

**0900599 [2009] RRTA 336 (28 April 2009)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0900599

**DIAC REFERENCE(S):** CLF2008/143526

**COUNTRY OF REFERENCE:** Togo

**TRIBUNAL MEMBER:** Suzanne Leal

**DATE:** 28 April 2009

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Togo, arrived in Australia [in] July 2008 and applied to the Department of Immigration and Citizenship for a Protection (Class XA) visa [in] October 2008. The delegate decided to refuse to grant the visa [in] December 2008 and notified the applicant of the decision and his review rights by letter [on the same date].
3. The delegate refused the visa application on the basis that the applicant is not a person to whom Australia has protection obligations under the Refugees Convention.
4. The applicant applied to the Tribunal [in] January 2009 for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class XA) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:  

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

## **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant in addition to the Tribunal's own file.
20. In his visa application, the applicant claims to be a citizen of Togo of Mina ethnicity. Together with his visa application form, the applicant provided the following statement:

My name is [name deleted in accordance with s.431(2) of the Migration Act as it may identify the applicant]. I was born on [date of birth deleted] in the village of [village] in the country of Benin. My father was Ghanaian, my mother Togolese. My usual occupation was French Teacher. I left Togo [in] July 2008, and arrived in Australia [date]. I now live at [address].

I come from a family where the parents are divorced and have been since very soon after my birth. In the early part of my life I lived in Lome with my mum and two half-brothers. [Information about the applicant's brothers deleted: s.431(2)]. In 1986 [a sibling] died. For this reason, though we are two children, I find myself in position of responsible son for my mother. Aside from the problems of my nationality (which are explained later), I did not have many difficulties.

I am really afraid for my life if I return to Togo because of what started to happen in 1991.

From [date] December 1991, I passed through so many difficulties and dangers because of political and tribal troubles, (north and south). Many of the people from the north of Togo were supporting the power that protected their interests. Because the President (Ghassingbe Eyadama) was from the north, and we are from the south, and live in an [area], where many of the people are from the north, we are considered as opponents.

This explains why on the morning of the [date] December 1991 some members of the military came to our house to aggress my mum. At the time, [my brother] and I were at my Grandmother's house. My mother was beaten by the soldiers, and threatened that they would return and beat her again.

Three weeks later, on the [date] January, it was my turn to be aggressed in front of our house by a group of militaries, led by [Person 1], who was being proud of beating me. Three soldiers were urinating on our house. I politely asked them not to, but they started to punch me severely, and to whip me with their belts. I had many bruises. They shouted that "people from the south had to be killed one by one". [Person 1] shouted repeatedly that "this one I would like to kill with my own hands". I was saved from much worse injury by a senior military officer ([name], who was known to my family) passing by and rescuing me.

The following week, it was my mum again, who was nearly shot when soldiers caused a disturbance in the local village, and she was in the wrong place while she was coming back from Ghana.

This situation forced us to leave Togo for Benin. We arrived in Benin on the [date] February 1992, and went to the town [town] where my family still had a house.

Because there were many refugees from Togo there, the UNHCR had been sending us some food and other material assistance. My mother was chosen by the refugees to become their leader. The Catholic Priest, who was in charge of the section of [a Catholic] organisation in that village, (that was supposed to share the things out to the refugees), Reverend [name], had been taking the greatest part to his own shop. The share was the lion's one. This brought him in conflict with the refugees. My mother realised this was wrong, and wrote to UNHCR, telling them of the problem. Many of the people in [town] are catholic and were supporting [the reverend] against the refugees, and my mother. This turned my stay in Benin into Hell.

I went through insults, physical and spiritual attacks because I was considered the only son of my mother and everything that they wanted to do to her, when they saw me; they just did it to me. This disturbed my studies in Benin a lot because I often got sick.

To explain the spiritual attacks, witchcraft is common in that part of the world, and although I am Christian, my culture believes in the power of witchcraft, and the people who wished us harm performed rituals to harm me.

In 1995 one of the most serious attacks occurred when my bed in my room caught fire when I came home from church, at siesta time, when I would normally have a sleep. Fortunately, an inner wisdom warned me not to lie on the bed, or I would have been seriously burned.

We decided to come back to Togo because Togo seemed to be a little bit stable; so we went back to Togo on the [date] June 1995. The killing and the kidnapping of one of our distant relatives ([name]), who was also from the South, and neighbours (one was [name]) made us realise that there was no peace or stability in the country.

I fled by road to Cote D'Ivoire to stay with one of my Uncles, [name] till 2001. I had to leave Cote D'Ivoire because of family problems and political troubles. The family disruptions meant that I could no longer live with my uncle, where I was reasonably safe. The changing political situation meant that foreigners, especially Ghanaian, were often (recognised by their different French accent and) beaten.

I came to Lome (capital of Togo) for the funeral of one of my Aunts, [name]. I was the one who played the organ during the funeral service. It was then that I met the husband of my [relative], [Person 2], on the [date] July 2001. Interested in my music, he invited or he convinced me, to join the UFC Party because in that Party they have a choir and an orchestra. That is how I joined the UFC Party on the [date] July 2001.

I didn't know how people got to know about my adhesion to the Party. Two months later some Militaries and RPT young men went to my house and asked for me. By then I was living with another friend, [name] at [town].

I can't stay in one place for long for my safety. That is how I had to roam about Lome from suburb to suburb. When my mum told them that I was not around, they thought she was lying and they beat her and [my brother] quite severely, went through the house looking for me. It was [my friend] who informed me what had happened at my mother's house, and I ran away to Accra (Ghana). I couldn't stay with Daddy because I didn't really know him, and he was growing old. The other people in his tribe didn't like foreigners, and this meant that I would not escape persecution. Furthermore, my

father's third wife, who is from his tribe, did not want to have his son (from his second marriage) living with them.

From conversations with my father at this time, I came to understand that my father had divorced his second wife (my mother) because she was Togolese (a foreigner), and the people of his village had organised his third wife for him-she was of the same tribe as my father. I didn't register myself as a refugee in Accra. So many times I have seen the Togolese Army cars roaming around and know that some Togolese people are taken back by force. Some died like Agboti Yao.

I decided to hide myself in an area where nobody knew me. I stayed in [suburb] while I was schooling at [Institute]. That was October 2001 I spent three academic years in that institution. I taught children's French at home from July 2004 to [date] January 2005. By then Togo was looking a little bit peaceful. I decided to go back in order to resettle myself but it was not to be because of the tragic events that sent me back to Ghana.

These events were: The death of Gnassingbe Eyadema on February 5th 2005 and the Presidential election held on April 24th 2005. These brought a lot of troubles; shootings in the [location] area where I lived. Homes of those seen as opponents were burned. That was the case with Mr Olympio, who was in the party with me [information deleted: s.431(2)].

During the campaign the choir I was [a member of], were supporting the Opposition Leader Bob Akitani. I was also in the Outreach Committee. I was molested and wounded by a militia balance of the RPT Party (the government party who ruled the county for the past 40 years).

I ran back to Ghana on the [date] May 2005. When they came back to our house there was no one there. They destroyed so many things including the school infrastructure that was also part of the house. To survive in Ghana I involved myself in the educational system as a French teacher in [school] from June 2005.

On the [date] April while I was coming back from school I met a certain group of people in my area. One of them suddenly told the others in French "Here he is" and they beat me seriously, I still have scars on my right ankle from that beating. I didn't know why this happened. It was later that on that I got to know that this was the new strategy that the Togolese Army has adopted to punish people like me, Togolese who relocate to Ghana. It was clear that even in Ghana my safety was not guaranteed. I started roaming around staying with church members and friends until the death of my grandmother on the [date] November.

My life was not safe in Togo, Benin, Cote D'Ivoire nor Ghana. What was I to do? Where can I go to have a safe life? I was thinking this when I heard about Australia which was preparing to welcome the youth from around the world to World Youth Day. For somebody who was in permanent danger like me, the opportunity was not to be wasted. So I also joined a group preparing to go to World Youth Day in Sydney. Three days before flying to Australia, the housekeeper let me know that some people, looking strange, had been around asking about me.

Australia for me is a good shelter. Knowing what I have already endured and what will happen to me if I am sent back to Togo again appears very hard for me. It's like burying myself in my own grave.

I have tried on several occasions when Togo looks peaceful, to go back and resettle myself, but in vain. I am tired of running away for so many years. Even if Togo is looking a little bit stable, some people are in danger of death. The reason why Gilchrist Olympio, the Opposition Leader, cannot come back to stay in Togo. What makes me more afraid is what happened only this August to [Person 2] He was the one who convinced me to join the Party and he has been murdered. If I go back the same thing can happen to me because people know the good relationship between him and me. Another fear is that all presidential elections we hold in Togo are times of great troubles and killings and the elections are coming again in 2010. How are they going to be?

I wasted so many years in running away. I need peace to reorganise my life. That is why I am pleading to the Australian Government not to send me back to death in Togo but to protect me and help me to give the best of myself for the advantage of Australia. May God Bless Australia.

#### My nationality

I had difficulties to get my Togolese nationality because there was no law to allow those that have a Togolese mother and a foreign father to be recognised as Togolese. My father was [occupation] in Togo when I was born. I was born in Benin while my mother was visiting an aunt.

Soon after I was born the relationship between the Rawlings government in Ghana and the Eyadema government in Togo went bad. That forced my father to go back to Ghana while I was still a baby.

I didn't claim Ghanaian citizenship because, with the bad relationship between Ghana and Togo, being Ghanaian in Togo would put me in political danger (because of being a foreigner).

During the national conference that was held in 1990, this problem (of people of mixed parentage not being able to get nationality) was raised. In 1994, the Togolese government fixed the problem by delivering nationality certificates to people that have a Togolese mother and a foreign father. At that time I was in exile in Benin. By the time I came back, they stopped doing this. So I couldn't have any nationality.

#### My passport

Because of the problems of my nationality, I was not able to get a passport. While I was in another country (I don't remember which one), my mother contacted a relative of mine who had been a government official. He was able to use his influence to get nationality papers for me. Using these papers he was then able to get a passport for me. This was earlier this year. The organisers of the group coming to World Youth Day took my passport and organised a visa to Australia, which was issued by the consulate in Pretoria. The group went from Togo to Ghana to catch the plane to Australia. I knew that I was taking a risk that my identity might be discovered, and I might not be allowed to leave Togo. Fortunately, the group leader [name] (I don't remember his family name.) handled all the business with passports and papers, and I was able to leave Togo without being stopped. I believe I was fortunate to be able to take advantage of the group of church people to escape Togo. We then flew to Australia from Accra.

21. Also contained on the Departmental file are the following documents:

- Certificate of Togolese nationality for [the applicant], confirming his birth in Benin [date of birth deleted: s.431(2)], and dated [date deleted: s.431(2)] February 2003;
- Membership card for the UFC for the applicant stating his date of membership as [date deleted: s.431(2)] July 2001 and signed by E. Akitani Bob;
- Togolese passport for the applicant issued [in] February 2008;
- Letter signed by Jean-Pierre Fabre for the Secretary-General of the UFC dated [in] July 2008 and stating as follows:

We the undersigned UNION OF FORCES FOR CHANGE (UFC) certify that the said [applicant], who was born on [date] at [village], Primary School Teacher, bearer of card No [number] – Visa number [number] dated [date] July 2001 is an active member of the UFC.

In witness whereof this certificate is issued to him to serve all relevant purposes.

22. On the Departmental file is the following note to the delegate from the applicant's advisor:

I have...spoken to [the applicant], and he has asked whether I could stress one particular point about his application.

[The applicant] is strongly of the opinion that he was a member of the UFC party, and that he was not in any way a 'junior' member of the party because of the fact that he was the [position held]. He regularly attended meetings and contributed towards the debate. He did not just contribute on matters concerning the choir As I have already indicated before, the choir was an integral part of the whole political process.

[Information about party activities deleted: s.431(2)].Despite the fact that [the applicant] was a member of the choir, he was the subject of political persecution because of his political views. This was the case irrespective of his role within the party.

23. In his decision, the delegate found that the applicant is a citizen of Togo. On the basis that there was no information before him to suggest that the applicant has the right to enter and reside in a safe third country, the delegate found that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act. The delegate accepted that the applicant is a member of the Union of Forces for Change.
24. In refusing to grant a protection visa to the applicant, the delegate made the following findings:

Having regard to the available information, I accept that the applicant, like many others within the Togolese civilian population, may have suffered traumatic events or serious harm in the past in Togo, which may have prompted [him] to flee Togo on several occasions. Nevertheless, the relevant factor in regard to the grant of a Protection visa is whether there would be a real chance of Convention based persecution in the foreseeable future should the applicant return to Togo, not that there may have been past difficulties. Accordingly, the relevant consideration is whether the applicant faces a real chance of serious harm amounting to persecution for Convention reasons in the reasonably foreseeable future of his return to Togo Available reports indicate that whilst Togo's human rights record has been poor it has

shown significant improvement in recent years, and available information does not suggest a person in the applicants circumstances would be at risk of persecution if he returns to Togo.

25. The applicant appeared before the Tribunal [in] March 2009 to give evidence and present arguments.
26. The applicant told the Tribunal that his mother is Togolese and his father Ghanaian. His father had [worked] in Togo. During his father's time in Togo, problems emerged between the Togolese and Ghanaian governments. Because of his father's [work], the applicant became well-known within the Togolese government. During the time his father [worked] in Togo, relations between the two countries deteriorated to such an extent that in Togo it became dangerous to say you were from Ghana. As a result of this, despite having requested Togolese citizenship since 1988, he only received it in 2003. On one occasion when he was trying to gain nationality, a high ranking officer told him that 'with a name like that' he would have no chance.
27. The applicant was also unable to have himself declared as Ghanaian. This is because he was not accepted by his father. This is because his father had married outside his tribe (Nzima) which was not accepted. Accordingly, neither the applicant nor his mother were accepted by his father and his father's family.
28. In 1991, the military came to the applicant's home and beat his mother. The applicant told the Tribunal that his mother had been targeted on the basis that she was from the south of Togo, whereas the supporters of the government tended to live in the north. The following week, the applicant was beaten by three soldiers. An officer, who was a friend of the applicant, came to his assistance. Because of the danger in Togo, the applicant, his mother and his [information deleted: s.431(2)] elder brother sought refuge in Benin, where they have a family home.
29. In Benin, the High Commissioner for Refugees sent goods to people like the applicant, who were seeking refuge from the events in Togo. These goods were being kept by the local priest rather than being distributed amongst those people seeking refuge in Benin. The applicant's mother informed the UNHCR what was happening. However, the other people seeking refuge in Benin supported the priest rather than the applicant's mother and this led to difficulties for the applicant and his family.
30. The applicant does not have an ongoing right to live in Benin – he is not a citizen of the country and despite having been born there, has no right to become a citizen of Benin.
31. The applicant, his mother and his brother returned to Togo in 1995.
32. The applicant lived in Ghana from 2001 to 2005. He did not register as a refugee in Ghana due to concerns for his safety: he knew that the Ghanaian government had deported registered refugees back to Togo.
33. The applicant returned to Togo in January 2005. The applicant told the Tribunal:

I love Togo. Each time the possibility is there to return, I go. I returned there in January 2005. Unfortunately, in February 2005, the president died. I thought to return to live there in peace. After the president died, all sorts of trouble started.

34. The applicant became a member of the UFC [in] July 2001, when he was still in Togo.
- Some of our relatives got kidnapped, so I fled to the Cote d'Ivoire from 1995 to 2001. In July 2001, I went back to Togo. I didn't stand up to be involved [in the UFC], but I love music, playing the piano, I like religious singing. One of my [relatives] was a member, and they needed someone for the choir. I joined because of that. The person who encouraged me to join was [Person 2]. He is [distantly related]. We met at the funeral of my aunt, I conducted the funeral service. He was a family member of a different party supporting the UFC. The party was called [party name].
35. [Person 2] has died since the applicant came to Australia. According to the applicant, some say he committed suicide, others say he [did not]. The applicant queries that if he committed suicide [details deleted: s431(2)], why did he end up with bruises? According to the applicant, the media doesn't report everything and so the situation in Togo is difficult to understand unless you are physically in the country. According to the applicant:
- For me and according to the information, the peace that is there is not solid. There is peace because so many people are fearful. People are tired, with no courage to talk so they remain silent. The small time I spent in Togo because I left, I would ask people questions and they said they are tired – let the government do what they like.
36. Two months after the applicant joined the UFC, militia came to his house. The applicant was not home at that time but the militia attacked the applicant's mother and brother. When told the militia were looking for him, the applicant left Togo for Ghana.
37. During the election campaign in Togo in 2005, the applicant found things very difficult. Sometimes he couldn't leave the house. [Information about the applicant's house deleted: s.431(2)] During the election campaign, the applicant found it difficult to leave the house, as he was under surveillance [information deleted: s.431(2)].
38. The applicant told the Tribunal that he could not have foreseen the consequences of the death of the old president in 2005:
- When the president died after forty years, people breathed a sigh of relief. None expected such a deterioration. People felt that the opposition would win the election and so wouldn't be in danger. We didn't think it would turn out the other way. People expected big changes. This was a total surprise.
39. The applicant explained his fear following the election: In his district in Lome, many people living there were from the north of Togo, where the president come from. According to the applicant, 90% of the national army were also from the north of Togo and so were supporters of the president.
40. According to the applicant, the fact that the army were supporters of the government:
- means each time the opposition went to criticise the government, you get shot by the army. You need to understand, when you see people from the north, they will be enemies, because they will be members of the president's clan. [People from the north] have more privileges. Culturally, we are different: the speech, the accent is different. Physically, [people from the north] are different. Some have initiation scars. When I was attacked, the soldier said, 'he is from the south, I'll kill him with my hands. All from south should be killed.
41. Slowly, the applicant found that there were people from the north who were also against the government – so it was a political problem, rather than a north/south civil problem.

42. In response to information received by the Tribunal that the elections in Togo in 2007 seemed to be fair and free, the applicant told the Tribunal:
- Apparently they seemed to be just, but they were technically flawed. The opposition had more votes than the government, but the government held more seats.
43. Although the applicant agreed that the opposition holds 31 seats in parliament, he told the Tribunal that it is a question of safety: are these members of the opposition treated fairly and are they kept safe?
- According to the evidence I've read, the opposition members aren't well treated. Some aren't allowed to travel. They are marginalised. It is a sacrifice they are prepared to make by being in parliament because traditionally, they have refused to take part in elections. This gave the government the excuse to say that the opposition doesn't want to take an active part. What the government says is that the opposition comes along, creates problems and then disappear.
44. The applicant told the Tribunal that it is not safe for him to return to Togo. If he were to return, he would have to flee again: the thought of this tires him and overwhelms him. Even his mother is unable to live in the family home in Lomo due to her fear of harm. A few days before the applicant left Togo, servants at the house looking after the applicant's [information deleted: s.431(2)] brother said that people had come to the house looking for the applicant.
45. The applicant explained that he was able to leave Togo by flying out of Ghana with a group of delegates to World Youth Day, who were all protected by [Person 3]. According to the applicant, he found out only at the Departmental interview that [Person 3] had provided him with a letter of support to attend World Youth Day. It is, according to the applicant, a general letter of support.
46. When the applicant spoke to his local priest about attending World Youth Day, he didn't tell him of his intention to remain in Australia. The applicant was fearful when crossing the border. He considered trying to cross the border illegally by himself and then joining up with the group afterwards. If, however, he had done that the priest would have become aware of what he was doing and this would have been problematic for the applicant. For this reason, he decided that it would be safer to remain with the group.
47. When asked why he did not claim asylum in Ghana, the applicant told the Tribunal:
- I couldn't make a claim of asylum because I had already been attacked in Ghana: I still have scars from that attack. The new government in Ghana is good friends with the government of Togo. Some refugees from Togo living in Ghana have been deported back to Togo by the Ghanaian government. There were Togolese military vehicles in Accra rounding up Togolese refugees to deport them back to Togo.
48. When he returned to Togo between October 2007 and July 2008, he hid, so that it wasn't known he was back in Togo. He returned following the attack on him in Ghana.
49. While in Ghana, the applicant had been teaching French to school children. On the day of the attack in April 2007, he was returning home from the school when he heard someone say in French, 'Here he is.' Because French was being spoken rather than English, he assumed the people were Togolese. He was beaten around the feet and face. As a result of the attack, one of his teeth had to be removed.

50. The applicant confirmed that the information supplied in relation to his visitor visa was false. He told the Tribunal that this was because he simply wanted to get a visa to leave and stay out of the country. The idea to apply to be a delegate for World Youth Day came from the applicant's cousin who lives in [Europe]. She told him that the Pope was coming to Australia and because of that, it was easy for young people to get a visa to come to Australia. When the applicant applied to come to Australia, he didn't know where it was: he thought it was in Europe.
51. He told the Tribunal that he had more problems getting a passport than he did getting the visa. It was not until 2003 that he was able to get a certificate of Togolese nationality. He was only able to get the passport through a contact in the government. The applicant provided details of the contact but asked that these not be revealed in the judgement in order to protect the contact's safety.
52. The applicant did not have the funds for the airfare to Australia. Friends and family helped to contribute to the expenses. According to the applicant:
- They saw my suffering and they put in the money. If it is not persecution [I have suffered], put yourself in my place. It is difficult for a mother to accept for me to go to a country where I know no-one. Why would I go to Ghana to teach when my own school was in my mother's house? My mother made many sacrifices for me: even not marrying because of me. She is ageing, she is 65 years old. It is my turn to support her. I wouldn't leave her [if I didn't have to]. Why leave her if I could be by her side?
53. Following the Tribunal hearing, the applicant forwarded further documentation, including medical and dental records in addition to a letter of support from [a] Counsellor/Advocate at [organisation deleted: s.431(2)].
54. In a letter dated [in] April 2009, [Person 4] of [organisation deleted: s.431(2)] writes as follows:
- [The Applicant]
- DOB: [date of birth deleted: s.431(2)]
- I am the Clinical Director of [organisation deleted: s.431(2)]. [The applicant] has consulted me on several occasions. He has circular lesions above each ankle on the outer aspect of the leg, which are scarred and have central areas where the skin is damaged so badly that he has lost sensation. We are still providing dressings on these lesions as they have not previously been treated to manage the central damaged region, but they clearly pre-date his time in Australia. These lesions are consistent with his stated history of being beaten about the lower limbs.
55. Dental records for [the applicant] show that he has four missing teeth.

## **Independent evidence**

### **Ethnic Demographic Information**

56. Sources indicate that there are reportedly over 20 or 50 ethnic groups in Togo. The two largest ethnic groups are the Kabye people predominantly from the north of Togo and the Ewe people located in the south of Togo. Reports suggest that the Mina people comprise approximately 3.2% of the Togolese population, are related to the Ewe ethnic group and

located in the South of Togo Available information indicates that the Kabye ethnic group are dominant in the armed forces and the government while southern ethnic group are dominant in the private sector. (US Department of State 2009, 'Togo: Profile', January <http://www.state.gov/r/pa/ei/bgn/5430.htm> – Accessed 6 March 2009 –; Minority Rights Group International 2008, 'Togo Overview', *World Directory of Minorities and Indigenous Peoples* <http://www.minorityrights.org/?lid=5352> – Accessed 5 March 2009)

### **Relations between ethnic groups in Togo**

57. Available information indicates a convergence of ethnic, regional and political divisions in Togo. The two major political parties, the Rally of the Togolese People (RPT) and the Union of Forces for Change (UFC) have contrasting regional and ethnic support bases. Sources consulted report that the RPT have a power base in the northern regions of Togo where the Kabye ethnic group is situated. The UFC, the major opposition party in Togo, has a support base in the southern regions of Togo where the larger Ewe ethnic group is based. The US Department of State *Country Reports on Human Rights Practices 2008 – Togo* states that due to the “congruence” of political, ethnic and regional divisions politically motivated human rights abuses “at times had ethnic and regional overtones.” According to a November 2007 report by Columbia International Affairs and the *Economist Intelligence Unit* (EIU) the RPT’s Kabye support base is “relatively small” and “as a result it’s hold on power has traditionally been based on absolute control of the organs of state, combined with electoral manipulation and the suppression of political opponents” No reports were found in the sources consulted regarding inter ethnic violence for the period of 2007 to 2009 that was not linked to political parties. The 2008 Freedom House report for Togo states that “discrimination is common among the country’s 40 ethnic groups” but that “while tensions persist, no serious incidents of interethnic violence were reported in 2007” (US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Togo*, 25 February, Section 5; Roberts, T. 2008, ‘The legislative election in Togo, October 2007’, *Electoral Studies*, vol. 27, no. 3, September, p.560; Minority Rights Group International 2008, ‘Togo Overview’, *World Directory of Minorities and Indigenous Peoples* <http://www.minorityrights.org/?lid=5352> – Accessed 5 March 2009;; Freedom House 2008, *Freedom in the World – Togo*, 2 July [http://www.freedomhouse.org/inc/content/pubs/fiw/inc\\_country\\_detail.cfm?year=2008&country=7504&pf](http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2008&country=7504&pf) – Accessed 16 February 2009).
58. According to a 1993 report by Professor Rashid Oladoja Lasisi from the Department of History at the University of Ilorin, Nigeria the colonisation of Togo led to a “new type of ethnic solidarity and consciousness” Lasisi reports that this sense of ethnic solidarity was first experienced by the Ewe peoples which then led to “ethnic loyalty” among the Gur speaking people, to which the Kaybe tribe belong. The report states that “the different groups, therefore, organised political parties which they used as an instrument of the struggle”. Togo gained independence in 1960. According to Professor Lasisi during the immediate post independence period the Gur group “was marginalised politically, socially and economically” but used its dominance within the armed forces to assume political leadership from the Ewe led Kwa group. Reports indicate that in 1963 Sylvanus Olympio, the President of Togo and an ethnic Ewe was assassinated and Nicholas Grunitzy was elected President and formed a multiparty government. In 1967 Lieutenant Colonel Etienne Eyadema, a member of the Kabye ethnic group, led a military coup and assumed presidential power. In 1969 Eyadema established the Rally of the Togolese People (RPT) as the only legal political party. Eyadema ruled as president until his death in 2005. According to a 2008 report by Minority Rights Group International “after the post-independence rise of Gnassingbé Eyadéma, a Kabyé from

the north, Éwé were systematically excluded from political power throughout his decades-long rule”. An overview on Togo by the Minority Rights Group International reports that Eyadema “relied on his Kabye dominated military to intimidate political opponents”. Despite this political oppression, the Minority Rights Group International reports that the Ewe people “played leading roles in the political opposition to Eyadéma” and “retained their prominence in the civil service, and an important role in Togolese trade” (Lasisi, R.O, 1993, ‘Language, Culture, Ethnicity and National Integration: The Togo Experience Since 1990’, *African Study Monographs*, vol. 14, no. 1, June, Center for African Area Studies, Kyoto University website, p. 10 [http://jambo.africa.kyoto-u.ac.jp/kiroku/asm\\_normal/abstracts/pdf/asm%20%20vol.14%20no.1%201993/rashid%20ola%20lasisi.pdf](http://jambo.africa.kyoto-u.ac.jp/kiroku/asm_normal/abstracts/pdf/asm%20%20vol.14%20no.1%201993/rashid%20ola%20lasisi.pdf) – Accessed 6 March 2009 –; Minority Rights Group International 2008, ‘Ewe’, *World Directory of Minorities and Indigenous Peoples* <http://www.minorityrights.org/5348/togo/w.html> – Accessed 5 March 2009 ; Minority Rights Group International 2008, ‘Togo Overview’, *World Directory of Minorities and Indigenous Peoples* <http://www.minorityrights.org/?lid=5352> – Accessed 5 March 2009; US Department of State 2009, ‘Togo: Profile’, January <http://www.state.gov/r/pa/ei/bgn/5430.htm> – Accessed 6 March 2009).

59. Following the death of Etienne Eyadema in 2005 the military installed his son, Faure Gnassingbe, as president of Togo. Due to international pressure presidential elections were held in April 2005 from which Faure Gnassingbe was proclaimed the winner. Reports note criticisms of the 2005 presidential elections including the intimidation of opponents and other irregularities. Protests by opposition supporters are reported to have been violently suppressed by security forces leading 40, 000 people to flee Togo for neighbouring countries. A report by Minority Rights Group International states that the “violence surrounding the succession of Eyadéma in 2005 often pitted northerners against southerners, and particularly Kabyé against Éwé” (Freedom House 2008, *Freedom in the World – Togo*, 2 July [http://www.freedomhouse.org/inc/content/pubs/fiw/inc\\_country\\_detail.cfm?year=2008&country=7504&pf](http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2008&country=7504&pf) – Accessed 16 February 2009 ; Minority Rights Group International 2008, ‘Togo Overview’, *World Directory of Minorities and Indigenous Peoples* <http://www.minorityrights.org/?lid=5352> – Accessed 5 March 2009; Roberts, T. 2008, ‘The legislative election in Togo, October 2007’, *Electoral Studies*, vol. 27, no. 3, September, p.558–559).
60. There have been recent political reforms in Togo which have allowed for political participation by opposition groups, including the Ewe supported UFC Reports indicate that in response to pressure from the EU and the incentive of EU economic aid, in August 2006 the government signed a political agreement with Togo’s main political parties, including the UFC, which led to the establishment of a transitional national unity government and the creation of an independent electoral commission in order to organise an election for 2007. Sources consulted report that the UFC refused to join the transitional unity government as it believed that due to its position as the largest party, a UFC member should have been assigned the role of Prime Minister. On 14 October 2007 the UFC participated in national parliamentary elections. A 2008 journal article by Tyson Roberts from University of California, Los Angeles (UCLA) describes the 2007 election as “the first since multiparty elections began in 1992 that were not boycotted by the main opposition party”, the UFC. The RPT, the Kabye led political party, won 50 out of the 81 contested seats and is thus the current ruling party. Reports indicate that the UFC contested the election results due to claims of election fraud and other election issues. However, reports indicate that the European Union observers found the elections to have been undertaken in “transparent conditions” The

Commission of European Communities reports on the peaceful conditions in which the 2007 elections were undertaken. Tyson Roberts's article attributes the failure of the UFC in the 2007 elections to the inequitable regional distribution of parliamentary seats which reportedly favours the RPT's political and ethnic stronghold in the northern districts of Togo. Tyson Robert also reports that "although the election is a step forward in the democratic process, it has resulted in a step backward in power sharing". According to the report the present RPT government has rejected UFC candidates for the positions of vice president and prime minister in favour of RPT members. A January 2009 Columbia International Affairs and EIU report states that the RPT will remain in power until the presidential election which is scheduled for April 2010 (Roberts, T. 2008, 'The legislative election in Togo, October 2007' *Electoral Studies*, vol. 27, no. 3, September, pp.558–560 –; Freedom House 2008, *Freedom in the World – Togo*, 2 July [http://www.freedomhouse.org/inc/content/pubs/fiw/inc\\_country\\_detail.cfm?year=2008&country=7504&pf](http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2008&country=7504&pf) – Accessed 16 February 2009; US Department of State 2009, 'Togo: Profile', January <http://www.state.gov/r/pa/ei/bgn/5430.htm> – Accessed 6 March 2009 –; 'Togo: all calm as parliamentary elections are held on 14 October 2007' 2007, *The Commission of the European Communities*, 16 October; Columbia International Affairs/ *Economist Intelligence Unit* 2009, 'Togo: Country Outlook', 1 January [http://www.ciaonet.org/atlas/tg/economy/outlook/20090101\\_23371.html](http://www.ciaonet.org/atlas/tg/economy/outlook/20090101_23371.html) – Accessed 11 February 2009).

61. Reports indicate that the Togolese government is in the process of establishing a Truth and Reconciliation Commission to investigate crimes committed during the 2005 elections. On 26 September 2008 the *UN Integrated Regional Information Networks* reported that a UN funded and UN led survey had been undertaken involving approximately 23000 people in order to seek opinions regarding on the future construction of the Truth and Reconciliation Commission. A report with the findings of the survey was submitted to the Togolese government on 11 September 2008. On 1 January 2009 *BBC Monitoring Africa* published a speech sourced from *Radio Togo* by the Togolese President Faure Gnassingbe in which he states that the national consultations "are expected to enable us to establish soon a Truth, Justice and Reconciliation Commission" ('Togo: Truth and Reconciliation Process Underway' 2008, *UN Integrated Regional Information Networks*, 26 September, allAfrica.com website <http://allafrica.com/> – Accessed 10 February 2009 –; 'Togolese leader says to continue beneficial socio-economic reforms in 2009' 2009, *BBC Monitoring Africa*, source: *Radio Togo*, 1 January –).
62. Available information indicates that three election protests organised by the Union of Forces for Change (UFC) in March and October 2007 were met with government opposition and intervention by security forces. Reports indicate that one of these protests, which was held on 20 October 2007, was violently repressed by security forces. While the US Department of State (USDOS) reported in March 2008 that the Togolese government restricted the right to freedom of assembly it noted that this was "less than in previous years" A July 2007 Country Report on Togo by the Economist Intelligence Unit also states that the UFC "have protested about the intimidation of opposition supporters – especially outside the capital – by government officials and traditional chiefs". No other reports of harassment of UFC members during or after the 2007 national parliamentary elections were found in the sources consulted including no reports of harassment by the Rally of the Togolese People (RPT), Kabye or militia groups. Advice received from the UNHCR offices in Togo and Ghana in February 2009 states that the vast majority of Togolese refugees who fled Togo in 2005 have returned from the neighbouring countries of Benin and Ghana. The UNHCR office in Ghana has

advised that the UNHCR office in Togo has monitored the return of Togolese refugees and that “so far there has been no report of any returnee belonging to the UFC who suffered serious harm upon return” (Immigration and Refugee Board of Canada 2008, TGO102895.FE – Togo: The situation of opposition parties, including the Union of Forces for Change (Union des forces de changement, UFC), particularly during and after the October 2007 election; the participation of the UFC in political life since October 2007 (October 2007 – July 2008), 31 July [http://www.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=452064](http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=452064) – Accessed 12 February 2009; ‘Togo opposition party fails to stage demo 19 October to protest poll results’ 2007, *BBC Monitoring Africa*, source: republicoftogo.com website, 19 October; ‘Togo: Togo govt bans opposition protest march’ 2007, Republic of Togo, 4 August, allAfrica.com website <http://allafrica.com/> – Accessed 12 February 2009; US Department of State 2008, *Country Reports on Human Rights Practices 2007 – Togo*, 11 March, Section 2.b; The Economist Intelligence Unit 2007, *Country Report – Togo*, July, p.15; Rashleigh, Cameron 2009, Email ‘RE: Request for assistance – Refugee Review Tribunal’, 11 February; Unofficial Translation: United Nations High Commission for Refugees 2009, ‘Refugee Review Tribunal – Australia / Informations sur les mouvements de rapatriement des réfugiés togolais du Bénin et du Ghana’ 9 February)

63. A July 2008 report by the Immigration and Refugee Board of Canada (IRB) provides information on the situation for the UFC after the 2007 national parliamentary elections. Reports cited by the IRB indicate a violent attack on a UFC protest in October 2007 in which “approximately 15 people were injured” including several UFC party leaders. The IRB also cites a report which states that a protest march organised by the UFC for 4 August 2007 “was banned by the Togolese government for security reasons”. The IRB provides the following information on these incidents:

According to the 21 October 2007 UFC press release, acts of violence were committed against certain party members and leaders during a protest march. An article published by the Panafrican News Agency (PANA) on 22 October 2007 reported that, according to the UFC, Patrick Lawson, vice-president of the UFC, Jean-Pierre Fabre, party secretary-general, and Crosby Quist, party communications director, were injured (PANA 22 Oct. 2007; see also UFC 21 Oct. 2007). The same article stated that Jean-Pierre Homawoo, political director of the UFC campaign board, and his brother Jean-Claude, a candidate in Lomé-Commune, were also injured (PANA 22 Oct. 2007). Another article published on Afrik.com on 25 October 2007 reported that tear gas was used to disperse party members on their way to a demonstration at CENI headquarters (see also UFC 21 Oct. 2007). Approximately 15 people were reportedly injured at the demonstration (Afrik.com 25 Oct. 2007). A Golfe Info article posted on the UFC website states that a peaceful march scheduled for 4 August 2007 by the UFC and other organizations was banned by the Togolese government for security reasons (17 Mar. 2008) (Immigration and Refugee Board of Canada 2008, TGO102895.FE – Togo: The situation of opposition parties, including the Union of Forces for Change (Union des forces de changement, UFC), particularly during and after the October 2007 election; the participation of the UFC in political life since October 2007 (October 2007 – July 2008), 31 July [http://www.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=452064](http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=452064) – Accessed 12 February 2009).

64. The 2008 US Department of State (USDOS) *Country Reports on Human Rights Practices for 2007 – Togo* also provides information on the government intervention in UFC public demonstrations during March and October 2007. The USDOS lists the same incidents as reported in the above IRB report as part of the governments restrictions on freedom of assembly which are described as “less than in previous years” The USDOS reports that:

The constitution and law provide for freedom of assembly; however, the government generally restricted this right, although less than in previous years.

A political party wishing to hold a demonstration or rally on public property is required to notify the minister of security; no notification is required for rallies on private property.

On February 7, the government published new rules for political demonstrations. The rules provide that, in compliance with the Global Political Agreement (which provided for a transitional unity government to prepare for legislative elections), and to preserve public order, political parties must hold their public demonstrations on a Saturday or Sunday and must notify the Ministry of Security 72 hours prior to the planned demonstration.

**On August 3, the government banned street demonstrations planned by several opposition parties, including the UFC, ADDI, and UDS-Togo, for Saturday, August 5. The government stated that the demonstrations aimed to block preparations for the legislative elections.**

**On October 20, security forces used tear gas to disperse a group of UFC activists attempting to invade the CENI office after a meeting that the party held at Freau Jardin, a local plaza. The UFC and the media reported that security forces beat, brutalized, and insulted demonstrators; an estimated 10 persons were injured and 25 arrested** (US Department of State 2008, *Country Reports on Human Rights Practices 2007 – Togo*, 11 March, Section 2.b).

65. On 23 October 2007 *BBC Monitoring Africa* published a report by Radio Togo which briefly describes the 20 October 2007 attack on a UFC protest march. The Radio Togo report provides a transcript of a statement by the Togolese Human Rights League which states that the protest violence was the result of a clash between supporters of the Union of Forces for Change and “elements of FOSEL (2007 Legislative Elections Security Force)”. The report by Radio Togo provides the following information:

Still on the elections, the Togolese Human Rights League [LTDH] is inviting the people to exercise restraint. This message was delivered through a communique presented by Kiki Daki [phonetic]

[Daki] On Saturday, 20 October 2007, a demonstration by the Union of Forces for Change degenerated into a clash between supporters of this party and elements of FOSEL [2007 Legislative Elections Security Force].

In another development, a fight broke out between two members of the Lome Commune CELI [Independent Local Electoral Commission] in the office of the chairman of CENI on the same day.

These unfortunate events have seriously tarnished the electoral process which until then had been quite smooth.

The Togolese Human Rights League condemns these incidents which do not give credit to our country and which are likely reduce to nothing all the efforts made by Togolese stakeholders, government, the electoral commission and development partners and ruin the hope of a whole people who have been wallowing in misery for over two decades (‘Togolese rights body slams “unfortunate events” following 14 October polls’ 2007, *BBC Monitoring Africa*, source: Radio Togo, 23 October).

### **Treatment of UFC refugees returning to Togo**

66. On 27 January 2009 a request for information on the repatriation of Togolese refugees was sent to the UNHCR Regional Office in Canberra. Information provided by the UNHCR office in Togo indicates that as a result of the events surrounding the 2005 presidential election approximately 40, 000 Togolese fled to Ghana and Benin to seek asylum. The UNHCR office in Togo reported that in April 2007 due to spontaneous returns, tripartite agreements were signed between UNHCR, Togo and Benin, and also between UNHCR, Togo and Ghana The UNHCR Togo office has stated that to date only 4, 500 refugees remain in Benin and Ghana

(RRT Research & Information 2009, Email to Cameron Rashleigh 'Request for assistance from Refugee Review Tribunal, Sydney Australia (RRT ref: TGO34339)', 27 January; Rashleigh, Cameron 2009, Email 'RE: Request for assistance – Refugee Review Tribunal', 11 February; Unofficial Translation: United Nations High Commission for Refugees 2009, 'Refugee Review Tribunal – Australia / Informations sur les mouvements de rapatriement des réfugiés togolais du Bénin et du Ghana ', 9 February)

67. The UNHCR offices in Togo and Ghana provided advice on the situation for refugees who have returned to Togo who have claimed association with the UFC. According to the reports the UNHCR have been monitoring the situation for returnees and have found that members of the Togolese political opposition, including the UFC have been returning to Togo without incidence. The UNHCR office in Togo provided the following advice:

To ensure that the condition for the return of Togolese refugees in Benin and Ghana are undertaken in accordance with UNHCR standards, a monitoring process was put in place starting in September 2008.

In this context, several investigations have been conducted in the main areas of return. To date, no incidents involving a returnee have been reported. As to claims to belong to the UFC, CAR or another political party, all refugees without exception claimed to belong to a movement which formed part of the opposition. The great majority of them have returned and have not been subject to any reprisals. Their reintegration is taking place without any problem (Unofficial Translation: United Nations High Commission for Refugees 2009, 'Refugee Review Tribunal – Australia / Informations sur les mouvements de rapatriement des réfugiés togolais du Bénin et du Ghana ', 9 February).

68. The UNHCR office in Ghana provided the following similar advice:

UNHCR Field Office in Lome, Togo has reported that refugees have returned in safety and dignity. Thus so far there has been no report of any returnee belonging to the UFC who suffered serious harm upon return. Returnee monitoring in Togo include human rights organizations such as the OHCHR in Togo who are involved in receiving returnees and provide information to returnees about the services (Rashleigh, Cameron 2009, Email 'RE: Request for assistance – Refugee Review Tribunal', 11 February).

69. The UNHCR offices in Togo and Ghana also provided information as to why some Togolese refugees in Benin and Ghana have decided not to return to Togo. The UNHCR office in Togo has stated that:

The main reasons given by these refugees not to return to their country of origin are based on:

- Fears of persecution and / or alleged injury;
- Lack of confidence in the electoral process for the presidential election of 2010;
- Resettlement cases pending for some and hope to benefit from this solution for others (Unofficial Translation: United Nations High Commission for Refugees 2009, 'Refugee Review Tribunal – Australia / Informations sur les mouvements de rapatriement des réfugiés togolais du Bénin et du Ghana ', 9 February).

The UNHCR Office in Ghana provided similar explanations on the reasons for Togolese refugees not returning to their homeland:

In the case of refugees who did not want to repatriate the reasons given were that the conditions that caused them to flee Togo are still there, mainly political, and hence cannot go back. Others also said they want to 'wait and see' the outcome of the next presidential election in 2010 before deciding on what to do. According to such people they would not trust the current political development in Togo and current government and prefer to stay in Ghana than to go back and face a possible other exile (Rashleigh, Cameron 2009, Email 'RE: Request for assistance – Refugee Review Tribunal', 11 February)

## Post Election Political Situation for the UFC

70. A January 2003 report by the Canadian Immigration and Refugee Board (IRB) provides information on the UFC including party structure and membership cards. The report provides the following information:

The Union of the Forces for Change (UFC) is the largest opposition party in Togo. It is legally incorporated and recognized by government authorities. However, given that there were no UFC candidates in the 27 October 2002 legislative elections-as a result of a unilateral change in the electoral code by the party in power-the UFC is not represented in the Togolese National Assembly.

As for its structure, the party is organized as follows: at the national level, it has a National Office with 16 members, a Central Council composed of representatives from the National Office and the federations, and a Congress comprised of representatives from the National Office, the Central Council, the federations, the sections and the subsections.

Locally, at the prefecture level, the party is organized into federations. The party has sections and subsections that cover cantons and villages respectively.

The UFC issues a membership card. The cards that are currently in circulation were first printed in 1997 and are yellow. Even though the party statutes require the president to sign each membership card, it is Emmanuel Akitani Bob, the executive vice-president of the UFC, who is currently signing them because the party president, Gilchrist Olympio, resides outside the country. Furthermore, for audit purposes, the party keeps a national registry of the numbers of the membership cards issued (Immigration and Refugee Board of Canada 2003 , TGO40787.FE – Togo: Update to TGO39455.FE of 27 August 2002 on the Union of the Forces for Change (UFC), its status, its membership card, and the treatment of its members by government authorities (January 2003 ) 17 January [http://www.irb-cisr.gc.ca/en/research/rir/index\\_e.htm?action=record.viewrec&gotorec=444083](http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm?action=record.viewrec&gotorec=444083) – Accessed 12 February 2009).

71. The 2007 *Political Handbook of the World* provides an overview of the political history of the UFC leading up to the 2005 election. The following excerpt is the information provided on the UFC:

**Union of Forces of Change** ( *Union des Forces du Changement* - UFC). The UFC coalition is led by Gilchrist Olympio, who has long been linked to the MTD (below). In July 1993 the Eyadema government issued an arrest warrant that linked Olympio to an attack on the president's residence in March, and in early August the UFC leader, who had been calling for a new electoral register, was disqualified from presidential polling for refusing to return to Togo for a medical check-up. Subsequently, the UFC spearheaded a successful boycott of the balloting by its (then) COD-2 partners; however, its calls for a boycott of assembly balloting in February 1994 were ignored. In December 1997 UFC Secretary General Jean-Pierre Fabre was arrested and briefly detained after he sought to investigate the alleged murder of opposition activists by government security forces.

Although officially declared the runner-up at June 1998 presidential balloting, Olympio, who had been blocked from entering Togo from his base in Ghana during the closing days of the campaign, claimed that he had received 59 percent of the vote, not the 34 percent with which he had been credited. Subsequently, the UFC was at the forefront of the antigovernment actions that followed the polling, and in August UFC headquarters were attacked by unknown assailants. Although remaining critical of the French government's previous support of the Eyadema regime, the UFC followed President Jacques Chirac's call for reconciliation and joined talks with the government in July 1999 along with the CAR and UTD.

The UFC helped form the anti-regime CFD in 2002 but withdrew from the group in 2003. Olympio returned to contest the presidential election in 2003 but failed to meet the residency requirements. Bob-Akitani ran as his proxy and placed second in the balloting. Akitani also finished second in the disputed April 2005 presidential poll, In September 2005, UFC member Gabriel Sassouvi DOSSEH-ANYROH was dismissed from the party after he accepted a cabinet post in the Gnassingbe government.

*Leaders* : Gilchrist OLYMPIO (1998 presidential candidate), Jean Pierre FABRE (Secretary General), Emmanuel BOB-AKITANI (2005 presidential candidate and Vice President of the Party) (Banks, A., Muller, T. & Overstreet, W. (ed.) 2007, 'Union of Forces of Change', *Political Handbook of the World: 2007*, CQ Press, Washington, pp. 1238 – 1239).

72. The Union of Forces for Change has a French language website which contains press releases and statements by the party. The website does not appear to have detailed information on the structure, beliefs or leadership of the party (The Union of Forces for Change website – <http://www.ufctogo.com/spip.php?page=sommaire> ).

### **Ghanaian citizenship**

73. According to the Ghanaian *Citizenship Act 2000* a person born after 22 August 1969 and before 24 September 1979 is a citizen of Ghana by birth if at the time of his birth one of his parents had Ghanaian citizenship. Section 5 of the legislation states that:

A person is a citizen of Ghana by birth if he was born in or outside Ghana on or after 22nd August 1969 and before 24th September 1979 and at the date of his birth either of his parents was a citizen of Ghana (*The Citizenship Act 2000* (Date of Assent 29 December 2000 & Date of Gazette Notification 5 January 2001), Ghana Immigration Service website <http://www.ghanaimmigration.org/acts%20and%20regulations/act%20591.pdf> – Accessed 10 March 2009).

74. Information from the Ghana Immigration Service website indicates that a person who has Ghanaian citizenship by birth is eligible for a Ghanaian passport. This includes individuals who are Ghanaian citizens by birth due to having a parent who is a Ghanaian citizen. The Ghana Immigration Service provides the following information on passport eligibility:

#### **ELIGIBILITY FOR A PASSPORT / PROCEDURE**

A Ghanaian citizen (as defined in the 1992 Constitution of Ghana Chapter 3 Section 6)

- By birth (where either parent or grand parent is a Ghanaian citizen)
- By marriage
- By naturalization ('Eligibility for a Passport / Procedure' 2007, Ghana Immigration Service [http://www.ghanaimmigration.org/eligibility\\_info.htm](http://www.ghanaimmigration.org/eligibility_info.htm) – Accessed 11 March 2009 – Attachment 15).

75. The Ghana Immigration Service website also provides the following information on the documentation required for passport applications. This includes specific documentation required for Ghanaian descendants with a foreign parent or a foreign birth certificate:

#### **REQUIREMENTS FOR GHANA PASSPORT**

1. Evidence (proof) of citizenship;

- (a) Birth Certificate or,
  - (b) Certificate of Registration/ Naturalization or
  - (c) Old passport or
  - (d) Statutory Declaration by applicant's parents or
  - (e) An affidavit by head of applicant's family.
2. A completed application form (obtainable at any Post Office in Ghana)
  3. Four (4) current passport size photographs (Not more than six (6) months old)
  4. Evidence of profession where applicable
  5. Marriage Certificate (Married Women who want to use their spouse's name)

**6. Applicants with one foreign parent are required to attach copies of their Ghanaian parents passport to their application.**

**7. Applicants with foreign Birth Certificates are required to provide evidence of arrival in Ghana and also translated birth certificates in other languages into English** ('Passport Acquisition' 2007, Ghana Immigration Service website [http://www.ghanaimmigration.org/acquisi\\_info.htm](http://www.ghanaimmigration.org/acquisi_info.htm) – Accessed 11 March 2009).

76. *The Citizenship Act 2000* allows citizens of Ghana to hold dual citizenship. However, the Act states that when a person has lost their Ghanaian citizenship as a result of gaining citizenship in another country they are required to renounce their non-Ghanaian citizenship in order to become a Ghanaian citizen. Section 16 of the Act provides the following information:

(1) A citizen of Ghana may hold the citizenship of any other country in addition to his citizenship of Ghana

...(3) A citizen of Ghana who—

- (a) loses his Ghanaian citizenship as a result of the acquisition or possession of the citizenship of another country shall on the renunciation of his citizenship of that country become a citizen of Ghana (*The Citizenship Act 2000* (Date of Assent 29 December 2000 & Date of Gazette Notification 5 January 2001), Ghana Immigration Service website <http://www.ghanaimmigration.org/acts%20and%20regulations/act%20591.pdf> – Accessed 10 March 2009).

### **Death of [Person 2]**

77. [Country Information regarding Person 2 deleted: s.431(2)]

## **FINDINGS AND REASONS**

### **Country of nationality**

78. A copy of the applicant's Togolese passport is contained on the Tribunal's file as is a certificate for the applicant stating that he has Togolese nationality. The Tribunal accepts that the applicant is a citizen of Togo and is outside his country of nationality.

### **Assessment of claims**

79. The applicant claims that he is in fear of being persecuted by the Togolese government and army because he is an active member of the opposition party, UFC (Union of Forces for Change).
80. At hearing, the applicant gave clear, detailed evidence that was consistent with the evidence provided in his statement and given in hearing before the delegate. His evidence was supported by that contained in the independent information.
81. I accept the applicant's evidence that he belongs to the Mina people who are related to the Ewe ethnic group, located in the south of Togo. I accept that members of the Ewe ethnic group tend to be supporters of the UFC opposition party whilst the Kabye people, from the north of Togo, dominate in the armed forces and the government. I accept that there has been a long history of tension between the two peoples.
82. I accept that the applicant's mother was attacked by the Togolese army in 1991. The independent information confirms that the ruling RPT party has a support base from of those from the north of Togo and that clashes between government forces and Togolese from the south of Togo have been widespread.
83. I accept that the applicant became a member of the UFC [in] July 2001 and that he was active in the party as the [party role deleted: s.431(2)]. I accept his evidence that rather than being a minor position within the party, being the [party role deleted: s.431(2)] gave the applicant a public profile as a party member, particularly in 2005 when he travelled with party delegates during the election campaign. I accept the applicant's evidence that he and other members of the UFC came under attack during the 2005 election campaign. This is consistent with the independent country information. I accept that the applicant's family home is in the same area as the house belonging to the current president's sister and I accept the applicant's evidence that he was kept under surveillance during the election time.
84. I accept that the applicant returned to Togo in 2005, having lived in Ghana from 2001.
85. I accept that following the 2005 election, the applicant returned to Ghana where he supported himself by teaching French to school children. I accept that in April 2007, the applicant was attacked by men he assumed to be Togolese because they were speaking French. He had heard that members of the Togolese army were seeking dissident Togolese living in Ghana I accept that he sustained injuries to his face and legs. His evidence is consistent with dental records and medical reports contained on file.
86. I accept that the attack near the applicant's house in Ghana in April 2007 prompted the applicant to return to Togo I accept that the applicant remained in hiding following his return to Togo while he considered where to go in order to secure his safety. I accept that his cousin in [Europe] suggested that he apply to be part of World Youth Day as a means of leaving the

country. I accept that due to the assistance of a relative, he was able to secure a passport. I accept his evidence that he lodged the application for World Youth Day and is not aware how [Person 3] came to endorse his application. I accept that prior to leaving Australia, he heard from his housekeeper that 'some people, looking strange' had come to his house asking about him.

87. Although the independent evidence says that human rights are improving in Togo, the evidence also shows that there have been recent suspected political attacks.
88. The independent information confirms that Person 2, the leader of the opposition party [party deleted: s.431(2)] – a party supportive of the UFC - died in August 2008 and that a verdict of suicide was entered despite [suspicion regarding his death] I accept that Person 2 was [distantly related to the applicant] and that it was [Person 2] who encouraged the applicant to join the UFC. The death of [Person 2] supports the applicant's contention that despite the apparent improvement in the human rights situation in Togo, politically motivated attacks are still taking place.
89. I accept that the applicant has a profile as an active member of the UFC [party activities deleted: s.431(2)], as the son of a Ghanaian [worker] during a period of tension between Ghana and Togo, and as a distant relative and associate of [Person 2].
90. The independent information concedes that although the human rights situation has improved in Togo since the 2005 election, nevertheless, election protests organised by the UFC in 2007 and 2008 involved violent repression by security forces and a restriction of the right of assembly. Although many refugees have been repatriated from Ghana to Togo, others have refused to return to Togo for 'fears of persecution and/or alleged injury and due to a 'lack of confidence in the electoral process for the presidential election of 2010.'
91. In the light of the country information, I accept that although the situation in Togo has improved since 2005, human rights abuses continue to occur and there are concerns for further abuses in the lead up to the 2010 elections.
92. I am satisfied that as a member of the Mina people and as an active member of the UFC, the applicant has previously been the target of attacks by Togolese soldiers. I am satisfied that he attracted further attention during the 2005 election [information deleted: s.431(2)] and due to his involvement in the UFC. I am satisfied that he was targeted by Togolese attackers in Ghana and I accept that in the light of the country information and the applicant's own evidence, it is possible that these attackers were related to the Togolese government. I am satisfied that the unexplained visit of people to the applicant's house to enquire as to his whereabouts may also have been linked to the applicant's active membership of the UFC. I also accept that upon return to Togo, the applicant may well be targeted for his involvement in the UFC, particularly in the lead up to the 2010 elections. I am satisfied that the possible danger to him may well be further exacerbated following the suspicious death of his relative and associate, [Person 2].
93. I accept the applicant's evidence that he was able to obtain a certificate of Togolese nationality and subsequently a Togolese passport thanks to the assistance of a relative who had been a government official and who was able to use his influence to get the documents for the applicant.

94. I accept that the applicant fears returning to Togo in the reasonably foreseeable future because of earlier attacks on him by Togolese soldiers and searches for him by people who may well be affiliated with the Togolese authorities. As an active member of the UFC, who has previously been targeted as a political activist, I am satisfied that he would be at risk of persecution upon his return to Togo.
95. On the basis of all the evidence, I find that the applicant has a well-founded fear of persecution in the reasonably foreseeable future.

**Essential and significant reason s91R(1)(a) and s91R(1)(c)**

96. I am satisfied that because of his membership of the UFC, the applicant has a well-founded fear of persecution on the basis of his political opinion should he return to Togo.

**Serious harm**

97. I find that the harm threatened is serious harm, in that it involves the threat of significant physical harassment or ill-treatment should the applicant be forced to return to Togo. I am satisfied that in the light of previous surveillance and attacks, the applicant would risk physical harm upon his return to Togo.

**Protection obligations s36(3)**

98. There is no evidence before me that the applicant is entitled to reside in another country. I accept that the applicant's father is Ghanaian and that under Ghanaian law, the applicant may be able to apply for Ghanaian citizenship on this basis. However, I accept that the applicant is estranged from his father and would be unable to rely on his support in claiming Ghanaian citizenship.
99. I agree with the findings of the delegate that the applicant does not have effective protection in a third country under section 36(3) of the Migration Act.

**Relocation**

100. Togo is a small country with a national government run by the RPT party. Given that the applicant has been targeted by Togolese attackers in Ghana, it would be difficult for him to escape attention and possible further attacks in Togo itself. In these circumstances, I am satisfied that relocation is not an option available to him.

**CONCLUSIONS**

101. The Tribunal is satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a) for a protection visa.

**DECISION**

102. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act, being a person to whom Australia has protection obligations under the Refugees Convention.

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act 1958*

Sealing Officer's I.D. prrt44