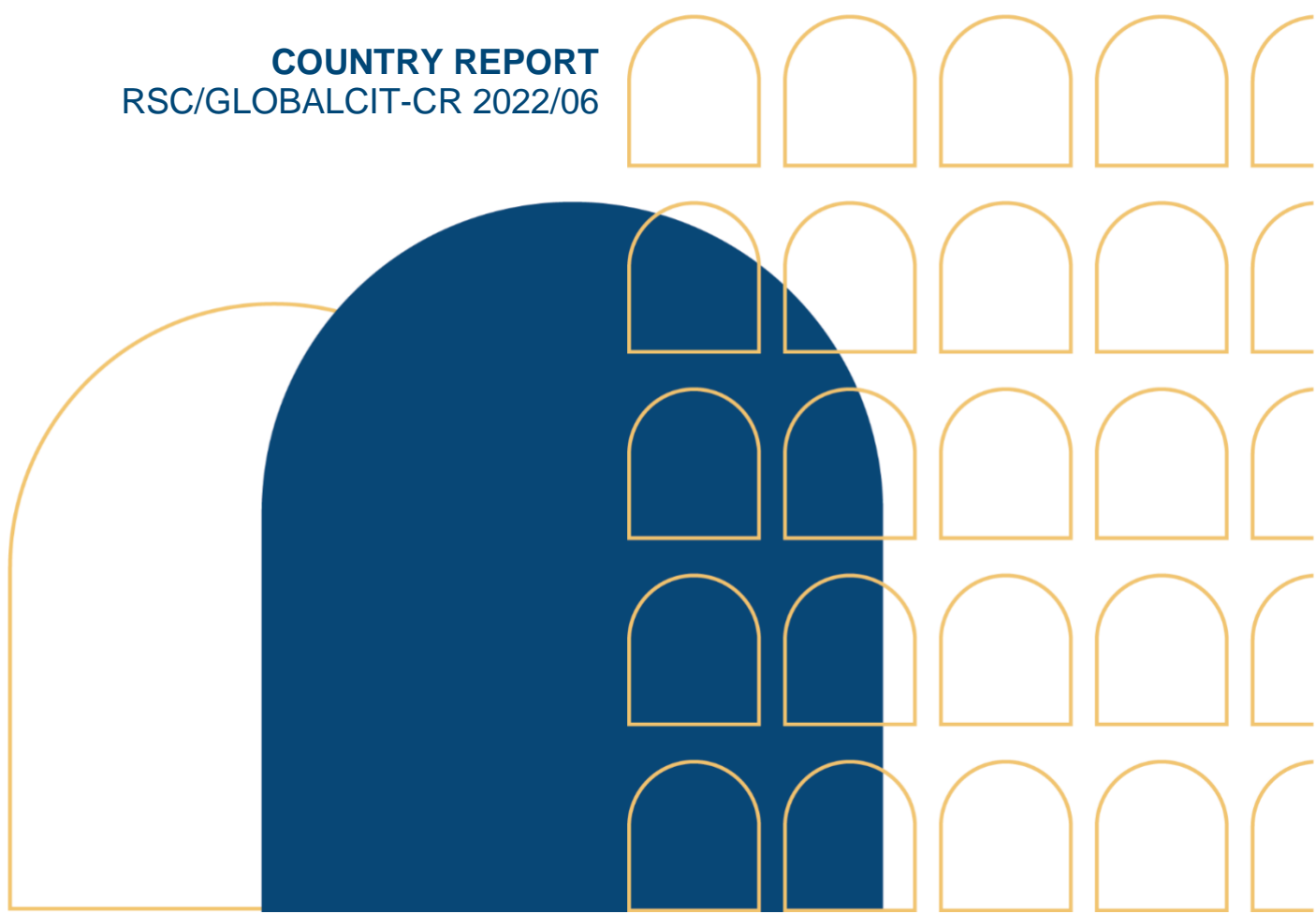


Report on Citizenship Law: Togo

Michael Offermann

COUNTRY REPORT
RSC/GLOBALCIT-CR 2022/06



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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with Edinburgh University Law School

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I – 50014 San Domenico di Fiesole (FI)
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1. Introduction

Togo is a narrow, oblong country in West Africa, roughly 50 km wide and 650 km long, situated between Ghana, Benin, and Burkina Faso. It is made up of about two thirds of the territory of the former German colony of Togoland, corresponding to the part mandated to France by the League of Nations. The remaining portion of the German territory was mandated to the United Kingdom. With the creation of the United Nations, both parts passed under the UN trusteeship system. As was often the case elsewhere, the colonial borders did not respect the territories of ethnic groups and France and the UK followed different lines of colonial administration. This resulted in a complex history of nationality administration. In a 1955 referendum supervised by the UN, the British-administered part of Togoland voted to join Gold Coast, when it became independent in 1957 under the name of Ghana.

Under the “French Union” of 1946, all inhabitants of French overseas departments and territories, including Togoland, had become French citizens. In anticipation of independence, the 1958 statute for Togoland created a Togolese citizenship. In 1961, one year after French Togoland had become the independent Republic of Togo, the new country adopted its first nationality law,¹ modelled largely on the French template common to France’s former African colonies, based on the French Civil Code. This template combined elements of both “*ius sanguinis*” (right of blood/nationality by descent) and “*ius soli*” (right of soil/right to the nationality of the country where the person is born) for the attribution of nationality from birth (“nationality of origin”). A child was attributed nationality at birth if either father or mother was Togolese; or, if born in Togo, if either parent was also born in Togo. Although there were elements of discrimination based on sex, a child could thus acquire nationality through either the father or the mother. The law also provided for acquisition at a later stage based on long-term residence (naturalisation), marriage, adoption, or birth on the territory to foreign parents and continued residence until adulthood. Transitional provisions governing the transfer of sovereignty to the new state provided for attribution of nationality to those who could show they had been considered Togolese in the past, and for the option to acquire nationality for others resident for the preceding five years.

Apart from a minor amendment in 1971, this law remained in force until it was replaced by ordinance in 1978. The new code was more restrictive and discriminatory. Only the father could transmit his nationality to the child, and no longer the mother. A child born in Togo needed now to have both parents born in Togo in order to be attributed Togolese nationality at birth. A

¹ This report will use the term nationality rather than citizenship, since “*nationalité*” is the term used in Togolese law.

foreign spouse married to a Togolese person who had acquired Togolese nationality due to that marriage would now lose it again in case of divorce. These provisions were stated to apply retroactively.

The 1978 code remains in force, as amended in 1980. The 1992 Constitution, however, provides that either the father or the mother transmits Togolese nationality to their child. The 2007 Child Code reaffirmed this provision. The 2012 Code of Persons and the Family stated that a foreign spouse would retain her Togolese nationality in case of divorce. While these more recent laws corrected some of the discriminatory features of the 1978 Code, the Code itself remained unchanged – which means that contradictory provisions coexist until today.

Under the current regime, there remain three ways to acquire Togolese nationality: 1) by attribution at birth (a) to the child of a Togolese mother or father, (b) to a child born in Togo if both parents were also born also in Togo, provided that the child is ordinarily resident in Togo and appears to have the status of a Togolese (*possession d'état de Togolais*); (c) to a child born in Togo who cannot claim any other nationality; 2) by later acquisition as of right (a) through marriage, unless nationality is declined (only for a woman married to a Togolese man), (b) by “declaration” for children born in Togo to foreign parents at the moment of reaching adulthood if they demonstrate “possession d'état de Togolais” from the age of 16; 3) through discretionary naturalisation based on five years' residence. Unlike some other West African nationality codes, the Togolese nationality code does not distinguish between children born in or out of wedlock. There is no specific provision which allows children adopted by Togolese citizens to become Togolese.

Dual citizenship is possible in some cases. A foreigner who is naturalised must give up the former nationality. A Togolese who voluntarily acquires another nationality is stated to lose Togolese nationality, but subject to permission from the Togolese Council of Ministers (there is some ambiguity in the wording of the law). A woman who marries a Togolese can take up the Togolese nationality and keep her former one. Those who are attributed two nationalities at birth through their parents, or based on being the second generation born in Togo, or who acquire Togolese nationality by declaration, are permitted to hold both (or more) nationalities. In addition to its non-compliance with the Constitution, the current nationality code is not compliant with several provisions of human rights conventions to which Togo has acceded. Togo's recent accessions to the two UN conventions regarding statelessness are also meaningless without a corresponding review of the nationality law.

In practice, due to the prevailing poverty and the insufficient capacities of public facilities, for most people in Togo it is difficult to obtain a nationality certificate, the legal proof of nationality under Togolese law. This certificate is necessary to obtain an ID card which is a prerequisite for the enjoyment of basic civil, economic, and social rights and services. Only about 1.2 million citizens out of a total population of 8.5 million have one. This situation constitutes a severe impediment to personal development and in consequence to the development of the country.

The modern harbour of Lomé and local markets attract many traders and businesses from neighbouring countries. Many foreigners have children born in Togo. In spite of a nationality law that is generous on paper about awarding Togolese nationality to foreigners born in Togo, in practice, the acquisition of Togolese nationality by foreigners, particularly through naturalization or by declaration based on birth in the country, is very rare.

The government has made commitments over more than a decade to reform the nationality code in order to bring it into compliance with the constitution and Togo's obligations under international law, and to improve the system for obtaining certificates of origin and nationality certificates, but these remain unimplemented. The most important reforms required include the

ending of gender discrimination in the nationality code in transmission to both spouses and children, the establishment of the presumption of nationality for children found in Togo of unknown parents and place of birth, and the easing of the onerous requirements to obtain a nationality certificate and national identity card. Togo is in the process of updating its identification systems, including the biometric registration of the population, but without addressing these fundamental underlying issues.

Under colonial rule and trusteeship administration a division had emerged between the people of Southern and Northern Togo, essentially based on economic interests. This division contributed to the authoritarian rule of the first Togolese president, and to the military coups of 1963 and 1967 that defined Togo and led to long years of autocracy. An uprising in the early 1990s brought the democratic constitution of 1992, but the long-time ruler General Eyadéma Gnassingbé did not take long to reassert his grip on power. As in most such regimes, violence has been an indispensable ingredient of governance. It came to a new climax in 2005 when General Gnassingbé died and was succeeded by one of his sons, Faure Essozimna Gnassingbé, in an unconstitutional transition, subsequently legitimised in controversial elections. President Faure Gnassingbé remains president almost 20 years later.

In order to improve the image and the reputation of Togo and to reconcile the Togolese, the new president tried to put his governance under the principles of democracy and human rights, helped by the fact that his mother hailed from the South and his father from the North, thereby combining allegiances to both parts of Togo – with some but still quite limited success. In the 2021 Economist Intelligence Unit's Democracy Index,² Togo remains in the group of authoritarian states, ranked 136 in a list of 167 countries.

2. Historical and political background

The territory that is today Togo, situated between the Rivers Volta and Mono, was in the pre-colonial era governed by different political institutions sandwiched between the Ashanti Kingdom to the West and the Dahomey Kingdom to the East. In July 1884, the Germans signed a protectorate treaty with the ruler of the coastal region, King Mlapa III, and called it Togoland according to the name of the lake where the king's residence was situated. German control was gradually consolidated over the interior.

The German colonization of Togoland ended in 1914 with the surrender to British and French forces, which had closed in from their colonial territories of Gold Coast (future Ghana) and Dahomey (future Benin) respectively. The British and French governors divided the territory in a convention signed on 27 August 1914 and approved by the respective governments on 7 September 1914. Under the Treaty of Versailles of 28 June 1919, Germany formally gave up the claim to its former colonies. In the joint declaration of 10 July 1919, Britain and France agreed on the borderline between their Togolese territories. This line was confirmed on 20 July 1922 by the League of Nations when it conferred on Britain and France the mandates to administer their parts of Togoland.³

² 'Democracy Index 2021. The China Challenge', *Economist Intelligence Unit*, London, UK.

³ *Digithèque de Matériaux juridiques et politiques: « Togo. Mandat français sur l'ancien Togo allemand »* - <https://mjp.univ-perp.fr/constit/tg1920.htm>. Terms of League of Nations Mandates, Document A/70, United Nations, New York, 21 October 1946: p. 69-75, "Mandate for French Togoland", SDN C. 449 (1) d. M.345 (d). 1922. VI. Geneva, 1 August 1922; p. 76-81, "Franco-British Declaration"; p. 83-89, "Mandate for British Togoland", SDN C. 449 (1) b. M. 345 (b). 1922. VI, Geneva, 1 August 1922 - <https://undocs.org/pdf?symbol=en/A/70>.

With the creation of the United Nations (UN) in 1945, the mandates of the League of Nations were replaced by Trusteeship Agreements.⁴ On 13 December 1946, the UN General Assembly (UNGA) approved⁵ the proposed Trusteeship Agreements for Togoland under French Mandate⁶ and for Togoland under British Mandate,⁷ by which France and Britain became the “Administering Authorities”.

In practice, British-administered Togoland was governed as part of the Gold Coast. Demands from the Ewe people divided between the French and British-administered territories for the reunification of the territory preoccupied the UN during several years but were never satisfied. The division of the Ewe between today's Togo and Ghana continues to create political tensions.

France tried to fully integrate its part of Togoland into French West Africa (*Afrique Occidentale Française*, AOF). But the UN kept Togoland in its [International Trusteeship System](#), which excluded a simple annexation. A Togolese nationality law was first created in 1958 for the French administered territory, by an ordinance adopted under the new French constitution creating the *Communauté française*, which granted a degree of self-government to the colonial territories.⁸ The first government in Togo under this constitution was led by Sylvanus Olympio, who became the first president of Togo as an independent republic in 1960.

2.1 UK administered Togoland

The border between the British Gold Coast and the German Togoland had already created grievances among the Ewe people because it cut through parts of their heartland, situated to the east of the Volta River. The new border between the two British- and French-administered mandates and then trust territories did not take local interests into account either, creating an even more dramatic division of the Ewe between two colonial powers.

The UN trusteeship system established in 1945⁹ set out the basic objectives “to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement” (Art.76). By insisting on taking into account the wishes and interests of the peoples concerned,¹⁰ the system provided an international forum for the local efforts to promote a unification of the Ewe (the Ewe unification movement)¹¹. In 1950 and the

⁴ UN Charter, Chapter XII: International Trusteeship System, Art. 75-85 - <https://www.un.org/en/about-us/un-charter/chapter-12>.

⁵ Approval of Trusteeship Agreements, A/Res/63 (I), 13 December 1946 - [https://undocs.org/en/A/RES/63%20\(I\)](https://undocs.org/en/A/RES/63%20(I)).

⁶ Document A/154/Rev.2, 12 December 1946 - <https://undocs.org/en/A/154/Rev.2>.

⁷ Document A/150/Rev.2, 12 December 1946 - <https://undocs.org/en/A/150/Rev.2>.

⁸ For more details, see: Bronwen Manby, ‘[Citizenship in Africa: The Law of Belonging](#)’, Ch.3.2. “French Territories”, p.48-56; Hart Publishing, 2018.

⁹ UN Charter, Chapter XII: [International Trusteeship System](#), Art. 75-85. ‘United Nations and Decolonization. International Trusteeship System’ - <https://www.un.org/dppa/decolonization/en/history/international-trusteeship-system-and-trust-territories>.

¹⁰ UN General Assembly resolution 441(V) of 2 December 1950, paragraph 2, “impressed (...) upon the Administering Authorities the necessity of elections to the Standing Consultative Commission in a democratic manner that will ensure a true representation of the people”; the Trusteeship Council then endorsed the British and French proposal to replace this Commission by a “Joint Council for Togoland Affairs” tasked to “advise them on matters of common concern to the two Trust Territories” [A/RES/555(VI)].

¹¹ For more details about the question of the Ewe unification, see works by Divine Edem Kobla AMENUMEY: 1) ‘The pre-1947 background to the Ewe unification question: a preliminary sketch’, *Transactions of the Historical Society of Ghana*, Vol. 10 (1969), pp. 65-85; 2) [A Political History of the Ewe Unification Problem](#), thesis

following years, several UN General Assembly resolutions, special reports of the Trusteeship Council¹² and reports of its Visiting Missions dealt with the “Ewe problem” and the “Togoland unification problem”.¹³

However, neither the United Kingdom nor France and not all local political organisations were in favour of the idea of unification. These differences meant that the Joint Council for Togoland Affairs for the two Trust Territories, which the UN General Assembly had recommended in order to consider the question of unification and ascertain the opinion of their inhabitants,¹⁴ never became functional.¹⁵

British Togoland had been governed as an integral part of the Gold Coast.¹⁶ As the latter headed towards independence and gained a measure of self-government, the Gold Coast Government had in practice gradually become the Administering Authority of Togoland, a development in contradiction to the Trusteeship Agreement which had designated the UK Government as such.¹⁷ Consequently, in 1954, the United Kingdom Government informed the United Nations¹⁸ that with the upcoming independence of its Gold Coast colony, the UK would not be able to ensure the administration of the part of Togoland under UK Trusteeship. In the letter, the Government described in detail why it considered the integration of that part of Togoland into the independent Gold Coast (and the termination of the Trusteeship Agreement) as most appropriate and in accordance with the objectives specified in Art.76 of the UN Charter and suggested a plebiscite so as to find out the wishes of the people concerned. A Trusteeship Council mission that visited both parts of Togoland in August and September 1955 agreed with this proposal.¹⁹

The UN General Assembly decided to hold a referendum in the UK-administered Togoland on two possible options: a union with an independent Gold Coast or a separation from the Gold Coast and continuation under trusteeship pending the ultimate determination of its political future.²⁰ The referendum took place on 9 May 1956 and resulted in a win for the union with independent Gold Coast with 58% in favour. However, a majority of the voters in the southern section of the territory, 55.5%, mostly Ewe, opted for separation and continued trusteeship. But as nearly 80% of the Northerners (only 40% of the electorate) voted for the union, the southern vote could not outweigh the northern choice.²¹

submitted for the Degree of Doctor of Philosophy, University of Manchester (UK); December 1972; 3) *Ewe Nationalism - The Ewe Unification Movement: A Political History*, Ghana Universities Press 1989. Also [Wikipedia: Ewe Unification Movement](#).

¹² United Nations Trusteeship Council: <https://www.un.org/en/about-us/trusteeship-council>.

¹³ [A/RES/441\(V\)](#), 2 December 1950; [A/RES/555\(VI\)](#), 18 January 1952; [T/1034](#), 7 November 1952; [A/RES/652\(VII\)](#), 20 December 1952; [T/1040](#), 16 March 1953; [T/1041](#), 16 March 1953; [T/1067/Rev.1](#), 10 July 1953; [A/RES/750\(VIII\)](#), 8 December 1953; [A_2660-EN.pdf](#), 23 June 1954; [A_2424-EN.pdf](#), 22 July 1953; [A_2669-FR.pdf](#), 23 July 1953; [T/1108](#), 24 September 1954; [A/RES/860\(IX\)](#), 14 December 1954; [T/1218](#), 18.10.1955; [A/RES/944\(X\)](#), 15 December 1955, etc.

¹⁴ UNGA Resolutions [555/18.1.1952](#), [652/20.12.1952](#), [750/8.12.1953](#).

¹⁵ Question de l'unification du Togo. Rapport spécial du Conseil de tutelle, [A/2669](#), 23.7.1954.

¹⁶ The crown colony of Gold Coast was in fact composed of three jurisdictions: Gold Coast, Ashanti, and the Northern Territories Protectorate, all placed under the *Governor of Gold Coast*, who also administered British Togoland. [Wikipedia: 'Gold Coast \(British colony\)'](#), ['Northern Territories of the Gold Coast'](#).

¹⁷ 'UN Visiting Mission to the Trust Territories of in West Africa, 1952. Report on Togoland under UK Administration', [T/1040](#), 16.3.1953, para.21-37 and 71 -89; 'The Togoland unification problem', [A/RES/750\(VIII\) C](#), 8.12.1953.

¹⁸ In a letter, dated 21 June 1954 - https://digitallibrary.un.org/record/856481/files/A_2660-EN.pdf.

¹⁹ Trusteeship Council, *Special Report on the Togoland unification problem and the Future of the Trust Territory of Togoland under British Administration*, [T/1218](#), 18.10.1955, paragraphs 103 and 104 (p.15).

²⁰ 'The Togoland unification problem and the future of the Trust Territory of Togoland under British administration', [A/RES/944\(X\)](#), 15.12.1955.

²¹ 'Report of the United Nations Plebiscite Commissioner for the Trust Territory of Togoland under British Administration', [A/3173](#), 5.9.1956. The union option was strongly supported by the Convention People's Party (CPP), the Northern People's Party and the group of Traditional Chiefs, while the Togoland Congress Party, the All-Ewe-Congress, and ancillary parties and groups, including a few southern Chiefs, campaigned for separation

On 6 March 1957, British Togoland became independent with and as part of independent Ghana under the leadership of Prime Minister Kwame Nkrumah of the CCP.²² The Trusteeship Agreement between the UN and the UK ended at the same moment.²³

Initially, Ghana maintained the status of a constitutional monarchy with the British Queen as Head of State. As stated in the Independence Act of 1957, Ghana's inhabitants continued to be British subjects or citizens of the Commonwealth until the moment they became "citizen(s) of Ghana under any law of the Parliament of Ghana making provision for such citizenship".²⁴ In May 1957, the first "Ghana Nationality and Citizenship Act" defined Ghanaian citizenship, and "British protected persons" from the former Togoland trust territory became citizens of Ghana under this law.²⁵ On 1 July 1960 a new Constitution²⁶ came into force under which Ghana became a republic.

Hopes and dreams for an independence of the former British Togoland or a unification with the Republic of Togo, often motivated by an alleged political and economic discrimination from the Ghanaian government and Ewe nationalism, have not entirely faded away even today, and occasionally lead to violent outbursts.²⁷

2.2 French-administered Togoland

The Constitution of the 4th French Republic of 27 October 1946 created the French Union (*Union française*) joining together mainland France and the French overseas departments and territories on one side, and the associated territories and states (including the territories of the AOF, *Afrique équatoriale française* [AEF], and Togoland) on the other (Art.60)²⁸. The preamble stated that France formed the Union with the overseas peoples on the basis of the equality of rights and duties, without distinction as to race or religion and that France intended to lead all people under its responsibility to the freedom of democratic self-government and guaranteed equal access to public offices and the individual and collective exercise of the rights and freedoms outlined in its preamble (notably the Declaration of Rights of 1789). The word "colony" disappeared from official documents.²⁹ Law n° 46-940 of 7 May 1946,³⁰ reflected in Art. 80 and 81 of the 1946 Constitution, had already granted full French citizenship to the

(Trusteeship Council, *Special Report on the Togoland unification problem and the Future of the Trust Territory of Togoland under British Administration*, T/1218, 18.10.1955, paragraph 102).

²² Only after the referendum of July 1960, Ghana became a republic. In the presidential elections that followed the same year, Nkrumah was elected President.

²³ UNGA Resolution 1044 (XI)/13.12.1956, *The future of Togoland under British Administration*.

²⁴ Chapter 6, Section 2 which referred to the British Nationality Act of 1948, Chapter 56, Part 1, Section 1(3) (which provided that, on entry into force of the law, the expressions "British subjects" and "citizens of the Commonwealth" had the same meaning).

²⁵ Ghana Nationality and Citizenship Act No. 1 of 1957, section 4.

²⁶ Constitution of the Republic of Ghana, 1 July 1960, available at https://www.artsrn.ualberta.ca/amcdouga/Hist247/winter_2017/resources/ghana_constitution_1960.pdf.

²⁷ For more details, see e.g. : Dr Christian Spieker, 'Un jour cette bande de terre du Togo britannique...nous reviendra', *iciLomé*, 11.11.2021 ; *iciLomé*, 16.10.2021, 'Dernière minute : Le Chef des sécessionnistes du Togoland est décédé' ; *iciLomé*, 25.4.2021, 'There's NO boundary between Togo and Ghana' Togoland activist'; *Nationalia*, 17.11.2020, 'Western Togoland, Africa's (not so) new secessionist tension'; Edward Bamfo-Darko, 'Togoland Secessionists Are Old Political Party With Old Immaterial Agendum', *Modern Ghana*, 1.10.2020; *Deutsche Welle*, 25.9.2020, 'Ghana's Western Togoland region declares sovereignty'; *iciLomé*, 26.11.2019, 'Le leader de Togoland dément toute fuite vers l'extérieur'; *iciLomé*, 13.2.2016, 'Un vent de sécession souffle sur le Togo Britannique'.

²⁸ <https://www.conseil-constitutionnel.fr/les-constitutions-dans-l-histoire/constitution-de-1946-ive-republique>.

²⁹ *Digitheque MJP*, 'Les Grandes lois de la République'.

³⁰ *Journal Officiel de la République Française*, n° 0107 du 8 mai 1947.

inhabitants of all these territories. [Law n° 46-2151 of 5 October 1946](#),³¹ however, restricted voting rights so as to make sure that natives of mainland France kept the overwhelming majority of seats in the French National Assembly.³² [Law n° 46-972 of 9 May 1946](#)³³ instituted deliberative assemblies in each French overseas territory, including in Togoland.³⁴ [Decree n° 56-361 of 27 March 1956](#) specified the modalities of the application of the [1946 French Nationality Code](#) in Togo and Cameroon.

A 1956 framework law (*Loi Cadre*)³⁵ authorized reforms in the overseas territories that aimed to grant autonomy to the dependent territories by establishing representative assemblies elected by universal popular vote and a local executive elected by these assemblies³⁶. For French-administered Togo and Cameroon (the second former German Trust Territory split between France and the UK), the *Loi Cadre* provided for a new self-governing status (Art. 8) to be defined in detail by a government decree compliant with the Trusteeship Agreement and the 1946 Constitution. In a referendum, the people would then be asked to choose between the new status or the continuation of the trusteeship regime. If the new status was accepted, it was intended to obtain the termination of the UN trusteeship regime (Art.8).

The new self-governing status for Togo was formulated by [decree n° 56-847](#) of 24 August 1956, which created the “Autonomous Republic of Togo”.³⁷ [Decree n° 56-848](#) of the same day fixed the date and the modalities of the referendum. While the status conferred some legislative powers to the Togolese Legislative Assembly, important responsibilities and competences remained with the French High Commissioner, including defence, foreign relations, justice, currency, customs, and broadcasting. Art.23 to 25 stated that the inhabitants of Togo were Togolese citizens and that they enjoyed all rights and freedoms of French citizens, including access to the civil service and the rights to vote and to be elected in the French Republic – without being submitted, however, to compulsory military service in the French armed forces. French citizens equally enjoyed the same rights in Togo as Togolese citizens. Togo maintained representatives at the French National Assembly and the Assembly of the French Union (Art.3).³⁸ The referendum, held on 28 October 1956, approved the proposed status.³⁹

The UN Trusteeship Council did not, however, approve the end of the trusteeship regime, due largely to concerns about continued French influence over the government of the territory. Considering the conclusions of the UN Mission that had visited Togoland in late 1955 and pointing to the two main opposing viewpoints of the political parties that the mission had highlighted,⁴⁰ the UNGA had adopted a resolution recommending that the wishes of the people of French administered Togoland should be ascertained in a consultation under UN

³¹ With the exceptions of Senegal (2), French Soudan (3), and Côte d'Ivoire (3), each territory (including Togoland) sent one MP into the National Assembly, 31 in all, while metropolitan France (including Martinique, Guadeloupe, and Réunion) had 553. [Journal Officiel de la République Française, n° 0235 du 8 octobre 1946](#).

³² Digithèque MJP, [Grandes Lois de la République. Loi n° 46-940 du 7 mai 1946](#).

³³ [Journal Officiel de la République Française, n° 0109 du 10 mai 1946](#).

³⁴ A subsequent law, [Law n° 46-2152 of 7 October 1946](#), determined that decrees would determine the modalities of the territorial assemblies. In the case of Togo, that was decree n° 46-2378 of 25 October 1946 which provided the Assembly with mainly consultative and limited enforceable competences. [Law n° 46-130 of 6 February 1952](#) abolished those decrees and introduced a universal suffrage by a single electorate. (*Digithèque MJP, 'La République Autonome du Togo'*).

³⁵ [Law n° 56-619 of 23 June 1956](#) - also called ‘Loi-Cadre’ (framework law) or ‘Loi Deferre’.

³⁶ Digithèque MJP, [Grandes Lois de la République. Loi n° 56-619 du 23 juin 1956 autorisant le Gouvernement à mettre en œuvre les réformes et à prendre les mesures propres à assurer l'évolution des territoires relevant du ministère de la France d'outre-mer](#).

³⁷ [Journal Officiel du Territoire du Togo, n° 888 du 30 août 1956](#). An English version of the decree can be found in the annex of UN document T/1290, 6.12.1956.

³⁸ For more details, see: GONIDEC P.F., ‘L'évolution de la République autonome du Togo’, in: *Annuaire français de droit international*, volume 3, 1957. pp. 627-638.

³⁹ *Digithèque MJP, 'La République Autonome du Togo'*.

⁴⁰ T/1218, paragraphs 112-123.

supervision.⁴¹ In [resolution 1046 of 23 January 1957](#), the UNGA deemed that “the reforms introduced by Decree n. 56-847 and their application required further studies by the Trusteeship Council” and resolved to send a commission to Togoland “in order to examine (...) the entire situation in the territory resulting from the practical application of the new Statute and the conditions under which the Statute is applied”.⁴²

The Commission visited Togoland during June 1957. Its report highlighted the flaws of the new autonomous status and therefore did not recommend an immediate end to the trusteeship regime but rather a further consultation of the people regarding the future status of the Territory. The Commission underscored the importance of elections on the basis of universal suffrage.⁴³

After some resistance, both the French representative to the Trusteeship Council and the representative of the Government of the Autonomous Republic of Togoland accepted a further transfer of powers and the early renewal of the Legislative Assembly in 1958 (normally scheduled only for 1960),⁴⁴ opening the way to the supervision of new elections by the United Nations and the termination of the Trusteeship Agreement.⁴⁵

2.3 Transition to independence of the Republic of Togo

[Decree n° 58-187](#) of 22 February 1958⁴⁶ introduced more reforms⁴⁷ designed to prepare Togoland for independence.⁴⁸ The Autonomous Republic of Togoland was renamed the Republic of Togo and the Legislative Assembly was renamed “Chamber of Deputies” (*Chambre des Députés*). France remained only with the responsibilities for foreign relations, defence, monetary policy, and foreign exchange. The provisions of the 1956 Statute regarding the nearly full reciprocity of Togolese and French citizenship remained unchanged (Art.31, 32, and 33).⁴⁹ Nine conventions⁵⁰ signed on 25 February 1958 between the French and Togoland authorities supplemented the Decree of 22 February by detailing the transfer of more powers to Togoland.⁵¹ In the view of the French authorities, Togoland had thereby attained complete self-government, as demanded by Art.76 of the UN Charter.⁵²

⁴¹ [A/RES/944](#), section II, 15.12.1955.

⁴² The future of Togoland under French administration, [A/RES/1046\(XI\)](#), 23.1.1957.

⁴³ The Togoland Government argued in detail why it considered the Legislative Assembly derived from the Territorial Assembly elected on 12 June 1955 as legitimate (*Report of the UN Commission on Togoland under French Administration*. Annex II, Section N, p.94, [A/1343](#). Particularly, a new law adopted on 6 June 1957 concerning the circumstances in which the Legislative Assembly may be dissolved ([A/1343](#), Section M, p.93) made its dissolution difficult.

⁴⁴ *Special Report of the Trusteeship Council*, Annex II, p.1-8, [A/3676](#), 24.9.1957; *Le Monde*, 14.9.1957: ‘La France envisage de faire accomplir au Togo un nouveau et important pas en avant annonce M. Kosciuszko-Morizet’.

⁴⁵ *The future of Togoland under French administration*, [A/RES/1182 \(XII\)](#), 29.11.1957; and GONIDEC P.F., ‘L'évolution de la République autonome du Togo’, in: *Annuaire français de droit international*, volume 3, 1957. pp. 636.

⁴⁶ Promulgated by [Order 23/58/C of 27 February 1958](#) (*Journal Officiel*, n° 46, numéro spécial, 5.3.1958). The English translation can be found here: The future of Togoland under French Administration, [T/1409](#), 26.9.1958

⁴⁷ “(...) important fields of activity (were) transferred to the Togoland Government: public freedoms, the electoral system, justice, public order, commercial legislation, penal legislation, and so on” (Statement of the representative of France at the 13th meeting of the GA, October 1958, [A/3958](#), of 23 October 1958, p.5).

⁴⁸ DigiThèque MJP, *Indépendance de la République togolaise*, 27 avril 1960.

⁴⁹ Including the access to civil services and the rights to vote and to be elected in the French Republic.

⁵⁰ The English translation can be found here: The future of Togoland under French Administration, [T/1409](#), 26.9.1958.

⁵¹ *Journal Officiel de la République du Togo*, n° 63, Numéro spécial, 27 July 1958, ; and Statement of the representative of France at the 13th meeting of the GA, October 1958, [A/3958](#), of 23 October 1958, p.4.

⁵² Statement of the representative of France at the 13th meeting of the GA, October 1958, [A/3958](#), of 23 October 1958, p.7.

The elections for the *Chambre des Députés* were held on 27 April 1958 and won by a large majority of the *Comité de l'unité togolaise* (CUT).⁵³ In his report, the UN Commissioner in charge of the supervision of the election concluded that in spite of the tight timeframe, the defects and weaknesses of the electoral system, the conduct of the election, and insufficient information among voters, he had no doubt that the general outcome faithfully reflected the wishes of the people of Togoland.⁵⁴ The election result meant a major turnaround, establishing the political dominance of the southern parties.⁵⁵

The Constitution of the 5th French Republic,⁵⁶ a new Constitution adopted by referendum held on 28 September 1958 in the entire French Union, with 82% of the votes in favour, replaced the Union with the French Community (*Communauté française*) and included the right for the overseas territories to choose between immediate independence or the status of an autonomous state within the Community (Art.76 – 87 of the 1958 Constitution). France kept control of essential domains (Art.78)⁵⁷ and the French President continued to preside over and represent the Community (Art.80). Art.86, however, opened the possibility of independence. Only Guinea voted against and obtained immediate independence.⁵⁸ As a trust territory, Togoland did not participate in the referendum.⁵⁹

Referring to paragraph 7 of UNGA Resolution 1182(XII) of 29 November 1957 regarding the wishes it may have regarding the new self-governing status of Togo and the termination of the Trusteeship Agreement, the newly elected Legislative Assembly adopted a resolution⁶⁰ confirming its preference for complete independence. The French Ordinance n° 58-1376 of 30 December 1958⁶¹ confirmed the aim of independence and the end of the trusteeship and specified the relations between France and Togoland up to that date. Art.26 of the Ordinance stated that persons of Togoland origin had Togoland nationality, which would be defined by

⁵³ 190,098 votes for the CUT (Comité de l'unité togolaise, led by Sylvanus Olympio); 56,281 for the UCPN (Union des Chefs et des Populations du Nord du Togo, led by Antoine Idrissou Meatchi); 40,489 for the PTP (Parti togolais du progrès, led by Nicolas Grunitzky, the Prime Minister; 22,753 votes for independents; and 1,358 in all for the MPT (Mouvement Populaire togolais), Juvento, and the RJT (Rassemblement des Jeunes togolais) - *Report of the United Nations Commissioner for the Supervision of the Elections in Togoland under French Administration*, p. 178-179, [T/1392](#), 30.6.1958.

⁵⁴ *Report of the United Nations Commissioner for the Supervision of the Elections in Togoland under French Administration*, p.184-188, [T/1392](#), 30.6.1958.

⁵⁵ From 1946 to 1952, the CUT had dominated the "Representative Assembly of Togoland" (A.R.T.) and Sylvanus Olympio had been its President. But from the end of 1951 on, thanks to the French support, the PTP and the UCPN had been able to push the CUT aside. (Nicoué Lodjou GAYIBOR (sous la direction de), [Le Togo sous domination coloniale \(1884-1960\)](#), Université du Bénin (Lomé), Département d'Histoire, GAYIBOR Nicoué Lodjou, Lomé 1997, p. 206-211 ; *Report of the UN Commission on Togoland under French Administration*. August 1957. Trusteeship Council, [T/1343](#), paragraphs 409-415; Sandro Capo Chichi, 'Sylvanus Olympio, le père du Togo', *Nofi Media. Histoire et Culture Noire*, October 2014; "Die Entstehung, Funktion und Arbeitsweise der togoischen Parteien ab 1941 und der Weg in die Unabhängigkeit", January 20, 2018 | Author: Anonymous)

⁵⁶ Legislative elections followed on 23 and 30 November. The presidential elections of 21 December was won by Charles de Gaulle ([Assemblée Nationale: L'installation de la Ve République](#)).

⁵⁷ Foreign affairs, defense, currency, economic and financial policy, strategic raw materials, the control of justice, high education, external and common transport, and telecommunication – Art.78 of the 1958 Constitution ([Official Journal n° 234 of 5 October](#), p. 9168).

⁵⁸ For more details on the "Communauté Française", see: Frédéric Turpin, '1958, la Communauté franco-africaine : un projet de puissance entre héritage de la IV^e République et conceptions gaulliennes', Numéro thématique : 1958 et l'outre-mer français, *Outre-Mers. Revue d'histoire*, Année 2008, 358-359, p. 45-58 ; Frédéric Turpin, 'L'Union pour la Nouvelle République et la Communauté franco-africaine : un rêve de puissance évanoui dans les sables algériens ? (1958 – 1961)' *Histoire@Politique* 2010/3 (n° 12), p. 5.

⁵⁹ [Universalis.fr](#), [Communauté française](#), [Wikipedia.fr Communauté française \(Cinquième République\)](#).

⁶⁰ *The future of Togoland under French Administration*. Note by the Secretary General (Communication to the GA of letter no. 355 of 3 November 1958 from the representative of France, Annex I, p.3), [A/C.4/382](#), 3.11.1958.

⁶¹ *Journal Officiel de la République Française*, n° 307, 31 décembre 1958, p. 12115-12116. The English Version of the draft decree can be found here: [A/C.4/382](#), p. 6-11.

law;⁶² no more mention was made of French nationality nor of a reciprocity of corresponding rights.

UN General Assembly [Resolution 1253](#) of 14 November 1958 acknowledged all these developments, congratulated “France and the authorities and people of Togoland on their achievements in Togoland, which enable(d) the basic objectives of the International Trusteeship System to be attained”, and resolved that on the date of the independence of Togoland the Trusteeship Agreement would cease to be in force. UNGA Resolution [1416 \(XIV\)](#) of 5 December 1959 took note that the date agreed by the two Governments was 27 April 1960 and recommended that Togoland should be admitted to UN membership.⁶³

On 23 April 1960, four days before Independence Day, 27 April, the Chamber of Deputies adopted [Law n° 60-10](#) modifying the organisation of the institutions of the Togolese Republic, a sort of provisional constitution for independence. The law confirmed a parliamentary system where the powers of head of state remained with the prime minister (Art.23). Title IV “On Nationality and Citizenship” remained unchanged from the French Ordinance of December 1958.

2.4 Independent Togo: one-party and military rule

Presidential and legislative elections and a referendum on the first Constitution of Togo were held jointly a year later, on 9 April 1961.

The [new Constitution](#) which entered into force on 14 April 1961 kept the legislative powers of the new National Assembly but designated the President of the Republic as chair of the Council of Ministers – a semi-presidential system with significant powers vested in the President. Basic citizens’ rights were left vague and essentially left to ordinary legislation, including the issue of nationality (Art.23), which was not mentioned otherwise. The Parliament was elected for five years, the President for seven with no limits to the possibility of being re-elected. The Constitution was adopted with 99.62% of the valid votes and a voter turnout of 89.95%.⁶⁴

The 1961 elections themselves by no means met democratic standards. None of the opposition parties had been able to register candidates so that the CUT, now renamed Party of Togolese Unity (*Parti de l'Unité Togolaise*, PUT), picked up all 52 seats of the National Assembly and Sylvanus Olympio the Presidency.

But soon Olympio was confronted with increasing difficulties, including opposition support for President Kwame Nkrumah of Ghana’s idea of an integration of Togo into Ghana, which Olympio completely opposed.⁶⁵ As the governments of both Ghana and Togo accused each other of coup attempts, Olympio ordered a crackdown.⁶⁶ Several leaders of the opposition were arrested and imprisoned in Mango, in the far north of the country. Togo had become a one-

⁶² Art 26: “Les ressortissant du Togo possèdent la nationalité togolaise”; Art 27: “la nationalité togolaise est défini par la loi”.

⁶³ See also: UN Security Council [Resolution 136](#) of 31 May 1960; UNGA Resolution [1477 \(XVI\)](#) of 29 September 1960.

⁶⁴ [African Elections Database](#). Elections in Togo. 9 April 1961 Constitutional Referendum.

⁶⁵ A.R. Gomda, ‘[Olympio Says No Nkrumah](#)’, *Modern Ghana*, 2.10.2021; Pascal Kossivi Adjamagbo, ‘[Contributions de la jeunesse à l’indépendance du Togo à travers la JUVENTO](#)’, *Mediapart*, 23.8.2021 (Le blog de Pascal Kossivi ADJAMAGBO - Professor of Mathematics and Togolese Politician) - Justice Minister Anani Ignacio Santos had already resigned from the Olympio Government in May 1959.

⁶⁶ [Decree n° 62-8](#) of 3 January 1962. Philippe Decraene, ‘[Les difficultés de M. Nkrumah peuvent expliquer la tension survenue entre Accra et Lomé](#)’, *Le Monde Diplomatique*, January 1963 ; Pascal Kossivi Adjamagbo, ‘[Contributions de la jeunesse à l’indépendance du Togo à travers la JUVENTO](#)’, *Mediapart*, 23.8.2021.

party state.⁶⁷ Olympio's choice of a more diverse array of foreign relations and especially his plan to leave the monetary zone of the CFA Franc⁶⁸ and to create a Togolese currency also incurred the displeasure of the French government.⁶⁹

On 13 January 1963, a group of demobilised former Togolese non-commissioned officers of the French colonial infantry assassinated President Olympio.⁷⁰ A *Comité insurrectionnel* assumed responsibility for what had become the first coup in Africa,⁷¹ but handed over power to opposition leader Nicolas Grunitzky two days later. It was clear that France preferred Grunitzky to Olympio,⁷² and little doubt that France, through Charles de Gaulle's special adviser for Africa, Jacques Foccart,⁷³ had at least endorsed the coup.⁷⁴

Grunitzky on 17 January formally dissolved Parliament, abolished the Constitution and formed a provisional government of national union which included representative of all parties.⁷⁵ Political prisoners were released and political parties permitted again.⁷⁶ A new Constitution was elaborated and submitted to a referendum on 5 May, held in parallel to legislative and

⁶⁷ One-party systems were often imposed with the intention over overcoming ethnic, regional, political, and economic diversity and conflicts in order to ensure national unity. See: Balowa KOUMANTIGA, '[Le parti unique et la question de l'unité nationale au Togo de 1961 à 1990](#)', University of Kara, 2013, Master degree (Maîtrise ès Lettres, Sciences Humaines).

⁶⁸ Introduced on 26 December 1945, "CFA" initially meant "Colonies françaises d'Afrique" but was then changed to "Communauté Financière Africaine" in West-Africa and to 'Coopération Financière en Afrique' in Central Africa (BCEAO, '[Histoire du Franc CFA](#)'). The West-African CFA franc zone was joined by Mali in 1984 and by the former Portuguese colony of Guiné-Bissau in 1997.

⁶⁹ '[Togo-Assassinat de Sylvanus Olympio : Les courriers de la responsabilité française](#)', *La Nouvelle*, 18.5.2017, aLomé.com; *Togoweb*, 27.4.2018, '[Ces secrets que vous ignorez sur Sylvanus Olympio, le père de l'indépendance](#)' (lisapoyakama.org).

⁷⁰ Olympio had refused to integrate them into the Togolese armed forces, strong of only 120 men [[Wikipedia\(de\): 'Kléber Dadjo'](#)]. The future Togolese President Étienne Eyadéma first boasted of having shot himself Olympio, but later retracted. (Christophe Boisbouvier, 'Togo : qui a tué l'ancien président Sylvanus Olympio ?' [Jeune Afrique](#), 11.10.2021/18.1.2013 or [Missionnaires d'Afrique](#), 11.10.2021). The Togolese Truth, Justice, and Reconciliation Commission (CVJR) received however confirmation of Eyadéma's responsibility from various witnesses. Only one stated that a French Gendarme had in fact killed Olympio (CVJR, '[Rapport final](#)'). See also: Jack Garofalo, '[TOGO: c'était l'aube ...](#)', *Paris-Match* (France), 13.1.1963 (Archives ufctogo.com, 2003).

⁷¹ *Le Monde*, 15.1.1963, '[Un comité militaire de huit membres a pris le pouvoir après l'assassinat du chef de l'État](#)' ; *Wikipedia (de)*, '[Emmanuel Bodjollé](#)' ; *Wikipedia (en)*, '[Emmanuel Bodjollé](#)'.

⁷² While Olympio had told AFP, in May 1960: "I will do my best to ensure my country can thrive without France", Jacques Foccart was quoted as having said: "Sylvanus Olympio was not one of our friends" ('Foccart parle', Fayard-Jeune Afrique, 1995): Christophe Boisbouvier, 'Togo : qui a tué l'ancien président Sylvanus Olympio ?' [Jeune Afrique](#), 11.10.2021/18.1.2013 or [Missionnaires d'Afrique](#), 11.10.2021. In English: Christophe Boisbouvier, '[Togo: Who killed Sylvanus Olympio, the father of Togolese independence?](#)', *The Africa Report*, 4 November 2021. Strangely, a Radio station in France had announced Olympio's death about an hour before he had actually been shot. *Togoweb*, 27.4.2018, '[Ces secrets que vous ignorez sur Sylvanus Olympio, le père de l'indépendance](#)' (lisapoyakama.org); '[Assassinat de Sylvanus Olympio : la version non-dévoilée des faits](#)', *Togoweb*, 13.1.2020.

⁷³ Whiteman, Kaye, '[The Man Who Ran Françafrique](#)', *The National Interest*, no. 49, Center for the National Interest, 1997, p. 92–99.

⁷⁴ France's continued interference and manipulation in the affairs of its former African colonies is hotly debated there under the term of "Françafrique". See e.g.: François Xavier Verschave, '[La Françafrique - Le plus long scandale de la République](#)', Ed. Stock, Paris, 1998/2003 ; or as short overview : '[La Françafrique, le plus long scandale de la République](#)', *Survie*, 12.7.2016 ; Ndèye Khady LO & Rose-Marie Bouboutou-Poos (Journalists), '[Françafrique: quelle est l'histoire du "sentiment anti-français" en Afrique et pourquoi il resurgit aujourd'hui?](#)', *BBC*, 28 mai 2021 ; *Wikipédia (fr)* : [Françafrique \(livre\)](#).

⁷⁵ [Ordonnance n° 1 of 17.1.1963](#) regarding the constitution of the Provisional Government of the Togolese Republic and [Ordonnance n° 2 of 17.1.1963](#) pertaining to the designation of the members of the Provisional Government of the Togolese Republic (*Journal Officiel*, n° 208, 17.1.1963) and [Ordonnance n° 3 of 26.1.1963](#) pertaining to amnesty and a correction to [Ordonnance n° 1 \(Journal Officiel n° 210, 16.2.1963\)](#).

⁷⁶ Mama-Sani ABOUDOU-SALAMI (Judge at the Constitutional Court of Togo), '[Multipartisme et droit de vote au Togo](#)', *Association des cours constitutionnelles ayant en partage l'usage du français (ACCPUF)*, Bulletin n° 6, November 2006.

presidential elections. In view of the latter, the four main parties⁷⁷ had agreed to form a single list of candidates under the banner of the Coalition of Union and National Reconciliation,⁷⁸ where each party would have a quarter of the seats of the National Assembly (56). Nicolas Grunitzky was the only presidential candidate. About 90% of the registered voters approved what was on offer.

The [new Constitution](#) signed into law on 11 May 1963 and published on 15 May re-established a multi-party system (Art.3), maintained a semi-presidential system,⁷⁹ and introduced the position of a Vice-President (Art.21). The elections of the President, the Vice-President, and Parliament had to coincide and take place all 5 years. The Constitution was more detailed than the previous one, including on rights contained in the Universal Declaration of Human Rights, to which it also referred in the preamble. As in the 1961 Constitution, the issue of the nationality was expressly left to ordinary legislation.

On 14 May 1963, President Grunitzky formed a government in which all parties were represented.⁸⁰ But the diverging interests of the parties present in the government and their incapacity to find common ground led to a latent instability and strife. When on 21 November 1966 a huge popular demonstration initiated by the Togolese Unity party (PUT, former CUT) asked for the resignation of the government, Grunitzky responded by forming a new government composed only of members of his own party and abolishing the post of Vice-President.⁸¹

Just a few weeks later, on 13 January 1967, the military led by Lt.-Col. Étienne Gnassingbé⁸² intervened again and forced the Grunitzky government to resign.⁸³ They immediately set up a "Committee of national reconciliation".⁸⁴ This committee would not last long either. On 13 April 1967, Lt.-Col. Eyadéma announced its disbanding "at the request of the majority of the people and in order to consolidate peace".⁸⁵ The Ordinance which followed the next day, 14 April, stated that the Committee had decided its dissolution and his designation as the new President of the Republic.⁸⁶ He immediately formed a new government which included three other military officers and eight civilians.⁸⁷ The decree which determined the banning of the four parties of

⁷⁷ UDPT (*Union Démocratique des Populations Togolaises*, which had been formed in October 1959 out of a merger of the PTP and the UCPN), JUVENTO, PUT (ex-CUT), and the MPT (Mouvement Populaire Togolais, founded by Pedro Olympio after his defection from the PTP on 16 August 1954.) The MPT had obtained 1,4% of the votes in the 1955 elections and 0,3% in those of 1958. (Wikipedia [fr], "[Mouvement Populaire Togolais](#)"; Wikipedia [de]: '[Pedro Olympio](#)').

⁷⁸ Coalition d'union et de réconciliation nationale.

⁷⁹ The President is the head of state (Art.20) and the head of government (Art.25). In case of a censure motion adopted in Parliament, the President may substitute parts or all of the ministers or dissolve Parliament and organise new elections. (Art. 64 and 65).

⁸⁰ *U.S. State Department*, '[Togo \(01/09\). History](#)', (Archived content, 20 January 2009-20 January 2017).

⁸¹ [Law n° 66-21 of 15 December 1966](#) pertaining to the revision of certain articles of the constitution, JORT n° 342.

⁸² In 1974, he abandoned the Christian name of « Etienne » in favour of "Éyadéma" in an endeavour to go back to African roots. - '[1974 : retour à l'authenticité](#)', *republicoftogo.com*, 23.01.2012.

⁸³ Philippe Scipion, '[Outre-mer - Coup d'État militaire au Togo](#)', *Revue Défense Nationale*, n° 255, March 1967, p. 538-541 ; Lubabu M. K. Tshitenge, '[La chute du président togolais Nicolas Grunitzky](#)', *Jeune Afrique*, 14.1.2008.

⁸⁴ Ordinance n° 1 of 14 January 1967 regarding the Constitution of the National Reconciliation Committee and Ordinance n° 2 of 14 January 1967 pertaining to the composition of the National Reconciliation Committee, both published in the [Journal Officiel n° 345 of 30 January 1967](#). Philippe Scipion, '[Outre-mer - Coup d'État militaire au Togo](#)', *Revue Défense Nationale*, n° 255, March 1967, p. 538-541.

⁸⁵ Philippe DECRAENE, '[Au Togo, le Lieutenant-Colonel Eyadéma dissout le comité de réconciliation nationale et constitue un gouvernement](#)', *Le Monde*, 17.4.1967.

⁸⁶ [Ordinance n° 15 of 14 April 1967](#) pertaining to the designation of the President of the Republic, JORT, n° 351, 15 April 1967, p.9.

⁸⁷ [Ordinance n° 16 of 14 April 1967](#) pertaining to the dissolution of the National Reconciliation Committee and the formation of the Government JORT, n° 351, 15 April 1967, p.9 – Kléber Dadjo became Justice Minister.

the last Grunitzky Government and of all associations linked to them had been signed already by E. Eyadéma as President one day before.⁸⁸

This was the beginning of a 38-year long reign by one person.⁸⁹ The National Assembly was suspended until 1980, and government was by presidential ordinance. Even when a new constitution led to legislative elections in 1979, these were under a one-party system. Multi-party elections were not restored until 1991, and Eyadéma managed to stay in office until his death in 2005.

On 27 November 1969, Eyadéma founded the “Rally of the Togolese People” (*Rassemblement du Peuple Togolais*, RPT) of which he was elected chairman two days later, with Edem Kodjo, who would later become Secretary General of the Organisation of African Unity (OAU)⁹⁰, as number two.⁹¹ The RPT would be the only permitted political party and extend its control over society through its social organisations.⁹² “Meticulous ethnic balancing of the cabinet” and economic gains allowed the new regime to attain some stability.⁹³ A referendum held on 9 January 1972 confirmed Eyadéma as President of the Republic with 99.9% of the voter turnout in favour.⁹⁴ In the years to come, he was in the centre of a personality cult.⁹⁵

A new [Constitution adopted on 30 December 1979](#)⁹⁶ established the RPT formally as the only political party which would be paramount in all institutions of the state. The presidential mandate was extended to 7 years while the one of the National Assembly remained 5 years. The Constitution refers in general terms to the Universal Declaration of Human Rights but is otherwise not specific on citizens’ rights. The issue of nationality is not mentioned. But a new, more restrictive Nationality Code had been adopted one year before, in September 1978, and is, with some exceptions, still in force today.⁹⁷

Consequently, in the presidential and legislative elections held also on 30 December 1979, Eyadéma won 99.87% of the total votes and the RPT all 67 seats in the National Assembly. The legislative elections of 24 March 1985 and the presidential elections of 21 December 1986 gave similar results.⁹⁸ In the absence of any legal opposition, on 23 September 1986, a commando of some 70 armed Togolese insurgents crossed into Lomé from Ghana in an attempt on the life of the President, but was soon defeated.⁹⁹

⁸⁸ [Decree n° 67-111 of 13 April 1967](#) pertaining to the dissolution of the associations named Juvento, Mouvement populaire Togolais, (MPT), Parti de l'Unité Togolaise (U.T) et Union Démocratique des Populations Togolaises (U.D.P.T), [JORT, n° 357](#), 16.6.2021, p.276.

⁸⁹ Kaye Whiteman, [‘Gnassingbe Eyadema. Dinosaur dictator who ruled Togo for 38 brutal and fearful years’](#), The Guardian (UK), 7.2.2005.

⁹⁰ 1978-1983. For more details on the political life of Edem Kodjo see: [‘Edem Kodjo, l'ancien Premier ministre à la conquête du pouvoir’](#), AFP/Letogolais, 27.5.2002 ; [‘Edem Kodjo: Un esprit éclairé au service de l'Afrique’](#), Ma Nation Togo, 12.2.2014.

⁹¹ U.S. State Department, [‘Togo \(01/09\). History’](#); Wikipedia(de), [‘Rassemblement du peuple togolais’](#).

⁹² CNTT (*Confédération Nationale des Travailleurs du Togo*), UNFT (*Union Nationale des Femmes du Togo*), UCTT (*Union des Chefs Traditionnels du Togo*) and its youth wing, all set up in the early 70s. Wikipedia[de], [‘Rassemblement du peuple togolais’](#).

⁹³ [‘Early years and coups’](#), Britannica.

⁹⁴ [Elections in Togo](#), *African Elections Database*.

⁹⁵ [‘Early years and coups’](#), Britannica.

⁹⁶ The Constitution was promulgated on 9 January 1980. [JORT, Special Number, 12 January 1980](#), p.7 and following. [Law n° 1988-6 of 26 May 1988](#) brought very minor amendments to Art.24 and 29 regarding the election of the deputies and the president of the National Assembly.

⁹⁷ [Ordonnance n° 78-034 du 7 septembre 1978](#) portant code de la nationalité togolaise.

⁹⁸ [Elections in Togo](#), *African Elections Database*.

⁹⁹ U.S. State Department, [‘Togo \(01/09\). History’](#); [‘Hommage aux victimes du 23 septembre 1986’](#), [republicoftogo.com](#), 24.9.2007.

The abolition of the multiparty system was broadly welcomed as it was perceived as a solution to the profound regional, ethnic, and political divisions Togo had gone through, by promising national unity and reconciliation. However, it did not take long before the disadvantages of the absence of any checks and balances in the system became visible, as criticism was met by violent repression.¹⁰⁰

2.5 The reintroduction of limited democracy in 1991

The winds of change of 1989/1990 also affected Togo. The Berlin Wall had fallen and Eastern European countries had opened up to democratic elections. French President François Mitterrand gave his famous speech on the need for democratization in Africa during the 16th Conference of Heads of State of Africa and France in La Baule on 20 June 1990, conditioning future French financial support for African states on progress in that field.¹⁰¹ In neighbouring Benin, in February 1990, popular protest had imposed a “Sovereign National Conference” on President Kérékou, which led to democratic elections and a change in government – the first such conference in francophone Africa. In Togo, the date of 5 October 1990, the date of a popular uprising against the trial of young opposition activists¹⁰² arrested after distributing flyers critical of President Eyadéma’s regime, marked the beginning of a broad protest movement which included a students’ strike in March 1991 and women’s protests.¹⁰³

Finally giving in to public protest and pressure, President Eyadéma authorized the foundation of political parties¹⁰⁴ and thus put an end to the one-party state. Following a general unlimited strike in June and as a result of an agreement, encouraged also by France, with the Collective of the Democratic Opposition on 12 June 1991, the President grudgingly accepted the holding of a National Conference in Togo too, which took place in July and August.¹⁰⁵

The Conference declared itself sovereign and immediately decided the suspension of the 1980 Constitution and of the National Assembly.¹⁰⁶ On 23 August, the Conference adopted a [transitional constitution](#) which replaced the dissolved National Assembly with a High Council

¹⁰⁰ An excellent analysis of this issue in the case of Togo and very much in general is provided by Balowa KOUMANTIGA, ‘[Le parti unique et la question de l’unité nationale au Togo de 1961 à 1990](#)’, University of Kara, 2013, Master degree Maîtrise ès Lettre, Sciences Humaines.

¹⁰¹ *Perspective Monde*, ‘[Discours du président français François Mitterrand](#)’ sur la démocratisation en Afrique, 20.6.1990 ; Roger, Koudé, 10.5.2021, ‘[François Mitterrand et l’Afrique : retour sur le fameux discours de La Baule du 20 juin 1990](#)’, *Revue politique et parlementaire*.

¹⁰² Dossouvi Logo and Agbélenko Doglo, members of the Convention Démocratique des Peuples Africains (CDPA) founded as clandestine opposition party in 1984 in Paris. (‘[Etude sur la Diaspora Togolaise en France](#)’, FORIM Réseau des diasporas solidaires, 7.4.2005, p.11; ‘[Le 5 octobre 1990 au Togo vu de l’intérieur par Têko-Djolé Firmin YOVODEV](#)’, *TOGO SCOOP INFO*, 10.5.2020).

¹⁰³ ‘[Le 5 octobre 1990 au Togo vu de l’intérieur par Têko-Djolé Firmin YOVODEV](#)’, *TOGO SCOOP INFO*, 10.5.2020 ; Hermann Attignon, ‘[Togo : Historique du soulèvement populaire du 05 octobre 1990](#)’, *Alliance Nationale pour le Changement*, 24.9.2012 ; ‘[Dossouvi Hilaire Logo, une icône de la lutte pour la démocratie au Togo n’est plus](#)’, *togoforum*, 15.3.2014; U.S. State Department, ‘[Togo \(01/09\). History](#)’.

¹⁰⁴ [Law n° 91-97 of 12 April 1991](#) pertaining to the charter of political parties.

¹⁰⁵ Matthieu Kairouz, ‘[Ce jour-là : le 8 juillet 1991, les Togolais placent leurs espoirs dans une Conférence nationale](#)’, *Jeune Afrique*, 7.7.2016 ; [Decree n° 91-179 of 25 June 1991](#) pertaining to the convening of the National Conference and [Decree n° 91-182 of 2 July 1991](#) modifying Decree n° 91-179 of 25 June 1991 pertaining to the convening of the National Conference, *JORT n° 16*, 4.7.1991; [Act 5 of 12 August 1991](#) extending the National Conference until 24 August included, *JORT n° 22*, 19.8.1991; [Act 9 of 24 August 1991](#) extending the National Conference until 28 August, *JORT n° 29*, 2.9.91.

¹⁰⁶ [Act 1 of the Conference](#), sign by the Chairman, Catholic Bishop Philippe Fanoko Kossi Kpodzro (*JORT*, n° 44, 17.12.1991): The Conference discussed economic, education, health and other social policies, democracy, human rights, the rule of law, the justice system, the role of the ethnically imbalanced army, and national union and reconciliation and analysed the enormous deficiencies existing in these fields.- [Déclaration liminaire](#). See also: Concluding observations of the Committee on the Elimination of Racial Discrimination. Togo’, [CERD/C/TGO/CO/17](#), 23.9.2008, para.18.

of the Republic.¹⁰⁷ The High Council¹⁰⁸ and the Prime Minister¹⁰⁹ were elected three days later and also had the task of overseeing the elaboration and adoption of a new Constitution. Kokou Joseph Koffigoh, the new Prime Minister, was the founder of the Togolese Human Rights League.

However, all steps undertaken to dethrone General Eyadéma ultimately failed.¹¹⁰ In his opening speech, General Eyadéma had already denounced the Conference as a “civil coup d’état”. When the Conference declared itself “sovereign”, that is, competent to adopt laws, the armed forces walked out. Just before the end of the Conference, Eyadéma signed an Ordinance which declared null and void all acts of the Conference that had not been promulgated by him – most acts.¹¹¹ Law n° 91-1 of 25 September 1991 and an amendment to the transitional constitution restored some of the powers of the President.¹¹² In the aftermath of the Conference, in view of the international attention on Togo, Eyadéma did not directly defy the new institutions. But the military did, repeatedly harassing the Prime Minister and briefly arresting him. In January 1992, Koffigoh had to accept the participation of members of the readmitted RPT in a newly formed government.¹¹³

On 2 July 1992, the High Council of the Republic adopted a draft new constitution, as commissioned by the National Conference, and opened it to a referendum.¹¹⁴ The referendum took place on 27 September and received 98.11% “yes” votes.¹¹⁵ The new Constitution was promulgated by the President on 14 October 1992.¹¹⁶ It is still in force but has been amended significantly several times.

The 1992 Constitution was much more detailed than the previous ones, including on citizens’ rights. Unlike the 1978 Nationality Code, its Art.32 determined that the child of a Togolese father or mother was also a Togolese citizen. The presidential terms were brought back to 5 years and to two at maximum without exception (Art.59). A two-round first-past-the-post

¹⁰⁷ [Act 7 of 23 August 1991](#) pertaining to the constitutional law organizing the powers during the transition period, [JORT n° 44](#), 17.12.1991, p.6 and following.

¹⁰⁸ [Act n° 8 of 24.8.1991](#) pertaining to the modalities of the election of the members of the High Council of the Republic ; [Act n° 17 of 26.8.1991](#) pertaining to the proclamation of the election of the members of the High Council of the Republic ([JORT n° 29 du 2.9.1991](#)).

¹⁰⁹ [Act 10 of 28 August 1991](#) pertaining to the modalities of the election of the Prime Minister by the National Conference, [JORT n° 27](#), 29.8.1991; [Act 15 of 28 August 1991](#) pertaining to the proclamation of the election of the Prime Minister of the Transition Government, [JORT n° 26](#), 28.8.1991.

¹¹⁰ Art.60 of the transitional constitution stated that laws adopted by the High Council of the Republic not timely promoted by the President of the Republic could be done so validly by the Prime Minister. “[Decree n° 91-11 of 26.9.1991](#) pertaining to the disempowerment” ([JORT n° 34](#), 9.10.1991), signed by the Prime Minister, had deprived the President of any active role. “[Resolution n° 3 of 27.8.1991](#) pertaining to the dissolution of the Rally of the Togolese People – RPT Single Party, State Party” ([JORT n° 44](#), 17.12.1991, p.21) had dissolved the RPT.

¹¹¹ “[Ordinance n° 91-06 of 26.8.1991](#) pertaining to the non-validity of certain acts of the National Conference” ([JORT n° 25 du 28.8.1991](#)).

¹¹² [Law n° 91-1 of 25 September 1991](#) pertaining to the exercise of the regulatory powers of the President of the Republic and Prime Minister, [JORT n° 33](#), 7.10.1991; [Law n° 92-001 of 27.8.1992](#) pertaining to the modification of Act 7 of the Sovereign National Conference of 23 August 1991 pertaining to the constitutional law organizing the powers during the transition period. [JORT, n° 44](#), 28.8.1991. This included chairing the Council of Ministers in certain cases.

¹¹³ [Decree n° 92-001 of 2.1.1992](#) pertaining to the composition of the Government of National Union of the Togolese Republic, [JORT n° 2](#), 3.1.1992.

¹¹⁴ [Law n° 92-004 of 20 July 1992](#) pertaining to the organisation of a constitutional referendum, [JORT n° 25](#), 21.7.1992. The text of the proposed Constitution came in annex to this law. [Law n° 92-2/PR of 27.8.1992](#) ([JORT n° 29](#), 28.8.1992, p.2) made some minor amendments to this document. Laws n° 92-003 and 92-004 signed by Eyadéma on 27 August 1992 and published in the same JORT confirmed that the PM and the members of the HRC were maintained in their functions.

¹¹⁵ [JORT n° 34](#), 15.10.1992.

¹¹⁶ [JORT n° 36](#), 19.10.1992; [Elections in Togo](#), *African Elections Database*.

system was applied.¹¹⁷ The Constitution also created new institutions such as the Court of Auditors, the High Media Authority, and the Economic and Social Council.¹¹⁸

As Eyadéma clung to power, the following years were marred by popular protest and strikes met by violent repression, which resulted in many deaths and about 300,000 Togolese refugees in neighbouring Ghana and Benin in 1994. Presidential elections on 25 August 1993, boycotted by the opposition and marked by a very low voter turnout, handed victory again to Eyadéma. In view of the deteriorating human rights situation and the democratic deficiencies, the EU decided to suspend economic assistance to Togo, which was only resumed in late 2007.¹¹⁹ In the legislative elections of 1994, the RPT did not reach a majority of seats, but Eyadéma succeeded in dividing the opposition alliance and maintaining control of power. The presidential elections of 1998, officially won by Eyadéma, were once more marred by serious irregularities.¹²⁰ The legislative elections of 7 and 21 March 1999 were again boycotted by the opposition and the RPT obtained 79 of the 81 seats.¹²¹ But in order to allay the political tensions, President Eyadéma sought a dialogue with the opposition. Under the facilitation of France, Germany, the European Union and the Organisation Internationale de la Francophonie (OIF), the governing RPT, its junior partner the Convention des Forces Nouvelles (CFN) and seven opposition parties signed the “[Accord-Cadre de Lomé](#)” (Lomé Framework Agreement) which aimed to ease the political environment, improve the framework for elections, reinstate respect for the Constitution, democracy and human rights, allow the return of the refugees, and maintain the inter-Togolese dialogue through a follow-up committee. More significantly, General Eyadéma promised to respect Art.59 of the Constitution limiting presidential terms and not to seek a third term in office under the 1992 Constitution – a promise he would soon break. The Accord-Cadre would just remain one vain accord in a series of several more to come. Due to another opposition boycott in the legislative elections of 27 October 2002, the RPT obtained 72 seats, enough to have the four-fifths majority needed to scrap the presidential term limits contained in Art.59 of the Constitution. In consequence, President Eyadéma had little difficulty in winning the presidential elections of 1 June 2003 with 57,8% of the votes,¹²² dashing all hopes of political changr.

The 1990s, in the aftermath of the National Conference, continued to be marked by abuses of power, corruption, and egregious human rights violations, which are well documented.¹²³ Due

¹¹⁷ Whereby a second voting round had to take place between the two candidates with most votes, when none of them had reached the absolute majority of the votes in the first round.

¹¹⁸ Some provisions of the Constitution however have been applied, for instance the obligation for high-ranking government and administration officials to declare their property at the beginning and the end of their mandates (Art.145). Art.150 states de right of every Togolese citizen to resist any attempt against the constitutional order and any member of the government or the National Assembly may call on any means to reestablish the legitimate order, including resorting to existing military or defense agreements.

¹¹⁹ U.S. State Department, ‘[Togo \(01/09\). History](#)’; University of Central Arkansas, Political Science, ‘[Togo \(1960-present\)](#)’.

¹²⁰ ‘[Togo - Political parties](#)’, Nations Encyclopedia ; ‘[Top 30 des faits qui ont marqué le règne des Gnassingbé depuis 30 ans](#)’, Togo Tribune, 26.2.2020.

¹²¹ U.S. State Department, ‘[Togo \(01/09\). History](#)’; [Elections in Togo](#), African Elections Database.

¹²² Gilchrist Olympio had been barred from running due to the amended Art.63 of the Constitution which required that a presidential candidate had his ordinary residence in Togo for at least 12 months preceding the election (Law n° 2002-029 of 31.12.2002, JORT n° 42, 31.12.2002) . The UFC candidate, Bob Akitani, the second-best placed obtained 33,7% ([Elections in Togo](#), African Elections Database).

¹²³ Final report of the Truth, Justice, and Reconciliation Commission, CVJR, ‘[Rapport final](#)’, 2012; Rapport de la commission d’enquête internationale pour le Togo, UN Commission on Human Rights, E/CN.4/2001/134, 22.2.2001; ‘[TOGO. À l’heure des réformes, impunité pour les auteurs de violations des droits de l’homme](#)’, Amnesty International, 8.4.1992 (AI Index AI : AFR 57/001/1992); ‘[TOGO. Les forces armées tuent impunément](#)’, Amnesty International, 5.10.1993 (AI Index: AFR 57/13/93/F); ‘[Togo: Une nouvelle ère pour les droits de l’homme?](#)’, Amnesty International, 15.9.1994 (AI Index : AFR 57/02/9); ‘[TOGO. Time for accountability More than three decades of human rights abuse](#)’, Amnesty International, 20.7.1999, (AI Index: AFR 57/22/9); ‘[Situation des droits de l’homme au Togo. Rapport du Secrétaire général](#)’, UN Human Rights Commission, E/CN.4/1994/59, 20.1.1994; ‘[Togo : il y a vingt ans, la tuerie de la lagune de Bè](#)’, RFI, 16.4.2011 ; [Decree n° 91-](#)

to the violence, by 1994, more than 200,000 Togolese had sought refuge in Ghana and Benin.¹²⁴ Dissatisfied with government explanations presented in Togo's 3rd periodic report under the ICCPR, the UN Human Rights Committee in 2002 expressed its concern "at information that many extrajudicial executions, arbitrary arrests, threats and intimidation perpetrated by the Togolese security forces, against members of the civilian population, in particular members of the opposition, have not been investigated in a credible manner".¹²⁵

Pressure on the Togolese government continued, and in 2004 it accepted "22 commitments" to strengthen democracy and the rule of law, as a result of consultations with the European Community under Art.96 of the [ACP-EU Cotonou Agreement](#), on relations between the European Union and the African, Caribbean, and Pacific group of states.¹²⁶

2.6 The post-Eyadema era

President Gnassingbé Eyadéma died suddenly on 5 February 2005. According to Art.65 of the Constitution, the President of the National Assembly, who at that moment was on an official trip in France, should have taken over as President of the Republic. But the military prevented him from returning by closing all borders and installing Eyadéma's son, Faure Essozimna Gnassingbé, as his successor.¹²⁷ Facing an international outcry,¹²⁸ F.E. Gnassingbé stepped down on 25 February 2005 and ordered fresh elections. These elections took place on 24 February. According to the official results, F. E. Gnassingbé received 60,15% of the votes and Bob Akitani of the UFC (*Union des Forces du Changement*) received 38,25%.

These elections were also marred by significant irregularities and fraud, and were accompanied by an outbreak of violence which caused hundreds of deaths and about 40,000 Togolese to flee to neighbouring countries. The International Federation for Human Rights concluded in its report on the events that while the political parties contributed to stirring up tensions between the order forces and the civil population during and after the electoral campaign, the main responsibility for crimes committed lay with the Togolese state.¹²⁹

140 of 23 May 1991 setting up a national enquiry commission regarding the events of 9 and 10 April 1991 in the surrounding of the Bè lagoon, JORT n° 16, 4.7.1991; 'Togo, un pays où l'impunité règne en maître', ACAT, 6.3.2007; 'Témoignage d'Agbéyomé Messan Kodjo sur le massacre de Fréau Jardin', *iciLomé.com*, without exact date: 2010/2011.

¹²⁴ UNHCR (Ghana), [A/AC.96/846/Part I/9](#), 18.7.1995; UNHCR (Benin), [A/AC.96/846/Part I/2](#), 11.8.1995.

¹²⁵ Concluding observations of the Human Rights Committee (Third periodic report of Togo), [CCPR/CO/76/TGO](#), 28 November 2002, paragraph 9.

¹²⁶ [Communiqué de presse du Conseil de l'UE, Bruxelles, 14 avril 2004](#), 8232/04 (Presse 106). The commitments included taking up the political dialogue with the opposition and civil society in accordance with the "Accords Cadre de Lomé"; ensuring the conditions for free and fair elections; guaranteeing the freedom of action of the political parties without harassment, intimidation and censorship; equitable access of all parties to the public media; holding transparent legislative and local elections and admitting observers at all stages; an end to extrajudicial executions and torture and such verification in detention facilities and prisons; and release of political prisoners.

¹²⁷ Naila Salihu, 'The Colonial Legacy of Civil-military Relations and Democratic Stability in West Africa', *ACCORD, Conflict Trends* 2016/4, 16.2.2017. Within 24 hours, Faure Essozimna Gnassingbé resigned from his post as Minister of Public Works and Mining, took up his seat as Member of Parliament for the Blitta constituency, and was elected President of the National Assembly on early Sunday morning, 6 April in replacement of Fambaré Natchaba who was prevented from returning to Togo. At the same occasion, the National Assembly also amended Art. 55 and 144 of the Constitution and Art. 152 of the Electoral Code in order to allow Mr. Gnassingbé to become President of the Republic and continue the presidential term of his father without election until 2008. - François Soudan and Jean-Pierre Moraux, 'Ce jour-là : le 5 février 2005, les dernières heures de Gnassingbé Eyadéma', *Jeune Afrique*, 14.5.2005; Pierre Lepidi, 'Au Togo, Faure Gnassingbé reconduit pour un quatrième mandat, l'opposition conteste' *Le Monde*, 24.2.2020.

¹²⁸ Didier Samson, 'Investiture-express de Faure Gnassingbé', *RFI Savoirs*, 7.2.2005.

¹²⁹ International federation for human rights (FIDH), 'Mission d'enquête internationale. TOGO. Retour sur la crise togolaise : l'exigence de justice demeure' November 2005, p. 27. The FIDH is particularly informative and also

In response to continued international and African pressure, the Togolese Government undertook a series of commitments to reform and reconciliation.

A new “National Dialogue” was held over 4 months in 2006¹³⁰, which resulted in the signing of the Global Political Agreement ([Accord politique global](#), APG) between the RPT, five parties of the traditional opposition,¹³¹ two civil society organisations,¹³² and the Government. The Agreement contained the elections of a new National Assembly in the course of a transparent, fair, and free electoral process and listed all details needed for it (voters’ registration, electoral redistricting, electoral commission, ballot mode, access to state media, electoral observation, etc.).

Paragraph 1.2.5 of the APG merits particular attention as it stipulated the implementation of a programme to issue national identity cards in view of the production of trustworthy voters’ rolls. As we will see below, the obtaining of an ID card, which depends on the concrete proof of Togolese nationality, remains difficult in Togo to this day, a serious impediment to the exercise of basic citizens’ rights. Therefore, only about one quarter or one third of the adult population have one.

The APG emphasized the need to reform the security sector and justice system, and enable the safe return of Togolese refugees abroad. The signatories committed themselves to pursuing reforms aiming to consolidate democracy, the rule of law and good governance.¹³³ The last chapter referred to the setting up of a Government of National Unity open to political parties and CSOs “in a spirit of national reconciliation and mutual trust for the consolidation of the healing process” and of follow-up and verification mechanisms.¹³⁴ In order to achieve reconciliation, the APG notably proposed the creation of a Truth Commission that would shed

provides statements by the EU and the European Parliament. In agreement with the Togolese Government, the UN High Commissioner for Human Rights also sent a fact-finding mission to Togo: ‘[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. The Togolese Human Rights League published its report: ‘[Togo. Du coup d’état monarchique du clan Gnassingbé au jeu de massacre électoral. 5 février 2005 – 24 avril 2005](#)’, December 2005. The Government set up its own enquiry commission ([Decree 2005-050/PR of 25 May 2005, JORT n° 22, 25.5.2005](#)): *Commission nationale spéciale d’enquête indépendante*, ‘[Rapport sur les actes de violence et de vandalisme survenus au Togo avant, pendant et après l’élection présidentielle du 24 avril 2005](#)’, November 2005 (no longer available on the internet). Togo’s National Human Rights Commission and the African Commission on Peoples and Human Rights also wrote reports.

¹³⁰ From 21 April to 6 July in Lomé and from 7 to 19 August in Wagadugu under the facilitation of the President of Burkina Faso, Blaise Compaoré.

¹³¹ Comité d’Action pour le Renouveau (CAR), la Convention Démocratique des Peuples Africains (CDPA), la Convention Patriotique Panafricaine (CPP), le Parti pour la Démocratie et le Renouveau (PDR); l’Union des Forces de Changement (UFC).

¹³² Groupe de Réflexion et d’Action Femme, Démocratie et Développement (GF2D), Réseau des Femmes Africaines Ministres et Parlementaires (REFAMP/T)

¹³³ The institutions coming out of the subsequent elections and that Dialogue would have to undertake the necessary constitutional and institutional reforms along the spirit of the 1992 Constitution, the Electoral Code of 5 April 2000 ([Law n° 2000-009 of 5 April 2000](#) pertaining to the electoral code, JORT n° 9, 5.4.2000) and the “Accord-Cadre de Lomé”. They included the political regime, the conditions of eligibility of the President of the Republic and the limitation of the presidential terms, the nomination and prerogatives of the Prime Minister, the institution of a Senate, the reform of the Constitutional Court, and the modernization of the justice system.

¹³⁴ They included a “Permanent Framework for Dialogue and Concertation” (CPDC), a follow-up committee, composed of a representative of each of the participant parties, of the facilitator, the EU, and ECOWAS. The CPDC was formally created by [Decree n° 2008-144/PR of 17.11.2008](#) pertaining to the creation of the Permanent Framework of Dialogue and Concertation (CPDC). The CPDC rallied a selected group of parliamentary and extra-parliamentary political parties and worked notably on the issue of the reforms and other social questions. Edmond D’Almeida, ‘[Togo : dix ans après sa signature, que reste-t-il de l’Accord politique global ?](#)’, *Jeune Afrique*, 19.8.2016.

light on acts of political violence committed since 1958. The implementation of these reforms would remain central to opposition demands and relentless political strife for the years to come.

On 20 September 2006, as a first concrete result of the APG, President Gnassingbé appointed an opposition politician as Prime Minister of a transitional Government of National Unity which included Ministers from various parties. But UFC leader Gilchrist Olympio, a son of Sylvanus Olympio, who considered that his party, as the major opposition party, should naturally lead the Government, refused to participate. One of the tasks of this government was to organise the legislative elections of 14 October 2007. They were accompanied by a large EU Electoral Observer Mission. Although the opposition parties obtained a large majority of votes, the electoral system in force allowed the ruling RPT to keep a large majority of seats in the National Assembly.¹³⁵ Following these elections, on 27 November 2007, the EU lifted the economic sanctions that it had imposed on the Togolese Government in 1993.¹³⁶

In a widely noted speech on 28 July 2007,¹³⁷ President Gnassingbé regretted the political violence and intolerance of the past, and famously pledged: “Never again this, on no portion of the land of our ancestors”.¹³⁸ He also promised support for the work of the new country office of the UN High Commissioner for Human Rights, established the previous year.¹³⁹

The Truth, Justice, and Reconciliation Commission (*Commission Vérité, Justice et Réconciliation*, CVJR) was formally created on 25 February 2009¹⁴⁰ and inaugurated on 29 May.¹⁴¹ The Commission presented its [Final Report](#) to the Togolese President in early April 2012. It contained 68 detailed recommendations on a redress and reform programme designed to consolidate the reconciliation process. In a follow-up to the work of the CVJR, the

¹³⁵ The RPT received 924,615 votes (40.4%), the UFC 874,751 (38%) and the CAR 193,087 votes (8.4%) [Electoral Observer Mission of the European Union in Togo. [Legislative Elections of 14 October 2007. Final Report](#), p.54]. In its [report](#) (p.17), the EU Observer Mission reminded that, due to its inequality, the electoral system was not compliant with Art.25 of the [International Covenant on Civil and Political Rights](#) as detailed in the [General Comment No.25 of the Human Rights Committee](#).

¹³⁶ ‘Togo (1960-present)’, *University of Central Arkansas, Political Science*.

The CAR and the UFC were no longer part of the new government set up in December 2007 under the RPT Prime Minister Komlan Mally. But three smaller parties remained in the government (which was reduced from 34 to 21 Ministries): CDPA, CPP and UDS (Union des démocrates socialistes) led by Antoine Folly ([‘Un nouveau gouvernement resserré’](#), *RFI*, 14.12.2007). Mally, for his part, resigned on 5 September 2008 and was replaced two days later by the former UNDP official Gilbert Fossoun Houngbo (appointed Assistant Secretary General, Assistant Administrator of the UNDP, and Director of the UNDP's Regional Bureau for Africa by UNSG Kofi Annan since 29 December 2005).

¹³⁷ « ODONTCHOU EDITION 2007 », Discours de S.E.M. Faure Essozimna GNASSINGBE, Président de la République Atakpamé, le 28 juillet 2007 (no more available on the internet).

¹³⁸ “Plus jamais ça sur aucune portion de la Terre de nos Aïeux!”. However, he cautioned that identifying and punishing the authors of human rights violations was a complex and heart-breaking issue and would not have a simple and unique answer and should not threaten stability, civil peace, and reconciliation – all the more since the justice system stood discredited and accused of being dependent on the Executive. Indeed no trials against authors of political violence have ever taken place since, in spite of the many lawsuits that were filed. This has been criticised by UN conventional mechanisms : Human Rights Committee, Concluding Observations on the fifth periodic report of Togo, [CCPR/C/TGO/CO/5](#), 24.8.2021, paragraph 13, p.8; Committee on the Elimination of Racial Discrimination Concluding observations on the combined eighteenth and nineteenth periodic reports of Togo, [CERD/C/TGO/CO/18-19](#), 18.1.2017, paragraph 17, p.4.

¹³⁹ Togo has also sought closer cooperation with human rights treaty bodies by submitting due reports: [CERD in 2007](#) and in [2015/2016](#), [CESCR in 2010/2011](#), [CRC in 2011](#), [CEDAW in 2010/2011](#), [CRPD in 2016/2019](#), [CAT in 2018](#), and [ICCPR in 2018/2019](#). All Concluding Observations and related documents can be found [here](#).

¹⁴⁰ Decree n° 2009-046/PR of 25 February pertaining to the creation of the Truth, Justice, and Reconciliation Commission (CVJR) (currently not available on the internet).

¹⁴¹ Investigating during three years the major events of political violence and human rights violations that had occurred between 1958 and 2005, the CVJR concluded that the deadliest acts of violence were mostly protagonised by the army, militias, and militants and sympathizers of political parties during elections “when the tensions and frustration crystallised around the wish to conquer or to keep the power at any cost” - CVJR, [Final Report](#), p.211.

Government created the High Commission for Reconciliation and the Consolidation of National Union (HCRRUN)¹⁴² with the task of implementing the recommendations of the CVJR and in particular the reparations. A programme called “Infrastructure of sustainable peace”, which included the setting up of peace committees throughout the country, was part of the reconciliation strategy.¹⁴³

The presidential elections of 4 March 2010 took place once more in an atmosphere of mutual mistrust. The government had again admitted electoral observer teams from various organisations, including the European Union,¹⁴⁴ and ECOWAS military observers. The elections themselves went ahead with relative calm and were won by the incumbent, President Faure Gnassingbé.¹⁴⁵

Among many other deficiencies noted by the EU Observer Mission in these elections, one important aspect was the absence of a functioning civil registry which made the verification of the age and the nationality during the voters’ registration process impossible, as most could not provide ID cards. This problem had been addressed in the 2006 APG.¹⁴⁶ It returned in all subsequent elections and motivated the opposition parties to regularly put into doubt the integrity of the voters’ lists. In the absence of an ID card, two witnesses would be sufficient in order to be registered as voter. The obvious contradiction here is that the obtaining of an ID card in Togo is dependent on very strict conditions, as we will see further below, whereas the issuance of a voter’s card is not – but for both, there is one common condition: Togolese nationality. The conditions for the issuance of each of these cards should therefore essentially be similar.

Shortly after this election, in order to further “national cohesion and economic and social progress”, President Gnassingbé invited the main opposition party UFC to take part in the Government, which UFC leader G. Olympio finally accepted in an agreement signed on 26 May 2010.¹⁴⁷ It was agreed that the institutional and constitutional reforms specified in the APG would be finalized within six months, that a new voters’ list would be worked out, that the electoral districts would be redrawn, and that local elections would be envisaged without delay.¹⁴⁸ The agreement, however, remained otherwise silent about a common political programme in favour of the country and its people. In principle, it ended the long-standing

¹⁴² Decree n° 2013-040/ PR of 24 May 2013 pertaining to the creation of the High Commission for Reconciliation and the Consolidation of National Union, JORT 27.6.2013, amended by Decree n° 2014-103/PR of 3 April 2014 modifying Decree n° 2013-040/ PR of 24 May 2013, JORT 23.5.2014 - For more details see: [Qu'est-ce que le HCRRUN?](#).

¹⁴³ Paul Amegbo, ‘Pour asseoir une véritable infrastructure de paix durable au Togo : Les forces vives de quatre préfectures de la région des Plateaux/Ouest en atelier à Kpalimé’, *Savoir News*, 20.11.2015 ; Faustin Lagbai, ‘Mise en place d’une infrastructure de paix au Togo. Les acteurs à l’école de la prévention des conflits’, *Togo-Presse*, 28.7.2016; ‘Le Représentant résident Adjoint du PNUD rend visite aux membres du HCRRUN’, *Haut-Commissariat au Renforcement de l’Unité et à la Réconciliation Nationale*, 17.7.2018; see also: CERD, ‘Consideration of reports submitted by States parties under article 9 of the Convention. Eighteenth and nineteenth periodic reports of States parties. Togo’, [CERD/C/TGO/CO/18-19](#), 18.1.2017, paragraph 15 and 16. This project had the support of UNDP.

¹⁴⁴ The others were the African Union, Union Economique et Monétaire Ouest Africaine (UEMOA), Communauté des Etats Sahélo-Sahariens (CEN-SAD), and Organisation Internationale de la Francophonie (OIF).

¹⁴⁵ With 60,89% of the votes, against Jean-Pierre Fabre of the UFC who obtained 33,94%, and Yawovi Agboyibo of the CAR (2,96%). None of the other candidates reached even 1% of the votes: Agbéyomé Kodjo (OBUTS), Brigitte Adjamagbo-Johnson (CDPA), Bassabi Kagbara (PDP), Nicolas Lawson (PRR). [Elections in Togo](#), *African Elections Database*.

¹⁴⁶ [Togo. Rapport final. Élection présidentielle. Mars 2010](#). Union européenne. *Mission d’observation électorale*, p.5 and following ; ‘[Togo \(1960-présent\)](#)’, *University of Central Arkansas, Political Science*.

¹⁴⁷ The new Government was appointed on 28 May 2010. Decree n° 2010-036/PR of 28 May 2010 pertaining to the composition of the government, JORT n° 21 bis, 28.5.2010.

¹⁴⁸ [Accord entre le Rassemblement du Peuple Togolais \(RPT\) et l’Union des Forces de Changement \(UFC\) : Pour un meilleur essor du peuple Togolais](#).

animosity between the UFC, representing Togo's South, and the RPT, representing Togo's North. But an important part of its members refused to follow this turnaround of the UFC's stance and instead founded a new party, the ANC (Alliance Nationale pour le Changement)¹⁴⁹ which maintained the UFC's former line of confrontation. As the legislative elections of 25 July 2013 would show, the voters sanctioned the realignment of the UFC with the RPT. The UFC lost most of its seats and was only allowed to keep three of its previously seven ministers.¹⁵⁰

On 14 April 2012, President Gnassingbé dissolved the ruling party, the RPT, in order to mark a new beginning "in search of a new Togo, more solidary and fraternal". The same day, but at a different location, he founded the new party: "UNIR" (*Union pour la République*).¹⁵¹ On the opposition side, mass protest demonstrations continued to call for the electoral, institutional and constitutional reforms agreed in the APG and reasserted in the recommendations made by the CVJR in its final report.

The 2015 presidential elections were again won by President F.E. Gnassingbé. The two major opposition blocks had tried to unite and present one single opposition candidate, but the attempt failed.¹⁵² A team of civil society observers judged the election as "transparent, free, and fair" but also made far-reaching recommendations regarding legal and organizational electoral reforms.¹⁵³ A significant number of irregularities were reported in an [internal report](#) by the team of electoral experts recruited by European Union.¹⁵⁴ The head of the "Independent National Electoral Commission" (CENI) announced the results of the election live on TV before the Commission had concluded its compilation work, causing the OIF team to leave the site, upset.¹⁵⁵

¹⁴⁹ National Alliance for Change.

¹⁵⁰ 'Togo: Rapport intérimaire de la Mission d'expertise électorale de l'Union européenne', [togosite/alome.com](#), 9.8.2013; 'L'Union européenne se démarque du rapport de sa mission d'expertise électorale', [AfreePress/alome.com](#), 13.8.2013. The opposition alleged massive fraud. - Togo: Brigitte Adjamagbo-Johnson : « il y a eu des fraudes massives, mais... », [togoactualite.com/alome.com](#), 14.8.2013.

¹⁵¹ « Union for the Republic » - 'Faure acte la disparition du RPT', [republicoftogo.com](#), 14.4.2012; 'UNIR les Togolais', [republicoftogo.com](#), 15.4.2012; 'Togo : le RPT est mort, que vive l'Unir', [RFI](#), 15.4.2012; André Silver Konan, 'Togo : le RPT est mort, l'Unir lui succède', [Jeune Afrique](#), 16.4.2012; [Dissolution du RPT et création de UNIR : Enquête exclusive dans la fratrie Gnassingbé](#), [Le Correcteur](#) n° 343, 16.5.2012. The dissolution was decided during the RPT's Fifth Extraordinary Congress in Atakpamé, with many of its leaders rather unhappy about it. UNIR brought together not only former RPT members but also other groups and parties that supported President Gnassingbé. Georges Aidam, a former CAR politician was elected Vice-President. President Gnassingbé insisted that the new party was necessary to engage in a constructive dialogue of the Togolese of all horizons in order create new hope, ensure Togo's renewal, mutual pardon and reconciliation, preserve the political climate of peace, and engage in a new political, economic, and social governance so as to build a new Togo in union, national harmony and prosperity. However, not all in the old RPT guard saw it that way, and many opposition leaders remained rather doubtful. As a result, Togo's political troubles did not end there.

¹⁵² On 31 October 2014, they formed a new block, the "CAP 2015" ("Combat pour l'Alternance Politique en 2015"). - 'Togo : information sur le Combat pour l'alternance politique en 2015 (CAP 2015), y compris sur ses objectifs, sa structure, ses dirigeants et ses activités; information sur la manifestation du 21 novembre 2014, y compris sur les incidents de violence qui l'ont marquée', [Immigration and Refugee Board of Canada](#), 28.7.2015 ; Cour Constitutionnelle du Togo, Affaire : Proclamation des résultats définitifs de l'élection présidentielle du 25 avril 2015, [DECISION n° EP-008/15 DU 03 MAI 2015](#), JORT n°12, 3.5.2015.

¹⁵³ Franck NONNKPO, 'Election présidentielle au Togo: « En démocratie, il nous faut apprendre à gagner en toute humilité et perdre en toute dignité »'. Interview de Doudou Dia, directeur exécutif de l'Institut Gorée, 15.5.2015, [Focus Info](#) n°133, du 6 au 20 mai 2015. Mistrust in the Electoral Commission in Togo remains high. According to Afrobarometer, only a quarter of the Togolese had partial or much trust in its work. [Afrobaromètre, 'La plupart des Togolais manquent de confiance en la commission électorale et préfèrent une alternative indépendante et technique'](#), 28.1.2019. See also: Zeus Aziadouvo , 'TOGO : Top 23 des techniques et stratégies de fraudes électorales au Togo', [Togosite.com](#), 15.4.2015.

¹⁵⁴ 'République Togolaise. Élection présidentielle du 25 avril 2015. RAPPORT FINAL', [Union européenne. Mission d'expertise électorale](#).

¹⁵⁵ Christophe Châtelot, 'Au Togo, la réélection contestée de Faure Gnassingbé', [Le Monde](#), 29.4.2015; 'République Togolaise. Élection présidentielle du 25 avril 2015. RAPPORT FINAL', [Union européenne. Mission d'expertise électorale](#), p.46.

The EU Experts noted that the recommendations made by the previous EU observer and expert missions (2007, 2010, 2013) had seen very little implementation.¹⁵⁶

The issue of the ID cards versus voters' cards came up at these elections again. At the Government's invitation, the OIF (Organisation de la Francophonie) had helped with the consolidation and verification of the voters' roll.¹⁵⁷ To great surprise, their observers noted that more than 75% of the voters had not been registered with national ID cards but simply upon the testimony of two witnesses, which made the verification of the age and nationality impossible and thereby opened the way to unlawful registrations and fraud. OIF, the Gorée Institute, and the EU Mission of Experts all insisted on the need to establish a functioning civil registry system that would provide all citizens with ID cards so as to enhance the integrity of the voters' roll. Given the importance for citizens to have an ID card for access to basic citizen rights, it is indeed difficult to understand why the repeated occasions of voters' registrations have not been used to enrol all citizens in an effective civil registry and issue them with ID cards.

The demands for the constitutional and institutional reforms remained at the centre of the activities of the opposition parties and civil society organisations, including major churches.¹⁵⁸ Protest demonstrations continued in 2016, but the divisions among the opposition parties meant that not all of them adhered.¹⁵⁹ In a major development, a relatively new political party, the "Parti national panafricain" (PNP)¹⁶⁰ managed to mobilise surprisingly broad mass protest marches in several Togolese towns on 19 August 2017.¹⁶¹ The security response was heavy-handed. The PNP leader fled abroad, and since then, no other significant popular protest has taken place.

In view of future elections, fourteen opposition parties temporarily united to form the C14 coalition. Meetings between the C14 and the Government promoted by the EU, France, Germany, and the USA in 2018 did not yield results. A conference of ECOWAS Heads of State, backed by the AU, proposed a roadmap for adoption of reforms and a revision of the voters' rolls before the legislative elections later that year. But, faced with the Government's refusal to release those detained during the protests and to reform the biased electoral commission

¹⁵⁶ 'Togo: Intégralité du rapport de l'OIF sur le fichier électoral', 13.4.2015, paragraph 19 and 43; 'République Togolaise. Élection présidentielle du 25 avril 2015. RAPPORT FINAL', *Union européenne. Mission d'expertise électorale*, p.8, 25, 53 and 55 (recommendations 1, 4.3 and 4.4.); Franck NONNKPO, 'Election présidentielle au Togo: « En démocratie, il nous faut apprendre à gagner en toute humilité et perdre en toute dignité »'. Interview de Doudou Dia, directeur exécutif de l'Institut Gorée', 15.5.2015, Focus Info n°133, du 6 au 20 mai 2015.

¹⁵⁷ 'Togo: Intégralité du rapport de l'OIF sur le fichier électoral', 7.4.2015, *africardv.com*, 13.4.2015. The OIF mission was led by General Siaka Sangaré. General Siaka Sangaré has been the General Delegate for the elections in Mali since 29 March 2006. He led various OIF and ECOWAS electoral observer missions to African countries and chaired the electoral commission of Guinea during the presidential elections of 2010. He was unanimously elected as President of RECEF (Réseau des compétences électorales francophones) at the Constituent Assembly held in August 2019 in Quebec City/Canada. UNESCO, 'World Press Freedom Day 2019. Siaka Sangaré'; Aïssatou Diallo, 'Dix choses à savoir sur Siaka Sangaré, délégué général aux élections au Mali', 24.5.2018, *Jeune Afrique*.

¹⁵⁸ 'Lettre pastorale de la Conférence des Evêques du Togo. A l'occasion du 56ème anniversaire de l'Indépendance du Togo', 27 avril 2016; 'TOGO : Déclaration de la Conférence des Evêques du Togo en faveur des réformes', *Plateforme citoyenne justice et vérité*, 18.9.2017; 'Togo : Déclaration pastorale de l'Église évangélique presbytérienne du Togo et de l'Église méthodiste du Togo', 2.10.2017.

¹⁵⁹ Tino Kossi, 'Liberté Togo', 19.5.2016 /27avril.com, 19.5.2016.

¹⁶⁰ National Pan-African Party, founded in 2014 and led by Tikpi Atchadam.

¹⁶¹ 'Tikpi Atchadam. Politician, Togo', *West Africa Brief*, *Actualité ouest-africaine*, 25.9.2017; Africa Portal and the Washington Post refer to "hundreds of thousands" of demonstrators. Wolali Koffi Ahlijah, 'Is there an end in sight to Togo's political crisis?', *Africa Portal*, 20 Sep 2018; Tyson Roberts, 'Why did 14 opposition parties just boycott Togo's legislative election?' *Washington Post*, 7.1.2019; 'Tensions in Togo as anti-Gnassingbe rally turns deadly', *Aljazeera*, 21.8.2017.

(CENI) and the electoral system,¹⁶² the C14 opposition members decided to boycott first the voters' registration and then the election.¹⁶³ Gnassingbé's UNIR obtained 59 out of the 91 seats.¹⁶⁴ The voter turnout was very low in the South of the country and high in the North.¹⁶⁵

On 8 May 2019, the new National Assembly finally adopted important constitutional amendments¹⁶⁶ corresponding partially to the demands for reforms sustained by the opposition and several CSOs, in particular the limitation of presidential mandates and the introduction of a two-round system for the presidential election.¹⁶⁷ However, the new Art.158 specified that terms already spent by the President or Members of Parliament would not be taken into account, prompting anger among the opposition.

On 30 June 2019, Togo held the first local elections since 1987 which resulted in a huge win for UNIR.¹⁶⁸ Many potential voters, mainly in the South, who had boycotted the voters' registration of 2018, could not vote and the turnout there was particularly low.¹⁶⁹ Civil society

¹⁶² Both clearly biased in favour of the ruling party (*Electoral Observer Mission of the European Union in Togo. Legislative Elections of 14 October 2007. Final Report; Togo. Rapport final. Élection présidentielle. Mars 2010. Union européenne. Mission d'observation électorale*, p.5.

¹⁶³ Wolali Koffi Ahlijah, 'Is there an end in sight to Togo's political crisis?', *Africa Portal*, 20 Sep 2018; Tyson Roberts, 'Why did 14 opposition parties just boycott Togo's legislative election?' *Washington Post*, 7.1.2019; 'Manifestations réprimées au Togo: qui est Tikpi Atchadam, le leader du PNP?', *RFI*, 21.8.2017; Edmond D'Almeida, 'Togo : CAP 2015 et PNP veulent faire front commun face à Faure Gnassingbé', *Jeune Afrique*, 22.4.2017; Comité des droits de l'homme, 'Observations finales concernant le cinquième rapport périodique du Togo', CCPR/C/TGO/CO/5, 24.8.2019, Paragraph 45 b); 'Amnesty International Report 2017/18 – Togo', Amnesty International, 22 February 2018; 'Togo: Opposition protest march in Lomé November 17', *Crisis24*, 13.11.2018; 'Early years and coups', *Britannica*. Already before the legislative elections of December 2018, the C14 coalition had started to disintegrate. Their most influential constituent parts left in the first months of 2019. By the end of March 2019, only seven parties still stayed in the coalition and by the end of October only five. - 'Plusieurs partis politiques absents aux journées de réflexion de la C14', *La voix de la nation*, 22.2.2019; 'Togo : minée par des querelles, la coalition de l'opposition s'effrite', *Jeune Afrique/AFP*, 25.3.2019; 'Togo. Opposition unity is crumbling', *Economist Intelligence Unit*, 25.4.2019; 'Signature de la Charte de la C14 ce jeudi entre les partis membres', *Télégramme228*, 7.5.2019; 'Le PSR claque la porte à la C14', *Togo tribune*, 23.10.2019; Nadoun Coulibaly, 'Togo : que reste-il de C14, la coalition des partis d'opposition ?', *Jeune Afrique*, 12.2.2020; 'Politique : Un parti politique membre de la C14 s'apprête à plier bagage', *Horizon News*, 29.12.2018.

¹⁶⁴ UFC 6 seats; Mouvement Patriotique pour la Démocratie et le Développement (MPDD, until October 2018 OBUTS) 3; Nouvel Engagement Togolais (NET) 3, Mouvement des Centristes Républicains (MRC) 1, Parti Démocratique Panafricain (PDP) 1, and independent lists 18 seats. - Kpizou EDJEU, 'La Cour Constitutionnelle proclame les résultats définitifs de l'élection législative du 20 décembre 2018', *Togopresse*, 31.12.2018; 'Législatives au Togo : les observateurs saluent la bonne tenue du scrutin', *Jeune Afrique/AFP*, 22./23.12.2018; Fiacre Vidjningninou, 'Législatives au Togo : le parti au pouvoir s'impose lors d'un scrutin déserté par l'opposition', *Jeune Afrique*, 24.12.2018.

¹⁶⁵ African electoral observers from the AU, ECOWAS, the "Conseil de l'entente" (Bénin, Burkina Faso, Côte d'Ivoire, Niger, Togo), the Community of Sahelo-Saharan States (Cen-Sad), and the Institute of Panafrican Electoral Assistance stated that the election had taken place under the best conditions of transparency and security but regretted the boycott of the major opposition parties. The summit of ECOWAS heads of state of 22 December agreed and also expressed their satisfaction that the Togolese Government had committed itself to speedily adopt and implement the constitutional reforms. - *Après les missions d'observation, les chefs d'État entièrement satisfaits*, *Togomatin*, 24.12.2018.

¹⁶⁶ *Loi n° 2019-003 du 15 mai 2019*. The Amendment was adopted by 90 of the 91 members of Togo's Parliament, with one having been absent. 'Togo changes law to let president stand for two more terms', *Aljazeera*, 9.5.2019.

¹⁶⁷ The President is now only eligible for a maximum of two five-years terms (new Art.59); this provision is only amendable by referendum. The mandate of the members of the National Assembly is extended to six years, renewable twice, the same rule being applied to the Senators. The Senate has not yet been instituted until now. The new Art.100 diversifies the composition of the nine members of the Constitutional Court.

¹⁶⁸ In 117 municipalities, 1527 municipal councillors were to be elected. For technical reasons the election in three municipalities had to be postponed. In two others, they had to be repeated due to irregularities. The 63 councillors for these five municipalities were elected on 15 August. The governing UNIR obtained 920 councillors, the ANC 136, the C14 130, the UFC 43. The overall turnout was 52.46%. - Supreme Court, *Décision n° 45/2019 of 17 July 2019* proclamation of the final results of the municipal elections of 30 June 2019, JORT, n° 1764th year, 19.7.2019; Supreme Court, *Décision n° 52/2019 of 30 August 2019* proclamation of the final results of the partial municipal elections of 15 August 2019, JORT n° 21 ter/64th year, 6.9.2019.

¹⁶⁹ Michael DIBIE IKE, 'Togo's ruling party wins majority in local elections', *Africanews/AFP*, 6.7.2019.

organisations complained that the CENI had rejected their applications for the official accreditation of electoral observers.¹⁷⁰

The presidential elections of 22 February 2020 brought further regression. According to the official results, President Gnassingbé beat Agbéyomé Messan Kodjo, a veteran of the RPT¹⁷¹ put forward as the “single opposition candidate” by parts of the opposition, by 71% against 20%.¹⁷² Again, there were allegations of wide-spread fraud.¹⁷³ Civil society election observers had not been permitted.¹⁷⁴ Kodjo declared himself the “democratically elected President of Togo” and started to form his “government”. He was arrested on 21 April 2020¹⁷⁵ but conditionally freed four days later. He left the country shortly after. Togo launched an international arrest warrant against him.¹⁷⁶ The former chairman of the 1991 Sovereign National Conference and retired Catholic Archbishop of Lomé, Monseigneur Philippe Fanoko Kpodzro, who had backed Kodjo’s candidacy, applied for political asylum in Sweden.¹⁷⁷ Two close collaborators of A.M. Kodjo have since been detained or sentenced to prison terms in Lomé.¹⁷⁸

¹⁷⁰ ‘Elections locales 2019 au Togo. Mission d’observation citoyenne. Rapport final’, VISIONS SOLIDAIRES.

¹⁷¹ A former close confidant of President Eyadéma, former Minister and Prime Minister and President of the National Assembly who had fallen out with Eyadéma in 2002. ‘Kodjo : ‘C’est moi l’héritier d’Eyadéma’, *republicoftogo.com*, 22.2.2010). OBUTS became the “Mouvement patriotique pour la démocratie et le développement” (MPDD) in October 2018 and obtained 3 seats in the legislative election that year. - ‘Agbéyomé Kodjo. Actuel Président du parti OBUTS. Biographie’, *aLomé*; Wikipédia(fr) : Agbéyomé Kodjo; Wikipedia(de): ‘Agbéyomé Messan Kodjo’; Charles Djade, ‘Togo : Jean-Pierre Fabre et Agbéyomé Kodjo en quête du leadership de l’opposition’, *Jeune Afrique*, 21.1.2020.

¹⁷² *Supreme Court, Decision n° EP-009/20 of 9 March 2020*, Case : Decision rectifying decision n°EP-008/20 of 3 March 2020 pertaining to the proclamation of the final results of the presidential election of 22 February 2020, JORT n° 8 bis/65th years, 11.3.2020. The low turnout was again also a result of the refusal of the C14 in 2018 to encourage its voters to register for the legislative election. ‘Politique : Un parti politique membre de la C14 s’apprête à plier bagage’, *Horizon News*, 29.12.2018.

¹⁷³ Pierre Lepidi, ‘Au Togo, Faure Gnassingbé reconduit pour un quatrième mandat, l’opposition conteste’ *Le Monde*, 24.2.2020 ; ‘Élection présidentielle au Togo : Faure Gnassingbé en route pour un 4e mandat ?’, *TV5 Monde*, 5./20.2.2020.

¹⁷⁴ The Independent National Electoral Commission (CENI) revoked the authorisation extended to the National Consultation of Civil Society of Togo to field 500 to 600 electoral observers. A team from the American National Democratic Institute that had come to support the CNSE in this activity also had their visas cancelled on arrival in Togo. ‘Elections Présidentielles en République du Togo: Pour Communiqué De Presse Immédiat’, *West Africa Election Observers Network*, 21.2.2020 ; ‘Togo election: Main observer group barred from monitoring’, *ALJAZEERA*, 19.2. 2020; John Campbell, ‘Togo Slides Toward Authoritarianism’, *Council on Foreign Relations*, 21.2.2020 (Blog Post by Guest Blogger); Felicia Anthonio, ‘Une coupure internet entache les élections présidentielles de 2020 au Togo: ce qu’il s’est passé et la suite’, *accessnow.org*, 5.3.2020.

¹⁷⁵ His immunity as Member of the National Assembly had been lifted on 16 March 2020 - Fiacre Vidjningninou, ‘Togo : arrestation de l’opposant Agbéyomé Kodjo’, *Jeune Afrique*, 21./27.4.2020.

¹⁷⁶ Fiacre Vidjningninou, ‘Togo : arrestation de l’opposant Agbéyomé Kodjo’, *Jeune Afrique*, 21./27.4.2020; ‘Togo : L’opposant Agbéyomé Kodjo libéré sous contrôle judiciaire’, *Jeune Afrique/AFP*, 25.4.2020; ‘Togo : Pourquoi Agbéyomé Kodjo n’est plus député’, *Jeune Afrique*, 17.3.2021.

¹⁷⁷ ‘Mgr. Philippe Kpodzro: «Mon tort, c’est d’avoir conduit le Togo à l’alternance, après 54 ans des Gnassingbé, père et fils»’, *iciLomé*, 14.8.2021 ; Godfrey AKPA, ‘Togo-Gilbert Bawara sur « l’exfiltration » de Mgr Kpodzro en Suède’, *iciLomé*, 11.5.2011; Godfrey AKPA, ‘Togo-Gilbert Bawara : « Mgr. Kpodzro n’a rien à craindre... »’, *iciLomé*, 11.5.2021 ; ‘DMK - accusation de meurtre, exils...la fin !’, *Togoweb*, 14.5.2021.

¹⁷⁸ Jean Paul Omolou, a Togolese resident in Switzerland on vacation in Lomé, appointed “Ambassador to Switzerland” by A. Kodjo, detained on 4 November 2021, accused of inviting the people and the army to insurrection, spreading false news, glorifying crime, and insults against public authority; and Paul Missiagbéto, detained in May 2021 and sentenced to 4 years in prison, two of them suspended, for threats, insults, and disturbance of public order. ‘Instruction en cours’, *republicoftogo.com*, 15.11.2021; Mensah Agbenou, ‘Togo – L’activiste Jean Paul Omolou placé sous mandat de dépôt’, *iciLomé*, 13.11.2021; Godfrey AKPA, ‘Togo-Face à l’adversité du régime : La DMK s’en remet à Dieu’, *iciLomé*, 12.11.2021; Anselme AVI, ‘Arrestation spectaculaire de Jean-Paul Omolou à Lomé’, *Togobreakingnews.info*, 4.11.2021 ‘Togo: la Dynamique Mgr Kpodzro s’insurge contre la condamnation de Paul Missiagbéto’ *RFI*, 1.9.2021.

2.7 The ethnic divide

A North-South divide had emerged already before independence, as we saw above. The military takeover of the country aggravated this divide. According to an ILO report from 2001, nearly three quarters of public servants came from the southern Adja-Ewé-Mina ethnic group, while about a quarter came from the northern Kabyè-Tem-Losso group. Other ethnic groups accounted for only 2.81 per cent of public servants.¹⁷⁹

But in the army, the Kabyè-Tem-Losso group, of which General Eyadéma was the most prominent member, formed three quarters of the staff and provided the majority of senior officers and NCOs.¹⁸⁰ This clearly added an ethnic North-South factor to the political tensions of Togo. The UN-mandated 2005 fact-finding mission unambiguously points to the ethnic dimension of the outburst of violence of that year.¹⁸¹ As the mission report states, President Eyadéma systematically favoured members of his own group, the Kabyè, and stalwarts of the ruling RPT for posts of responsibility in the army, the administration and the high-level institutions of the Togolese State.¹⁸² Today, while the opposition to the ruling party is strongest in the south of Togo, the majority of staff in the security sector still hails from the northern ethnic groups where the ruling party is predominant.

In its recommendations, the UN fact-finding mission insisted on the need to profoundly transform the army so that it would become apolitical, representative of the cultural and ethnic diversity of Togolese society, and respectful of human rights.¹⁸³ Referring not only to the army, but to the public service in general, the Committee on the Elimination of Racial Discrimination explicitly supported these recommendations in 2008 and repeated them in 2017.¹⁸⁴ Recommendation n° 30 of the Truth, Justice, and Reconciliation Commission also refers to the absolute need of non-discrimination among Togo's ethnic groups. Its recommendation n° 31 insists on the use of the official language (French) in public services (as the use of local languages has often been linked to privileged treatment for those who speak the same language as the servant whose service is requested).¹⁸⁵

The North-South divide seems, however, to have lost its weight in more recent times. Several factors may have contributed: more effective government policies aimed at political reforms, reconciliation and unity, increased mobility, improved and broader access to education, intermarriages, and the aversion against politics among a youth more interested in other subjects offered by social media. More recent electoral results also seem to point to less clearcut divisions between North and South. The fact that the mother of the current President

¹⁷⁹ Committee on the Elimination of Racial Discrimination. Reports submitted by States Parties under article 9 of the Convention. Sixth to seventeenth reports of States Parties due in 2005. Addendum Togo, [CERD/C/TGO/17](#), 26.7.2007, paragraphs 132 -134. "The Adja-Ewé-Mina group's strong showing is partly attributable to the fact that it is numerically the largest group, but also because it was the first ethnic group to come in contact with the missionaries who founded Togo's first schools. While in the south the first schools were opened in 1886, in the centre the first school was not opened until 1897 (in Sokodé)." (Paragraph 135).

¹⁸⁰ Idem, paragraphs 137. The government explained this imbalance: "some ethnic groups in Togo have little interest in the army, the military being a special kind of profession requiring physical strength, endurance, duty, discipline and the rules and regulations that apply to any army." (Paragraph 137).

¹⁸¹ '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, p. 36 – 37.

¹⁸² Idem, p.10.

¹⁸³ Idem, section 7.2.3.5, p.44.

¹⁸⁴ Concluding observations of the Committee on the Elimination of Racial Discrimination. Togo', [CERD/C/TGO/CO/17](#), 23.9.2008, para.18; Committee on the Elimination of Racial Discrimination. 'Concluding observations on the combined eighteenth and nineteenth periodic reports of Togo', [CERD/C/TGO/CO/18-19](#), 18.1.2017, paragraph 23 and 24.

¹⁸⁵ CVJR, 'Rapport final', p. 275 – 276.

of the Republic is from the South while his father was from the North has also been of quite symbolic character.

3. The evolution of Togolese nationality law

3.1 The Nationality Code of 1961

Until the constitution of 1961, the regulation of nationality was entirely delegated to ordinary legislation. The first law on Togolese nationality, detailed and liberal, was enacted on 25 July 1961.¹⁸⁶ It was largely inspired by the French nationality code of 1945.¹⁸⁷

3.1.1 Attribution of nationality at birth – by descent

In terms of *ius sanguinis*, both a father and a mother could transmit their nationality to their child. However, there were some elements of discrimination. In the case of a Togolese mother and a father without nationality or of unknown nationality, the child was automatically and only a Togolese citizen (Art.5). If the mother was Togolese and the father was a foreigner and the child was born outside Togo, this child could repudiate (a process not requiring authorisation) Togolese nationality during the six months before reaching adulthood (21 years at that time) (Art.6).

This implied that a child born in Togo to a Togolese mother and a foreign father could have both nationalities: the Togolese one plus that of the father. No provision offered the same right of repudiation of the Togolese nationality to a child born to a Togolese father and a foreign mother, born in Togo or outside, although the child might also have the nationality of the mother.

It is noteworthy that the nationality code did not distinguish between children born within or outside of wedlock. However, Art.7 provided that for the parental connection to be recognised it had to be established under the conditions determined by law or by Togolese customs.

3.1.2 Attribution of nationality at birth – based on birth in the territory

The law also contained several elements of *ius soli* ("right of soil"): Togolese nationality was attributed to a child born in Togo to a father also born in Togo (double *ius soli*) (Art.1). The same applied to a child born in Togo to a mother also born in Togo, with the difference that if the father was a foreigner (born in Togo or not), the child could repudiate Togolese nationality during the six months before becoming an adult (at the age of 21) (Art.2). For such repudiation, the article did not demand the proof of the existence of another nationality, assuming transmission by the father, and could in theory lead to statelessness. Also here, the possibility of repudiation was accepted only for a child born in Togo to a mother also born in Togo and married to a foreigner, and not for someone born in Togo to a father born in Togo and a foreign mother, who might also transmit her nationality to the child.

¹⁸⁶ Law n° 61-18 of 25 July 1961.

¹⁸⁷ Ordonnance n° 45/2447 du 19 octobre 1945 portant code de la nationalité française. See Togo chapter in : Roger Decottignies and Marc de Biéville, *Les nationalités africaines*, Collections du Centre de recherche, d'étude et de documentation sur les institutions et les législations africaines 4, Paris, A. Pedone, 1963.

Art.1 and 2 did not simply suggest that the mother or the father born in Togo were foreigners although these were obviously included. In fact, they included all those parents born in Togo and somehow established the beginning of a Togolese nationality under the independent State. This should be seen in combination with the transitional Art.70 and 72 (see below). According to Art.4, the rights outlined in Art.1 and 2 did not apply, however, to the children born in Togo to foreign diplomatic or consular staff.

Art.3 granted original Togolese nationality to all persons born in Togo who could not claim any other original nationality.

3.1.3 Transitional provisions

The 1961 law contained provisions intended to resolve some issues of nationality which arose from the transition to independence, allowing for a significant level of inclusion. Art.70 granted Togolese nationality to all persons who were adults at the date of the publication of the law and demonstrated their *possession d'état de Togolais*: enjoyment of the status of a Togolese, which meant that they behaved and were consistently considered by the public and the authorities as Togolese citizens. This article covered most of the native adult population of Togo, confirming their Togolese nationality, as citizens of the newly independent State.

Art.71-1 created the option for those originating from neighbouring countries to acquire Togolese nationality if they had had their ordinary residence in Togo for at least the preceding five years. Under Art.71-2, "persons belonging to the Togolese collectivity" who had acquired French nationality under the former regimes could also opt for Togolese nationality if they fulfilled the conditions of the law for the attribution (from birth) or the acquisition of Togolese nationality. These two options described in Art.71, however, had to be taken within the six months after the publication of the law, and the government could oppose the acquisition of nationality.

Art.72 added that nationality "of origin" (*nationalité d'origine*), by descent or birth on the territory under the conditions described under Art.1 to 7 relating to the attribution of nationality at birth, applied to all persons born before the publication of the new nationality law. Amongst other things, this meant that all those born in the country to one parent also born there automatically became nationals at independence.

3.1.4 Acquisition of nationality at majority based on birth and residence

A child born in Togo to foreign parents acquired Togolese nationality at the age of 21 if (s)he had been ordinarily resident in Togo since the age of 16. During the six months before attaining the age of adulthood, the minor could declare, without authorisation, that (s)he declined the quality of a Togolese citizen, under the condition that (s)he could prove the possession of another nationality and that (s)he had not been recruited into the Togolese armed forces or participated in such a recruitment process. During the same period, the Togolese Government could declare its opposition to such acquisition (Arts.12 and 13). These provisions implied that the acquisition was automatic, if it was not declined or opposed. According to Art.14, Arts.12 and 13 were not applicable to children born in Togo to foreign diplomatic or consular staff.

A child born in Togo to foreign parents could already apply for Togolese nationality by declaration from the age of 18 (with parental permission, since majority was only at the age of 21) if he or she had had been ordinarily resident in Togo during the preceding 5 years (Art.15). Within six months of such a declaration the Government could reject, by decree, their acquisition of nationality (Art.16). If the Justice Minister refused the registration of such

declaration, the declarant could appeal to a civil court. If that court admitted the validity of that declaration, the six-month term during which the government could reject the acquisition started on the day of the court ruling (Art.16).

3.1.5 Acquisition of Togolese nationality through marriage

A woman marrying a Togolese man acquired Togolese nationality automatically at the moment of the celebration of the marriage (Art.8). To be legally valid for the acquisition of Togolese nationality, the marriage had to be celebrated according to the legislation of Togo or of the country where it was celebrated, or according to Togolese customs and in that case with a written statement (Art.11).

The foreign spouse could decline that acquisition before that moment if the law of her pre-existing nationality allowed her to keep that nationality (Art.9). A declaration had to be made before a judge of the peace competent for the area of residence of the declarant, or outside Togo before Togolese consular staff (Art.31). Such a declaration could be made by a minor without authorization.

Within a year after the celebration of the marriage, the Togolese government could oppose the acquisition of Togolese nationality. In the case of a marriage outside Togo, this one-year period would count from the moment of the transcription of the marriage into the Togolese Civil Registry by the Togolese diplomatic or consular representation. In the case of such opposition, the foreign spouse would be considered as never having acquired Togolese nationality (Art.10). This provision created the risk of statelessness, as the nationality laws of many countries do not allow dual nationality: by acquiring the Togolese nationality at the moment of marriage, the previous nationality is lost in such cases and it is not evident that the spouse in question may recover her former nationality in the case of opposition by the Togolese government.

A foreign wife married to a Togolese husband before the publication of the new nationality law could exercise her right to decline Togolese nationality, and the government could object, during a period of one year following the publication (Art.73).

While a foreign woman married to a Togolese man could obtain Togolese nationality immediately, a foreign man married to a Togolese woman could acquire Togolese nationality only through a simplified naturalisation procedure.

3.1.6 Naturalisation

Several conditions had to be met by a person applying for naturalisation (Art.18):

- A minimum age of 21 years;
- Ordinary residence in Togo for 5 years before the application;
- To have the centre of his or her main interests in Togo at the moment of the signature of the naturalisation decree;
- To be of good character and behaviour and not to have been sentenced to a prison term of more than one year for any breach of ordinary law that was not cleared by rehabilitation or an amnesty;
- To be of good physical and mental health.

The 5-year term of ordinary residence was not required for persons born in Togo or for men married to Togolese women, nor for persons who had rendered exceptional services to Togo or whose naturalisation would be of exceptional interest for Togo (Art.19).

The application for naturalisation had to be presented to the Justice Ministry with all supporting documents and justifications. The Minister would order an investigation (Art.17 and 37). If the Minister deemed that the conditions had not been met, (s)he had to inform the applicant about the reasons. Otherwise, (s)he would submit the request to the Council of Ministers, which would take the final decision by decree, published in the *Journal Officiel* (government gazette). This decision did not need any justification and could not be challenged (Art.38, 39 and 40).

A naturalised person would enjoy all rights attached to Togolese nationality, with one exception: during the first 5 years after the naturalisation, he or she could not take up a position or an elective mandate for which the Togolese nationality was a requirement. This limitation could be waived by the Council of Minister upon a report from the Justice Ministry in the case of persons who had rendered exceptional services to Togo or presented an exceptional interest for the country (Art.22).

3.1.7 Loss and deprivation

In the case of the voluntary acquisition of a foreign nationality, an adult Togolese citizen (aged at least 21 years) would lose Togolese nationality. However, such acquisition needed an authorisation by the Council of Ministers (Art.23) – a confusing provision that is repeated in the current nationality code. A Togolese citizen who was also the national of another country could be released from the Togolese nationality on request, by government authorisation in the form of a decree; this also applied to minors, on the condition of parental authorisation (Art.24).

A Togolese citizen would also lose their nationality if it was repudiated, as provided under Arts.2 or 6 referring to children of a Togolese mother, or mother born in Togo, and a foreign father (Art.23). This procedure did not require authorisation. The transitional provisions of the law determined that the time period allowed for any such renunciation would count from the date of the publication of the law for all concerned persons who had reached adulthood on or before that date (Art.72).

A Togolese woman who married a foreign man could keep her Togolese nationality unless she explicitly declared before the celebration of the marriage that she relinquished it. In that case, she had to be able to acquire the nationality of her husband. A woman who had not yet attained adulthood could make such a declaration without authorisation (Art.26). For those marriages that had been celebrated before the publication of the new nationality law, a special one-year period from the date of the publication of the law was in place for Togolese wives of foreigners who chose to give up their Togolese nationality (Art. 74).

A Togolese citizen who was employed in the public service of another country or a foreign army and did not obey an injunction from the Togolese Government to resign from that employment within the six months after the notification of that injunction would lose their Togolese nationality by government decree. If it was established that the individual in question was absolutely unable to comply, this six-month term would only start from the date from which they were then able to (Arts.27 and 44).

Persons who had acquired Togolese nationality otherwise than by attribution at birth according to Art. 1 to 7 (*ius sanguinis* and double *ius soli*) could be deprived of it in the following cases (Art.28):

- (s)he was sentenced for an act considered as a crime or an offence against the internal or external security of the State;
- (s)he committed acts to the benefit of a foreign State incompatible with the quality of a Togolese citizen or detrimental to the interests of Togo;

- (s)he was sentenced in Togo or abroad for an act considered as a crime under Togolese law to a prison term of at least 5 years.

The deprivation would only take effect if such facts occurred during the first 10 years after the acquisition of Togolese nationality and could only be decided during the 10 years following the occurrence of such facts (Art.28).

A naturalisation decree could be revoked within one year after its publication if it appeared that the legal conditions for the naturalisation had not been met (Art.29). It could also be revoked within one year after the discovery of such facts if the beneficiary had made false declarations, presented deceitful or erroneous documents, or used fraudulent means to obtain the naturalisation (Art.30). In the cases referred to in Art.28, 29, and 30, the Justice Minister had to inform the person in question directly, at his or her residence, or if the residence was not known through the *Journal Officiel*, about the intention to withdraw nationality, and the person then had one month to provide documents and pleadings in his or her defence (Art.45).

3.1.8 Procedure for acquisition or repudiation of Togolese nationality by declaration

Procedures to acquire, decline or repudiate nationality that did not require authorisation were carried out by declaration.¹⁸⁸ Declarations had to be signed before a judge of the peace competent for the area of residence of the declarant or outside Togo before a consular or diplomatic representative (Art.31). The declaration would be registered at the Justice Ministry (Art.32). The Minister could decline the registration (only) if (s)he found that the conditions for such declaration were not fulfilled and would then have to inform the declarant about the reasons. The latter could appeal the decision in court (Art.33). In those cases where the Council of Ministers could refuse acquisition of Togolese nationality, this was done by decree within six months of the acquisition (Art.34). If there were no such objections the declarant could obtain a copy of the declaration noting that it had been registered. In the absence of such court ruling, the validity of a declaration could still be challenged by a public prosecutor or any interested person (Art.36).

3.1.9 Dual nationality

Whoever voluntarily acquired the nationality of another country, subject to an authorisation by government decree, lost the Togolese one. Whoever acquired Togolese nationality had to relinquish the former nationality.

However, dual nationality was possible in some cases:

- A woman who married a Togolese man acquired the Togolese nationality, but was not explicitly forced to renounce the one she already held;
- A child born in Togo to a foreign father born in Togo or a foreign mother born in Togo was Togolese from birth (Art.1) and was not forced to abandon the nationality of the foreign father or mother which (s)he might also have (depending on the nationality law of their State of origin). That child might even have two or three nationalities: the Togolese one and the ones of the foreign father and possibly of the foreign mother, if these latter two were different;
- A child born anywhere to a couple of mixed nationality, Togolese and foreign, could have both nationalities, depending on the nationality law of the state of origin of the foreign parent.

¹⁸⁸ Acquisition according to Arts.12, 15 and 71, decline according to Art.9, repudiation according to Arts.2 and 6 and Arts.23 and 26 - see above.

3.2 Amendment of 1971

The first Togolese Nationality Code of 25 July 1961 ([Law n° 61-18](#)) was amended only once before the current Code entered into force on 11 September 1978. The Ordinance of 22 March 1971¹⁸⁹ added a new article, Art.28-bis, which widened the range of reasons that would justify deprivation of nationality: any individual who had acquired Togolese nationality otherwise than at birth and had “engaged in activities prejudicial to the interests of Togo” (a formulation which could allow quite a broad interpretation) would lose their Togolese nationality on the day of the signature of the decree taken in the Council of Ministers pronouncing the deprivation. The 10-year period mentioned in Art.28 and the one-month period mentioned in Art.45 (see above), which provided some form of minimal legal protection, would no longer be applicable. Art.46 which stated that the decree would take effect only on the day of its publication would also not apply. The Ordinance was published according to the urgency procedure and entered into force the day of its signature.

The author has been unable to find out the exact reasons for this problematic amendment. But it came in the aftermath of the alleged “conspiracy of 8 August 1970” to overthrow the government, which overshadowed the political life in Togo in the second half of 1970 and early 1971, and was probably a manoeuvre to eliminate a group of 17 political opponents of Togolese, Ghanaian and Dahomeyan nationality.¹⁹⁰

3.3 The 1978 Nationality Code

The National Assembly was dissolved in 1967. Until 1980, General Eyadéma ruled Togo by ordinances. It was probably the wish to come back to a more respectable, formalised constitutional and legal order that led to the adoption of a new constitution on 30 December 1979, which re-established the legislative, executive, and judicial branches of the State under a one-party system.¹⁹¹ Presidential and legislative elections took place the same day. A year earlier, on 7 September 1978, two ordinances had been issued: one on the organization of the judicial system¹⁹² and a new nationality code¹⁹³ which, with some amendments, is still in force today. The author has not been able to determine what precise reasons motivated the issuing of the new Nationality Code. Although it maintained many of the provisions of the 1961 Code, it was significantly less liberal.

The 1978 Code differs from the 1961 Code in relation to the *jus soli* provisions. The 1961 Code provided that a child born in Togo to a father *or* a mother born in Togo was attributed nationality at birth (Art.1 and 2). As noted above, if the mother was born in Togo and the father was a foreigner, the child had the right to repudiate the Togolese nationality during the six months preceding his or her adulthood (fixed at 21 years in the 1961 and the 1978 Codes). The 1978 Code made this rule more restrictive, by requiring a father *and* a mother also born in Togo for double *jus soli* to apply. The possibility of repudiation was obviously no longer included, as a mother born in Togo alone was no longer sufficient for the attribution of nationality. A new condition was also added for the attribution to be recognised: the *possession d'état de Togolais*, which meant that the person behaved and was constantly considered by the public

¹⁸⁹ [Ordinance n° 71-014 of 22 March 1971](#) supplementing law n° 62-18 of 25 July 1961 relating to Togolese nationality.

¹⁹⁰ [Final report of the “CVJR”](#) (Truth, Justice, and Reconciliation Commission), p.162-164; Ekoué SATCHIVI, ‘Trente-neuf ans après le fameux « complot du 8 août 1970 »’, 17.8.2009, [UFCTOGO.COM](#).

¹⁹¹ Comité pour l'élimination de la discrimination raciale, Rapports présentés par les États parties conformément à l'article 9 de la Convention, 14^e et 15^e rapports que les États parties devaient soumettre en 2005, Additif, CERD/C/TGO/17, 13.7.2007, p.5.

¹⁹² [Ordonnance 78-34 du 7 septembre 1978 portant organisation judiciaire.](#)

¹⁹³ [Ordonnance 78-34 du 7 septembre 1978 portant Code de la nationalité togolaise.](#)

and the authorities as a Togolese citizen. Moreover, in case the Justice Minister was not convinced that this latter condition was met, the Minister could object to the attribution of nationality – a strange provision for a type of nationality categorised as “original” under the French civil law regime – that is, normally attributed at birth.

In addition, the previous automatic acquisition of Togolese nationality by a person born in the territory and still resident at majority (unless declined), became instead the right to opt for nationality by declaration, requiring a positive action (Art.8). Art.2 of the 1978 Nationality Code, however, continued to attribute Togolese nationality of origin to all persons born on Togolese territory who could not claim any other nationality.

The new Code introduced new forms of gender discrimination. Nationality transmission by descent was now limited to the father: the child of a Togolese mother no longer had a right to Togolese nationality. The 1961 Code had no such limitation: it recognized that the father as well as the mother would transmit their Togolese nationality to their child, with the only difference that the child of a Togolese mother and a foreign father could repudiate Togolese nationality, if that child was not born in Togo (Art.6 of the 1961 Code). These amendments went against the trend in international law, including the much greater gender equality adopted by the lusophone African countries gaining independence in the mid-1970s.¹⁹⁴

Art.73 of the 1978 Code states that the newly restrictive provisions relating to attribution of Togolese nationality at birth are to be applied retroactively to individuals born before the publication of the Code. This would mean that many people with foreign fathers who were Togolese according to the 1961 Code were no longer nationals under the 1978 Code. There is no information available about how many people may have been affected.

The provision of the 1961 Code that in case of marriage, a foreign wife could become Togolese at the moment of the celebration of the marriage, while the foreign husband of a Togolese wife had to pass through the naturalisation procedures, remained unchanged. But a new feature in the 1978 Code was that in case of divorce, the divorced wife would lose her Togolese nationality, potentially exposing her to statelessness if she had lost her previous nationality.

3.4 Amendments of 1980 and 1989

A 1980 amendment¹⁹⁵ to the 1978 Nationality Code stated that the adult children of a person who applied for naturalisation could add their own application for naturalisation to that of the parent, if they themselves also met all the necessary conditions. A collective decree granting the naturalisation to the applicant and to those adult children would then be issued.

Art.5 of the 1980 *Code des personnes et de la famille*¹⁹⁶ which referred to foundlings, was amended by Law n° 89-16 of 24 October 1989¹⁹⁷ which stated that any child under the age of five whose parents were unknown would be considered as having been born on Togolese territory. This was an important amendment as it protected such children from statelessness: there was no longer a need to prove birth on Togolese territory in order to claim nationality under Art.2 of the nationality code, since birth on the territory was now simply assumed up to

¹⁹⁴ Bronwen Manby, “[The Nationality Laws of the Lusophone States in Africa](#)”, *Network Timor: E-Boletim Lei & Justiça* 2, no. 3 (2019): 14–34.

¹⁹⁵ [Ordonnance n° 80-27 du 8 octobre 1980](#) portant modification de l'ordonnance n° 78-34 du 7 septembre 1978 portant code de la nationalité togolaise.

¹⁹⁶ [Ordonnance n° 80-016 du 31 janvier 1980](#) portant code des personnes et de la famille.

¹⁹⁷ [Loi n° 89-16 du 24 octobre 1989](#) complétant l'article 5 du Code des personnes et de la famille.

the age of five. This provision was also in line with Art.2 of the 1961 Convention on the Reduction of Statelessness, although that article does not define an age limit.

3.5 The 1992 Constitution

The [1992 Constitution](#) was a consequence of the 1991 Sovereign National Conference, of which the intent stated in the preamble was to democratise the Togolese State, to establish the rule of law, and to grant fundamental human rights. The 1992 Constitution was much more detailed than the previous ones, including on citizens' rights. Unlike the 1978 Nationality Code, its Art.32 determined that the child of a Togolese father *or* mother was also a Togolese citizen, abolishing that form of gender discrimination.

3.6 The 2007 Child Code

The 2007 Child Code¹⁹⁸ contained and confirmed the constitutional norm that a Togolese father as well as a Togolese mother transmitted their nationality to their child (Art.17). It also included a provision to the effect that a child found in Togo of unknown parents and place of birth who appeared to be under the age of 5 had the right to acquire Togolese nationality (Art. 19). The modalities of the exercise of this right, however, are not specified anywhere. Art.19 also states that a child born in Togo to parents whose place of birth is unknown has the right to Togolese nationality. This provision is in accordance with Art.2 of 1978 Nationality Code which specifies that any person born in Togo who cannot claim another nationality is Togolese at birth.

3.7 The 2012 Code of the Persons and the Family

Art.149 of the new Code of the Persons and the Family (henceforth "Family Code") adopted in 2012¹⁹⁹ contradicts Art.23.3 of the 1978 Nationality Code by affirming that a divorced foreign woman who had acquired Togolese nationality through her marriage with a Togolese man does retain her nationality. In its latest periodic report to the CEDAW Committee, [the combined 6th and 7th report](#) delivered in 2011, the Togolese government announced this legal change which would bring Togolese legislation into line with Art.9 of the [Convention on the Elimination of All Forms of Racial Discrimination](#) (CEDAW), which refers to gender equality in nationality law.²⁰⁰

The 2012 Code does not incorporate the 1989 amendment to the 1980 family code, that a child of unknown parents found in Togo was to be presumed born there. Art.19 of the 2007 Child Code ensures, however, that such a child has the right to Togolese nationality, as mentioned above.

¹⁹⁸ [Loi n° 07-017 du 6 juillet 2007](#) portant Code de l'Enfant.

¹⁹⁹ [Loi organique n° 2012-014 du 6 juillet 2012](#) portant code des personnes et de la famille ([Law n° 2012-014 of 6 July 2012](#) pertaining to the Code of the Persons and the Family).

²⁰⁰ Certain articles of the 2012 Code have been revised by "Law n° 2014-019 of 17 November 2014 amending articles 99, 100, 153, 403, 404, 419 and 420 of Law n° 2012-014 of 6 July 2012 pertaining to the Code of the Persons and the Family". This Amendment "grants women a set of rights that ensure them a certain protection, fulfilment and equality with men." (Concluding observations on the combined sixth and seventh periodic reports of Togo". Addendum. Information received from Togo on follow-up to the concluding observations. [CEDAW/C/TGO/CO/6-7/Add.1](#), 24.6.2015, item 3). Law n° 2014-019 itself is not available on the internet so far.

4. The current law regulating Togolese nationality

Togolese nationality continues to be regulated by the [1978 Nationality Code](#), as amended by [Ordinance n° 80-27](#) regarding the possibility of a collective naturalisation decree.

Two provisions – the prevention of Togolese mothers from transmitting their nationality to their child and the loss of the acquired Togolese nationality for foreign spouses who are divorced from their Togolese husbands – have been overridden by the [1992 Constitution](#), the [2007 Child Code](#), and the [2012 Family Code](#). The 2007 Child Code has also added a provision for acquisition of nationality by foundlings. But the Nationality Code itself has not yet been adjusted correspondingly, in spite of official promises and efforts to that effect. According to Art.74 of the Code, application modalities may be enacted by decree, but this has never happened so far.

While it is clear that the Constitution prevails over ordinary law, it is not clear which ordinary law prevails over another: the 2007 Child Code and the 2012 Family Code or the 1978 Nationality Code. The 2007 and 2012 Codes are however “laws” and were adopted by the National Assembly, and at later dates, while the Nationality Code is an “ordinance” issued by a President with few democratic credentials²⁰¹ and thus clearly has less democratic legitimacy.

4.1 Attribution of Togolese nationality at birth

The Togolese nationality code distinguishes between (automatic) *attribution* of nationality at birth or *acquisition* of nationality at a later date. While most states born out of the former territories of French West Africa (*Afrique Occidentale Française*, AOF) employ the term “nationality of origin” (*nationalité d'origine*) in their nationality codes, the current Togolese code uses the term *attribution* due to birth in Togo or due to Togolese filiation (legal recognition of parentage). Only Art.73 of the Code refers to the term *nationalité d'origine*, stating that all provisions relating to the attribution of “nationality of origin” also apply to citizens born before the publication of the Nationality Code. The provisions on attribution of nationality at birth thus have retroactive effect.

Part I of the Code (“Titre I”) details the attribution of Togolese nationality at birth. Chapter one (Art.1 and 2) names the conditions under which a birth on Togolese territory awards the right to Togolese nationality (*ius soli*) and Chapter two (Art. 3 and 4) refers to this right through descent (*ius sanguinis*).

4.1.1 Double *ius soli*

A child born in Togo of a father and a mother born also in Togo is Togolese, if this child has its ordinary residence on the territory of the Republic of Togo and enjoys the “apparent status of a Togolese person” (*possession d'état de togolais*) (Art.1). *Possession d'état* is then defined, in line with several other nationality codes in former AOF (and in France), to consist of two main elements: that the person “behaves consistently and publicly like a Togolese person” and “has been treated consistently and publicly as such by the Togolese people and authorities”. The Justice Minister may refuse the attribution of Togolese nationality if the child does not have that status, by a motivated decision.²⁰²

²⁰¹ Apart from the 1972 referendum which confirmed General Eyadéma as President of the Republic.

²⁰² See also: Bronwen Manby, ‘[Citizenship Law in Africa. A Comparative Study](#)’, *Open Society Foundations (Africa Governance Monitoring and Advocacy Project (AfriMAP) Open Society Justice initiative)*, 3rd edition, 2016,

This provision has an inconsistency in the way it is drafted, reflecting the addition of a condition to the previously unqualified right based on double jus soli: at birth such a child evidently cannot have such a status but only develop it during childhood. This means that the nationality is in fact not attributed directly at birth but at a later date. Its ordinary residence also only starts with the day of birth. The provision does not clarify this question of a waiting time before the nationality is definitely attributed. Such a child might still have the nationality of one or of both of the parents if they are foreigners (or be stateless and then fall under Art.2 if born on Togolese territory). Whenever this child finally obtains the Togolese nationality under Art.1, it is considered as “attributed” and not as “acquired”, meaning that that person is protected against deprivation of Togolese nationality (see section 4.3.2 below).

In practice, an application for recognition of Togolese nationality based on double jus soli and “possession d'état” must be presented to the Department of Seal, Nationality and Civil Identification (DSNIC)²⁰³ in the Justice Ministry. According to the [website of the Togolese Administration](#), the applicant must provide:

- a birth certificate (or equivalent document);
- an ID photograph;
- a court ruling certifying his or her “status as a Togolese”;
- an extract from the police register;
- a residence certificate;
- the results of a social enquiry;
- and the government decision (the site does not say where the applicant may get such a decision – this would normally be the answer to the application).

The cost of the procedure, which officially may last 9 months, is 5,000 francs CFA (about 8 Euros).²⁰⁴

This form of attribution of the Togolese nationality is not often used, but then generally accepted. The procedure may, however, take a longer time.²⁰⁵

4.1.2 *Ius soli: Children who cannot claim any other nationality*

Art. 2 of the 1978 Code attributes Togolese nationality to any child born on Togolese territory who cannot claim any other nationality. This ensures protection against statelessness, and Togo is one of very few states in Africa to have such a provision.²⁰⁶

By including the condition for such a child to be born in Togo, the Code does not, however, provide an explicit protection against statelessness for children of unknown parents and place of birth (“foundlings”). Such protection dates to [The Hague Convention of 1930](#) (Art.14) and is also included within the 1961 [Convention on the Reduction of Statelessness](#), to which Togo formally acceded on 14 July 2021. Art.2 of the 1961 Convention provides that children of unknown parents found on the territory of a state party, without proof of birth there, shall be

p.117-118 and 120; and Bronwen Manby, ‘[Nationality, Migration and Statelessness in West Africa](#)’, A study for UNHCR and IOM, June 2015, p.10,18 and 91.

²⁰³ Direction du Sceau, de la Nationalité et de l'Identité Civile (DSNIC).

²⁰⁴ ‘[Obtenir la nationalité togolaise – Cas d’enfants nés au Togo de parents nés au Togo](#)’, DSNIC.

²⁰⁵ ‘[Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d’établissement de certificats d’origine et de nationalité](#)’ (Lomé, 12-16.9.2011), p.2 ; and information received at the DSNIC.

²⁰⁶ Bronwen Manby, [Citizenship Law in Africa: A Comparative Study](#), 3rd ed. (New York: Open Society Foundations, 2016).

considered to have been born within that territory to parents holding the nationality of that State, in the absence of proof to the contrary.

An amendment²⁰⁷ to the 1980 Code of the Persons and the Family²⁰⁸ added a supplement to its Art.5 specifying that “a child under the age of five found on Togolese territory whose filiation is unknown is considered to be born in Togo and registered as such in the civil registry”. In combination with Art.2 of the Nationality Code, this meant that a foundling aged under 5 had the right to Togolese nationality at birth. This amendment essentially complied with the 1961 Convention. This provision has not been integrated into the 2012 version of the Family Code. Instead, the 2007 Child Code gives such a child the right to *acquire* Togolese nationality (Art. 19).

In practice, an application for nationality based on inability to claim any other nationality must be presented to the DSNIC. According to the [website of the Togolese Administration](#),²⁰⁹ an applicant must provide:

- a birth certificate (or equivalent document);
- an ID photograph;
- a report on an investigation by the police or the gendarmerie;
- a report on a social inquiry.

The cost of the procedure, which may last one month, is officially 5,000 francs CFA (about 8 Euros).

It could not be ascertained how many such applications are received annually. The DSNIC does not record such statistics.

4.1.3 *Ius sanguinis*

According to the 1978 Code, Togolese nationality is only directly attributed to a child born anywhere to a Togolese father. A Togolese mother can only transmit her nationality to her child if she is married to a father whose nationality is unknown or who is stateless (Art.3). Furthermore, for the attribution of Togolese nationality, the parentage must be established under the conditions determined by the Togolese legislation or Togolese customs. Filiation (legal recognition of parentage) is defined by the 2012 Code of the Persons and the Family.²⁰⁹ This Code does not mention filiation established according to custom, and it is not clear whether that clause of the 1961 and 1978 nationality codes is still applicable. The Nationality Code does not distinguish between children born in or out of wedlock (although the Family Code establishes detailed conditions relating to proof of descent of children born in and outside of marriage).²¹⁰

The provision that a Togolese mother cannot transmit her nationality is, however, no longer applicable. The [Constitution of 19 October 1992](#)²¹¹ provides in Art.32 that Togolese nationality is attributed by law to a child born to a Togolese father or mother, rendering the provisions under Art.3 of the 1978 Code unconstitutional. In all the amendments made to the 1992 Constitution, this article has remained unchanged. In its combined initial to fifth periodic report

²⁰⁷ [Law n° 89-16 of 24 October 1989](#) supplementing Article 5 of the Code of the Persons and the Family.

²⁰⁸ [Ordinance n° 80-16 of 31 January 1980](#).

²⁰⁹ Art.1-5 refer to the name registered on the birth certificate, depending on the filiation. Art.171-216 are centred on filiation.

²¹⁰ For more details on this issue see: Bronwen Manby, ‘[Nationality, Migration and Statelessness in West Africa](#)’, A study for UNHCR and IOM, June 2015.

²¹¹ Adopted by the Togolese People on 27 September, signed by the President of the Republic on 14 October and published in the Journal Officiel (Togo’s Official Journal) on 19 October 1992.

pursuant to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), submitted in 2004, the government confirmed that: “A child’s nationality is now determined by his or her descent from either a Togolese mother or a Togolese father”.²¹² Subsequent laws complied with the 1992 Constitution: Art.17 of the 2007 Child Code²¹³ clearly states that the child of a Togolese father or mother is a Togolese citizen. Nonetheless, Art.3 of the Nationality Code of 1978 has never been amended.

In practice, under the 1992 Constitution and the 2007 Child Code, a child receives Togolese nationality from either the father or the mother. In order to receive his or her nationality certificate from the DSNIC, he or she must present:

- his or her original birth certificate or a certified extract of the birth register of the civil registry (possibly both);
- a copy of the “*jugement supplétif*” (the declaratory court ruling certifying the birth in the case of late birth registration – that is, later than 45 days after the birth) if the birth certificate was issued following the recording of such ruling in the civil registry;²¹⁴
- the nationality certificate of the father or the mother, or of a brother or sister of the same father or mother;
- an ID photograph.²¹⁵

The cost of the nationality certificate is 5,000 francs CFA (about 8 Euros) and officially it takes one month to receive it, but in reality, it may take much more.²¹⁶ The certificate is needed to apply for a national ID card.

4.2 Acquisition of Togolese nationality after birth

Part II (“Titre II”) deals with the *acquisition* and *reacquisition* of Togolese nationality, as opposed to the *attribution* at birth. It lists four modes (discussed below): a) automatic (with exceptions) through marriage of a woman to a Togolese man (Section 1, Art.5 to 7); b) through birth in Togo and lifelong residence there by a simple declaration (Section II, Art.8 and 9); c) on request and with government approval through naturalisation (Section III, Paragraph 1, Art. 10-14); and d) on request and with government approval through the reacquisition procedure (Section III, Paragraph 2, Art.15-18).

4.2.1 Through marriage

Art.5 states that a woman who marries a Togolese man acquires his nationality at the moment of the marriage. In its 2004 report to CEDAW, the government confirmed that “[a] foreign woman who marries a Togolese man can prove her acquisition of Togolese nationality by presenting her husband’s certificate of nationality and their marriage certificate”.²¹⁷

According to Art.6, if the national law allows her to keep her nationality of origin she may declare before the formal celebration of the marriage that she declines Togolese nationality. If

²¹² Initial to fifth periodic report [CEDAW/C/TGO/1-5, 18 March 2004](#), p.35 and 57-58.

²¹³ [Law n° 2007-017 of 6 July 2007](#) pertaining to the Child Code.

²¹⁴ A birth must be registered within 45 days after it occurred (Art.18 of the 2009 law on the civil registry: “[Loi N° 2009 - 010 du 11 juin 2009](#) relative à l’organisation de l’état civil au Togo”). After that 45-day period, a court judgement must certify the birth through a “jugement supplétif”; this ruling must then be recorded in the civil registry which issues the proper birth certificate (Art.30 and 31).

²¹⁵ Service public de l’administration togolaise: [Obtenir la nationalité togolaise – Cas d’un parent togolais](#), DSNIC.

²¹⁶ Service Public de l’administration togolaise : ‘[Obtenir la nationalité togolaise – Cas d’un parent togolais](#)’, DSNIC.

²¹⁷ Initial, second, third, fourth and fifth periodic reports of Togo under the Convention on the Elimination of All Forms of Discrimination against Women, [CEDAW/C/TGO/1-5, 18.3.2004](#), p.58.

she is still a minor she may do so even without authorisation. This type of declaration is signed before the judge of a “First Instance Court of Modern Law” or the “Section Judge competent for the area of residence” of the registrant (1978)²¹⁸ or, outside Togo, before Togolese consular staff (Art.30). It is then registered at the Justice Minister (Art.31).

Art.7 of the 1978 Nationality Code states that the marriage must be celebrated according to the Togolese legislation or customs or the legislation of the country where it has been registered. If the marriage was celebrated according to Togolese customs, this had to be ascertained in writing in order to have an effect on the nationality of the married woman. Art.73 and 74 of the [2012 Family Code](#), however, introduced a change: now, marriages must be celebrated by an officer of the civil registry and registered according to the rules in force in order to be legally recognized.²¹⁹ Marriage of minors²²⁰ is not allowed unless a competent judge exceptionally grants a waiver (Art.43 of the 2012 [Family Code](#) and Art.267 of the [2007 Child Code](#)).²²¹

Art.21 of the [2007 Child Code](#) determines that a foreign child who marries a Togolese woman or man can acquire Togolese nationality upon application with the Justice Ministry, under the condition that the marriage was celebrated according to the law of Togo or the country where it took place. Gender equality is respected in this provision.

In practice, according to the [website of the Togolese Administration](#), a woman seeking documents recognising acquisition of Togolese nationality based on marriage must provide:

- The birth certificate of the spouse or equivalent document;
- an ID photograph;
- the nationality certificate of the husband;
- the marriage certificate (all documents as original and as certified copy).

The cost of the procedure, which may last one month, is officially 5,000 francs CFA (about 8 Euros).²²² According to the DSNIC, acquisitions of Togolese nationality under Art.5, by foreign women through marriage, are “frequent”.

The 1978 Nationality Law discriminates against women as it does not allow a Togolese wife to transmit her nationality to her husband. In its 2004 CEDAW report, the Togolese Government argued that because certain conditions for naturalisation did not apply to the husband of a Togolese wife “it is true to say that a Togolese woman married to a foreigner can transmit

²¹⁸ “Tribunal de droit moderne de première instance ou devant le juge de section dans le ressort duquel le déclarant a sa résidence”. Today, it is “Tribunal de grande Instance” or District Court. The latest Code of Togo’s judicial organisation is “[Law n° 2019-015 of 30 October 2019](#) pertaining to the Code of the judicial organisation”, [JORT n°26/64th year, 30.10.2019](#).

²¹⁹ Copies of their marriage certificate must be sent to the civil registries of the places of birth of the two spouses and registered on their respective birth certificates. From there, confirmation of that registration must be sent back to the civil registry where the marriage took place (Art.80 of the Personal and Family Code).

²²⁰ The age of adulthood is fixed at 21 years by the 1978 Nationality Code, at 18 years by Art.2 of the [2007 Child Code](#) and by Art.239 of the [2012 Family Code](#). The [1980 Family Code](#) had established 20 years for the man and 17 years for the woman as normal minimum age for marriage (Art.43), here also with the possibility of exceptions accorded by court, similar to those of the present Code.

²²¹ Marriage of underage spouses, for serious motives, has to be authorized by a judge. Such a request can be presented to the judge by the parents, the spouses, a legal guardian, or a prosecutor. Both parents and the spouses individually must agree. any case the absolute age limit is 16 years. If one of the parents does not agree, the spouses or any other relatives may turn to the judge who will take a decision, which however can still be appealed. In any case the absolute age limit is 16 years. - (Art.43-48).

²²² Service Public de l’administration togolaise, ‘[Obtenir la nationalité togolaise – Cas d’un mariage entre un togolais et une étrangère](#)’, DSNIC.

Togolese nationality to her spouse”.²²³ The facilitated naturalisation consists only of a reduction in the residence period (see section 4.2.3).

There is no provision in the Nationality Code to the effect that a woman acquiring Togolese nationality by marriage must renounce her nationality of origin; unlike in the case of a person acquiring nationality by naturalisation, she may have two nationalities.

4.2.2 Children born to foreign parents in Togo

A child born to foreign parents in Togo may acquire Togolese nationality at the age of majority through a *declaration* to that effect if (s)he had, since the age of 16, “the apparent status of a Togolese”, as defined in Art.1 of the Nationality Law (Art.8).²²⁴ In line with longstanding internationally recognised principles²²⁵ of nationality law, this right does not apply to children born in Togo to foreign diplomatic or consular staff, as stated in both the Codes of 1961 (Art.4) and 1978 (Art.9).

In practice, a declaration must be presented to the DSNIC. According to the website of the DSNIC, the declarant must provide:

- a birth certificate (or equivalent document);
- an ID photograph;
- a court ruling certifying “possession d’état de togolais”;
- an extract from the police register;
- a residence certificate;
- the results of a social enquiry;
- and the government decision (the site does not say where the applicant may get such a decision – it would normally be the answer to the declaration).

The cost of the procedure, which may last 9 months, is officially 5,000 francs CFA (about 8 Euros).²²⁶ According to the DSNIC, there are no exact statistics about the number of such declarations, but the number is low. But when they come, they are generally accepted, although the procedure may take quite some time.²²⁷

Any accepted declaration regarding nationality – there are other types of such declarations, as discussed below – is registered at the Justice Ministry (Art.31). The declaration must be refused by the Justice Ministry if the conditions are not fulfilled. A negative decision must be substantiated and notified to the registrant (Art.32). The government may also raise its objections (“opposition”) to such acquisition of Togolese nationality by declaration through a decree adopted in the Council of Ministers within six months after the declaration was signed (Art.33). After this six-month period, if no refusal came up in the Justice Ministry and no opposition in the Council of Ministers, the Justice Minister issues a copy of the declaration to the registrant, on his/her demand, with the confirmation that it had been registered (Art.34) and the acquisition of Togolese nationality is complete. During a meeting in February 2022, the director of the DSNIC stated that she did not recall any cases of objections to such declarations (which are in any case not frequent).

²²³ CEDAW/C/TGO/1-5, 18 March 2004, p.58 (Article 9. Nationality of women, 1.4. Acquisition of nationality by naturalisation).

²²⁴ This provision of acquisition of the Togolese nationality is repeated in the 2007 Child Code ([Loi n° 2007-017 du 6 juillet 2007 portant code de l'enfant](#)).

²²⁵ Art.12 of the [Convention on Certain Questions Relating to the Conflict of Nationality Law](#) (Hague Convention), adopted by the League of Nations on 13 April 1930 (entry into force on 31 July 1937).

²²⁶ Service Public de l’administration togolaise : ‘[Obtenir la nationalité togolaise – Cas d’enfants nés au Togo de parents étrangers](#)’, DSNIC.

²²⁷ Interview with the director of the DSNIC in February 2022.

4.2.3 Naturalisation

A person who would like to become Togolese by naturalisation must meet a list of conditions (Art.11).²²⁸ The person must:

- have reached the age of 21 (under the present Nationality Law, 21 is also the minimum age for adulthood. Since the adoption of the [Child Code](#) in 2007, however, that age limit has been lowered to 18 years. It is not clear which age limit is currently required for the naturalization procedure);
- prove ordinary residence in Togo for the preceding five years;
- have the centre of his or her main interests in Togo at the moment of the signature of the naturalisation;
- be of good moral conduct and not have been sentenced to more than two years' imprisonment for a voluntary offence against property, morals, family or public peace, unless cancelled by rehabilitation or amnesty;
- be of good health and mind;
- have formally renounced his or her nationality of origin;
- must show his or her integration into the Togolese community, notably through sufficient knowledge of a Togolese language.

French is the official language of Togo. It is not clearly stated whether French counts as a Togolese "national" language, but probably not: a Government website states that the applicant should also speak a "national language" in order to justify his or her *integration into the community*.²²⁹ While French remains the overarching and administrative communication language, the local, "national" languages are spoken most commonly in the communities and families.

In the following cases, the condition of the minimum period of five years of ordinary residence in Togo is waived: a) the applicant is born in Togo or married to a Togolese wife, or b) the applicant has provided exceptional services to Togo or his or her naturalisation is of exceptional importance for Togo (Art.12).

In all cases of naturalisation, the candidate must submit his or her application to the DSNIC, together with all documents which prove that (s)he meets the legal conditions and that the application is justified. The Ministry then orders a police investigation into the conduct of the candidate. If not all of the conditions are fulfilled, the Minister declares the request inadmissible and notifies the applicant about this negative decision and its reasons (Art.10, 13, 35, and 36). In the case of a positive decision, the Minister submits a decree of naturalisation to the Council of Ministers. The Council may nonetheless reject the application and does not need to justify such a decision. No appeal is admitted. The Justice Minister informs the applicant about the decision (Art.37 and 38). The acquisition becomes effective once the decree is published in the *Journal Officiel*. The same proceedings apply to a request of reacquisition of Togolese nationality, as set out below.

A 1980 amendment to the Nationality Law²³⁰ allows adult children of an applicant for naturalisation to be added to the parent's applications, if they meet all the listed conditions. In such cases, a collective decree may be issued to the applicant and his or her adult children.

²²⁸ Service Public de l'administration togolaise, '[Obtenir la nationalité togolaise – Cas d'une naturalisation](#)', DSNIC.

²²⁹ Service Public de l'administration togolaise, '[Obtenir la nationalité togolaise – Cas d'une naturalisation](#)', DSNIC.

²³⁰ [Ordonnance n° 80-27 of 8 October 1980](#) pertaining to the modification of ordinance n° 78-34 of 7 September 1978 pertaining to the Togolese Nationality Code.

Naturalisation is not a right, even when all conditions are met. It is a discretionary decision of the Togolese Government. The cost of naturalisation is currently fixed at 15,000 francs CFA (XOF)²³¹, plus 1,000 XOF for a fiscal stamp.²³²

Through its harbour and markets, Togo has attracted many resident foreigners, mainly from neighbouring countries. In principle, a large number of them would appear to be eligible for naturalisation. The number of foreigners in the country rose from 386,000 in 2005 to 543,000 in 2019. 86.3% of them hailed from other African countries, mainly Nigeria, Benin, Ghana, Côte d'Ivoire, Gabon, Burkina Faso, and Niger.²³³ Among the 58,000 Europeans, 45% were French and nearly a quarter German citizens. Togo also hosted 10,865 refugees, among them a number of long-term refugees from Ghana and Rwanda.²³⁴ Nonetheless, UNHCR recently noted that naturalisation “remained a very infrequent practice”.²³⁵ An Ad hoc Commission tasked in 2011 with revising the nationality law noted that the low number of applications for naturalisation may originate from ignorance or the fact that those made are rarely successful.²³⁶ Indeed, a search through editions of the *Journal Officiel* from recent years returns just a handful of results.²³⁷

The number of naturalisations in Africa is generally low.²³⁸ Togo appears to be situated towards the bottom of that scale. The concept of naturalisation in Africa is indeed very different from the one applied by European or North American nations. In comparison: In 2019 Germany naturalised 131,980 people, Italy 127,001, France 109,821, Spain 98,954, Sweden 64,206, Canada 250,434, and the USA 843,593.²³⁹ In Latin America, numbers are also low.²⁴⁰

²³¹ Approximately 23 Euros. The exchange course is fixed at 655 XOF to the Euro since the introduction of the Euro.

²³² Service Public de l'administration togolaise, ‘Obtenir la nationalité togolaise – Cas d'une naturalisation’, DSNIC.

²³³ Nigeria (154,800), Benin (112,000), Ghana (102,000), Côte d'Ivoire (41,000) Gabon (22,800), Burkina Faso (15,900), Niger (10,500) – United Nations, Department of Social and Economic Affairs, Population Division, *International Migration*.

²³⁴ Some of the Ghanaian long-term refugees were not recognized as refugees under Togolese law, but registered by UNHCR with authorization of the Togolese authorities. - ‘Compilation on Togo. Report of the Office of the United Nations High Commissioner for Human Rights’, Human Rights Council Working Group on the Universal Periodic Review (UPR), Fortieth session, 24 January–4 February 2022, [A/HRC/WG.6/40/TGO/2, 9.11.2021](#), p.9-10, paragraph 46 (contribution of UNHCR).

²³⁵ In its contribution to the ‘Compilation on Togo. Report of the Office of the United Nations High Commissioner for Human Rights’, Human Rights Council Working Group on the Universal Periodic Review (UPR), Fortieth session, 24 January–4 February 2022, [A/HRC/WG.6/40/TGO/2, 9.11.2021](#), p.9, paragraph 46. Togo presented its human rights records in the third cycle of the UPR on 24 January 2022.

²³⁶ ‘Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité’ (Lomé, 12-16.9.2011), p.3. Discussed further in section 6.1.

²³⁷ Décret n° 074/PR du 29 juin 2007 accordant la nationalité togolaise à Mme Homa Smith née Sobhani, *JORT* n° 26/52e Année, 29.6.2007, p.4; Décret n° 2016-011/PR du 10 février 2016 accordant la nationalité togolaise à MONSIEUR CHIMELES BEKELE, *JORT* n°8/61e Année, 11.3.2016, p.9-10; Décret n° 2016-012/PR DU 10 FEVRIER 2016 accordant la nationalité togolaise à MADAME Marie Goretti Gatera née Umifuyisoni, *JORT* n°8/61e Année, 11.3.2016, p.9-10; Décret n° 2016-013/PR du 10 février 2016 accordant la nationalité togolaise A MONSIEUR Simon Pierre Gatera, *JORT* n°8/61e Année, 11.3.2016, p.9-10; Décret n° 2018-068/PR du 11 /04/2018 accordant la nationalité togolaise à monsieur DEDJENE Yewondwessen, *JORT* n° 5/63e Année, 17 Avril 2018, p.72 (possibly, there might be a few more; JO available at <https://jo.gouv.tg/>).

²³⁸ Michael Offermann, ‘Les risques d'apatridie au Mali et pour les Maliens vivant à l'étranger. En application des législations et pratiques relatives à la nationalité, au Mali et dans les pays d'accueil de Maliens’, UNHCR, 2020, p.21-22. See also Bronwen Manby, ‘Naturalisation in African States: Its Past and Potential Future’, *Citizenship Studies* 25, no. 4 (2021): 514–42, <https://doi.org/10.1080/13621025.2021.1926098>.

²³⁹ Eurostat, ‘Acquisition of citizenship’, March 2021; [New naturalized Canadian citizens from 2011 to 2020; U.S. Naturalizations: 2019](#).

²⁴⁰ ‘Why are there so few naturalizations in Latin America?’, Diego Acosta, July 5, 2019, (University of Bristol), GLOBALCIT.

4.2.4 Reacquisition of Togolese nationality

Individuals who lost their Togolese nationality may recover it under certain conditions, at any age. They must have their ordinary residence in Togo at the moment of reacquisition but there is no requirement of a minimum period. The application for the reacquisition must be accompanied by proof of their former Togolese nationality. Individuals who were deprived of their nationality due to serious criminal offences committed in Togo or abroad and punished by prison sentences of at least 5 years are excluded from the reacquisition unless they were judicially rehabilitated. But they may still be eligible for the reacquisition if they have provided exceptional services to Togo or their naturalisation is of exceptional importance for Togo. The reacquisition is granted by decree adopted in the Council of Ministers after a police investigation into the conduct of the applicant (Arts. 15-18).

4.2.5 Effects of acquiring Togolese nationality

The underage child of a father who has acquired Togolese nationality as per provisions described in sections 4.2.2 or 4.2.3 becomes a Togolese national in his or her own right (Art.20).²⁴¹ The paternal link (*filiation*) must be established in accordance with Togolese legislation or customs. The children of mothers who acquire nationality are not given the same rights – a discrimination not specifically mentioned by the Committee on the Elimination of all Forms of Discrimination against Women. That means that a mother who marries a Togolese man cannot transmit her new nationality to her child or children.

Certain conditions may exclude a minor from the right stated in Art.20, namely if the minor:

- is married; or
- serves or has served in the armed forces of his or her country of origin; or
- has been served an expulsion order or is under a house arrest that has not expressly been revoked in the same form in which it had been ordered; or
- was sentenced to a prison term of more than six months for an intentional criminal offence. (Art. 21 and 22)

An individual who has acquired Togolese nationality enjoys all the same rights as Togolese citizen from the moment the naturalisation decree is signed – with one exception: during a period of five years, he or she cannot take on functions or elective mandates for which Togolese nationality is mandatory. But there is an exception to this exception: a naturalised foreigner who has provided exceptional services to Togo or whose naturalisation is of exceptional importance for Togo may still be authorized by a decree taken in the Council of Ministers upon a substantiated report from the Justice Minister (Art.19).

If, after the adoption of the naturalisation or reacquisition decree, it appears that all the required conditions had not been met, the decree may be revoked during a period of two years after its publication (Art.40). If the person in question knowingly made false declarations, provided documents containing deceptive or incorrect assertions or used fraud to obtain the naturalization or reacquisition, the Council of Ministers may also revoke the respective decree by a new decree adopted during the two years that follow the discovery of the fraud. The withdrawal decree takes effect on the date of its signature but does not affect the validity of deeds signed by that individual, nor the rights acquired by third persons before the publication of that decree on the grounds of the Togolese nationality of that individual (Art.41). According to Art.46, the decree only takes effect on the date of its publication, which is in contradiction to Art.41.

²⁴¹ The provisions of this Art.20 are stated nearly identically in Art.20 of the [2007 Child Code](#).

In both cases described here under Art.40 and 41, the person in question must be notified by the Justice Minister about the intention to withdraw his or her Togolese nationality, personally or at his residence. In the case the person's residential address is not known, the intended measure must be published in the Official Journal. Within one month after the notification or the publication, the person may provide supporting documents (Art.45).

4.3 Loss and deprivation of Togolese nationality

Part III ("Titre III") of the Nationality Code deals with the loss (Chapter I, Art.23-27) and deprivation (Chapter II, Art.28 and 29) of Togolese nationality. Since the loss of Togolese nationality for women who had acquired it through marriage is no longer applied in case of divorce, the provisions on "loss" (*perte*) exclusively refer to cases where the person had been attributed nationality at birth (pursuant to Art.2 and 3) or after birth (pursuant to Art.1). "Deprivation" (*déchéance*) is applied to those who have acquired nationality after birth (according to Art.8 or 9).²⁴²

4.3.1 Loss of Togolese nationality

The following will lose his or her Togolese nationality (Art.23):

- a) An adult Togolese citizen who voluntarily acquires another nationality; nonetheless, this loss must be authorized by a decree taken in the Council of Ministers (Art.23-1). Such decree takes effect on the day of its publication in the *Journal Officiel* (Art.42). His or her allegiance to Togo ends at the date of the acquisition of the foreign nationality according to Art. 25-1.

This seems contradictory: A Togolese citizen may acquire another nationality of a country that permits dual nationality. According to Art.25-1, the Togolese nationality is lost on the day of that acquisition. But Art.23-1 says that, for that loss, a government authorisation by decree is required, which only takes effect on the day that the decree is published in the JO, meaning that a person would retain nationality if no authorisation were obtained. There appears to be no sanction in case a person does not inform the government about the acquisition of another nationality or apply for authorisation. In the current Penal Code²⁴³ at least, there is no such provision. The Nationality Code itself is completely silent on the matter of potential sanctions. Art.727 of the [Family Code](#) states that a Togolese citizen who also has another nationality remains subject to Togolese law.

If the Minister of Justice rejects a request for the authorization to be released from Togolese nationality, the applicant is informed about this decision which does not need to be explained (Art.43). If the applicant has already received another nationality, the Togolese one would still be forfeited under Art. 25-1 of the Nationality Code.

- b) a Togolese citizen who exercises his or her right to repudiate Togolese nationality according to the provisions of the Nationality Law (Art.23-2). The loss is effective from the date of the signature of the respective declaration (Art.25-2).

²⁴² The translation of the terminology is complex: in English the distinction between "loss" and "deprivation" established by the 1961 Convention on the Reduction of Statelessness is between withdrawal that is automatic, by operation of law, and withdrawal that requires a decision of the public authority. In the French version of the 1961 Convention, deprivation is translated as "*privation*". The term "*déchéance*" ("*forfeiture*"), used in French for withdrawal from those who have *acquired* nationality, does not have an exact equivalent in English – but deprivation is used here as the closest term.

²⁴³ [Law n° 2015-010 of 24 November 2015](#) pertaining to the new Penal Code.

This possibility of repudiation is limited to the case of a Togolese woman who marries a foreigner and, *before* the celebration of the marriage, declares that she wants to acquire the nationality of her husband and is able to do so under the nationality law of his country. Otherwise, she keeps the Togolese nationality. In the case of such a declaration, she loses the Togolese nationality on the date of the marriage (Art.26).

Art.22 of the [2007 Child Code](#) adds another aspect not foreseen in the Nationality Code: a Togolese minor of at least 16 years who marries a foreign woman or man (which must be authorized by the president of a first instance court, as explained above) has the option to keep Togolese nationality or to renounce it *before or after* the marriage.

- c) a foreign wife who is separated from her husband by divorce, according to Art.23.3. This could leave her stateless if she had lost her former nationality due to that marriage or the acquisition of the Togolese nationality and she cannot recover. Nevertheless, this provision is no longer applied as confirmed by the Togolese Government.²⁴⁴ Indeed, Art. 149 of the [2012 Family Code](#) determines that the divorce does not have any effect on the nationality acquired by the husband or the wife. Divorce does not lead to the loss of nationality which can only result from the decision of a judge.
- d) a Togolese citizen who also holds the nationality of another country (dual nationality)²⁴⁵ and who is authorized to renounce the Togolese nationality by the Togolese Government upon his or her application (Art.24). The authorization is granted by decree. A minor may submit the application only with the consent of his or her parents (or whichever of the two has the legal guardianship over the child) or the legal guardian (Art.24). The loss of the Togolese nationality is effective from the date of the decree that authorizes the loss (Art.25.3).
- e) a Togolese citizen who is employed in the civil service of a foreign country or a foreign army and maintains that position despite an injunction to resign issued by the Togolese Government. If the concerned person does not comply within the six months following the notification of that injunction, he or she may be declared to have lost Togolese nationality. If it is established that he or she was absolutely unable to resign, the six-months period is counted from the date that this inability disappeared. Being informed beforehand about the intention to withdraw the nationality, the person in question has the possibility to provide supporting documents (Art.44).

The loss becomes effective on the date of the decree's publication according to Art.44, but the release from allegiance to Togo takes effect on the date of the decree (Art.27). Again, the difference is not clear.

In practice, an application for authorisation to renounce Togolese nationality must be presented to the DSNIC.²⁴⁶ According to the website, the applicant must provide:

- a request addressed to the Justice Minister with a fiscal stamp of 500 francs CFA;
- a certified copy of the birth certificate;
- a certified copy of the nationality certificate;

²⁴⁴ 6è , 7è et 8è Rapports périodiques de l'État togolais sur la mise en œuvre de la Charte Africaine des Droits de l'Homme et des Peuples (Article 62 of the Charter) August 2017, paragraph 571, p.165 ; Concluding observations on the combined sixth and seventh periodic reports of Togo. Addendum. Information received from Togo on follow-up to the concluding observations. Date received: 9 June 2015, [CEDAW/C/TGO/CO/6-7/Add.1](#), 24.6.2015, p.3, item 7.

²⁴⁵ See below the cases of dual nationality: heading 4.5.

²⁴⁶ Service Public de l'administration togolaise, '[Renonciation à la nationalité togolaise](#)', DSNIC.

- copies of the two first pages of the passport;
- original of the promise of naturalisation of the foreign country;
- Original of the translation of the promise of naturalisation.

The (provisional) cost of the procedure is 15,000 francs CFA (about 23 Euros). While the applicant waits for the official government decree, which may take some time, the DSNIC delivers a provisional attestation. The applicant may later apply to reacquire Togolese nationality.²⁴⁷

Several hundred Togolese citizens have been authorized to abandon their Togolese nationality in recent years. This procedure is particularly required when a person naturalises in another country that does not permit dual nationality and demands proof of renunciation of the former nationality – in this case Togolese. Searching in the recent editions of the *Journal Officiel de la République du Togo* available on the internet²⁴⁸ gave four results:

- Decree n°2019-145/PR of 6 November 2019 pertaining to the authorisation of the loss of Togolese nationality, JORT n° 28/64th Year, 6.11.2019 (500 persons)
- Decree n° 2019-032/PR of 20 March 2019 pertaining to the authorisation of the loss of Togolese nationality, JORT n° 6 quarto/64th Year, 20 March 2019, (281 persons)
- Decree n° 2017-069/PR of 4 May 2017 pertaining to the authorisation of the loss of Togolese nationality, JORT n° 14/62nd Year, 4.5.2017, (274 persons)
- Decree n° 2015-024/PR of 27 March 2015 pertaining to the authorisation of the loss of Togolese nationality, JORT n°70 ter/60th Year, 27.3.2015, (344 persons)

Given that not all editions have yet been posted on the internet, there might be slightly more decrees, but certainly not many.

Nonetheless, the difficulty of obtaining such a decree has meant and still means that Togolese citizens who try to naturalise in other States that do not permit multiple nationality could and can face difficulties in acquiring the new nationality because they have not been released from Togolese nationality. For that reason, Germany adopted, for instance, certain exception rules that allow the acquisition of German nationality even when the other State does not release a citizen of that State's nationality in a timely way, when other conditions are met. In Germany, one such condition is that the other state did not react to an application for the loss of the foreign nationality within a period of two years – and explicitly named Togo.²⁴⁹

4.3.2 Deprivation of Togolese nationality

A person may be deprived of his or her Togolese nationality if he or she obtained nationality by *acquisition* – that is, where it was not *attributed* nationality at birth, according to Art.1 or 3 (born in Togo to parents also born in Togo, or to a parent who is Togolese) – and:

- a) carries out activities that are prejudicial to the interests of Togo, by decree of the Council of Ministers (Art.28); or
- b) has been sentenced in Togo or abroad, for an act considered as crime under Togolese law, to a prison term of at least five years. The forfeiture is only applicable if the crime was committed within 10 years of the acquisition of the Togolese nationality (Art.29).

²⁴⁷ Reacquisition according to Art. 15 to 18 of the Nationality Code.

²⁴⁸ <https://jo.gouv.tg/>.

²⁴⁹ Among other States like Afghanistan, Algeria, Angola, Eritrea, Iraq, Iran, Lebanon, Morocco, Nigeria, Syria, Thailand, Togo, Tunisia, and Cuba. - Rheinland-Pfalz, Ministerium für Integration, Familie, Kinder, Jugend und Frauen, "Fragen und Antworten zur Einbürgerung", p.27-28, 2015.

Within one month after such sentence, criminal court registrars must inform the Justice Ministry about judgments or sentences regarding crimes described in Art.29 (Art.47), under the supervision of the Prosecutor General or the Prosecutor of the Republic.²⁵⁰

In both cases, described in Art.28 and 29, the person in question must be notified by the Justice Minister about the intention to withdraw his or her Togolese nationality, personally or at his residence. In the case of an unknown residence, the intended measure must be published in the Official Journal (Art.45). Within one month after the notification or the publication, the person may provide arguments or documents supporting his or her case (Art.45). The deprivation decree takes effect on the day of its publication in the Official Journal.

In some countries, a long absence (of several years) can lead to the withdrawal of acquired nationality. The Togolese law does not include such a clause.

4.4 The nationality of adopted foreign children

The Nationality Code is silent on the matter of foreign children adopted by Togolese citizens. The [2012 Family Code](#) states that in the family of the adopting person, the adopted child has the same rights and obligations as a child whose descent from the adopting person is ascertained (Art.226).²⁵¹ One can argue that this includes the right to the Togolese nationality, but this is not explicit, and doubts may arise from the wording of the article that only refers to “rights and obligations in the family”. At the DSNIC, the author was informed that, in practice, an adopted foreign child acquires the Togolese nationality.

4.5 Dual nationality

Dual nationality is not permitted in Togo for adults who voluntarily change their nationality. A person acquiring Togolese nationality through naturalisation must renounce a previous nationality (Art.11), while a person voluntarily acquiring a foreign nationality is stated to lose Togolese nationality – although, as noted above, the contradictory requirement for authorisation for loss of nationality leaves this ambiguous (Art.23-1 and 25-1). However, those who hold or acquire a second nationality involuntarily (including at birth) or who acquire Togolese nationality as of right, may keep both nationalities.

The most common situation where double nationality can arise is when a child is born to parents of whom one is a Togolese national and the other a foreign national whose country of origin allows the transmission of that nationality by descent and does not oblige the child to choose between one of these two nationalities, for instance, at the age of majority.

As noted above (section 4.2.1), a foreign woman who marries a Togolese citizen automatically receives Togolese nationality if she does not formally declare, before the marriage, that she declines it. There is no provision saying that if she accepts Togolese nationality, she must abandon her original one. Consequently, she may have two nationalities if the state of her

²⁵⁰ These two functions are defined in Art.2 of the Law n° 2019-015 of 30 October 2019 on the Code of the Judicial Organisation ([Loi n° 2019-015 du 30 octobre 2019](#) portant Code de l'organisation judiciaire): “Procureur de la République: magistrat placé à la tête du ministère public près le tribunal de grande instance ou le tribunal d'instance à compétence correctionnelle et civile; Procureur général: magistrat placé à la tête du ministère public près une cour ».

²⁵¹ Articles 217 to 226 of the [2012 Personal and Family Code](#) deal with adoption.

original nationality also allows that (Art.5 and 6).²⁵² Equally, her children may have two nationalities if the law of her country of origin allows her to transmit her original nationality to her children.

A child born in Togo to a foreign father and a foreign mother also born in Togo may keep the nationality of his or her parents, or possibly both of them if they are different, if the nationality laws of the country or the countries of origin of their parents allow such transmissions by descent. There is no provision that compels a child in that position to abandon any other nationality transmitted from her or his father or mother. Theoretically, if the father and the mother are of different foreign nationalities, the child can have three nationalities, including the Togolese one.

When the Togolese nationality is acquired by “declaration” in adulthood by a person born in Togo to foreign parents who had his or her residence in Togo since the age of 16 years and has the “apparent status of a Togolese” (*possession d'état de Togolais* as defined in Art.1), according to Art.8 of the Nationality Code, no provision forces him or her to abandon any original nationality possibly transmitted from one or both of their parents if their country or countries of origins allow that.

4.6 Nationality disputes

In common with other francophone states in Africa, the Togolese nationality code sets out in detail the procedures for resolution of disputes about a person's nationality.

4.6.1 The competence of the civil courts

Disputes about nationality fall under the exclusive competence of the ordinary civil courts (*juridiction civile de droit commun*) (Art.48). If the Togolese or foreign nationality of any individual implicated in a lawsuit dealt with in another court is put into doubt, that other court must suspend that lawsuit and refer the issue of the nationality to the competent civil court (Art.49). If the issue of the nationality is raised in a criminal court operating without a jury, the court must direct the party that raised the doubt about the nationality or the public prosecutor in case the person in question has a certificate of nationality legally delivered (as described in Art.70) to appeal to the civil court within 30 days. The criminal court suspends the case until the issue of the nationality is resolved or until the 30-day delay expires if a civil court has not been seized (Art.50).

The civil court of ordinary law is seized by writ of summons (*par voie d'assignation*), with the exception of those cases where the law expressly authorizes a plaintiff to appeal by means of an application according to the rules of procedure in force (Art.52). The Justice Ministry must receive a copy of the summons or of the application (Art.59). In all cases regarding nationality, the Prosecutor of the Republic must be actively involved, independently of whether the lawsuit was initiated by an individual concerned, by the public administration or by a third person (who may be asked for a security deposit to cover possible expenses or compensation to which he or she may be sentenced), according to the type of case (Art.53-58). Any complaint must be

²⁵² In its Initial, second, third, fourth and fifth periodic reports under the CEDAW, the Togolese Government writes: “A Togolese or foreign woman is free to choose, upon her marriage, between her own nationality and that of her husband” (CEDAW/C/TGO/1-5, 18.3.2004, p.58). Such a choice between two nationalities is however not stated in the 1978 Nationality Code and therefore an apparently erroneous statement. Art.6 of the Nationality Code is not allowing a choice between the two nationality, but just a choice to accept or decline the Togolese one.

accompanied by a justification in order to be admissible. A decision on the case cannot be taken before the expiration of the 30-day term. Exceptionally a decision may be taken within ten days when the civil court is seized by a case concerning electoral matters. This applies also to possible appeals (Art.59). All decisions by competent civil courts on matters of nationality are final, by way of derogation from ordinary law (Art.60). Decisions by criminal courts (*juridictions répressives*) are never final in matters of nationality (Art.61).

4.6.2 Proof of nationality

The burden of proof in matters of nationality lies, by way of an action or a plea in objection, with the individual who claims to have or not to have Togolese nationality, or otherwise with the person who questions the Togolese nationality of an individual who has a Togolese nationality certificate (Art.62). In the case of a nationality acquired by declaration, the proof is a copy of the registered declaration or a certificate from the Justice Ministry that such a declaration has been registered (Art.63).

In the cases where the law offers the possibility to sign a declaration to repudiate or decline Togolese nationality, the proof that such a declaration was not signed can only be provided through a certification from the Justice Ministry, at the request of any claimant. Until there is evidence to the contrary, the holding of the apparent status of a Togolese (*possession d'état* as defined in Art.1) suggests that no such declaration of repudiation was submitted.

The 1978 nationality law only mentions one possible case of repudiation: a Togolese woman who marries a foreigner and thereby acquires the nationality of her husband normally keeps here Togolese nationality unless she repudiates her Togolese nationality before the marriage (Art.26). The 1961 Law (Art.2) created such a possibility for a child born in Togo to a mother born also in Togo and a foreign father; the law seemed to imply, but did not explicitly state, that in the case of a repudiation of the Togolese nationality, the child must be able to acquire the nationality of the father. The possibility to decline Togolese nationality is only offered to a foreign woman who may declare that she refuses to acquire Togolese nationality before getting married to a Togolese husband (Art.6).

Proof of naturalisation is provided by a copy of the naturalisation decree or a copy of the *Journal Officiel* in which it was published. Alternatively, if it is not possible to provide either of these documents, a certificate that the decree exists can be requested and delivered by the Justice Ministry (Art.65). In cases of loss or deprivation of Togolese nationality by decree, the modalities of the proof described in Art.65 also apply (Art.66).

4.6.3 The nationality certificate

In other francophone countries in West Africa, the general authority given to courts to adjudicate nationality disputes includes the authority to issue a nationality certificate that is formal legal proof of a person's nationality and can only be overturned by another court based on new evidence. In Togo, however, only the Justice Minister (Art.70) is authorised to issue nationality certificates.²⁵³ In practice, a nationality certificate is a requirement to obtain a Togolese national identity card or passport.

²⁵³ The 2011 Ad hoc Commission tasked with revising the Nationality Code pointed out that, differently from Togo, in other French-speaking countries of the sub-region this certificate is delivered by a competent judge. The Commission concluded from information obtained that this had been a political choice. - '[Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité](#)' (Lomé, 12-16.9.2011), p.3.

In West Africa, only Côte d'Ivoire and Togo require a nationality certificate before issuing a national ID card and passport. Citizens of Burkina Faso born abroad, for instance, must provide a nationality certificate for their first national ID card.²⁵⁴ All citizens of Burkina Faso must present such a certificate when applying for a passport.²⁵⁵ Otherwise, such a certificate may only be required for certain positions where a determined nationality is a condition (jobs restricted to nationals or UEMOA or ECOWAS citizens, for example).²⁵⁶

The certificate must indicate the legal provision according to which the claimant has Togolese nationality and detail all the documents that allowed this determination. A nationality certificate is trustworthy until proven otherwise (Art.71). Art.72 states that the absence of a reply during a period of two months equals a refusal, but in practice, this does not apply and waiting times may be much longer due to the limited capacities of the DSNIC, without signifying a refusal.²⁵⁷ While DSNIC issues the nationality certificate,²⁵⁸ this also depends on the Directorate General of National Documentation (DGDN), which operates under the Security Ministry and is responsible for issuing ID cards and passports. Applicants who live far from the capital city, Lomé, can hand in their application files at the prefectorial administration which sends it to Lomé. The cost of a nationality certificate is 5,000 FCFA (7,63 €).

5. Nationality administration

Administrative acts imply costs which are often out of reach for ordinary people. To these costs, travel and accommodation costs must also be added, when returning to the place of birth or registration is needed, as well as the bribes expected to avoid waiting times of months and even years. The prevailing level of poverty²⁵⁹ is certain to discourage many Togolese from even trying. The officially granted minimum wage remains at 35,000 FCFA (53,44 €) since 1 January 2012²⁶⁰ and is not always respected. "Although the poverty rate fell from 61.7% in 2006 to 53.5% in 2017, poverty and inequality remain extremely high, particularly in rural areas where 69% of households were living below the poverty line in 2015".²⁶¹

²⁵⁴ Carte nationale d'identité Burkinabè (Police nationale).

²⁵⁵ Passeport (Police nationale).

²⁵⁶ Examples: Loi n° 2011-08 du 30 mars 2011 relative au statut général des fonctionnaire des collectivités locales (Sénégal); Recrutement announcement, November 2019, Centre Africain d'Études Supérieures en Gestion (CESAG, Sénégal/UEMOA); Recrutement announcement for Forest Guards, December 2015 (Sénégal); Décret n° 2011-1704 du 6 octobre 2011 portant création de l'Ecole nationale d'Administration (ENA) et fixant ses règles d'organisation et de fonctionnement, Art.43: applications are restricted to Senegalese citizens.

²⁵⁷ Information received from a justice administration clerk.

²⁵⁸ Interview with the head of the DGEN in June 2014.

²⁵⁹ "Poverty and vulnerability remain high and geographically concentrated in rural areas. The poverty rate (using the national poverty line of CFAF 943.58 per day) decreased from 58.7 per cent in 2011 to 55.1 per cent in 2015, and recent simulations suggest it has continued to fall since 2015, particularly in rural areas thanks to relatively strong agricultural production, mainly in the cotton sector. Extreme poverty (measured using 1.90 USD PPP international line) estimated at 47.8 percent in 2017 is projected to decline to 43.3 percent by 2022, assuming rise in unemployment and loss of income in households that draw their income from coronavirus affected sectors and declining remittances. An increase in prices of imported goods could also negatively impact household welfare and incomes." In 2015, 69% of the rural population were living below the international poverty line and 23% of the rural population. – World Bank, 'Poverty & Equity Brief. Togo', April 2020.

²⁶⁰ 'Salaires minimums – République Togolaise', *Votresalaire.org/Togo*; 'Inflation - le Togo aussi dans la nasse', Le Point Afrique, 12.1.2022.

²⁶¹ The World Bank in Togo: 'Togo At-A-Glance'.

5.1 The civil registry

An efficient, orderly, and correct civil registry is a prerequisite for determining the identity and the nationality of an individual. The civil registry suffers from many deficiencies, including weaknesses of the legal and institutional framework, bureaucracy, lack of material and qualified staff, and inappropriate budget allocation. Some offices were devastated during the different phases of civil unrest in the country. Members of the public, especially in the countryside, have themselves often been unaware of the need – or too poor – to register their children or were reluctant for cultural or social reasons.²⁶² These and many other insufficiencies have been extensively analysed in at least two reports, one drafted in 2012 on behalf of the Government and UNICEF,²⁶³ and one drafted in 2015 on behalf of the Millennium Challenge Account Unit in the Cabinet of the Togolese Presidency.²⁶⁴

Since a new law on civil registration was adopted in June 2009, a new-born must be registered within 45 days.²⁶⁵ After this period has passed, a declaratory court ruling regarding the birth (*jugement supplétif*) is mandatory. The ruling must then be recorded in the civil registry competent for the area of the birthplace and a birth certificate issued.²⁶⁶ Every page of the birth registration book is composed of five sheets. Sheet no. 5 is the original birth certificate which is delivered to the registrant. Sheet no. 4 is sent to the regional statistics department on a monthly basis. Sheet no. 3 goes to the court competent for the respective civil registry. Sheet no. 2 is destined for the Ministry of Territorial Administration. Sheet no. 1 remains in the registration book: it is the original birth register.²⁶⁷

Government efforts to improve birth registration have produced some encouraging results: in 2017, 82.9%²⁶⁸ of children under five were registered, as compared to 77.9% in 2010 and 78% in 2014, while 79% of children of under one had been registered in 2017, as compared to 72% in 2010.²⁶⁹ According to Togo's national report to the UN Human Rights Council for Universal Periodic Review (UPR) in January 2022:

Togo has 1,139 registry offices staffed by 1,408 persons. The vast majority of these offices are located in cantons and villages and in health centres, the aim being to bring civil registration services closer to users. By Decree No. 2018-132/PR of 28 August 2018 on the reform of the civil registration system, the Government established a technical committee on civil registration with a view to providing all Togolese persons with birth certificates.²⁷⁰

²⁶² 'Pour chaque enfant, une identité', UNICEF Togo, 31.12.2019.

²⁶³ Honoré Mimche & Gustave Agbeviade Djoké : 'Analyse du système d'enregistrement des naissances au Togo', Octobre 2012, Ministère de l'action sociale et de la solidarité nationale, Direction générale de la protection de l'enfant, and UNICEF. Not available on the Internet.

²⁶⁴ Douti Nakmak, 'Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs', Rapport final, November 2015, Cellule Millennium Challenge Account, Cabinet, Présidence de la République, p.38 and following.

²⁶⁵ Law n° 2009 - 010 of 11 June 2009 relating to the organisation of the civil registry in Togo, Art.18. Negligence to do so by any person legally obliged is punished by a fine of 20,000 to 30,000 FCFA (Art.39).

²⁶⁶ Service Public de l'administration togolaise, 'Jugement civil sur requête tenant lieu d'acte de naissance', DSNIC.

²⁶⁷ Law n° 2009 - 010 of 11 June 2009 relating to the organisation of the civil registry in Togo, Art. 13.

²⁶⁸ 93,8% in urban areas and 76,1% in rural areas (2017); 83,9% male and 81,7% female.

²⁶⁹ 'Togo MICS6 2017. Enquête par grappes à indicateurs multiples. Rapport des résultats de l'enquête Octobre, 2019', Institut National de la Statistique et des Etudes Economiques et Démographiques (INSEED), 2018, Multiple Indicator Cluster Survey 6, 2017, Rapport final, Lomé, Togo (with support from UNFPA and UNICEF; 'Exhaustivité de l'enregistrement des naissances (%) – Togo', Worldbank ; 'Pour chaque enfant, une identité', UNICEF, 31.12.2019.

²⁷⁰ Human Rights Council Working Group on the Universal Periodic Review, Fortieth session, 24 January–4 February 2022, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, A/HRC/WG.6/40/TGO/1, 26.10.2021, paragraph 66 (in response to recommendations

In the endeavour to continue increasing the percentage of registered children and fulfilling a promise made by F. E. Gnassingbé in April 2020 after his re-election as President of the Republic,²⁷¹ the Togolese Government announced that (timely) birth registration would be free from 1 January 2022.²⁷²

Due to the still insufficient rate of birth registrations, declaratory court rulings remain quite common. But they also result in special attention from the DSNIC because they are often used by persons who are already registered but who try to register again as another person in order to change their age²⁷³ and obtain a new birth certificate on that basis. This is possible because courts are so far not able to verify whether the applicant is already registered or not.²⁷⁴ If the mistrust at the DSNIC prevails, applicants are asked to bring their original birth certificate, and if they cannot, they may never receive their nationality certificate. The presentation of fraudulent documents does not, however, entail prosecutions and conviction.²⁷⁵

5.2 The difficulties in obtaining a nationality certificate

A large proportion of the inhabitants of Togo who have the right to Togolese nationality according to the law find it impossible or extremely hard to obtain a nationality certificate. These difficulties are particularly rooted in the deficiencies of the justice administration and excessive requirements.

The official time it takes to issue a nationality certificate, according to the DSNIC, is one month.²⁷⁶ In 2020, the processing of an application took on average about six weeks when all the supporting documents are as required.²⁷⁷ In April 2022, the waiting time was three months. In practice, it is not unusual that applicants have to wait much longer, particularly when there is not complete correspondence between the different documents presented by the applicant. Sometimes, a small difference in a date or in the spelling of a name on a birth certificate or other errors lead to the rejection of the supporting documents, which then must be corrected at the civil registry, often with the intervention of a court ruling. Such non-conformities have often occurred due to significant shortcomings in the antiquated civil registry system (which is now under gradual reform). In practice, such administrative corrections can take a great deal of time and cost a lot of money, above the official price list if the applicant wants to find a solution in a relatively timely manner – even when the error was clearly committed by the administration itself.²⁷⁸ Errors and irregularities with the entries of names, dates, or other data also happen at the DSNIC or in the prefectures for those who send their files from further afield in Togo, and their correction can take time and cost money too. For the DSNIC and the DGDN,

received during the third round of the UPR in 2016 regarding birth registration - recommendations 128.25, 128.26, 128.27, 128.28, 129.12 and 129.13).

²⁷¹ 'Nouveau mandat de Faure: de nouvelles confidences !', Togo actualités, 19.4.2020.

²⁷² 'Généraliser l'enregistrement des naissances', republicoftogo.com, 15.12.2021; Lilia Habboul, 'Togo. Gratuité des certificats de naissance', Pouvoirs d'Afrique, 16.12.2021.

²⁷³ Generally, to lower their effective age so as to have access, for instance, to school or to a football competition, when in fact they passed the allowed age limit, or to increase the age of an underage girl that her parents want to get married.

²⁷⁴ Interview of the head of the Directorate-General of the National Documentation in June 2014.

²⁷⁵ According to the head of the DGDN in 2014.

²⁷⁶ Service Public de l'administration togolaise, 'Obtenir la nationalité togolaise – Cas d'un parent togolais', DSNIC. Note: Since the recent updating of this site, no deadline is given any more.

²⁷⁷ 'Togo : Obtention du Certificat de Nationalité, un chemin de croix. La nécessité d'une déconcentration de la DSNIC', Liberté Togo, 4.8.2020.

²⁷⁸ Often, if the applicant is not ready or capable of paying this extra money, his or her file will rest on the bottom of the stack of files and take months if not years to be processed. This is essentially a consequence of the lack of staff and means in the justice system.

late registrations by court ruling (*jugement supplétif*) are often suspicious, as noted above, and may be rejected, even when fully correct and justified. Many Togolese citizens do not have the necessary income to stem such costs and are thereby seriously hindered in receiving their nationality certificate and thus their ID card. Sometimes files get lost, particularly when they have to make it all the way from rural areas, and the applicant must start all over again.²⁷⁹

Overcrowding at the DSNIC in Lomé, from the early morning hours well before the service opens, is always huge and waiting times are long.²⁸⁰ Middlemen offer their services to accelerate procedures, but it is not cheap and no one can really be sure that they bet their money on the right person.²⁸¹ The DSNIC is aware of and tries to combat such practices. Interruptions in service have also occurred when the forms used for the certificate, which are produced in Canada, did not arrive in time.²⁸²

In February 2017, the Director of the DSNIC indicated that her service issued around 83,000 nationality certificates per year, without counting the official copies which her service also produces, because photocopied certificates, even certified, are generally not accepted anywhere (for instance for the renewal of an ID card or a passport).²⁸³ Of the approximately 190,000 children born in Togo in 1999 reaching the age of 18 in 2017, most would normally need a nationality certificate in order to receive their ID card. These numbers²⁸⁴ show the enormous discrepancy between the needs and the effective capacity of the DSNIC. On the other hand, many people living in rural areas never concretely felt the need for an ID card, but such need can arise very suddenly and then the situation is dire. Currently, in early 2022, the number of issued certificate surpasses 100,000, according to the DSNIC Director.

The current digitalized format of the nationality certificate has been in use since 2 June 2008.²⁸⁵ The DSNIC is asking all citizens who still have the old version to change it soon, at their own cost.²⁸⁶ During a press conference on 24 November 2021 held by the DSNIC and UNHCR, the Director of the DSNIC announced that only about two million of the new nationality certificate had been issued so far (which means an average of 154,000 per year since 2008 and suggests that the production capacities have been increased since 2017).²⁸⁷ The total population of Togo at the end of 2021 was 8.58 million, and its growth rate 2.3%.²⁸⁸ The conclusion is that a significant expansion of these capacities and particularly a decentralization of that service will be absolutely necessary if Togo wants to allow every citizen not only to have a nationality certificate, but also an ID card, which in Togo depends on the former and is a prerequisite for

²⁷⁹ Douti Nakmak, 'Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs', Rapport final, November 2015, Cellule Millennium Challenge Account, Cabinet, Présidence de la République, p.53-54 ; 'Lutte contre l'apatridie, les députés mis à contribution', *Assemblée Nationale*, 5.11.2021.

²⁸⁰ Those circumstances are well depicted in: 'Togo : Obtention du Certificat de Nationalité, un chemin de croix. La nécessité d'une déconcentration de la DSNIC', *Liberté Togo*, 4.8.2020.

²⁸¹ Douti Nakmak, 'Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs', Rapport final, November 2015, *Cellule Millenium Challenge Account*, Cabinet, Présidence de la République, p.53 ; 'Lutte contre l'apatridie, les députés mis à contribution', *Assemblée Nationale*, 5.11.2021 ; 'Togo : Obtention du Certificat de Nationalité, un chemin de croix. La nécessité d'une déconcentration de la DSNIC', *Liberté Togo*, 4.8.2020 ; and personal accounts.

²⁸² According to a source in the Justice Ministry.

²⁸³ Michael Offermann, 'En bref – la carte d'identité au Togo'.

²⁸⁴ Calculated from World Bank and Worldometer data. Birth rates: <https://data.worldbank.org/indicator/SP.DYN.CBRT.IN?locations=TG>; Population growth: <https://data.worldbank.org/country/togo> ; <https://www.worldometers.info/world-population/togo-population/>.

²⁸⁵ 'Certificats de nationalité numériques', *Republicoftogo.com*, 19.5.20088.

²⁸⁶ 5,000 FCFA for the certificate.

²⁸⁷ Jean-Aimé A., 'Togo / Certificat de nationalité - Les personnes n'ayant pas le nouveau format risquent... ', *L.frii.com*, 25.11.2021 ; Godfrey AKPA, 'Togo-Suppression de l'ancien format de la nationalité -Une manière de saigner encore les populations', *iciLome.com*, 17.12.2021.

²⁸⁸ *Worldometer*; *National Institute of Statistics (INSEED)*.

the enjoyment of fundamental citizen rights. Technically at present, only two out of 8,58 million Togolese can have access to an ID card – less than a quarter. A major effort will be needed if the situation is to improve.

On the same press conference of 24 November 2021, the Director of the DSNIC also announced that new printing machines for the official copies of the certificate would be installed in Togo's five economic regions²⁸⁹ and in the prefectures of Agoé and Golfe (both part of Greater Lomé) and respective requests could soon be made via the internet, as has been possible with the application for criminal records since August 2021.²⁹⁰ This is a positive prospect, but insufficient given the existing gap.

5.3 The certificate of origin

In many families, no member has a nationality certificate. In such cases, a person seeking official recognition of Togolese nationality must go back to the prefecture of origin of her or his family in order to receive an authentication of his or her origin from traditional authorities, stating the names of the forefathers going back up to six generations. Only paternal descent is accepted, which conforms to the terms of the 1978 Nationality Code but violates the 1992 Constitution and the 2007 Child Code, which both state that nationality is transmitted by the father as well as by the mother. Proof of paternal descent may also be an insurmountable obstacle when the father is unknown at any point in the chain.²⁹¹

A prefectorial committee for the establishment of certificates of origin and the analysis of nationality applications has to examine each case. Chaired by the Prefect, the committee is composed of the Prosecutor of the Republic, representatives of the Gendarmerie and the Police, and the county chief.²⁹² The committee meets when its president deems that there are enough applications to make it worthwhile. So, they are rather irregular, sometimes causing great delays for the applicant. The procedure is relatively cumbersome and, combined with the travel and accommodation costs for those who left their birthplace to live elsewhere, constitutes an obvious barrier to obtaining the certificate of origin.²⁹³ The cost of the certificate of origin is 10,000 FCFA.

Furthermore, the certificate of origin is problematic. The 2011 Ad hoc Commission tasked with revising the Nationality Code highlighted that this certificate had no legal base²⁹⁴ and, moreover, was not reliable. The certificate of origin is “based on relatively draconian conditions and resulted in many fanciful declarations”.²⁹⁵ Indeed, in view of the very low prospects of success in following the legal paths for acquisition of the Togolese nationality based on residence in Togo, it is generally much easier for a foreigner to try to obtain it by seeking a

²⁸⁹ Maritime, Plateaux, Centrale, Kara, Savanes.

²⁹⁰ ‘[Lutte contre l'apatridie, les députés mis à contribution](#)’, *Assemblée Nationale*, 5.11.2021 ; ‘[Modernisation de la justice : la plateforme du casier judiciaire automatisé opérationnelle](#)’, Ministère de la Justice et de la Législation, 10.11.2021.

²⁹¹ ‘[Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité](#)’ (Lomé, 12-16.9.2011), p.2.

²⁹² “Chef canton”.

²⁹³ Douti Nakmak, ‘[Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs](#)’, Rapport final, novembre 2015, Cellule Millenium Challenge Account, Cabinet, Présidence de la République, p.51-52.

²⁹⁴ The ministerial decision n° 008/MJ-MATDCL of 30 April 2008 which created the prefectorial commissions in charge of the certificates of origin and of Togolese nationality had no legal basis.

²⁹⁵ ‘[Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité](#)’ (Lomé, 12-16.9.2011), p.4.

certificate of origin through corruption, thereby diverging from the legal logic of the certificate of origin itself. The Commission therefore recommended a reorganization of the civil registry so as to make it efficient and reliable, as the reliability of the nationality certificate finally must depend on a well-functioning civil registry. The abolition of the certificate of origin could be envisaged at the same time.²⁹⁶

In practice, according to the accounts of one applicant from northern Togo, the administration was satisfied with evidence of the genealogy going back three generations. He paid 10,000 FCFA for the certificate of origin, 5,000 for the nationality certificate and other fees of about 10,000 FCFA for an extract of the original birth register, the certification of copies, photographs, etc. Three months after having presented all the required documents, he received the nationality certificate sent back from the central service in Lomé to his prefecture. Much might also depend on the good will of the clerks who deal with these cases.

5.4 The ID card

Togo's first law establishing a national identity card (NIC) was enacted in early 1962.²⁹⁷ The decree was followed days later by a General Instruction for its implementation modalities.²⁹⁸ No new regulations have been adopted since, although the practice has indeed considerably changed and is therefore not covered by the existing law. According to the decree, the NICs are issued by the district chiefs (Art.1) and the application can be filed at the secretariat of the district, at a police station, with the chiefs of administrative posts or any other administrative authority determined by an order of the Interior Ministry (Art.3).

Art.4 provides that an NIC is issued on presentation of an authentic copy of a birth certificate or a declaratory court ruling in lieu of a birth certificate (*jugement supplétif*). If the nationality of the applicant is in doubt, a nationality certificate may be required. Today, however, a nationality certificate has become a general requirement for applications for an NIC, contrary to the provisions of the decree and the General Instruction.

Unlike other ECOWAS countries, where the ID card is officially mandatory from the age of 15 or 18,²⁹⁹ the Togolese ID card is not. There is no minimum age for the issuance of an ID card and no obligation to apply for one.³⁰⁰ The card loses its validity only when the photograph no longer allows identification of the bearer. The General Instruction states expressly that the profession of the bearer is not indicated on the card, but in practice that indication is required and must be proven by relevant documents. The fingerprint of the left index finger must appear on the application form and on the card. Special physical characteristics must also be mentioned there. The residential address is indicated on the card although it is acknowledged that it might change during its 5-year validity. It must be supported by documentary proof.

The General Instruction described exactly how the NIC was filled in (by typewriter and with carbon paper that produced a copy for the administration) and how the identity photograph must be fixed. In later years, the cardboard cards were plastic-coated. In the case of loss of the card, a declaration had to be made at the police station or at the district secretariate

²⁹⁶ 'Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité' (Lomé, 12-16.9.2011), p. 3-5.

²⁹⁷ Decree n° 62-001 of 8 January 1962 establishing the National Identity Card, JORT n° 183/7th Year, 1.2.1962.

²⁹⁸ Instruction n° 43-bis of 10 January 1962 detailing the modalities of the application of decree n° 62-1 of 8 January 1962 establishing the National Identity Card.

²⁹⁹ Senegal and Mali : 15 ; Côte d'Ivoire : 16 ; Benin, Gambia: 18; Niger 18 (15 outside the home district).

³⁰⁰ In Senegal or Mali, for instance, the law make the national ID card mandatory from the age of 15.

corresponding to the residence of the bearer. The bearer could not receive a duplicate but had to start an entirely new procedure to obtain another card. This is still valid today.

Since 25 April 2006, a new, biometric model of ID cards in the form of a plastic card is produced and issued, first only in Lomé and, since March 2009, also in the northern town of Kara.³⁰¹ The system is placed under the control and management of the DGDN³⁰² which is also in charge of issuing passports, and visas and residence permits to foreigners. Nowadays, citizens can apply for their ID cards in police stations and in the prefectures all over the country. The data are entered into local computer terminals, but outside Lomé or Kara there is no a direct internet connection to the central system in the capital Lomé, so the information has to be transmitted with USB sticks. Consular representations abroad have internet access to the system.³⁰³

In order to apply for a national ID card, the applicant must provide:

- the original birth certificate (or an extract of the birth register);
- the original nationality certificate;
- proof of profession;
- proof of blood group;
- 5,000 FCFA;³⁰⁴
- and, where relevant, certificates of marriage (for married women), divorce, or death (for widows).³⁰⁵

The processing time is officially eight days,³⁰⁶ but may take much more in practice, particularly for applications from rural areas.

In 2015, there were 200 to 300 applications for ID cards per week,³⁰⁷ corresponding to roughly 40,000 per year.³⁰⁸ There have been many complaints about the obstacles to obtaining an ID card, not just about the cost, judged too high by many.³⁰⁹ Since August 2021, in an effort to better deal with the waiting times, the Directorate General of the National Police announced a

³⁰¹ 'DOSSIER : La Carte Nationale d'Identité (CNI)', *Doingbuzz.com*, 2016 ; 'Fiabilité du fichier électoral : ADDI demande au gouvernement la délivrance des pièces d'identité à chaque citoyen', *Togo tribune*, 28.3.2017 ; 'Céni, ce sera oui !', *Republicoftogo.com*, 27.3.2009; Douti Nakmak, 'Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs', Rapport final, November 2015, Cellule Millenium Challenge Account, Cabinet, Présidence de la République, p.

³⁰² "Directorate General of the National Documentation", set up in October 2003 in the Ministry of the Interior, Security, and Decentralisation as it was named then (today the "Ministry of Security and Civil Protection"). It replaced the Passport and Foreigner Service which had operated under the National Defense Ministry. - *Decree n° 2003-268/PR of 20 October 2003* pertaining to the transfer of the Passport and Foreigner Service to the Ministry of the Interior, Security, and Decentralisation.

³⁰³ Interview with the head of the DGDN, June 2014; Douti Nakmak, 'Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs', Rapport final, November 2015, Cellule Millenium Challenge Account, Cabinet, Présidence de la République, p.57.

³⁰⁴ 'Carte Nationale d'identité', *DGDN*.

³⁰⁵ Service Public de l'administration togolaise, 'Carte nationale d'identité – Première demande', DSNIC.

³⁰⁶ Service Public de l'administration togolaise, 'Carte nationale d'identité – Première demande', DSNIC. Note : Since the recent updating of this site, no deadline is given any more.

³⁰⁷ Douti Nakmak, 'Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs', Rapport final, November 2015, Cellule Millenium Challenge Account, Cabinet, Présidence de la République, p.57.

³⁰⁸ 52 x 750 = 39,000 – 200 to 300 applications received on each of three reception days per week.

³⁰⁹ 'Le MMLK demande la revue à la baisse des frais de délivrance des pièces d'identité', *iciLomé.com*, 3.6.2016 ; 'Carte nationale d'identité au Togo: Parlons-en !!!', *Courrier d'Afrique*, 29.6.2020 ; Zeus Aziadouvo, 'La carte nationale d'identité, un luxe au Togo', *Liberté/27avril.com*, 9/10.4.2015 ; 'Togo : Banalisation de la carte d'identité et de la nationalité togolaises par Mme Ingrid Awadé', *Togotribune.com*, 26.7.2016 ; 'Carte d'identité', *ELANEAUQUOTIDIEN*, 24.11.2014.

considerable extension of the opening hours for applicants of ID cards: they are now from 5:00 to 21:00.³¹⁰

For the [renewal of an expired or lost ID card](#), all the same original documents³¹¹ must be presented – for lost cards, also a police declaration. For some years, a new system has been in place where all these documents are scanned and kept in the system. If discrepancies are discovered between the stored documents and those then presented or if other, even minor, errors or non-conformities are noted, the renewal of the ID card is rejected, and the applicant asked to correct the documents or to bring the true documents. This does not happen infrequently. While this effort to ensure orderly and reliable personal documents is understandable, it often entails very long and expensive procedures³¹² in the justice administration and the civil registry to redress such inconsistencies.

It is difficult to know the approximate number of ID cards issued. For 2014, the DGDN gave a figure of 700,000 cards.³¹³ In June 2020, the Minister of Commerce and Industry reportedly mentioned a figure of 1 million ID cards.³¹⁴ A source close to the DGDN in 2017 informally hinted at 1.1 million cards. Nathaniel Olympio,³¹⁵ leader of the *Parti des Togolais*, in 2020 suggested that 85% of Togolese do not have ID cards, which implies that 30% of adult citizens, or 1.24 million, do have one, out of a total population of 8.28 million.³¹⁶ Answering questions from Members of Parliament, the Minister of Post Services, Digitized Economy, and Technological Innovations finally indicated a figure of 1.2 million entries in the database of ID cards.³¹⁷ These numbers are low. As we have seen above, a significant number of Togolese citizens do not have birth certificates and an even greater number do not have nationality certificates, the rate of issuance being well the population growth. The ID card depends on both certificates.

The idea of organising mobile court hearings to systematically register all those who do not have their birth and nationality certificates has been raised and considered for several years, but has so far not been widely implemented.³¹⁸ Only very occasional and limited operations have taken place, for instance for students or informal market women, partly organised by local NGOs – no comprehensive solution for the problem.³¹⁹ Moreover, the DSNIC partially and the DGDN entirely operate under the Security Ministry, which means that most of their staff belong

³¹⁰ [‘Vers plus de célérité dans l’obtention des cartes nationales d’identité’](#), Portail Officiel de la République Togolaise, 9.8.2021.

³¹¹ Or the official duplicates of the nationality certificate which are issued solely at the DSNIC.

³¹² Mainly due to unofficial payment that are too often necessary in order to avoid that the file becomes dormant underneath the stacks of other files in the overloaded administration.

³¹³ According to the head of the DGDN.

³¹⁴ [‘Carte nationale d’identité au Togo: Parlons-en !!!’](#), *Courrier d’Afrique*, 29.6.2020

³¹⁵ A nephew of Chilchrist Olympio.

³¹⁶ Louis KAMAKO, [‘Le Parti des Togolais critique le gouvernement Tomegah-Dogbé’](#), *togobreakingsnews.info*, 9.11.2020 ; [‘Conclusions CNAP : Voici la réaction de Nathaniel Olympio’](#), *iciLomé*, 5.8.2021.

³¹⁷ [Rapport de l’étude au fond du projet de loi relatif à l’identification biométrique des personnes physiques au Togo](#), *National Assembly*, 9.6.2020, p.8.

³¹⁸ Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d’établissement de certificats d’origine et de nationalité (Lomé, 12-16.9.2011), p.4 and Annex 2 ; Godfrey AKPA, [‘Nathaniel Olympio - « La dictature n’est pas une fatalité, elle peut être repoussée et délogée »’](#), *iciLomé*, 19.10.2021 ; [‘Le MMLK demande la revue à la baisse des frais de délivrance des pièces d’identité’](#), *iciLomé.com*, 3.6.2016 ; [‘Conclusions CNAP : Voici la réaction de Nathaniel Olympio’](#), *iciLomé*, 5.8.2021.

³¹⁹ [‘Togo : Banalisation de la carte d’identité et de la nationalité togolaises par Mme Ingrid Awadé’](#), *Togotribune.com*, 26.7.2016 ; [‘Délivrance de certificat de nationalité - Trois jours d’opération foraine au profit des étudiants de l’Université de Lomé’](#), *Togo Presse*, 29.1.2019 ; [‘Certificat de Nationalité - Un parcours de combattant’](#), *L’Indépendant Express*, *Togo Actualité*, 30.8.2019 ; [‘Carte nationale d’identité au Togo: Parlons-en !!!’](#), *Courrier d’Afrique*, 29.6.2020 ; Honoré Mimche & Gustave Agbeviade Djoké : ‘Analyse du système d’enregistrement des naissances au Togo’, Octobre 2012, Ministère de l’action sociale et de la solidarité nationale, Direction générale de la protection de l’enfant, and UNICEF, p.29, 58, 62-63.

to the Gendarmerie and the Police, who so far do not have a reputation of a citizen-friendly, helpful service. The common people in Togo generally do not distinguish between the different uniform wearers: they often call them all “soldiers”.

Despite these difficulties, there has not been a general outcry in the media or within civil society. Nonetheless, the lack of ID cards has severe consequences for individuals. By impairing the personal development of the citizens, the country is also creating obstacles to the economic and social development of the country as a whole. Moreover, security issues in the West African region make identification a necessity.³²⁰ Without the card, the citizen cannot exercise or enjoy fundamental civil, political, economic, and social rights:

- Free movement inside Togo (persons met without ID cards at night may have to spend the rest of the night at police stations)
- Access to higher and professional education
- Access to a formal job in the public or the private sector
- Opening a bank account
- Receiving national or international money transfers
- Opening a business, access to the formal economy
- Access to administrative services
- Access to justice
- Access to insurance
- Concluding contracts
- Travel abroad (within UEMOA³²¹ an ID card is sufficient)
- Acquiring a passport
- Acquiring a driver's license
- Registration of a car or of a motor bike
- Registering a SIM-card
- Buying land or property
- Creating a civil society organisation or a political party
- Healthcare and vaccinations
- Reliable voter registration

5.5 Passports

The issuance of passports follows the same rigorous rules and depends on the same system. They are issued only at the DGDN in Lomé and are valid for five years. For their renewal, all supporting documents that were necessary for the initial issuance must be presented again. In case of discrepancies, the renewal may be delayed until such discrepancies are corrected.

6. Current issues and conclusion

Necessary reforms of the Nationality Law, of the systems of the civil registration, the *jugements supplétifs*, the establishment of nationality certificates and the issuance of ID cards are overdue. Several ministries are involved: Justice, Security, Territorial Administration, Foreign Affairs, Social Action, Transport (driver's licence), Defence, and Finance. An inter-ministerial management committee, coordinated by the Finance Ministry supervises the identification

³²⁰ André Silver Konan, ‘Côte d’Ivoire : trois ans après l’attentat de Grand-Bassam, le cerveau présumé est toujours en fuite’, *Jeune Afrique*, 13.3.2019/12.11.2019 ; Moustapha Cissé, ‘CEDEAO: la carte d’identité unique ne garantit plus l’entrée en Côte d’Ivoire’, *Le320Afrique.com*, 11.7.2018.

³²¹ Union économique et Monétaire des États de l’Afrique de l’Ouest (Economic and Monetary Union of West Africa).

system. The intervention of so many stakeholders has made the improvement of the system more difficult, as the head of the DGDN explained.

The Consultative Commission in the Justice Ministry, provided for in the Nationality Law (Art.67-69) and tasked with studying all problems regarding nationality in a general manner and difficulties arising from the issuance of nationality certificates, has never been set up. The 2011 Ad hoc Commission tasked with revising the Nationality Code had recommended to speedily draft a decree on its organisation and functioning.³²²

6.1 Gender discrimination in the law and proposals for reform

The current Nationality Code is not compliant with Art.9 of the [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW) and that situation has been brought up in the Final Observations of the Committee which monitors the implementation of the Convention regarding Togo's periodic reports.³²³ Art.9 states:

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.
2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

On 30 June 2016, the Human Rights Council adopted a resolution affirming “The right to a nationality: women’s equal nationality rights in law and in practice”.³²⁴

As noted above, some of the non-compliant provisions of the Nationality Code have been remedied by more recent laws, including the 1992 Constitution and the 2007 Child Code, and the 2012 Personal and Family Code. However, the Nationality Code has itself remained unchanged, keeping the outdated provisions and providing the basis for discrimination within the system of “certificates of origin”. Moreover, later laws have made no change in relation to the right of a Togolese man to transmit his Togolese nationality to a foreign wife, while a Togolese woman cannot do the same to her foreign husband. The foreign husband must pass through the naturalization procedure, but with some dispensation as regards the required minimum time of residence in Togo. Therefore, for instance, he must abandon his former nationality while a woman married to a Togolese is not forced to do so.

The Committee on the Elimination of Discrimination against Women had urged Togo in 2006 “to remove all discriminatory laws relating to nationality”.³²⁵ Already in 2002, the UN Human Rights Committee had expressed its concerns that the process of harmonizing the national legislation with the 1992 Constitution and international human rights instruments had ground to a halt.³²⁶ In its Concluding Observations on the sixth and seventh periodic reports of Togo

³²² ‘Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d’établissement de certificats d’origine et de nationalité’ (Lomé, 12-16.9.2011), p.5.

³²³ These documents are available here:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=TGO&Lang=EN

³²⁴ A/HRC/RES/32/7, 18.7.2016.

³²⁵ ‘Concluding comments of the Committee on the Elimination of Discrimination against Women: Togo’, CEDAW/C/TGO/CO/5, 3 February 2006, paragraph 23.

³²⁶ Concluding observations of the Human Rights Committee (Third periodic report of Togo), CCPR/CO/76/TGO, 28 November 2002, paragraph 6.

(2012), the Committee on the Elimination of All Forms of Discrimination against Women welcomed the provisions of Art.149 of the new family code but insisted once more on the need to reform the discriminatory provisions of the 1978 Nationality Law.³²⁷ The Committee urged Togo to “accelerate the finalization and adoption, within a clear and precise time frame and without delay, of the law reform to bring domestic provisions into line with the Convention”.³²⁸ In a [letter dated 14 December 2015](#), the Committee acknowledged that due to that Art.149, its recommendations regarding the revision of the 1978 law had “been partially implemented”. In 2015, Togo informed the CEDAW Committee that “the nationality code is currently under revision, and an advance draft is under discussion by the competent bodies.”³²⁹

In August 2011, motivated by the outdated character of the Nationality Code and the deficiencies in the system of civil registration, *jugements supplétifs*, and certificates of origin which seriously impaired the issuance of nationality certificates, the Justice Minister tasked a high-level Ad-Hoc-Commission with “revising the law texts relating to nationality and to define the practical modalities of public court hearings to establish certificates of origin and nationality certificates”. The Commission elaborated a new text and formulated several recommendations regarding the system of the establishment of personal identification documents, but their work did not result in the effective adoption of a new Code.³³⁰ In line with the government’s commitment to CEDAW, the draft eliminated the gender inequality in the law, but it still left gaps that could lead to statelessness.

A national workshop on Achieving Gender Equal Nationality Rights in Togo, convened by the *Global Campaign for Equal Nationality Rights* on 7 and 8 February 2017 and attended by over 60 participants from the Togolese government and State, civil society, and the media had been another occasion to bring the discriminatory provisions of the Nationality Law to public and relevant stakeholders’ attention.³³¹ A further attempt occurred in 2019: from 22 to 25 April, the Justice Ministry and UNHCR held a validation workshop on a draft law on nationality. The media announced that a new nationality law was imminent.³³² Nonetheless, the same law continues in force, unamended.

6.2 Accession to the Statelessness Conventions

On 24 July 2021, Togo formally acceded to the [1954 Convention relating to the Status of Stateless Persons](#) and to the [1961 Convention on the Reduction of Statelessness](#). The Nationality Code will also need to be harmonized with these two conventions. The 1954 Convention requires State Parties to “as far as possible facilitate the assimilation and

³²⁷ “The Committee recommends that the State party: (a) Amend its Code of Nationality to grant women equal rights with men regarding the retention of the Togolese nationality in case of divorce (art. 23.3) and the transmission of the Togolese nationality to their children (art. 1) or to their spouses of foreign nationality (art.5)”. [CEDAW/C/TGO/CO/6Motiv-7, 8.11.2012](#).

³²⁸ ‘Concluding observations on the sixth and seventh periodic reports of Togo’, adopted by the Committee at its fifty-third session (1–19 October 2012), [CEDAW/C/TGO/CO/6-7](#), 8 November 2012, paragraph 15 and 29.

³²⁹ Concluding observations on the combined sixth and seventh periodic reports of Togo. Addendum. Information received from Togo on follow-up to the concluding observations. Date received: 9 June 2015, [CEDAW/C/TGO/CO/6-7/Add.1](#), 24.6.2015, p.3, item 9.

³³⁰ ‘Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d’établissement de certificats d’origine et de nationalité’ (Lomé, 12-16.9.2011), p.5.

³³¹ “The workshop and related activities underscored the strong interest of government and civil society members to work together to realize the government’s commitment to enshrine gender equality in a new Nationality Code without delay.” ‘[Togo Convening Increases Momentum for Nationality Law Reform](#)’, the *Global Campaign for Equal Nationality Rights*.

³³² ‘[Un nouveau code de la nationalité bientôt en vigueur](#)’, [republiquetogolaise.com](#), 24.4.2019; ‘[Vers un nouveau code de nationalité au Togo](#)’, [Togo Tribune](#), 24.4.2019.

naturalization of stateless persons” (Art.32). The current Nationality Code does not have any provision to that effect.

Art.1.1 of the 1961 Convention provides that “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless”, either at birth, by operation of law, or on application. This provision is echoed in Art.6-4 of the African Charter on the Rights and Welfare of the Child, which states that “a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws”. In its Art.2, the 1961 Convention states that “a foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State”.

Art.2 of the Nationality Code attributes Togolese nationality to any person born in Togo who does not have any other nationality of origin. Although this provision comes close to the provisions of the 1961 Convention and African Children's Charter, it is limited to persons born in Togo and does not include persons found in Togo whose birthplace is unknown. Here, again, the 2007 Child Code is more comprehensive and partially satisfies the 1961 Convention: Art.19 determines that any child under the age of five found on Togolese territory and whose parentage is unknown has the right to acquire Togolese nationality. Children with an unknown birthplace over the age of 5 are left out. Art.19 extends the same right to any child born in Togo to parents whose birthplace is unknown, which is more or less in line with Art.2 of the Nationality Code. Moreover, Art.19 of the Child Code refers to the *right of acquisition* of the Togolese citizenship. This is different from the *attribution* to which Art.2 of the Nationality Law refers, attribution being in principle automatic at birth. A reformed nationality law should clarify this issue.

6.3 Identification and the voters' roll

Political parties have repeatedly complained about the low number of ID cards held by Togolese citizens, pointing out that the delivery of ID cards ahead of voters' registrations had been an important point (1.2.5) of the Global Political Accord of 2006 (see section 2.6).³³³ While the barriers to obtaining an ID card are always high, it is much easier to obtain a voter's card ahead of elections. This is quite contradictory, given that there is just one main condition for both cards: to have Togolese nationality. Indeed, in the absence of a well-functioning civil registry system and an efficient system of delivering ID cards, Togo has been forced to carry out repeated voter registrations, all of which ended up being systematically disputed.

In 2015, the expert mission of the Organisation Internationale de la Francophonie (OIF), which had been asked to provide technical assistance for the consolidation of the voters' roll ahead of the presidential elections of April that year, noted that less than 25% of the voters, 865,861 out of 3,509,258, had been registered with an ID card and the rest through testimonies, making it impossible to formally verify their identity, age and nationality.³³⁴ Given that it is unlikely that all ID card-holders did effectively register as voters, the number of actual holders is probably

³³³ 'Fiabilité du fichier électoral : ADDI demande au gouvernement la délivrance des pièces d'identité à chaque citoyen', *Togotribune*, 28.3.2017 ; Godfrey AKPA, 'Nathaniel Olympio - « La dictature n'est pas une fatalité, elle peut être repoussée et dégagée »', *iciLomé*, 19.10.2021 ; 'Togo : Banalisation de la carte d'identité et de la nationalité togolaises par Mme Ingrid Awadé', *Togotribune.com*, 26.7.2016.

³³⁴ 'Présidentielle 2015 : Le fichier électoral consensuel compte 3 509 258 électeurs', *Commission Électorale Indépendante, CENI-Togo*, 10.4.2015 ; Cour Constitutionnelle du Togo, Affaire : Proclamation des résultats définitifs de l'élection présidentielle du 25 avril 2015, *DECISION n° EP-008/15 DU 03 MAI 2015*, JORT n°12, 3.5.2015.

somewhat greater. Estimates of Togo's population in 2015 indicated 7.32 million inhabitants,³³⁵ slightly under 50% of them being over the voting age of 18,³³⁶ which suggests a voting-age population of roughly 3.6 million, 3.5 million of whom were registered. The head of the OIF mission, General Siaka Sangaré, emphasized that the reliability of the voters' rolls has always been at the centre of electoral disputes, in Togo and elsewhere. He recommended a modernization of the civil registry to deliver trustworthy identity documents, and that voters should only be enrolled on that basis.³³⁷

6.4 The ECOWAS biometric national ID card: no plans for Togo

During a meeting in Accra in June 2014, ECOWAS Heads of State and Government decided to adopt a common ECOWAS National Identity Card which would serve as an ID card, travel document and resident's permit within the ECOWAS Region.³³⁸ The new card would be biometric, contain certain security features, and would be valid 10 years.³³⁹ During a subsequent ECOWAS summit in Abuja, in December 2015, the chair of the ECOWAS Commission presented the first example of the new card and announced its distribution from 1 January 2016 onwards, under the responsibility of each Member State.³⁴⁰ The card would be valid for 10 years and should be introduced in all Member States by the end of 2017.³⁴¹

In 2016, Senegal was the first country to issue new national identity cards with the agreed characteristics of the ECOWAS ID card.³⁴² Mali's Parliament adopted the new card in 2016 and Burkina Faso in 2017.³⁴³ Guinea-Bissau started issuing the ECOWAS identity card in

³³⁵ *Worldbank: Data. Togo. Total population*. The national Institut for Statistics gives lower numbers (*Institut National de la Statistique et des Etudes Economiques et Démographiques*, INSEED) : 7,886,000 on 1 January 2021.

³³⁶ 'Quatrième recensement général de la population et de l'habitat – novembre 2010, Publication des résultats définitifs', Volume spécial, « Tableau : Répartition de la population résidente selon le groupe d'âges et le sexe » p.5, Bureau Central du Recensement, Direction Générale de la Statistique et de la Comptabilité nationale, Ministère auprès du Président de la République chargé de la Planification, du Développement et de l'Aménagement du Territoire, Présidence de la République.

³³⁷ 'Les conditions d'une élection démocratique sont réunies', *republicoftogo.com*, 9.4.2015. The 2011 Ad-Hoc Commission tasked with revising the Nationality Law had made a similar recommendation in another context. - 'Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité' (Lomé, 12-16.9.2011), p.4-5.

³³⁸ Decision A/DEC.1/07/14 amending decision A/DEC.2/7/85 on the establishment of a travel certificate for ECOWAS Member States; 'Carte d'identité biométrique CEDEAO', *Pana/Maliweb*, 10.7.2014.

³³⁹ 'Ecowas biometric id card goes into force in 2016', *L-intégration*, 15.12.2014; 'CARTE D'IDENTITE BIOMETRIQUE DE LA CEDEAO : Le TOCSIN interpelle les autorités', *Le Pays*, 27.4.2016 ; 'Le Sénégal adopte la carte d'identité biométrique de la CEDEAO', *Xinhua/Seneweb*, 6.3.2016.

³⁴⁰ Stephen Mayhew, 'Distribution of ECOWAS Biometric ID Cards to begin in January 2016', 'Distribution of ECOWAS Biometric ID Cards to begin in January 2016', *BiometricUpdate.com*, 21.12.2015; 'Des cartes d'identité biométriques officiellement lancées par la CEDEAO', *Guinee28.info*, 18.12.2015.

³⁴¹ 'Le ministre de l'Intérieur liste les avantages de la future carte d'identité biométrique de la CEDEAO', *Osiris.sn*, 4.3.2016 ; 'Mali : CEDEAO : La carte d'identité biométrique ciblée par les États', *MaliActu.net*, 9.11.2016.

³⁴² 'Le Sénégal adopte la carte d'identité biométrique de la CEDEAO', *Xinhua/Seneweb*, 6.3.2016 ; 'ECOWAS Biometric ID Card: the 10 facts you need to know', *Presidency of Senegal*, 5.10.2016.

³⁴³ 'Baba Ahmed, 'Mali : pour les futures cartes d'identité biométriques, Cissé technologie construit une imprimerie près de Bamako', *Jeune Afrique*, 22.9.2017 ; 'Carte d'identité nationale biométrique CEDEAO couplée à l'assurance maladie l'état malien risque de payer deux fois : l'état malien risque de payer deux fois', *Mali24info*, 7.4.2021; 'Burkina Faso - l'adoption de la Carte d'identité CEDEAO actée', *La Tribune Afrique*, 11.4.2017.

March 2018.³⁴⁴ Ghana and Côte d'Ivoire adopted it in 2019. Guinea³⁴⁵ and Benin³⁴⁶ combined the introduction of the new card with an overhaul and modernization of the civil registry. Some countries, like Guinea or Benin, chose a validity of only 5 years. In Gambia, the roll-out of the biometric national ECOWAS identity card was launched on 1 October 2018.³⁴⁷ Sierra Leone announced it would launch the card at the end of 2020.³⁴⁸ Mali, Liberia³⁴⁹, and Nigeria³⁵⁰ decided to issue the ECOWAS card separately from the national ID card. Niger and Togo are lagging behind. In Togo, no plans to introduce the common-format ECOWAS ID card have been mentioned. Instead, Togo has embarked on a separate biometric registration programme.

6.5 Togo's programme of biometric national identification "e-ID Togo"

On 5 March 2020, the Council of Ministers approved a programme of biometric identification of all persons living in Togo, called "e-ID Togo". The e-ID programme is intended to address the fact that millions of Togolese citizens are living without identity documents and thereby impaired in developing their lives. The project does not, however, address the many problems and plans for reform in relation to the current system, outlined above, nor will it replace the national ID card. Instead, e-ID Togo establishes a wholly new layer of identification infrastructure. The stated objective is that existing procedures and documents will be integrated in due course.

The project is part of a process of modernisation, digitisation, and simplification of the public administration according to the vision of the National Development Plan 2018-2022, in particular to the Strategic Axis No. 3 ("Consolidate the social development and strengthen the inclusion mechanisms")³⁵¹ and Axis No.1 of the roadmap 2020-2025 ("Strengthen the inclusion and social harmony and consolidate the peace").³⁵² "e-ID Togo" will assign a unique

³⁴⁴ 'Guiné-Bissau começou a emitir BI que substitui passaporte na CEDEAO', *Expresso das Ilhas*, 29.3.2018; 'Guiné-Bissau começou a emitir novo bilhete de identidade que substitui passaporte na CEDEAO', *Diário de notícias/Lusa*, 28.3.2018.

³⁴⁵ 'Comment obtenir une carte d'identité biométrique ? Les explications du commissaire Paye Camara', *guineematin.com*, 3.2.2021 ; 'Mise en circulation des cartes d'identité biométrique : comment l'obtenir ?', *224INFOS*, 4.2.2021.

³⁴⁶ 'Bénin : les cartes d'identité biométriques désormais disponibles', *Africa24*, 2.8.2021; 'Du RAVIP à la dématérialisation de l'Etat Civil au Bénin', *Agence Nationale d'Identification des Personnes* ; 'RAVIP continue', *Agence Nationale d'Identification des personnes*, 26.2.2020 ; "West Africa Unique Identification for Regional Integration and Inclusion (Wuri) Program Phase 2", World Bank, April 2020, p.31-33.

³⁴⁷ 'National ID Cards ready for issue on October 1', *Gunjour Online News*, 22.9.2018.

³⁴⁸ 'NCRA where is our national id card? -citizens demand', *The Calabash Newspaper*, 11.1.2021; 'Sierra Leone assures of national photo ID cards starting December', *Politico SL*, 7.11.2020.

³⁴⁹ 'Liberia launches National Biometric ID System', *Africa Business Communities*, 30.10.2017; 'Liberia: The National Registry Should Do Better', *New Dawn*, 6.4.2021; 'Liberia takes steps towards issuing biometric eID cards', *IdentityWeek*, 18.5.2017.

³⁵⁰ Frank Hersey, 'ECOWAS, Nigeria look to ease travel with biometric card, faster passport issuance', *BiometricUpdate.com*, 28.7.2021; 'Immigration Service plans biometric cards for ECOWAS', *National Accord*, 26.7.2021.

³⁵¹ 'Le projet de loi sur l'identification nationale biométrique « e-ID Togo » adopté en Conseil des Ministres', *Ministère de l'Economie Numérique et de la Transformation Digitale*, 6.3.2020 ; *Plan National de Développement 2018-2020*, République Togolaise, p.75.

³⁵² This roadmap aims to achieve the Government's vision to turn Togo "into a country in peace, a modern nation with an inclusive and sustainable economic growth" and builds on three strategic, interdependent axes: 1) Strengthen the inclusion and social harmony and consolidate the peace; 2) revitalize the creation of jobs through the forces of the economy; and 3) modernize the country and reinforce its structures. Strategic Axis No.1 intends to ensure an identity to all citizens as well as access to health and basic services; to offer an accessible education to the highest number of citizens possible in correspondence to the needs of the labour market; and to guarantee security, peace and justice to all.- 'Feuille de route du Gouvernement', *L'Union* n° 1464, 14.8.2021, p.3; *Council of Ministers*, 9.12.2020.

identification number to every Togolese citizen and foreign resident in Togo and provide them with a proof of unique identity on the basis of their personal and biometric data stored in a central secure and reliable data base. It is stated that the system will verify the identity of citizens in order to facilitate their access to public and private social and economic services.³⁵³ The system will be managed by the newly created National Identification Agency (ANID), which is placed directly under the Presidency.

The “e-ID Togo” project has been conceived in cooperation with the World Bank and received its support in the framework of the Bank’s West Africa Unique Identification for Regional Integration and Inclusion (WURI) Project and its “Identification for Development Initiative” (ID4D³⁵⁴). The project was approved by the World Bank in June 2018 and its first phase started in Côte d’Ivoire and Guinea, and the ECOWAS Commission.³⁵⁵ The funding for the second phase for Togo, Benin, Burkina Faso, and Niger was approved in April 2020. Its stated objective is to “[i]ncrease the number of persons in the Togolese Republic, Republic of Benin, Burkina Faso and Republic of Niger, who have government-recognized proof of unique identity that facilitates their access to services”.³⁵⁶

In the WURI project, the World Bank proposes the ‘foundational model’ so as to avoid questions of legal status, leaving issues such as nationality for later, with the aim of covering all the inhabitants of a country without exclusion.³⁵⁷ This shall “help improve access to services, including safety nets, social registries, health and pension programs, financial and digital inclusion, women and girls’ empowerment, and labour mobility”.³⁵⁸ This model indeed seems attractive in Togo, where the access to the nationality certificate is subjected to so restrictive conditions. Recent Togolese legislation frames the project:

- the [Law on the protection of personal data](#)³⁵⁹ and the [decree defining the organisation and functioning of the Authority in charge of implementing this law](#) according to its Art.55³⁶⁰;

³⁵³ Government papers refer to access to credit, universal health insurance, and voters’ registration. - ‘[Le projet de loi sur l’identification nationale biométrique « e-ID Togo » adopté en Conseil des Ministres](#)’, *Ministère de l’Economie Numérique et de la Transformation Digitale*, 6.3.2020 ; [Exposé des motifs relatif à l’identification biométrique des personnes physiques au Togo](#). Adopté par le Gouvernement, 5.3.2020.

³⁵⁴ “ID4D directly supports countries to achieve Sustainable Development Target 16.9: “By 2030, provide legal identity for all, including birth registration,” and in making progress towards dozens of other targets such as poverty elimination, reduced inequalities, gender equality and women’s empowerment, safe and orderly migration, universal health coverage, and financial inclusion, among others.” – [The ID4D Initiative](#), World Bank.

³⁵⁵ [West Africa Unique Identification for Regional Integration and Inclusion \(WURI\) Program](#)’, World Bank; [West Africa Unique Identification for Regional Integration and Inclusion \(Wuri\) Program Phase 2](#)”, World Bank, April 2020, p.22; ‘e-ID Togo’, *Ministère de l’Economie Numérique et de la Transformation Digitale*.

³⁵⁶ ‘Togo, Benin, Burkina Faso, Niger. [West Africa Unique Identification for Regional Integration and Inclusion \(WURI\). Program Phase 2](#)’, *International Development Association/World Bank Group*, 10.4.2020, p.61.

³⁵⁷ Manby, Bronwen, “[The Sustainable Development Goals and ‘legal identity for all’: ‘First, do no harm’](#),” *World Development*, vol. 139, March 2021, p.6. - “This approach draws heavily on the ‘Aadhaar’ biometric registration and identity number developed in India” (p.6).

³⁵⁸ ‘[Togo, Benin, Burkina Faso and Niger Join West Africa Regional Identification Program to Help Millions of People Access Services](#)’, *World Bank*, Press release, 28.4.2020.

³⁵⁹ [Law n° 2019-014 of 29 October 2019](#) relating to the protection of personal data, JORT, n° 26ter/64th Year, 12.11.2019. - The law aims to regulate the collection, processing, transmission, storage, use, and protection of personal data. It guarantees that all processing of personal data, under any form, does not violate the freedoms and fundamental rights of physical persons (Art.1).

³⁶⁰ [Decree n° 2020-111 of 9 December 2020](#) pertaining to the organisation and operation of the Authority of the Protection of Personal Data (Instance de Protection des Données à Caractère Personnel, IPDCP), JORT n° 47, 65th Year, 24.12.2020, p.24-31.

- the [Law on the biometrical identification of the physical persons in Togo](#)³⁶¹ and the [Decree on the attributions, organisation, and operation of the National Identification Agency \(ANID\)](#) according to Art.19 of the Law;³⁶²
- during its session of 16 March 2022, the Council of Ministers adopted a law modifying the [2020 Law on the biometrical identification of the physical persons in Togo](#). Details have not yet been published.³⁶³

The law on the biometrical identification specifies that besides a person's name, date and place of birth, gender, the names of their parents, and their address or location, biometrical characteristic must be registered: facial picture, 10 fingerprints, and an iris scan (Art.6 and 7). Children's biometric data are not taken before the age of five (Art.8).

The Unique National Identification Number (NIU) is a random one (Art.10). Its composition does not provide any information concerning the owner, unlike for instance in Mali, where the national identification number includes their gender and the year and place of birth.³⁶⁴ After authentication, it will serve as proof of the identity of the person to which it is assigned but will not be a proof of nationality and will not substitute for the nationality certificate (Art.10).

The National Identification Agency (ANID) will be responsible for collecting the following data for each registered person (Art.6 and 7):

- 1) Demographic data:
 - First name and surname
 - Date and place of birth
 - Sex
 - First name and surname of the father and the mother (or legal guardian)
 - Address or location
 - Optionally: phone number, first name and surname of spouse, spoken languages, e-mail address
- 2) Biometric data:
 - Facial photograph
 - All 10 fingerprints
 - Iris scan (both eyes)

The NIU will be communicated immediately by SMS and/or e-mail if technically possible, or within 24 hours. It will be printed immediately or be available within 48 hours at the registration centre.³⁶⁵ The enrolment will initially take place in a countrywide campaign and then be continued in permanent offices in all prefectures.³⁶⁶

³⁶¹ "Loi n° 2020-009 du 10 septembre 2020 relative à l'identification biométrique des personnes physiques au Togo". Only the [text adopted by the National Assembly](#) is available on the internet, not the corresponding edition of the JORT. The Law was signed by the President on 10 September 2020.

³⁶² [Decree n° 2020-093/PR of 12 November 2020](#) pertaining to the attributions, organisation and operation of the National Identification Agency (Agence Nationale d'Identification, ANID), JORT n° 41 ter/65th Year, 25.11.2020

³⁶³ "La présente loi de modification a notamment pour objet de renforcer le cadre de l'utilisation du numéro d'identification unique (NIU) et de favoriser la mise en œuvre du registre social des personnes et des ménages. Elle réorganise également les missions de l'Agence nationale de l'identification (ANID) dans le but de lui permettre d'enregistrer les données nécessaires pour la gestion de la base de données du registre social des personnes et des ménages et de participer à la mise en œuvre des programmes venant renforcer la résilience et l'inclusion des populations." - <https://presidence.gouv.tg/2022/03/16/conseil-des-ministres-du-16-mars-2022-leconomie-numerique-au-coeur-des-travaux/>.

³⁶⁴ "Le recensement administratif à vocation d'état civil (RAVEC)".

³⁶⁵ [Rapport de l'étude au fond du projet de loi relatif à l'identification biométrique des personnes physiques au Togo](#), National Assembly, 9.6.2020, response R21.

³⁶⁶ [Rapport de l'étude au fond du projet de loi relatif à l'identification biométrique des personnes physiques au Togo](#), National Assembly, 9.6.2020, response R5.

The administration will be obliged to use the NIU to identify its users and must note it on every administrative document that refers to them (Art.13), including the national ID card.³⁶⁷ Although the citizens will not be formally forced to register, this provision effectively creates an obligation, as any person intending to use any administrative public or private services for which an identification is necessary will need to have a NIU.³⁶⁸ For identification needs, digital interfaces and biometric readers will be available, which will send electronic requests to ANID, which will just confirm or deny the identification without asking the reason for the request.³⁶⁹ There are heavy fines and prison terms for the misuse of the system and identity fraud (Art.29-36).

The identification project was scheduled to be rolled out on the entire Togolese territory in 2021 but had not yet visibly started by the end of the year, partially due to the Covid pandemic.³⁷⁰ At the same time, the National Institute of Statistics has been preparing Togo's 5th General Population and Housing Census (RGPH³⁷¹) which the UN recommends should be conducted every 10 years. At the end of 2021, ANID signed an agreement with the Indian firm IIIT-Bangalore for collaboration on developing a foundational digital identity system using the [Modular Open-Source Identification Platform \(MOSIP\)](#).³⁷²

A government website states that the civil registration, the declaratory rulings regarding late birth registration (*judgment supplétif*), and the systems for the ID cards, the passports, and the nationality certificates will gradually be integrated into "e-ID-Togo".³⁷³ That is also what the Minister of Postal Services, Digital Economy and Technological Innovations outlined when presenting the proposed "Law on the biometrical identification of the physical persons in Togo" to the National Assembly's "Commission on Constitutional Laws, Legislation and General Administration" for debate on 9 June 2020.³⁷⁴

In that session, the parliamentarians raised a significant question: why did the Government not opt for a simplification of the access to ID cards and organise large scale campaigns to ensure that all Togolese were registered in the civil registry, instead of introducing a new identification system? In her reply, the Minister explained that the advantage was that the NIU would not ask for the nationality or the legal status of the registered persons and thereby be able to include all Togolese citizens who did not have a proof of their nationality (which is necessary for the issuance of a Togolese ID card), and that it was reliable due to the biometrics. The civil registry on the other hand, in its current form, was not trustworthy as it was not digitised and not biometric, and therefore unable to prove that a person had only one identity. Indeed, as seen above, the system of late registration via a *jugement supplétif* is not digitally and

³⁶⁷ [Rapport de l'étude au fond du projet de loi relatif à l'identification biométrique des personnes physiques au Togo](#), National Assembly, 9.6.2020, response R7.

³⁶⁸ [Rapport de l'étude au fond du projet de loi relatif à l'identification biométrique des personnes physiques au Togo](#), National Assembly, 9.6.2020, R8.

³⁶⁹ [Rapport de l'étude au fond du projet de loi relatif à l'identification biométrique des personnes physiques au Togo](#), National Assembly, 9.6.2020, response R10 and R22.

³⁷⁰ 'L'Assemblée nationale adopte la loi sur l'identification nationale biométrique', *Ministère de l'Economie Numérique et de la Transformation Digitale*, 4.9.2020. According to a Government website, three of the six phases of the project have already been implemented. - 'e-ID Togo', *Ministère de l'Economie Numérique et de la Transformation Digitale*.

³⁷¹ Recensement Général de la Population et de l'Habitat.

³⁷² Frank Hersey, 'Togo signs MoU to establish MOSIP digital identity system', *BiometricUpdate.com*, 20.12.2021. MOSIP, which has the World Bank's ID4D as a member of its International Advisory Board, is funded by the Bill & Melinda Gates' Foundation, Tata Trust, Omidyar Networks, and NORAD. MOSIP was conceived at IIIT-Bangalore as a "global digital public good" based on strong principles of security and privacy and its use of open standards and open-source code makes it flexible and adaptable to various needs and contexts. - [MOSIP \(Modular Open-Source Identification Platform\)](#); Frank Hersey, 'World foundational digital identity systems under review by Privacy International', *BiometricUpdate.com*, 15.11.2021.

³⁷³ 'e-ID Togo', *Ministère de l'Economie Numérique et de la Transformation Digitale*.

³⁷⁴ [Rapport de l'étude au fond du projet de loi relatif à l'identification biométrique des personnes physiques au Togo](#), National Assembly, 9.6.2020, response R4.

biometrically linked to the civil registry and in fact allows for multiple registration under different identities – a reason why the DGDN is so wary about birth certificates based on such court rulings, when requested to issue a nationality certificate, an ID card or a passport.

The question remains relevant and the Minister's answer was not convincing: why not once and for all redo and digitalise the civil registry instead of introducing a parallel system, maintaining also the old one. The registration by ANID needs "written proof" of the mandatory demographic data (the relevant provision, Art.6, does not state which type) or otherwise by the testimony of two already registered family members or by witnesses approved by ANID. The same criteria can be used for overhauling the civil registry. One more question can be asked: what services would be available only for holders of an ID card and not for those of a simple NIU? Is it just the passport?

Other countries of the region have given examples. Based on the deficiencies of its civil registry, Mali had started a new biometric registration of the entire population in 2009 during which each enrolled citizen received a biometric plastic card with a unique national identification number: the "carte NINA" ("numéro d'identification nationale") which was used as voter's card during the 2013 elections and declared legally equivalent to the national (paper) ID card in 2016. Guinea and Benin have followed a different but similar path, in a relatively short time: the whole population has been newly registered on the basis of their birth certificates or using other personal identification documents or through witnesses (see section 6.4). Strangely enough, the topic of the difficult access to national identity cards is nearly completely absent from public discussion, in the media or among civil society organisations, although it constitutes a major impediment to the enjoyment of basic human rights and to personal and collective development. It has not been raised in any contribution sent by civil society organisations to the human rights treaty bodies or at the occasion of any Togo's participation in the Universal Periodic Review. The e-ID Togo project, with few exceptions, has so far not yet been broadly debated in the Togolese media either.

At the end, it is useful to highlight the conclusions reached in the 2015 report on the civil registry and other administrative acts drafted on behalf of the Millennium Challenge Account Cell in the Togolese Presidency. The author of that report recommends that the national ID card be made mandatory and accessible to all Togolese, that it also be used for voter identification, and that its validity be extended to 10 years instead of the current five (as suggested by ECOWAS and demanded by many Togolese citizens tired of the bureaucratic requirements for the renewal of the card). The author concludes that the current civil registry is not fit for purpose, due to false declarations and the missing link to the courts and their *jugements supplétifs*. Moreover, the registry is incomplete as marriages, divorces, adoptions, and deaths are often not registered. The author therefore suggests a new comprehensive general census based on biometrics so as to ensure the uniformity of the registrations, to include all those who do not have their birth registration and certificates, and to provide everyone with an ID card.³⁷⁵ The issuance of nationality certificates should then be decentralized and done at the courts of first instance competent for the place of residence of the applicant (as in most other francophone states in West Africa).³⁷⁶

³⁷⁵ Douti Nakmak, 'Elaboration d'une stratégie nationale de délivrance accélérée et sécurisée des actes d'état civil et autres actes administratifs', Rapport final, November 2015, Cellule Millennium Challenge Account, Cabinet, Présidence de la République, p.83-84, 91-92 and 99.

³⁷⁶ The 2011 Ad Hoc Commission had been informed that the choice to mandate the Justice Minister (the executive branch) with the issuance of the nationality certificate, instead of the courts (the judiciary), had been a political one. - 'Rapport de la Commission ad hoc chargée de réviser les textes relatifs à la nationalité et de définir les modalités pratiques des audiences foraines d'établissement de certificats d'origine et de nationalité' (Lomé, 12-16.9.2011), p.3.

COUNTRY REPORT
RSC/GLOBALCIT-CR 2022/06

