure that all detained persons can effectively remain in contact with the outside world and inform their families of their placement in detention, and that visiting rights are not subject to a fee. All visits must also be recorded in an ad hoc register, including the date and time of the visit, the name of the visitor and the visitor's relationship to the person detained.**

Internal rules of prisons

82. The Subcommittee was informed that internal rules for the prison facilities were being drafted. The current rules, which date from 1933, are obsolete and are no longer applied.

83. The lack of official internal rules has led to the development of informal rules which vary from one facility to another, with both the content and the application of those rules dependent upon the detainees themselves, in line with the established hierarchical system (see paragraphs 38 to 41 above).

84. **The Subcommittee recommends that the State party immediately adopt the decree-law on internal rules in prison facilities.**

Right to notify consular authorities of a person's detention

85. During the visits it carried out, the Subcommittee encountered nine detainees from countries other than Togo. None spoke French, and none had been informed of their right to consular protection and assistance.

86. The Subcommittee recommends that the State party take the necessary measures to ensure that consular authorities are notified any time one of their nationals is placed in detention and that such information is duly noted in a custody register (person contacted, date and time). All detained foreign nationals must be informed of their right to consular protection and assistance in a language that they are able to understand.

Complaint mechanism

87. The Subcommittee is unaware of any official procedure for the submission of complaints by detainees in the places of detention visited. In the prisons, that mechanism is managed by the yard chiefs and cell bosses, who thus replace the prison administration in carrying out its duties.

88. **The Subcommittee recommends that all detainees be informed of their right to submit complaints in a direct, confidential manner to the competent prison authorities and to the judicial authorities when appropriate. Noticeboards and informational posters should be hung in visible places at the facilities. The Subcommittee also recommends that complaints be investigated thoroughly, independently and**

impartially, within a reasonable time frame. Any decisions regarding a complaint should be communicated immediately to its author. The Subcommittee also encourages the competent authorities to establish a register of complaints received, indicating the nature of the complaint, the facility where it originated, the date of receipt, the date and nature of the resulting decision and any measures taken to implement it. Such registers should be regularly reviewed by an independent body.

2. In military camps

89. During the Subcommittee's visits to the military camps, the conditions of detention were found to be acceptable. Record-keeping was nevertheless inadequate.

90. The Subcommittee noted that there were several types of disciplinary sanctions involving deprivation of liberty within the military system. The Subcommittee also noted that when those sanctions were imposed, the individuals concerned did not necessarily know the duration of the detention, and there was no possibility of an independent inquiry or remedy for consideration of their situation. Moreover, the length of the punishment initially imposed could be extended arbitrarily without any notification to the person concerned.

91. The Subcommittee recommends that the State party set up a system to record sanctions involving deprivation of liberty taken against members of the military and establish an independent, impartial appeals system, allowing for a review of the punishments imposed where necessary.

E. Minors in conflict with the law

92. The Subcommittee commends the State party for the recent appointment of six new children's judges, expanding the national staff of judges for minors to seven. The Subcommittee also welcomes the validation process for the national juvenile justice guidelines, which began in January 2015 and which attests to the will of the State party to carry out practical reforms for the promotion and consolidation of juvenile justice in Togo.

1. Juveniles in conflict with the law in Lomé

Structure of the Juvenile Division

93. The Lomé Juvenile Division is a hybrid structure for the custody and the pretrial detention of minors. This body, established under Decree No. 70-55 of 23 February 1970, has been under the control of the Ministry of Justice since the Ministry of Civil Protection was dismantled. It is the only Togolese institution responsible for caring for juveniles in conflict with the law. It has a capacity of 28 places, most of which are filled by children between the ages of 14 and 18 from Lomé, Kpalimé and Tsévié.

94. The Subcommittee questions the appropriateness of the hybrid structure of the Juvenile Division, whose functions — which fall between those of a police station and a prison — do not allow for separate arrangements for minor children being held in custody and children who have been charged with an offence.

95. The Subcommittee invites the State party to:

(a) Reconsider the current structure of the Juvenile Division so as to separate the functions of the criminal police from those of pretrial detention;

(b) Establish, bearing in mind such restructuring, additional juvenile divisions, as recommended by the Committee on the Rights of the Child in its concluding observations of 2012 (see CRC/C/TGO/CO/3-4, para. 76).

Length of custody and pretrial detention

96. During its visit to the Juvenile Division, the Subcommittee met 18 children. On consulting the registers, it found that four of the children in pretrial detention had been detained for 1 to 4 months. The 14 other children had been sent there by judges under

orders for provisional custody which indicated no duration of custody and provided no information on the date of release. On consulting the registers, the Subcommittee found that some children had been placed in pretrial detention for periods exceeding 3 months, for minor offences.

97. The Subcommittee reminds the State party that such situations contravene the terms of articles 300, 305, 310 and 318 of the Togolese Children's Code and therefore constitute arbitrary detention. Under those articles:

(a) Custody must be a last resort, and must not last longer than 20 hours, except in cases where the public prosecutor's office authorizes an extension of 10 additional hours;

(b) Minors over the age of 14 who are accused of a criminal offence must be brought before a judge within 48 hours of their appearance before the State prosecutor;

(c) The length of pretrial detention may not exceed 3 months for misdemeanours and 12 months for crimes.

98. **The Subcommittee recommends that the State party ensure that the detention of children be as brief as possible, and that consideration be given to their conditional release or other alternative measures to deprivation of liberty. The Subcommittee recommends that the State party establish an appeals mechanism for children with a view to avoiding arbitrary or excessive detention.**

Conditions of detention

99. The Subcommittee is concerned about the poor sanitary and general physical conditions in which children live in the Juvenile Division. They do not have an adequate diet and they do not spend sufficient time outdoors, nor do they have access to sports or educational activities. The lack of an adequate diet and of appropriate activities constitutes inhuman and degrading treatment. The difficulty in accessing care was also disturbing, especially for children without parents or close relatives and for those whose families had no resources.

100. The Subcommittee also found that disciplinary measures amounting to corporal punishment are used in the Juvenile Division.

101. **The Subcommittee recommends that the State party provide children with an adequate, varied diet and that it facilitate their access to health care, including by covering their medical costs, particularly in the case of the most vulnerable children, who lack resources. The Subcommittee urges the State party to ensure that time outdoors, along with sports, handicrafts and educational activities, are provided on a daily basis in the Juvenile Division.**

102. **Lastly, the Subcommittee calls on the State party to establish a complaints mechanism for children, so that all acts of ill-treatment and corporal punishment can be reported and investigated and the perpetrators punished.**

2. **Situation of minors in conflict with the law in the rest of Togo**

103. The Subcommittee notes with deep concern that in some police stations and gendarmeries, children in conflict with the law are held in detention together with adults. The main reason for this, as expressed by law enforcement staff when questioned, was doubts about the age of the persons placed under arrest.

104. The Subcommittee also found that repairs and improvements made to the sections or cells for minors in some police stations and gendarmeries had been carried out by NGOs.

105. **The Subcommittee reminds the State party that minors in conflict with the law must never be detained alongside adults and, in the case of doubts about the age of the child, the situation must be handled in the child's best interests.**

106. **The Subcommittee recommends that the State party train and designate, in each police station and gendarmerie, at least one police officer specializing in children's rights and in juvenile justice.**

107. **The Subcommittee recommends that the State party implement a modernization and sanitation programme in cells or sections for minors, in accordance with international standards.**

IV. Legal framework and administration of justice

Definition of torture

108. The Subcommittee continues to be concerned about the fact that, more than 25 years after its ratification of the Convention against Torture, the State party has not yet adopted a criminal provision that explicitly defines torture as a separate offence. The Subcommittee notes with concern that at the time of its visit, the new Criminal Code and the new Code of Criminal Procedure had not yet been adopted, and that the lack of punishments commensurate with the gravity of the crime of torture continued to encourage impunity.

109. **The Subcommittee reiterates the numerous recommendations made by the Committee against Torture in 2006 and 2012 (CAT/C/TGO/CO/1 and CAT/C/TGO/CO/2, respectively) and by the Special Rapporteur on torture in 2007 (A/HRC/7/3/Add.5), according to which the definition of torture and its classification as a crime must be considered a priority and must not be further postponed. The Subcommittee calls on the State party to expedite the process of legislative reform and to take the necessary measures to promulgate and adopt the new Criminal Code and the new Code of Criminal Procedure as soon as possible in order to remedy the current legal vacuum that encourages impunity.**

Pretrial detention

110. The Subcommittee noted that more than two thirds of the prison population of Togo were defendants or accused persons. As has already been observed, excessive recourse to pretrial detention and the absence of alternative measures was one of the causes for extreme prison overcrowding.

111. The Subcommittee found that the slowness of the courts was also contributing to the disintegration of the prison system. For instance, the Subcommittee had noted situations in which accused persons spent several months in prison awaiting a hearing, during which time they were subjected to appalling conditions of detention that amounted to cruel, inhuman or degrading treatment. This was attributable to the insufficient number of judges and the lengthy postponements of hearings, the deferral of court rulings and, ultimately, the denial of the right to a prompt and fair trial.³

112. The Subcommittee was concerned at the delay in the adoption of the new Code of Criminal Procedure, which provided for, inter alia, the appointment of liberty and detention judges, who would make decisions about the imposition of pretrial detention for an accused person, and about any later requests for release.

113. The Subcommittee was also concerned to find that persons awaiting judgment were not kept separate from convicted prisoners in any of the prisons visited and that all were subject to the same regime, thus raising questions about the principle of the presumption of innocence.

114. **The Subcommittee recommends finalizing the reform of the criminal justice system and adopting alternatives to imprisonment, in line with the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) and establishing a liberties and detention judge. The Subcommittee recommends that the State party expedite cases of persons held in pretrial detention, and that it recruit and train additional judges with a view to reducing the excessive length of pretrial detention. The Subcommittee recommends that the State party ensure that different categories of detainee are held separately, in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.**

³ International Covenant on Civil and Political Rights, art. 14.

Legal aid

115. The Subcommittee notes with concern the lack of an effective system for providing legal aid in Togo. The Subcommittee regrets that, despite the fact that the law on legal aid was adopted on 24 May 2013, the implementing decree is still pending adoption. The Subcommittee is especially concerned about the fate of poor and marginalized individuals within the criminal justice system who have neither the means to hire a lawyer, nor access to legal aid, which violates the principles of equality before the law and access to justice without discrimination.

116. The Subcommittee recommends that the State party adopt without further delay the implementing decree of the law on legal aid, so as to guarantee access to a lawyer for all Togolese and foreign persons who do not have sufficient resources to ensure their defence from the moment that they are taken into custody until the conclusion of the judicial proceedings. The Subcommittee also urges the authorities to take the necessary measures to allocate an adequate portion of the budget for the establishment of this legal aid system.

V. National preventive mechanism

117. Togo should have designated or established a national preventive mechanism at the latest one year after its ratification of the Optional Protocol, in July 2010. At the time of the Subcommittee's visit, that mechanism had not yet been set up. The Subcommittee took note of the existence of a bill to establish the national preventive mechanism; under that bill, the State would designate the National Human Rights Commission as the national preventive mechanism. However, in view of the Commission's limited resources and the challenges it faces, the Subcommittee questions its ability to carry out the additional tasks related to such new responsibilities.

118. The Subcommittee wishes to emphasize that the national preventive mechanism could have a very significant impact on the situation of persons deprived of their liberty that it witnessed in Togo, particularly since the vast majority of the public officials with whom the Subcommittee met readily listened to and considered the Subcommittee's comments and recommendations.

119. To ensure the success of the national preventive mechanism, its mandate must be clear, and it must be shielded from all political interference. States parties to the Optional Protocol are required to guarantee the functional independence of their national preventive mechanisms and their personnel. They undertake to provide for and make available the necessary resources for the functioning of the national preventive mechanisms, in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

120. The Subcommittee recommends that the State party designate and establish a national preventive mechanism as soon as possible. In that connection, the Togolese authorities must take all necessary legislative and other measures to ensure that the national preventive mechanism fully conforms to the Paris Principles, as stipulated in the Optional Protocol, as well as to the Subcommittee's guidelines on national preventive mechanisms (CAT/OP/12/5) regarding the powers, composition and functioning of such mechanisms. The Subcommittee also recalls that national preventive mechanisms should have the power to carry out investigations and to prevent acts of torture, as well as to conduct unannounced visits to all places of detention, including unofficial locations, psychiatric institutions and any other places where persons are deprived of their liberty.

VI. Repercussions of the visit and conclusion

121. In general, persons deprived of their liberty did not express fear of speaking openly with the delegation. However, the Subcommittee recalls that any form of intimidation or reprisal against persons deprived of liberty constitutes a violation of the State party's

obligations under the Optional Protocol. In accordance with article 15 of the Optional Protocol, the Subcommittee requests the Togolese authorities to ensure, by way of inspections and instructions given to persons responsible for places of detention, that no reprisals shall occur as a result of its visit. The Subcommittee requests the State party to provide detailed information on the steps it has taken to avert and prevent reprisals against the personnel and detainees that met with the delegation.

122. The Subcommittee reminds the State party that the preliminary observations represent only the first stage of a constructive and cooperative dialogue with the Togolese authorities, with a view to finding solutions together to the aforementioned challenges.

Annex

[French only]

Lieux de privation de liberté visités et personnes rencontrées par le Sous-Comité

I. Lieux de privation de liberté visités par le Sous-Comité

A. Gendarmeries et commissariats de police

1. Lomé

Commissariat central

Service de recherche et d'investigation

Commissariat de police du marché de Lomé

Commissariat, Direction générale de la police judiciaire

Brigade antigang

2. Kara

Direction générale de la police nationale de Kara

Commandement de brigade de Kara

Gendarmerie brigade antigang de Kara

Commissariat central de Kara

Commissariat du 2^e arrondissement de Kara

3. Atakpamé

Commissariat de police de la ville

4. Notsé

Commissariat de Notsé

Gendarmerie de Notsé

B. Prisons

Prison civile de Lomé

Prison civile d'Atakpamé

Prison civile de Mango

Prison civile de Kara

Prison civile de Tsévié

Prison civile de Notsé

C. Centres psychiatriques et hôpitaux

Centre hospitalier universitaire Sylvanus Olympio, service du Cabano

Hôpital psychiatrique de Zébé, à Aného

D. Camps militaires

Camp militaire de parachutiste général Améyi

Camp militaire Gnassimbé Eyadéma

E. Autres

Agence nationale de renseignement

Brigade des mineurs de Lomé

[French only]

II. Liste des personnes rencontrées par le Sous-Comité**A. Autorités**

Premier Ministre

Représentants du Ministère des affaires étrangères et de la coopération

Représentants du Ministère de la défense et des anciens combattants

Représentants du Ministère de la justice et des relations avec les institutions de la République (Ministre et Secrétaire d'État), Inspection générale des services juridictionnels et pénitentiaires

Représentants de la Direction de l'administration pénitentiaire et de la réinsertion

Représentants du Ministère de la sécurité et de la protection civile, Directions générales de la gendarmerie et de la police, Inspection des services de sécurité

Représentants du Ministère des droits de l'homme, de la consolidation de la démocratie

Représentants du Ministère de l'action sociale, Direction de la protection de l'enfant, service social

B. Commission nationale des droits de l'homme**C. Organismes des Nations Unies**

Bureau du Haut-Commissariat aux droits de l'homme au- Togo
Coordinateur résident du Programme des Nations Unies pour le développement

Fonds des Nations Unies pour l'enfance (UNICEF)

D. Société civile

Association chrétienne pour l'abolition de la torture

Association des femmes solidaires

Amnesty International Togo

Avocats sans frontière

Association des victimes de la torture au Togo

Association togolaise des droits de l'homme

Association La parole des sans-voix

Association togolaise de défense et de promotion des droits de l'homme

Bureau national catholique pour l'enfance
Collectif des associations contre l'impunité au Togo
Chrétiens Citoyenneté Droits et Devoirs
Creuset Togo
Domino
Éducation aux droits de l'homme
Fédération des ONGs de défense des droits de l'enfant au Togo
Fraternité des prisons du Togo
GF2D
Handicap international
Ligue togolaise des droits de l'homme
Mouvement Martin Luther King, la voix des sans-voix
Nouveau droits de l'Homme
Prisonniers sans frontière
Union chrétienne de jeunes gens
Association d'aide en milieu carcéral
