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UNHCR's POSITION ON THE TREATMENT OF ASYLUM SEEKERS FROM TOGO

1. Following the death on 5 February 2005 of Gnassingbé Eyadéma, President of Togo since 1967, his son Faure Gnassingbé was sworn in as President ad interim, in contradiction with the relevant provisions of the Togolese Constitution. The protest of both the national and particularly the international communities against what some stakeholders termed “a constitutional coup d'état”, thereby also calling for a speedy return to constitutional order, prompted a negotiated solution brokered by the AU/ECOWAS Heads of States. As a compromise, it was agreed that Faure Gnassingbé would step down as the transitional President of Togo, and that he would run the presidential election scheduled to take place on 24 April 2005.

2. The situation which ensued became more tense with the barring of Gilchrist Olympio, a top opposition figure, from competing for the presidential election. Although the reasons which barred Gilchrist Olympio¹ from running for the presidency were constitutional, the opposition, which was already weak because it lacked a solid basis on the ground inside Togo, felt even weaker and soon found other reasons to protest amidst the campaign for the presidential election. There were violent clashes between the military and angry opposition youth during the pre-election period, with many casualties and injuries. Furthermore, concern was voiced by the opposition about possible rigging of ballots in the North², during and shortly after the election.

3. The presidential election took place on 24 April 2005 in relative calm. However, on 26 April 2005, when the results of the election were published declaring Faure Gnassingbé as the winner, thousands of Togolese (mostly the youth of the radical opposition coalition³) went to the streets to voice their frustration. The tension increased further on 27 April 2005, when Emmanuel Bob Akitani, the presidential candidate of the opposition proclaimed himself as President of Togo, calling for resistance against the ruling power. As a result, violence escalated in the streets of Togo, particularly in Lomé and other major cities, with deliberate acts of violent repression by the army, targeting the militants and supporters of the opposition. Reliable sources reported that at least one hundred persons were killed and 2,000 injured.

¹ Gilchrist Olympio is the son of the first President of Togo who allegedly had been mysteriously killed by Gnassingbé Eyadéma before the latter seized power almost four decades ago. Gilchrist Olympio has lived in exile in France since May 1992 when he escaped an attempted assassination in Togo.

² The North of Togo is the stronghold of the Kabye ethnic group, to which the Gnassingbé family belongs, whereas the opposition is mostly rooted in the South where the majority of the members of the Ewe ethnic group originate from.

³ It should be noted that since the regime of Eyadéma, the Togolese opposition has been divided into a moderate and a radical opposition. The moderate opposition is composed of personalities such as Edem Kodjo, the newly designated Prime Minister, who also served in this capacity during the regime of Eyadéma. Although it presents itself as part of the opposition, this faction has always collaborated with the regime in power in Togo. The radical opposition is a coalition of six opposition parties led by Bob Akitani, for the purposes of the presidential election of April 2005. It is this radical opposition which has loudly challenged the result of the election and, for this reason mostly, its members have been the targets of violent repression amounting to persecution.

4. Togolese started fleeing both generalised violence and persecutory acts on 26 April, resorting either to internal displacement or to seeking asylum outside Togo. By the end of July 2005, it was estimated that there were 16,000 Togolese displaced inside Togo, and UNHCR had registered some 24,500 Togolese refugees in Benin and roughly 15,500 in Ghana. The majority of the adult refugees registered in Benin, particularly in Cotonou, are young males between 18 and 25 years of age. They claim to have fled persecution by the Togolese army or government militias, on account of being militants or supporters of the opposition. For this reason, the Togolese refugees in Benin and in Ghana are particularly politicised and vocal against the regime of Faure Gnassingbé which they see as a mere continuity of his late father's regime. Both Benin and Ghana have granted *prima facie* refugee status to the Togolese asylum-seekers.

5. While at present, the general security situation in Togo is relatively calm, there are still reports from reliable sources, of house raids at night, arrests, rapes, and disappearances allegedly perpetrated by the Togolese military and allied militias targeting militants, supporters and allies of the opposition. Although the pace of the outflow has significantly slowed down, UNHCR in Benin continues to register new asylum-seekers from Togo, with the same claims that they are fleeing persecution from the Togolese military. Currently, the average number of new arrivals stands at about 200 individuals per week.

6. Meanwhile, the regime of Faure Gnassingbé is striving hard to portray a state of good will for reconciliation, calling for the return of the Togolese refugees, and undertaking many other positive initiatives. Amongst the efforts made by the current Togolese authorities towards reconciliation, it is worth mentioning the presidential decree dated 25 May 2005, creating an Independent Special National Commission of Inquiry to investigate "*the acts of violence and vandalism*" that marred the election period. Another sign of this positive mood is the creation of a High Commission for Repatriation and Reinsertion (HCRR) tasked with the preparations for the repatriation of Togolese refugees, as well as their reintegration into Togo and all related humanitarian matters. This HCRR has already established contact with UNHCR, with a view to building a collaborative working relationship. Nevertheless, it cannot be ignored that there is a serious divide in Togo between the current power and its associates (notably the Togolese army) on the one hand, and the radical opposition and its supporters on the other hand. Additionally, the geographical divide (North/South) and possibly the ethnic one (Kabye/Ewe) further play a role in the current crisis in Togo. Furthermore, the appointment of Edem Kodjo⁴ as Prime Minister and the subsequent formation of his government did not help bridging this gap which rather continues to widen.

7. The efforts of the new Togolese authorities respond to the demands of most stakeholders, including the refugees abroad, as well as some initiatives taken, notably in the African context, with a view to re-establishing normalcy in Togo. In this connection, it should be noted that on 25 April 2005, in order to preempt possible violent demonstrations after the publishing of the results of the polls, President

⁴ As mentioned previously, Edem Kodjo is a moderate opposition member who also served as Prime Minister from 1994 to 1996 when Togo was experiencing another political crisis, following the failure of the National Conference in 1993. The latter aimed at bringing about Democracy and Multipartism, *inter alia*.

Olusegun Obasanjo, in his capacity as Chairman of the AU, brokered an agreement⁵ between Faure Gnassingbé and Gilchrist Olympio, to form a government of national unity, regardless of the results of the polls. On 11 May 2005, the African Commission on Human and Peoples' Rights⁶ adopted a Resolution on Togo. This Resolution called upon the President of Togo to form a government of national unity, as agreed in Abuja – Nigeria - on 25 April 2005; encouraged the government of Togo to create conducive conditions for the voluntary return of the IDPs and the refugees; and decided to send a fact-finding mission to Togo to investigate the violations of human rights which occurred prior to, during and after the election. On 19 May 2005, at the invitation of Olusegun Obasanjo, a mini-summit took place in Abuja, to discuss the process for building national reconciliation and popular democracy in Togo. In addition to the protagonists to the Togolese crisis, the mini-summit was attended by the UN SRSG for West Africa, the Chairman of ECOWAS, the Executive Secretary of ECOWAS, the concerned Heads of States of ECOWAS, and the President of Gabon.

8. On 10 June 2005, the UN High Commissioner for Human Rights established a fact-finding mission to investigate allegations of human rights violations in Togo between 5 February and 5 May 2005; the mission arrived in Togo on 13 June 2005. This mission ended two weeks later, having also visited neighbouring Benin and Ghana. According to this mission⁷, the degree of violence which took place in Togo was much higher than what was reported in the media; this violence was organised on the part of the military and supporters of the regime, whereas it was spontaneous on the part of the opposition supporters. The mission emphasised the important destructions of both public and private property, by members of both the governmental and opposition sides. In this same vein, the mission reported that it received several testimonies of alleged incidents of rape, mostly by elements of the Togolese army and supporters of the government, and in some cases by some opposition supporters. Additionally, human rights violations were still taking place by the time of the mission. In this regard, the mission particularly reported on lists of names of persons - presumably belonging to the opposition - to be arrested, as well as an unknown number of persons who allegedly have been arrested and were detained incommunicado. Finally, the mission reported that a noticeable spirit of revenge prevailed amongst the protagonists, and for this reason, the possibility to timely hold legislative elections in December 2005 remains quite remote. Therefore, the mission concluded that a close and careful monitoring of the preparation of the elections is crucial on the part of all parties to secure the success of such elections.

9. On 20 July 2005, Amnesty International published its report following the investigation conducted in May/June 2005 in the Togolese refugee camps in Benin. This report concludes that the regime of repression of late President Eyadéma survived to his death and is continuing under his son Faure Gnassingbé with the same methods and means. The report further emphasises the significant role of militia

⁵ It should be noted that Gilchrist Olympio denounced this agreement the same day when it was reached.

⁶ The ACHPR met in Banjul – The Gambia - from 27 April to 11 May 2005 for its 37th Ordinary Session.

⁷ From oral debriefing of the Mission to UNHCR's Representative in Benin and Task-Force Meeting on Togo/Benin/Ghana on 29 June 2005. As of 31 July 2005, the Mission Report is awaited for possible public release anytime.

groups supportive of the regime, and argues that such militias sided with the Togolese army to commit massive human rights violations during and after the presidential election of 24 April 2005⁸, as in the past, during Eyadéma's regime.

10. Of particular significance is the meeting on 21 July 2005 between Faure Gnassingbé and Gilchrist Olympio organised by the well-known Sant'Egidio Community in Rome, Italy. According to *Radio France Internationale* (RFI), the two men called for the end of violence in Togo, and the return of the 30,000 refugees, and they agreed to meet again.

11. Against this background, UNHCR would like to advise as follows, in regard to the treatment of asylum seekers originating from Togo:

i) For the Togolese asylum-seekers in neighbouring countries, notably Benin and Ghana, where the figures and the pace of arrivals make it impossible to timely conduct individual refugee status determination, UNHCR recommends *prima facie* recognition based on article 1 A (2) of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, and article I (2) of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, as applicable;

ii) With regard to Non neighbouring countries within Africa, provided that the figures are manageable, UNHCR recommends individual refugee status determination based on the 1951 Convention, or the OAU Convention, as the case might be;

iii) Outside Africa, UNHCR advises States to examine cases individually, with a view to assessing their international protection needs. For those who might be determined not to be in need of international protection as provided by the 1951 Convention and its 1967 Protocol, UNHCR advocates for favourable consideration of complementary forms of protection;

iv) Considering the high level of violence on both sides – State apparatus and to some extent opposition supporters - as mentioned supra, due attention must be paid to the possible application of the exclusion clauses, in light of Article 1 F of the 1951 Convention and Article I.5 of the OAU Convention;

v) Given the security and political situation which remains precarious, and considering the continuing human rights violations on ethnic and political grounds, UNHCR advocates for a moratorium on forced removals of rejected asylum-seekers to Togo until further notice. The violent repression of opposition supporters by the State apparatus – army and militias - did not distinguish between high and low profile activity/support for the opposition. While this position is mostly relevant to situations arising as of February 2005, it would at least be advisable, for the cases adjudicated prior to the recent events in Togo, to conduct a case by case screening with a view to adjudicating every case based on its own merits, for the purposes of possible forced return.

Africa Bureau/DIP
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⁸ It should be underlined that Amnesty International's mission only visited Benin; it did not go to Togo or to Ghana.