



TOGO: CRITICAL VOICES

MUFFLED

AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW, 40TH SESSION OF THE UPR WORKING GROUP, JANUARY-FEBRUARY 2022

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INTRODUCTION

In 2016, for its second Universal periodic review (UPR) before the UN Human Rights Council, Togo accepted 167 recommendations mainly concerning the ratification of international human rights instruments and the protection of the rights to freedom of expression and peaceful assembly.

However, Togo rejected 28 recommendations mainly concerning the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

Since this review, Togolese authorities made progress on implementing some recommendations, but the majority were either not implemented or only partially implemented. Worryingly, new laws were adopted which threaten human rights and, in practice, the repression of critical voices continued with total impunity, notably in the context of mass demonstrations in 2017, the presidential elections which took place in February 2020 and the Covid-19 pandemic.

Between August and December 2017, two years after President Faure Gnassingbé was re-elected for a third mandate, political parties and civil society organizations organized protests calling for constitutional reforms, including the limitation of the number of presidential mandates. Demonstrations were banned, at least 10 people were killed, including two members of the armed forces and three children aged between 9 and 14. Hundreds of protesters were wounded, and dozens of them were arbitrarily arrested and sentenced to months in prison.

A constitutional reform limiting the number of presidential mandates was adopted in May 2019 which allows the president to be again candidate. In the months before and after the presidential elections which saw Faure Gnassingbe re-elected for a fourth term, civic space continued to shrink as a result of multiple pressures on critical voices. These included adoption of the 2018 cybersecurity law, the 2019 law on national security and the 2019 revised law on assembly which infringes on the rights to freedom of expression and peaceful assembly; administrative sanctions against media; digital surveillance of civil society's representatives; harassment against political activists and ill-treatment in detention facilities.

In this context, the Covid-19 pandemic has been a pretext for the authorities to systematically ban all public events since March 2020. Members of defence and security forces were allegedly responsible for killings of people who did not respect restrictive measures taken by the authorities to fight against the spread of the virus.

Amnesty International has been monitoring and documenting the human rights situation in Togo for decades. This submission builds on this long period of research, while focusing on patterns of human rights violations since Togo's last review in 2016.

FOLLOW UP TO THE PREVIOUS REVIEW

While some positive steps have been taken since the previous review, Togo has failed to implement many of the 167 recommendations it accepted in full or in part,¹ including to protect the rights to freedom of expression and peaceful assembly.²

In 2020, Togo ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.³

Togo cooperated with some UN special procedures, accepting the visit of the Special Rapporteur on albinism in 2018 and receiving the Special Rapporteur on contemporary forms of slavery in 2019.⁴

Regretfully, Togo failed to respond to visit requests from Working Group on Arbitrary Detention (2018), the Special Rapporteur on Freedom of Assembly (2019) and the Special Rapporteur on the Right to Water and Sanitation (2020). Togo also failed to respond to the communication⁵ of four special rapporteurs expressing concern that the 2019 revised Law on peaceful assembly and demonstrations restricts freedom of expression, peaceful assembly, and association in violation of Togo's international human rights obligations.

Togo established a National Committee on the Rights of the Child.⁶ Togo has also strengthened the National Human Rights Commission⁷ by having its members elected by the Parliament.

Togo has not ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

Togo has failed to fight against impunity⁸ and to bring to justice members of security forces suspected to be responsible for excessive use of force⁹ or torture and other ill-treatment.¹⁰

Togo has not revised its Code of Criminal Procedure to include legal safeguards against torture and other ill-treatment, including access to counsel from the moment of police custody.¹¹

There has been no progress on the implementation of recommendations to improve detention

¹ Human Rights Council, *Report of the Human Rights Council on its thirty-fourth session*, 14 June 2018, UN Doc. A/HRC/34/2 para. 444

² Human Rights Council, *Report of the Working Group on the Universal Periodic Review - Togo*, 30 December 2016, UN Doc. A/HRC/34/4, Recommendations 128.98 (Brazil), 129.22 (Australia), 129.25 (Uruguay)

³ A/HRC/34/4, Recommendations 128.9 (Ghana), (Turkey), 128.10 (Algeria), (Egypt), (Sierra Leone), 128.11 (Guatemala), 128.12 (Indonesia), (Philippines), 128.13 (Senegal)

⁴ A/HRC/34/4/Add.1 Recommendations 130.7 (Rwanda), (Azerbaijan), Recommendation 130.8 (Mexico), (Ghana), (Guatemala), (Montenegro)

⁵ U.N. Doc. OL TGO 1/2019, 11 September 2019,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24836>

⁶ A/HRC/34/4 Recommendation 128.19 (Gabon)

⁷ A/HRC/34/4 Recommendations 129.8 (Kenya), 129.9 (Chile), 129.10 (Australia)

⁸ A/HRC/34/4, Recommendations 128.88 (Ghana), 128.90 (Guatemala), 128.92 (France)

⁹ A/HRC/34/4, Recommendation 128.93 (France)

¹⁰ A/HRC/34/4, Recommendations 128.83 (United Kingdom of Great Britain and Northern Ireland), 128.84 (Netherlands), 129.19 (Mexico)

¹¹ A/HRC/34/4, Recommendations 128.69 (Serbia), 128.71 (Republic of Korea)

conditions.¹²

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Since the previous review, Togo has adopted legislation that addresses some human rights issues but raises other concerns, in particular regarding the right to freedom of peaceful assembly, the right to freedom of expression and the use of excessive force.

FREEDOM OF ASSEMBLY AND USE OF EXCESSIVE FORCE

In August 2019, the National Assembly passed a law on national security which enables the Minister of Territorial Administration and, in some cases, local authorities to order, without adequate safeguards including judicial control, house arrests, identity controls and interpellations of up to 24 hours, expulsions of foreign nationals, bans on assemblies, suspensions of associations, and closures of establishments including places of worship, hotels and “other meeting places”.¹³ It also allows the Minister of Territorial Administration to order the removal of or blocking the access to online content and to shut down online communications.¹⁴

In August 2019, the National Assembly passed amendments to the law on assembly which drastically curtailed the right to freedom of peaceful assembly. It stipulates that organizers of meetings and assemblies in private settings must inform local authorities in advance. It broadens the blanket ban on protests in certain areas and at certain times. The law allows local authorities to cap the number of assemblies per week in their area and to ban protests at the last minute.¹⁵

FREEDOM OF EXPRESSION

In December 2018, the National Assembly passed a cybersecurity law that severely restricts the right to freedom of expression by introducing punishment of up to three years imprisonment for false information, and up to two years imprisonment for attacks on public morality, as well as the production, dissemination or sharing of data that undermines “order, public security or human dignity”.¹⁶ The law contains vague provisions on terrorism and treason that carry penalties of up to 20 years and could be easily used against whistle-blowers and others reporting human rights

¹² A/HRC/34/4, Recommendations 128.70 (United States of America), 128.72 (Angola), 128.73 (Djibouti), 128.74 (Germany), 128.75 (Switzerland), 128.76 (Spain), 128.78 (Kenya), 128.92 (France), 128.77 (Greece)

¹³ Loi N°2019-009 portant sécurité intérieure

¹⁴ Loi N°2019-009 portant sécurité intérieure, article 50

¹⁵ Loi N°2019-010 du 12 août 2019 portant modification de la loi N°2011-010 du 16 mai 2011 fixant les conditions d'exercice de la liberté de réunion et de manifestation pacifiques publiques

¹⁶ Loi N° 2018 - 026 du 07 décembre 2018 portant sur la cybersécurité et la lutte contre la cybercriminalité

violations and abuses. It also confers additional powers on the police, in terms of surveillance of communications or IT equipment, without adequate safeguards including judicial control.

The Press and Communication Code Law, adopted in January 2020, allows for journalists to be punished with hefty fines for insulting the President, MPs, and government members.¹⁷

TORTURE AND OTHER ILL-TREATMENT

The 2018 law on the National Human Rights Commission (CNDH) establishes the National Mechanism for the Prevention of Torture within the Commission.¹⁸ The National Mechanism for the Prevention of Torture has the mandate to carry out regular and unannounced visits to all places of deprivation of liberty.¹⁹ However, the mechanism does not have its own staff or its own budget, raising concerns about its ability to exercise its mandate with full independence.

DISCRIMINATION

In the previous review, Togo rejected all recommendations to protect LGBTI people's rights, to repeal the provisions of the Penal Code that criminalize same-sex sexual relations and to protect sexual minorities from discrimination.²⁰

HUMAN RIGHTS SITUATION ON THE GROUND

FREEDOM OF ASSEMBLY AND USE OF EXCESSIVE FORCE

Peaceful meetings organized by political parties or human rights defenders are often arbitrarily banned and dispersed by the police, gendarmerie or army using excessive force. Impunity for suspected perpetrators of unlawful killings prevails. Those considered to be the organizers of such demonstrations are often exposed to reprisals and arbitrary arrest.

Between August and December 2017, during demonstrations organized by political parties, at least 10 people were killed, including two members of the armed forces and three children.²¹ Several hundred people were injured, including members of the security forces. More than 200

¹⁷ Law No. 2020-001 of 7 January 2020 on the press and communication code

¹⁸ Loi organique N°2018-006 du 20 juin 2018 relative à la composition, à l'organisation et au fonctionnement de la Commission Nationale des Droits de l'Homme (CNDH), Article 3

¹⁹ Loi organique N°2018-006 du 20 juin 2018 relative à la composition, à l'organisation et au fonctionnement de la Commission Nationale des Droits de l'Homme (CNDH), Article 6

²⁰ A/HRC/34/4 Recommendation 131.8 (Australia), 131.9 (Chile), 131.10 (Mexico), 131.11 (France), 131.12 (Slovenia), 131.13 (Spain), 131.14 (Uruguay)

²¹ Amnesty International, *Togo: Nine-year-old shot dead during protests*, 20 September 2017), <https://www.amnesty.org/fr/press-releases/2017/09/togo-un-enfant-de-neuf-ans-tue-par-balle-lors-des-manifestations/>

people were arrested.²²

In December 2018, protests ahead of contested parliamentary elections were dispersed by security forces and the army. Four people died, three were shot.²³ Despite the opening of judicial proceedings, no alleged perpetrator has been brought to justice to date.

On 13 April 2019, at least one man died in Bafilo during demonstrations demanding constitutional reforms

The Covid-19 pandemic has been a pretext for the authorities to systematically ban public events since March 2020, particularly in relation to the disputed presidential election results.²⁴

In 2020, several people were beaten and at least five people were killed by security forces while enforcing Covid-19 measures or dispersing peaceful protesters.²⁵

FREEDOM OF EXPRESSION

The authorities continued to restrict the right to freedom of expression and to target journalists, human rights defenders (HRDs) and political activists expressing critical views on the governance and the situation of human rights.

The electronic communications of HRDs, activists and others were put under surveillance.²⁶

The internet was shut down for nine days in September 2017 during opposition-led protests. The ECOWAS Court of Justice in June 2020 ruled that Togo violated freedom of expression.²⁷ It ordered Togo to pay compensation to the plaintiffs and to modify its legal arsenal regarding internet blackouts, but the decision has not been implemented to date.

On 12 December 2018, Assiba Johnson, President of the Group of Young Africans for Democracy and Development²⁸ was sentenced to 18 months in prison, with six months suspended, for spreading false news and insulting public officials, following the publication of a report on the repression of protests in 2017-2018.²⁹

In March 2020, HAAC ordered the suspension of the *Liberté* and *L'Alternative* Newspapers, respectively for 15 days and two months, because they had published 'serious, unfounded and slanderous accusations' against the French ambassador. After publishing an article criticising

²² Amnesty International, Annual Report 2016/17 (Index: POL 10/4800/2017), 22 February 2017, <https://www.amnesty.org/en/documents/pol10/4800/2017/en/>

²³ Amnesty International, *Togo: Spiraling violence and repressive cybersecurity law hit the country ahead of contested parliamentary elections*, 13 December 2018, <https://www.amnesty.org/en/latest/news/2018/12/togo-spiraling-violence-and-repressive-cybersecurity-law/>

²⁴ Amnesty International, Annual Report 2020/2021 (Index: POL 10/3202/2021), 18 March 2021, <https://www.amnesty.org/download/Documents/POL4038182021ENGLISH.PDF>

²⁵ Amnesty International, Annual Report 2020/2021 (Index: POL 10/3202/2021), 18 March 2021, <https://www.amnesty.org/download/Documents/POL4038182021ENGLISH.PDF>

²⁶ Father Pierre Marie-Chanel Affognon, a prominent HRD 's phone was targeted with spyware in late 2019 and early 2020 ahead nation-wide protests demanding constitutional reforms, including limiting the Presidential term to two terms.

²⁷ ECW/CCJ/APP/61/18 Amnesty International Togo & 7 Ors. v. Republic of Togo, http://prod.courtecowas.org/wp-content/uploads/2020/09/JUD_ECW_CCJ_JUD_09_20.pdf

²⁸ Regroupement des jeunes africains pour la démocratie et le développement (REJADD)

²⁹ Amnesty International, Togo: submission to the United Nations Human Rights Committee 128th Session - 2 March- 27 March 2020, (Index: AFR 57/1653/2020), <https://www.amnesty.org/download/Documents/AFR5716532020ENGLISH.PDF>

these measures, the newspaper *Fraternité* was also suspended for two months.³⁰

TORTURE AND OTHER ILL-TREATMENT

Security forces regularly use torture and other ill-treatment at the time of arrest and during pretrial detention to extract "confessions" or compromise defendants.

Twenty people arrested on 19 and 20 August 2017 in connection with demonstrations were subjected to ill-treatment included beatings during their arrest and detention. They reported the ill-treatment to the court, but their allegations were not investigated, and no one was held to account.³¹

On 23 April 2020, Kokou Langueh said that while held at the Central Directorate of Judicial Police headquarters, police officers beat him on his back and buttocks for several hours to extract a "confession" about his connections with Agbéyomé Kodjo, a political opponent. He was released on 30 April without charge. The suspected perpetrators have not been held responsible to date.³²

PRISONS CONDITIONS

Despite the commitments made in 2016, Togo's prisons remain overcrowded and prison conditions do not meet international human rights standards.

In May 2021, the prison population of 4,906 detainees exceeded the capacity of 2,889, representing an average occupancy rate of 170% in all prisons. Apart from the construction of a new prison in Kpalimé, few efforts have been made to reduce prison overcrowding and alternatives to detention are not used. The judicial authorities still make abundant use of pretrial detention.³³ Of the 4,906 detainees, only 2,144 were already sentenced as of 1 May 2021, representing a pretrial detention rate of over 56% of the prison population.³⁴

The health crisis due to Covid-19 pandemic led to the provision of a second daily meal to prisoners and the establishment of a telephone communication line. A prison hospital was set up in Tsévié to treat detainees infected with Covid-19.³⁵ However, the authorities have used the pandemic as a reason to ban visits, human rights organizations included, since March 2020.

Female prisoners are not always guarded by female prison officers, but some tasks, such as body searches, are carried out by female staff.

Prison officers have received little support to protect themselves from Covid-19. One prison officer

³⁰ Amnesty International, *Togo: Suspension of newspaper puts freedom of expression under severe strain*, 31 March 2020, <https://www.amnesty.org/fr/latest/news/2020/03/togo-la-suspension-dun-journal-met-la-liberte-dexpression/>

³¹ Amnesty International, *Togo: Shadow report to the African Commission on Human and Peoples' Rights – 63rd Ordinary Session: 24 October – 13 November 2018*, (Index: AFR 57/8202/2018), <https://www.amnesty.org/download/Documents/AFR5782022018ENGLISH.pdf>

³² Amnesty International, *Annual Report 2020/2021* (Index: POL 10/3202/2021), 7 April 2021, <https://www.amnesty.org/en/documents/pol10/3202/2021/en/>

³³ A/HRC/34/4, Recommendation 128.70 (United States of America), 128.74(Germany)

³⁴ Prison Administration statistics

³⁵ Interview with Idrissou Akibou, Prison Administration Director, 25 March 2021, www.icilome.com/2021/03/togo-interview-idrissou-akibou-la-prison-de-tsevie-a-ete-transformee-en-prison-hopital/

told Amnesty International: "We only have a few gloves and masks... What we were given was very inadequate. Although, we use the equipment economically, i.e. one glove instead of two to do the searches." ³⁶

DISCRIMINATION

LGBTI people in Togo face harassment, intimidation and arbitrary detention by the security forces on the basis of their real or perceived sexual orientation or gender identity and expression.

RECOMMENDATION FOR ACTION BY THE STATE UNDER REVIEW

AMNESTY INTERNATIONAL CALLS ON THE GOVERNMENT OF TOGO TO:

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

- Ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the ILO Domestic Workers Convention, 2011 (No. 189), the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity and the Rome Statute; and make the declaration under 34.6 of Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights to allow individuals and NGOs to have direct access to the Court.
- Issue a standing invitation to the UN Special Procedures and accept visits from the Working Group on Arbitrary Detention, the Special Rapporteur on the right to peaceful assembly and freedom of association and the Special Rapporteur on the rights to water and sanitation.
- Follow up on the communication from the Special Rapporteurs on the restrictions introduced in the Law on Peaceful Assembly and Demonstration in 2019.

NATIONAL HUMAN RIGHTS COMMISSION

- Ensure that the National Human Rights Commission receives adequate funding and is independent and impartial.
- Ensure the independence of the National Mechanism for the Prevention of Torture, including by making it a separate unit or department, with its own staff and adequate budget to fulfil its responsibilities, in line with the guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

³⁶ Amnesty International, *Forgotten behind bars*, (Index: POL 40/3818/2021), 18 March 2021, <https://www.amnesty.org/download/Documents/POL4038182021ENGLISH.PDF>

- Ensure that other public institutions and administrations are aware of the mandate and prerogatives of the National Human Rights Commission and collaborate with it.

FREEDOM OF PEACEFUL ASSEMBLY AND USE OF EXCESSIVE FORCE

- Prohibit the deployment of military armed forces in situations of public disorder.
- Provide security forces with adequate resources for policing large-scale or hostile demonstrations or counter-demonstrations, as well as effective training in the appropriate and differentiated use of force and weapons, including riot control equipment.
- Amend legislation regulating the use of force, in particular Decree No. 2013-013 on the maintenance and restoration of public order, to bring it in line with international standards, such as the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, including by establishing clear rules for the use of force by security forces in maintaining order during demonstrations.
- Ensure that excessive use of force and firearms by law enforcement officials is punishable as a criminal offence and make it clear that orders received cannot constitute an acceptable defence.
- Amend legislation that violates the right to freedom of peaceful assembly, such as the Penal Code and Law No. 2011-010 as amended by Law No. 2019-010 of 12 August 2019 establishing the conditions for the exercise of freedom of peaceful public assembly and demonstration, to bring them into line with international human rights standards.
- Establish an independent oversight body with adequate human and financial resources to investigate serious events involving the use of excessive force by the security forces and to establish individual and hierarchical responsibility, as well as institutional shortcomings and failures.
- Undertake prompt, thorough and impartial investigation including autopsy procedures where necessary into all allegations of excessive use of force and bring to justice in a fair trial all those suspected of being responsible, including senior officers if they failed to take the necessary steps to prevent the arbitrary use of force when it was within their power to do so.

FREEDOM OF EXPRESSION

- Amend legislation that violates the right to freedom of expression, namely the Penal Code, the Press and Communication Code, the Internal Security Law and the Cyber Security Law, to bring them into line with international human rights standards, including by decriminalizing defamation, offending a government official, publishing, disseminating or reproducing "false news" and "seditious shouting and singing", and by defining more precisely the offences related to terrorism.
- Amend the Internal Security Act, in particular those provisions that restrict freedom of expression by providing for the removal of online content or the blocking of access to it and the shutting down of all online communications without adequate judicial control.
- Refrain from Internet shutdowns and other disruptions to telecommunication services; and implement ECOWAS court decision ruling the state to pay compensation to the plaintiffs and also to enact and implement laws, regulations, and safeguards in order to meet its obligations to respect the right of freedom of expression in accordance with the international human rights instruments.

- Adopt and implement legislation to protect and facilitate the work of human rights defenders, journalists and bloggers and a law guaranteeing the legal recognition and protection of human rights defenders.
- Ensure that all individuals, including journalists, opposition leaders, real or perceived opponents of the government and human rights defenders, both men and women, are able to freely exercise their rights to express themselves without fear of arrest, detention, intimidation, threat, harassment or assault.
- Promptly, thoroughly and impartially investigate all allegations of arbitrary arrest and detention, intimidation, threats, harassment and attacks against human rights defenders, journalists or anyone expressing a dissenting opinion, and bring to justice in a fair trial anyone suspected of being responsible.

TORTURE AND OTHER ILL-TREATMENT

- Amend the Criminal Code to explicitly criminalize complicity in torture and attempts to commit torture and to ensure that superior officers are held criminally responsible when acts of torture are committed at their instigation or with their consent or acquiescence.
- Amend the Criminal Procedure Code to bring it in line with international standards, as Togo agreed to do at the 2016 UPR, including with a view to incorporating legal safeguards against torture, such as the right to be assisted by a lawyer as soon as a person is deprived of his or her liberty, and the replacement of detention by non-custodial measures, except where strictly necessary.
- Undertake prompt, thorough and impartial investigations into all allegations of torture and other ill-treatment and bring to justice in a fair trial any person suspected of being responsible.
- Ensure that all victims of torture have access to justice and effective remedies including measures of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

PRISON CONDITIONS

- Develop and implement effective strategy to reduce prison overcrowding, including by substituting detention with non-custodial measures.
- Ensure that all persons deprived of their liberty are detained in humane conditions, which include compliance with the UN Basic Principles for the Treatment of Prisoners, the Standard Minimum Rules for the Treatment of Prisoners and the Rules for the Treatment of Prisoners and the Imposition of Non-custodial Measures on Women Offenders.
- Recruit new staff, including female staff for the corps of supervisors of the prison administration.

LGBTI PEOPLES' RIGHTS

- Repeal the provisions of the Criminal Code which criminalize consensual same-sex sexual conduct and incitement to consensual same-sex sexual conduct.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE³⁷

Amnesty International Annual Report 2016/2017, (POL 10/4800/2017)

Amnesty International, *Togo: Le retrait des fréquences de deux médias est une attaque contre la liberté d'expression* (Press release, 6 February 2017)

Amnesty International, *Togo: One shot dead and several injured in protest dispersed by army*, 1 March 2017

Amnesty International, *Togo: Authorities must refrain from unjustified or excessive use of force during opposition protests*, 6 September 2017

Amnesty International, *Togo: Nine-year-old shot dead during protests*, 20 September 2017

Amnesty International, *Togo: the authorities must put an end to the judicial harassment of prodemocracy activists and human rights defenders*, (Index: AFR 57/7906/2018)

Amnesty International, *Togo: Spiraling violence and repressive cybersecurity law hit the country ahead of contested parliamentary elections*, 13 December 2018

Amnesty International, Annual Report 2017/2018, (POL 10/6700/2018)

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Amnesty International, *Togo: Suspension of newspaper puts freedom of expression under severe strain*, 31 March 2020

Amnesty International, *Togo: New arrests of opponents' part of growing crackdown on dissenting voices*, 1 December 2020

Amnesty International, Annual Report 2020/2021 (Index: POL 10/3202/2021)

Amnesty International, *Forgotten behind bars*, (Index: POL 40/3818/2021)

³⁷ All these documents are available on Amnesty International's website: www.amnesty.org

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TO ONE PERSON, IT
MATTERS TO US ALL.**

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