



Update on International Protection Needs of Asylum-Seekers From Togo

This document updates *UNHCR's Position on the Treatment of Asylum Seekers from Togo* dated 2 August 2005 which urged *inter alia* a moratorium on forced return in light of the precariousness of the security situation in Togo. In the 12 months since the position was issued the situation in Togo has stabilized and in a number of ways improved. Leaders of the opposition who previously would have feared for their lives now feel sufficiently comfortable to live in the economic capital, Lome. Others have actually been included in the government of national unity. Concurrently, however, there has been an absence of progress on other elements of the structural reform required – in particular to the laws governing Presidential elections and the structure and role of the army – to forestall future episodes of violence and its resultant displacement.

OHCHR Report

The 29 August 2005 report¹ of the Office of the United Nations High Commissioner for Human Rights (OHCHR), on human rights violations following the 24 April 2005 Presidential elections in Togo, estimated the number of persons killed at between 400 and 500, including summary executions in Lome, Aneho and Atakpame. It found that torture and inhumane or degrading treatment of civilians had been widespread as had been arbitrary detention, disappearance and rape. It placed responsibility for the abuses principally with the security forces of the Togolese Government – to which it attributed a coordinated and deliberate strategy of repression – while acknowledging that militias allied to the Togolese army as well as opposition militants were also reported to have perpetrated abuses.

The report identified an ethnic dimension to the violence, with the Kabye ethnic group of the former President, Gnassingbe Eyadema, disproportionately represented in the armed forces while the principal opposition leader, Gilchrist Olympio, receives his support predominantly from the Ewe ethnic group. Militants allied to each ethnic group systematically targeted members of the other ethnic group with violent attacks following the announcement of the disputed election results on 26 April 2005. Significantly, the current President, Faure Gnassingbe, son of Gnassingbe Eyadema, is of both Kabye and Ewe extraction on his father's and mother's side respectively.

The report recommended a credible truth, justice and reconciliation process be undertaken, indicating that the National Commission of Inquiry created by President

¹ Office of the High Commissioner for Human Rights, *Rapport: La mission d'établissement des faits chargée de faire la lumière sur les violences et les allégations de violations des droits de l'homme survenues au Togo avant, pendant et après l'élection Présidentielle du 24 avril 2005*, 29 August 2005, available at <http://www.ohchr.org/english/docs/rapporttogo.pdf>.

Gnassingbe was inadequate to the task. It recommended that the Togolese government engage in a process of national reconciliation with both opposition and civil society representatives, reform the armed forces, disarm all militias (including those affiliated to the ruling and opposition parties) and revise the constitution to clarify the conditions under which the next presidential, legislative and local elections would take place.

Developments

Since the report of the OHCHR, there have been positive developments in Togo. According to all observers, including the UN Country Team and the principal independent human rights organization in Togo, the 3,000 member Togolese League for Human Rights (Ligue Togolaise des Droits de l'Homme – LTDH)², the security situation has improved. Reports of kidnappings and killings at night continue to be received but in substantially diminished numbers. There have been no fresh outbreaks of widespread violence. OHCHR has recently been granted authority to establish a presence in the country. For its part, the Togolese government denies that there are any longer political prisoners in Togo, a claim which may indeed be correct though it should not be equated with a complete cessation of politically motivated human rights abuse.

In April 2004 the Togolese Government, in an effort to persuade the European Union to lift sanctions it imposed in 1993, established the Inter-Togolese Dialogue (Dialogue Inter-Togolais). This initiative was one of 22 commitments appertaining to the rule of law and respect for human rights undertaken by Togo and continues to meet and discuss issues relevant to the national agenda. On 2 June 2006, the Dialogue issued a ten point Global Political Accord (Accord Politique Global) outlining the participants' agreement on, *inter alia*, electoral and institutional reform, forming a new government, armed forces reform, impunity, the financing of political parties and the return of refugees. Though the document was signed by nine political parties, including the ruling Rally of the Togolese People (Rassemblement du Peuple Togolais – RPT) on 6 July 2006, the two principal opposition parties, the Union of Forces for Change (Union des Forces de Changement – UFC) and Democratic Convention of African People (Convention Démocratique des Peuples Africains – CDPA) declined to embrace it.

According to both UN and diplomatic sources, the Togolese government evinces a genuine intention to resolve issues with the opposition though this has not yet translated into meaningful political reform. Without doubt the government desires to have the sanctions lifted and claims to be committed to the reforms necessary to achieving that result. Likewise the government maintains a position strongly in favour of the return of refugees and has established a High Commissioner for Returnees and Humanitarian Action (Haut Commissaire pour les Repatriés et l'Action Humanitaire) to oversee such return.

It should be observed too that since the fall of 2005, there have been no significant further displacements of populations either within or out of Togo.

² Representations made to joint assessment mission to Togo of UNHCR and WFP from 26 January to 8 February 2006, and subsequently in communications with UNHCR Representation in Benin.

On the other hand, as stated in Amnesty International's report on the one year anniversary of the post-electoral violence in Togo, there is "still complete impunity"³ in Togo for the perpetrators of that violence. Given that such impunity has been the reality in Togo for more than four decades, it would be unrealistic to see it overcome overnight. Balancing the desire for reconciliation with justice is frequently difficult and Togo has not proven to be an exception. In a move opposed by the major Togolese opposition parties, the Togolese prime minister, Edem Kodjo, announced in a circular in March 2006 an amnesty for all those responsible for violence related to the election (with the exception of murder).

Notwithstanding its formal designation as a government of national unity, numerous Togolese opposition figures, including refugees, advise that the essence of the Togolese government has not changed and does not intend to change. They urge that the proof is in the government's lack of movement on the most sensitive but pressing issues of reform of the armed forces, government institutions and the process for presidential (as opposed to legislative and local) elections.

Despite the creation of the High Commissioner for Returnees and Humanitarian Action, there is an avowed reluctance on the part of many refugees to return. This is due at least in part to the paucity of independent and reliable information on the treatment of individuals who have returned to Togo. According to some NGO, refugee and opposition sources, returnees have been harassed by state officials and local chiefs. According to other reports, including by credible donor countries with an ongoing presence in Togo who have previously been critical of the government, there is no harassment of returnees or there is simply insufficient information to know. A conclusive determination of the issue is not presently possible given the contradictory nature of the accounts and the limited availability of firsthand information.

Refugees in Ghana

Of the 12,414 Togolese refugees registered by UNHCR in Ghana in 2005, only 6,578 remain according to a verification exercise undertaken jointly by UNHCR, the World Food Programme (WFP) and Ghana Immigration Service in April and May 2006. It is important to distinguish what the verification does and does not reveal. The verification confirms that half of the individuals originally registered with UNHCR in 114 sites over a 400 kilometer expanse of territory in the Volta Region of Ghana are no longer there. It confirms as well that the departures have been spontaneous (i.e. not organized and not assisted by UNHCR).

It does not reveal the proportion of those individuals who have left for other locations in Ghana (particularly the Ashanti region) or the number of Ghanaians who might innocently or deliberately have registered as refugees in the expectation of obtaining material assistance. Nor does it reveal where in Togo those who returned to Togo went or why they did so. UNHCR has been advised that many of the individuals who returned to Togo have eschewed the Togolese government reception committees

³ Amnesty International, *Togo: One year on from the April 2005 bloodshed, there is still complete impunity*, AFR 57/001/2006, Public Statement, 26 April 2006, available at <http://web.amnesty.org/library/index/engaf570012006>.

established to receive them and deliberately maintained a low profile. Some Togolese opposition figures suggest that the only persons to have returned did so because they were worn out and without the means to maintain themselves. Or they may have returned for reasons of family reunification, preservation of work or property, proximity to border (and thus security of escape route) but not necessarily because they accept that is now safe to do so.

A survey of the Togolese refugees by UNHCR's field office in Ho (southeastern Ghana) was undertaken in July 2006 to respond to the gaps in UNHCR's understanding of the true number and reasons for the apparent return to Togo of half of the individuals originally registered in Ghana. The survey was completed by 20% of the refugees identified in the verification exercise. Of these, only about 12% (164 of 1,325) indicated a willingness or intention to return to Togo at this time.

All of those willing to repatriate are among the 859 refugees situated in the northern Volta region who responded to the survey. Those unwilling to return cited general insecurity as the principal reason for their unwillingness. None of the 466 refugees situated in the southern Volta region evinced a willingness to return at this time. The reasons cited for this unwillingness included the general insecurity and impunity fears of the refugees in northern Volta but also a higher incidence of traumatization due to relatives being killed, continuation of the current regime in Togo which they believe to be undemocratic, apprehension of individual targeting owing to affiliation with the political opposition and destruction of properties.

Refugees in Benin

In Benin, Togo's neighbour on the other side from Ghana and the other country in the region to have received a mass influx following the events of April 2005, 25,557 refugees are recorded as having arrived in 2005. Unlike in Ghana, the refugees in Benin are not spread throughout dozens of communities in hundreds of kilometres of territory but in three principal areas: refugee camps at Agame and Come and the economic capital, Cotonou.

As of the end of July 2006, only approximately 8,000 of the original 25,557 refugees are estimated to remain. Of these, approximately 5,000 reside in the camp at Agame, 2,500 in Cotonou, and less than 500 at the camp at Come, which is slated to close.

UNHCR's office in Benin indicates that the number of refugees to have returned to Togo in June 2006 alone exceeded 1000 and that a modest number of returns continues each day, facilitated by the office. The office recently held meetings with officials from the Togolese government to discuss the parameters of and conditions for an eventual tripartite agreement on return though the conclusion of such an agreement obviously awaits fuller information on the returns having taken place to date and the evolution of reform in Togo.

Refugee Status Determination and Forced Return Advice

In light of the above, UNHCR is of the view that while serious problems persist which warrant careful consideration of asylum claims submitted by Togolese nationals seeking international protection, serious and indiscriminate threats to life, physical

integrity or freedom resulting from generalized violence or events seriously disturbing public order, no longer occur. UNHCR is therefore amending its position of 2 August 2005 in respect of international protection needs of Togolese asylum-seekers as follows:

1) All claims should be considered on the basis of their individual merits in fair and efficient refugee status determination procedures employing the definition of refugee as set out in Article 1A of the 1951 *Convention relating to the Status of Refugees* (Article I(1) of the 1969 *OAU Convention governing the specific aspects of refugee problems in Africa*, where applicable) and with due attention paid to possible grounds of exclusion.

2) In countries where the 1969 OAU Convention is applied, the situation in Togo no longer warrants favourable consideration under the definition of refugee in Article I(2).

3) Individuals already recognized as refugees, whether on a *prima facie* basis or following individual status determination, should for the time being retain this status. It follows that any return of a refugee to Togo must be on a strictly voluntary basis. Refugee status of such persons should be reviewed only if there are indications, in an individual case, that there are grounds for cancellation of refugee status which was wrongly granted in the first place; revocation of refugee status on the grounds of Article 1F(a) or (c) of the 1951 Convention; or cessation of refugee status on the basis of Article 1C(1–4) of the 1951 Convention.

4) For individuals found not to be in need of international protection following determination of their claims in fair and efficient procedures including a right of appeal, UNHCR does not object to their return to Togo on refugee protection grounds. Host States' *non-refoulement* obligations under applicable international human rights law remain unaffected. Compelling humanitarian reasons should also be given due consideration.

UNHCR
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