

# ATTACKS ON JUSTICE – TOGO

## *Highlights*

Despite the principle of separation of powers and independence of the judiciary enshrined in the 1992 Constitution, most judges are under the control of the executive. Judges are arbitrarily dismissed on political grounds. The number of magistrates and judicial officers and staff continues to be insufficient in all jurisdictions. In addition, courts and tribunals face material and financial difficulties and lack specially trained magistrates. Corruption remains a problem within the Togolese judiciary. The lack of adequate salaries for magistrates and judicial officers leads to vulnerability to corruption. Corruption within the judiciary and the lack of ethics lead to unfair trial. Moreover, the shortage of financial and human resources lead to lengthy pre-trial detention. Both problems contribute to a loss of credibility and public trust in the judicial system.

## BACKGROUND

On **5 February 2005**, **President Gnassingbé Eyadéma**, who had been Head of State since **1967** after seizing power in a coup d'état and dissolving all political parties, died after 38 years in power.

He had been elected for the first time in **1993** and re-elected in **1998 and 2003**. His elections were marred by violence, repression of the opposition and allegations of fraud. Prior to his re-election, the [1992 Constitution](#) was amended in **December 2002** in order to allow him to run for a third term in office.

At the death of Gnassingbé Eyadéma, the military declared his son, **Faure Gnassingbé**, President and members of Parliament passed a constitutional amendment on **6 February** allowing him to serve out the remainder of his father's elected term, which was to last until **2008**. Under international pressure, Faure Gnassingbé agreed on **18 February** to follow the transition process in accordance with the **1992** original Constitution (i.e. before its 6 February amendments) and therefore to organise a presidential election within sixty days. He resigned on **26 February**. After weeks of violence and a **24 April** poll marred by violence and massive fraud allegations, he was elected new **President of the Republic of Togo** by 60.15% of the vote. The opposition contested the election and civil unrest and violence have spread throughout the country. Since the death of President Eyadéma, violence and human rights violations committed by the security forces and the military have drastically increased.

In **February 2003**, a new electoral code (*Law No 2003-01/PR*) was adopted, which transferred the responsibility for the preparation and organisation of the elections from the **Commission Electorale Nationale Indépendante** (Independent National Electoral Commission – CENI) to the **Ministry of Interior**. The **CENI** was henceforth in charge of monitoring the regularity of the electoral and referendum

processes (*Article 6 of Law No 2003-01/PR*). It also provided for the nomination of the CENI President by the executive and for the nomination of the CENI members by the National Assembly.

In addition, *Law No 2002-029* of **31 December 2002** amended the **1992** Constitution and created a **Senate**, which, together with the **National Assembly**, constitute the **Parliament**. It is composed by two thirds of persons elected by the local communities' representatives and by one third of persons appointed by the President.

Freedom of speech, press, assembly, association and movement are restricted. Journalists are still threatened, intimidated, harassed and arbitrarily arrested, sometimes without charges, as are human rights defenders who are also under constant police surveillance.

On **30 March 2004**, Togo signed the [\*2000 Cotonou Agreement\*](#) linking cooperation between the EU and ACP countries to the respect for fundamental elements, such as democratic institutions, human rights and the rule of law. On **14 April 2004**, following the opening of consultations with the European Union, the Togolese government undertook [\*22 commitments\*](#) to the EU to strengthen democracy, human rights and fundamental freedoms and the rule of law, with the financial and technical support of the EU. In **August 2004**, the [\*European Commission\*](#) concluded that the government had taken a number of significant measures in order to improve respect for human rights and fundamental freedoms, but that serious concern remained. On **15 November 2004**, the European Commission decided to lift the sanctions against Togo and replaced them by a "roadmap" towards the full resumption of aid linked to the holding of a structured and transparent dialogue, of free and fair parliamentary and local elections within 24 months.

Togo entered into a commitment to ensure that the justice system operates impartially and independently of the executive (Commitment 2.7 with the EU). This Commitment refers to an analysis of the justice system to be completed in order for a subsequent action plan to be drawn up. This analysis was undertaken by a joint mission of the **Ministry of Justice** and **UNDP**, whose report, "Diagnostic de la justice au Togo", was published in **June 2004**. Following this report, a **National Programme of Judicial Modernization 2005-2009**, drafted by the international and national experts and the UNDP, should be adopted by the Government in **August 2005**, in order to reform the Togolese judiciary.

In **August 2004**, following Commitment 3.1 (relating to the commitment to review the press and communications code to bring it up to international standards within six months), the **Parliament** unanimously adopted a draft law amending the *Press and Communication Code* (*law No 98-004/PR* of **11 February 1998** modified by laws *No 2000-06/PR* of **23 February 2000** and *No 2002-026/PR* of **25 September 2002**). These amendments abolish prison sentences for journalists accused of defaming, insulting or spreading false information about the government, replacing the prison sentences with fines. However, arrest and preventive detention are still provided for, among others, in case of incitement to rebellion or promotion of ethnic hatred. The power of the Minister of Interior to seize and close newspapers has been discontinued. Arbitrary arrests of journalists have also decreased.

The judiciary does not fulfil its role of ensuring protection of human rights and fundamental freedoms, as judges and prosecutors do not initiate serious investigation on cases involving human rights violations committed by security forces.

## JUDICIARY

Article 113 of the 1992 Constitution guarantees the independence of the judiciary from the executive and the legislative authorities. It also states that judges are to be subject only to the authority of the law and that the judicial authority is responsible for the individual freedoms and fundamental rights of the citizens. However, these guarantees are not fully implemented in an effective and efficient manner. Indeed, Article 118 of the Constitution provides that judges are nominated by decree of the President of the Republic adopted in the Council of Ministers, following a proposal by the High Council of the Magistracy (*Conseil Supérieur de la Magistrature*). The use of the judiciary as an instrument of power has been highlighted in particular by international human rights NGOs (See, [June 2004 FIDH Report on Togo](#), the Judiciary is an instrument of power).

The duty of the **High Council of the Magistracy** is to ensure the independence of the magistracy (i.e. judges and prosecutors) and to monitor respect for the judges' statute (*magistrats du siege*), to intervene in the recruitment, appointment and assignment of the magistracy's staff and to issue disciplinary sanctions against magistrates. The High Council of the Magistracy, however, continues to be seen as too close to the executive. The process of recruitment, promotion, assignment and disciplinary control of magistrates and clerks is not based on criteria of merits, competence and seniority, as provided for by Article 18 of **1996 law No 96-11** on the status of magistrates. The current process of appointment for subjective motives puts the magistrate in a position of submission towards the executive, and accountability towards the executive and members of the High Council of the Magistracy which is contrary to the principle of the independence of the judiciary. For instance, many judges who are members of the **Professional Association of Magistrates of Togo** (Association Professionnelle de la Magistrature du Togo), which is considered as close to power, benefit from better assignments than judges who are members of the **National Association of Magistrates** (Association Nationale des Magistrats) and of the **Union of Magistrates of Togo** (Syndicat des Magistrats du Togo).

The 1992 Constitution provides that judges cannot be arbitrarily removed without their prior agreement, suspended or retired by the Government except in the cases and under the conditions provided for by law (*law No 96-11* of **21 August 1996** on the status of magistrates). In spite of these constitutional and legal guarantees, judges are arbitrarily dismissed on political grounds. In addition, numerous magistrates who have important functions in the judiciary are members, or former members, of the ruling party. The Constitution (Article 118) prohibits magistrates from getting involved in any public political activity. However, magistrates and their organisations are identified by the public at large with the executive or with opposition political groups, and this perception negatively impacts on the relations between magistrates, on career management, and on the perception of the independence and impartiality of the justice.

### **Lack of financial and material resources, and of specialized training**

Despite its increase, the number of magistrates (154 magistrates as of **2004**), judicial officers and staff continues to be insufficient to ensure that all jurisdictions carry out their tasks in an effective way. Some tribunals have reportedly only one magistrate who assumes the functions of president of the tribunal, examining judge and public prosecutor.

Moreover, the courts and tribunals, especially in the interior of the country, face material and financial difficulties due to the insufficient and inadequate basic infrastructures (e.g. electricity). For example, the **Court of Appeal of Kara**, which has been operational since **July 2003**, does not have proper infrastructure and equipment.

Furthermore, legal and judicial information is almost non-existent. Legal texts are not available, the official journal is not published regularly and its distribution is infrequent. Jurisprudence is neither filed nor published, and written judgments of the tribunals, courts of appeal and Supreme Court's are hard to obtain.

The **administrative chambers** of the **Courts of Appeal of Lomé** and **Kara**, and of the **Supreme Court**, have never been operational and are still not functional due to a lack of specially trained magistrates. No specialised training is available for the magistrates, including in the functioning of an administrative jurisdiction. Magistrates lack adequate initial and ongoing training with specialization. This absence leads to a situation where the decisions taken by the State and its bodies cannot be subject to any appeal, as these decisions are appealed before the administrative chambers of the Courts of Appeal and of the Supreme Court.

### **Corruption**

Corruption reportedly remains a problem within the Togolese judiciary. Many magistrates, clerks, lawyers and the judicial officers and staff are reportedly corrupt. The lack of adequate salaries affects their motivation and makes them more vulnerable to corruption by the political parties. In particular, corruption by private interests is reportedly frequent.

Judicial "go-betweens" (*démarcheurs*) are reportedly liaising between judges and persons subject to trial to ensure the rapid and the favourable outcome of the individual case. The clerks impose undue payments for facilitating the issuing of the judgments. These payments are offered by lawyers and their clients, and required by clerks to hasten the delivery of the documents. When such documents are necessary for the appeal, the deadline for appeal to be made exerts pressure to pay. Article 12 of *law No 96-11* of **21 August 1996** on the status of magistrates prohibits magistrates from taking any part in the defence of parties to trial before any tribunal. However, magistrates are building themselves a clientele and give advice, assist and defend people before jurisdictions, thus competing strongly with lawyers.

## **PROSECUTORS**

According to Article 118 of the 1992 Constitution, prosecutors are appointed by a decree of the President of the Republic, with the Council of ministers, following a

proposal by the Minister of Justice on the advice of the High Council of Magistracy. Under the Togolese legal system, prosecutors and judges are considered magistrates and are both regulated by *Law No 96-11* of **21 August 1996** on the status of magistrates. Prosecutors are under the authority of the **Minister of Justice**. The **State Prosecutor** is the head of the judicial police and, as such, decides whether a person should be brought before a tribunal and assigns the cases to the judges. The State Prosecutor is reportedly seen as being directly under the influence of the executive. Prosecutors are also corrupt, as are judges and other judicial officers. They also suffer from a lack of material and financial resources and of qualified personnel. This shortage has as a direct consequence that some tribunals have reportedly only one magistrate who assumes the functions of president of the tribunal, examining judge and public prosecutor, which creates a major problem regarding fair trial and due process.

## LEGAL PROFESSION

The Togolese legal profession had some 100 lawyers by **December 2004**. Widespread corruption in the legal profession is reported to undermine public confidence. Lawyers face difficulties in fulfilling their professional duties, as they frequently learn about charges against their clients just before the trial and therefore cannot prepare a proper defence case, although they do have access to their clients while in detention. Following the death of President Gnassingbé Eyadéma, the **Bar Association of Togo** (*l'Ordre des avocats du Togo*), through a sit-in at the Lomé High Court on **18 February 2005** and a public declaration adopted on **16 February**, called on **President Faure Gnassingbé** to return to the constitutional order and reopen all independent radio and television stations previously arbitrarily closed. The Bar Association contested the constitutionality of the **6 February** amendments to the constitution allowing Faure Gnassingbé to serve out the remainder of his father's term and called for respect of the Constitution and of the principle of free and fair elections. In **March 2005**, it also called for the resignation of the president and members of the **Constitutional Court**, who, according to the Bar Association, did not uphold the Constitution and the rule of law.

### Cases

In **March 2002**, **Maître (Me) Agboyibo** (lawyer), former president of the Bar Association and President of the political party "**Comité d'action pour le renouveau**" (Action Committee for Renewal), was released on instructions of the **President** of the Republic, who granted him pardon for reasons of "concern of appeasement" in the interests of "national reconciliation". In **August 2001**, Me Agboyibo, had been convicted to six months imprisonment for allegedly defaming the then Prime Minister, **Agbeyomé Messan Kodjo** (see "Attacks on Justice 2002"). At the time of his appeal, on **10 January 2002**, the Lomé Court of Appeal invalidated the condemnation on the ground that Me Kodjo had not paid the guarantee required to allow him to act as a private party associated in the court action with the public prosecutor, and invited the Public Prosecutor and the then Prime Minister to bring back the case before the courts after eliminating procedural irregularities. Me Agboyibo was not released (since he had been charged with another offence in **September 2001**, see below) and was then charged again on **29 January 2002** with the same offence, which is contrary to the principle of *ne bis in idem*. Following the

acquittal, the President of the Court of Appeal was reportedly brought by the State Prosecutor to the President of the Republic in order to explain why Me Agboyibo was not convicted and then promised him that Me Agboyibo would be kept in prison convicted in the other case (see below).

Following his indictment in **September 2001** for complicity in encouraging groups who committed human rights violations with impunity in the region of Sendomé in **1997** (see “Attacks on Justice 2002”), the examining judge decided on **17 January 2002** to release **Me Agboyibo**, as his detention "was not necessary to the expression of the truth". The **State Prosecutor** appealed against this decision before the **Court of Appeal of Lomé**. On **15 February 2002**, when a three-judge panel (unusually comprising the President of the Court of Appeal) was set to issue its decision, the President of the Court of Appeal appeared alone, alleging the absence of the two other judges. When the latter turned up, the president unsuccessfully tried to convince them to maintain Me Agboyibo in detention. The State Prosecutor asked for the report of the case and for the composition of the panel to be changed. After suspending the audience, the **President of the Court of Appeal** stipulated that Me Agboyibo be held in detention. It transpired that this decision was not genuinely taken during the court session, but had reportedly been taken by the President of the Court of Appeal the day before. Following this hearing, the Bar Association of Togo adopted on **20 February 2002** a resolution against the use of the judicial system as an instrument of politics and decided to boycott the hearings presided over by the President of the Court of Appeal until the end of **February 2002**.

## ACCESS TO JUSTICE

A **June 2004** joint **UNDP-Ministry of Justice** mission report analysing the situation of the Togolese justice system, “Diagnostic de la Justice au Togo”, concluded that the Togolese justice was "reasonably accessible to citizens, and generally healthy despite some corruption and private interests' influence, but affected by its internal (between professionals of the judicial system) and external relations suffering from the impact of politics, and affected by arbitrariness and lack of impartiality". The lack of independence of the executive is illustrated for instance by the unfair trial of political opponents and the issue of impunity enjoyed by the perpetrators of acts of torture, physical abuse of detainees and arbitrary arrests. In its **November 2002** “Concluding Observations”, the **UN Human Rights Committee** has noted "the many allegations that torture is common practice in Togo, particularly on arrest, during police custody and in places of detention, whereas the State party [has] claim[ed] that only a few rare cases of torture have taken place and that they [are] punished" (See, “November 28, 2002 Concluding Observations of the Human Rights Committee”, [CCPR/CO/76/TGO](#)).

In addition to the lack of ethics within the judiciary, including the problem of judicial corruption, the amount set for release on bail and the shortage of financial and human resources have led to lengthy pre-trial detention and unfair trial, and to a loss of credibility and public trust in the judicial system. Reportedly, the population believes that no positive outcome will result from judicial proceedings. The justice fees (both administrative fees and fees paid to lawyers) and corruption are important

impediments to access to justice. The bail paid by a defendant before the trial in order to be released is often not returned after a judgment closed without further action.

The lack of resources of the Togolese population is an important impediment to access to justice. Indeed, in order to go to court, a plaintiff has to pay a guarantee, whose amount is usually too high for most people. Furthermore, the dean (*doyen*) of the examining judges (*juges d'instruction*) in charge of determining this amount is vulnerable to corruption and can ask for disproportionate amounts from plaintiffs.

As legal aid is not generalised, assistance from a lawyer is not compulsory before the courts, except in criminal cases (Article 186 of the *Criminal Procedure Code*). Legal assistance provided by lawyers paid by the State is not sufficient, as it is only guaranteed in the Criminal Court and before the children's courts. The legal provisions (Articles 407 and 408 of the **1982 [Civil Procedure Code](#)**) relating to waiving or reducing legal fees are not well known and not frequently used by the people who are not assisted by lawyers. Furthermore, the unavailability of legislation and other legal texts constitutes an additional obstacle to a proper access to justice. In addition, the justice system is centralised in Lomé where the specialised jurisdictions (labour courts and children courts) are located, which does not permit an equitable access to justice to all.

Article 16 of the 1992 Constitution and the **1983 *Code of Penal Procedure*** provide that all persons charged have access to their lawyers at the stage of the preliminary investigation. However, in practice, access to legal counsel is only possible after 48 hours of detention (legal limit on police custody) and even this practice is not always respected by judicial police officers. In its **November 2002** "Concluding Observations", the **UN Human Rights Committee** pointed out that "the time limit of 48 hours for police custody is allegedly rarely observed in practice, and some persons have reportedly been detained for years without being charged". Since Togo's commitments to the European Union in **April 2004**, the right to immediate access of lawyers to persons arrested is reportedly better implemented.

### Cases

In **August 2004**, the Togolese government released 494 prisoners following a presidential pardon. Some of the prisoners had been held in preventive detention without trial for long periods. Others had already spent half their jail terms in prison. This release followed the **April 2004** commitments to the EU to release all political prisoners. The authorities had previously officially denied detaining political prisoners in Togo.

## LEGAL REFORMS DURING THE PERIOD

**February 2002:** *Law No 2002-002* modified the criminal code (*Law No 80-01* of **August 13, 1980**).

**April 2002:** the National Assembly adopted a *law on the status of the president and members of the National Human Right Commission*.

- 31 December 2002:** the National Assembly passed 34 *modifications to the 1992 onstitution*, creating among others a Mediator of the Republic (Ombudsman) and a Senate.
- 6 February 2003:** a new electoral code (*law No 2003-01/PR*) was adopted. This code was later replaced by another, adopted on **19 January 2005**.
- 2003:** legislation was passed providing for the creation of prefecture, municipal and regional councils.
- 2 July 2004:** Togo ratified the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*.
- 24 August 2004:** the Parliament unanimously adopted a draft law amending the *Press and Communication Code (law No 98-004/PR of February 11, 1998* modified by laws *No 2000-06/PR of February 23, 2000* and *No 2002-026/PR of September 25, 2002*).
- 6 November 2004:** a law relating to the High Audio-visual and Communication Authority (HAAC) was adopted.
- 12 January 2005:** a law modified law *No 96-12 of 19 November 1996* relating to the structure, organisation and functions of the National Human Rights Commission.
- 6 February 2005:** a law modifying the Constitution was adopted in order to allow Faure Gnassingbé to become head of the National Assembly and consequently President of Togo and to serve the remainder of his father's elected term (Article 65 of the Constitution which previously required elections to be held within 60 days of the president's death).



## General Country Information

### a. Legal system overview

#### 1. Rule of Law and independence of the judiciary

According to the *Constitution of 14 October 1992*, the country is led by an elected **President** as Head of State. The President is directly elected for a five-year term, and since the adoption of *law No 2002-029 of 31 December 2002* modifying the 1992 Constitution, may be re-elected. The President, taking into consideration the parliamentary majority, appoints the **Prime Minister** as head of the government. The **Council of Ministers** is appointed by the President on proposal of the Prime Minister. The President of the Republic presides over the **Cabinet** and has the power to dismiss the Prime Minister as well as the members of the government. The President is responsible for promulgating the laws voted by the **National Assembly** and transmitted to him by the **Government** 15 days thereafter. The President may, before the expiration of the above period, demand that the **National Assembly** deliberate a second time on any particular article, and this deliberation cannot be refused. Any laws which are not promulgated by the President within the applicable period set out above are decreed by **executive order of the Constitutional Council**.

Legislative power is exercised by a bicameral **Parliament** composed of the **National Assembly**, whose deputies are elected for a five-year term and may be re-elected, and of the **Senate**. *Law No 2002-029 of 31 December 2002* created the Senate. It is composed by 2/3 of persons elected by the local communities' representatives and by 1/3 of persons appointed by the President. *Law No 03-013 of 17 October 2003* provides for its composition and functioning. Under Article 84 of the Constitution, the National Assembly approves legislation concerning the organisation of courts of law and administrative courts, as well as the procedure before them.

The Constitution of 14 October 1992 embodies the principle of the separation of powers. Article 113 of the Constitution establishes the judiciary as an independent authority: "Judges are only subject, in the exercise of their functions, to the Rule of Law." According to Article 115, the President of the Republic is the guarantor of judicial independence. He is assisted to that effect by the **High Council of the Magistracy**.

On **31 December 2002**, *Law No 2002-029* modified the 1992 Constitution and created a **Mediator of the Republic** (Ombudsman) as an independent administrative institution. Article 154 of the Constitution provides that his duty is to settle the non-judicial conflicts between citizens and the administration. This Mediator is appointed for three years renewable by presidential decree. *Law No 2003-021 of 9 December 2003* provides for the status and attributions of the Mediator of the Republic and for the composition, organisation and functioning of this new institution.

#### 2. Sources of law

The legal system is primarily based on **French law** and as such it distinguishes between administrative, civil and criminal jurisdictions. The Togolese law also includes customary principles.

## **b. The judiciary**

### **1. Judicial Structure**

Title VIII (*Du Pouvoir Judiciaire*) of the 12 October 1992 Constitution provides for the organisation of the judiciary. Under Article 84, the **National Assembly** approves legislation concerning the organisation of courts of law and administrative courts, as well as the procedure before them. In addition, *Law No 78-35* of **7 September 1978** on the Organisation of the judiciary and the *Organic Law No 96-11* enacted on **21 August 1996** deals with the status and regulation of the judiciary.

The Constitution and the **1978 Law on the Organisation of the judiciary** provides for a **Supreme Court** (*Cour Suprême*), a **High Court of Justice** (*Haute Cour de Justice*) and a **Constitutional Court** (*Cour Constitutionnelle*). Under Title VII of the Constitution, an **Audit Office** (*Cour des Comptes*) is established in order to control matters related to the finances of the State. The Constitution, under Article 132, provides also for an **Economic and Social Council** (*Conseil Economic et Social*), which gives advisory opinions on legislation concerning economic and social issues.

Located in Lomé, the **Supreme Court** is the highest jurisdiction in the country, with two chambers, one for judicial (*chambre judiciaire*) and one for administrative issues (*chambre administrative*). The *Organic Law 97-05* of **6 March 1997** provides that the Supreme Court is chaired by a judge appointed on the proposal of the High Council of the Magistracy (*Conseil Supérieur de la Magistrature*).

The **High Court of Justice** is the only competent jurisdiction to deal with cases against the head of state and with crimes of high treason. The High Court of Justice is composed of the **President**, the **Presidents of the chambers of the Supreme Court** and **four legislators**, elected by the National Assembly. Under Articles 127 and 128 of the Constitution, the High Court of Justice has sole jurisdiction over offences committed by the President of the Republic, members of government (and accomplices in cases of plot to destabilize national security) and members of the Supreme Court.

The **Constitutional Court** has jurisdiction over matters arising under the Constitution involving its interpretation or the fundamental rights provisions of the Constitution. Its decisions are binding on all administrative and public authorities and there is no possibility of appeal.

### **2. Military Tribunals**

The *Code of Military Justice* of **30 March 1981** institutes a military tribunal for military offences, which are defined as offences committed by a member of the military against its obligations or against military honour, duties or discipline, and for the ordinary law offences committed by a member of the military on duties or within a military establishment. The 1992 Constitution (Article 119) provides for a **Military Tribunal** competent for crimes committed by security forces, organised according to the principles enshrined in the Constitution. Trials before the Military Tribunal are not public. However, no military tribunal exists in Togo.

### **3. High Council of the Magistracy**

Article 116 of the Constitution provides for a judicial council, the **High Council of the Magistracy** (*Conseil Supérieur de la Magistrature*). This article is completed by *Organic Law No 97-04* of **6 March 1997** on the organisation and functioning of the High Council of the Magistracy.

According to *Organic Law 97-04* and to Article 116 of the Constitution, the High Council of the Magistracy is composed of three judges of the Supreme Court, four judges of the Courts of Appeal and of the tribunals, a member of the National Assembly and a person chosen by the President of the Republic based on his or her experience. The Council is headed by the President of the Supreme Court, who is appointed by the President of the Republic according to Article 121 of the Constitution. All the members are appointed for 4 years and their terms may be renewed only once. Under Article 117 of the Constitution, the High Council for the Magistracy is the disciplinary body for judges.

### **4. Court Administration**

The Ministry of Justice is in charge of managing the budget of the justice system, the judicial staff, the infrastructures and the equipments, and is responsible for the administration of courts and tribunals.

## **c. Judges**

### **1. Qualifications, Appointment and Training**

Judges are nominated by decree of the President of the Republic, following a proposal by the High Council of the Magistracy (*Conseil Supérieur de la Magistrature*).

### **2. Freedom of Association**

Three associations of magistrates exist in Togo: the National Association of Magistrates (*Association Nationale des Magistrats du Togo*), the Union of Magistrates of Togo (*Syndicat des Magistrats du Togo*), and the Professional Association of Magistrates of Togo (*Association professionnelle des Magistrats du Togo*).

### **3. Freedom of Expression**

According to Article 9 of *Organic Law 97-05* of **6 March 1997**, no judge can be pursued, arrested, detained or tried for opinions expressed in his or her judgement. Charges can be initiated against the Supreme Court judges only following authorisation by the High Council of the Magistracy.

### **4. Discipline, Suspension and Removal**

Under Article 117 of the Constitution and Article 23 of *Organic Law No 97-04* on the organisation and functioning of the High Council of the Magistracy, the High Council of the Magistracy is the disciplinary body for judges. The disciplinary sanctions are provided for in the Organic Law.

#### **d. Fair Trial**

The judiciary is severely understaffed and the judicial system does not ensure defendants the right to a fair and expeditious trial. There are approximately 150 judges in Togo (as of **June 2004**) and hundreds of cases are pending before each judge. Some detainees wait years to be tried.

The factors aggravating the failure of the judiciary include poor training and low remuneration. Judges are not paid on time. Consequently, delays in the judicial process are frequent and corruption, which is very common, encourages impunity.