

# STATEMENT OF THE NDI PRE-ELECTION DELEGATION TO TOGO'S 1998 PRESIDENTIAL ELECTION

*Lomé, June 11, 1998*

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## **I. THE DELEGATION AND ITS WORK**

This statement is offered by a four-member international pre-election delegation organized by the National Democratic Institute for International Affairs (NDI). The delegation visited Togo from June 4 through June 11, 1998. The purposes of the delegation were to express the interest of the international community in the political and electoral processes in Togo, and to examine conditions leading to the presidential election scheduled for June 21, 1998.

NDI works to promote democratic institutions and processes worldwide. The Institute has conducted more than 40 international election observer delegations and more than 60 pre-election delegations, and it has established a reputation for independence, impartiality and professionalism in conducting electoral assessments. This pre-election delegation included election experts and political and civic leaders from Africa, Europe and North America. Delegation members have participated in numerous election assessments and international election observer delegations in West Africa and throughout the world.

The delegation included: Maria Leissner (Sweden), former President of the Swedish Liberal Party and former Member of Parliament; Patrick Merloe (United States), Senior Associate at NDI and Director of NDI Programs on Election and Political Processes; Bernadette Kapet-Blini (Côte d'Ivoire), Secretary General of the Mouvement International des Femmes Démocrates; and Timothy S. McCoy (United States), NDI Senior Program Officer for West Africa. The delegation conducted its work in accordance with international standards for democratic elections and in accordance with Togolese law. The delegation did not seek to interfere with or to certify the election process, and it recognized that ultimately it will be the people of Togo who judge the genuineness of the election.

## **SUMMARY OF FINDINGS AND OBSERVATIONS**

The delegation noted a number of positive aspects of the political process leading to the upcoming presidential election and certain improvements over the process that led to the 1993 presidential election; however, the delegation found that sufficient conditions do not yet exist to ensure a transparent and fair election on June 21. A number of immediate steps could be taken that would contribute to greater transparency and increase the chances for a democratic election. The delegation offers several recommendations at the end of this Statement that could be implemented to improve the process in

are not in place to meet international electoral standards. Given the flawed nature of past elections in Togo, extraordinary steps are necessary to establish confidence in the election process.

The delegation reached its observations and findings based upon: NDI's past experiences in Togo, including the Institute's election-related work in 1992-1993; continuing analysis of the situation in the country by NDI staff; NDI's 1997 program with members of Togo's National Assembly; review of reports by other organizations involved with the political and election processes in Togo; analysis of Togo's constitution, election code and press code; and analysis of information presented to the delegation during its meetings in the country.

In the course of its work, the delegation met with: leading representatives of each of the six political parties that have placed a candidate in the presidential election, as well as other political leaders; representatives of governmental bodies concerned with the processes leading to the election, including the President and several members of the National Electoral Commission (CEN), the Minister of Interior and Security; the Special Counselor to the Prime Minister concerned with the election; the High Authority for Audiovisual and Communication (HAAC); the President and several members of the Constitutional Court; members of the news media; leaders of civic organizations concerned with the election process; representatives of the international community, including the European Union (EU), the London-based Electoral Reform International Services (ERIS), which is conducting medium-term election observation for the EU, the Paris-based Reporters Sans Frontières (Reporters Without Borders), which is conducting media monitoring in Togo; and others who are monitoring the process leading the presidential election.

## **II. THE ELECTORAL CONTEXT**

The context for the 1998 presidential election must include, among other things, the process surrounding the 1993 presidential election. Democratic elections require an environment in which the electorate is free – and believes that it is free – to learn about the political parties and candidates, to mobilize support and to vote for candidates of their choice. The public also must have confidence that the results of the election will reflect accurately their free choice and that the outcome will be respected. International experience demonstrates that once public confidence is broken, as was the case in Togo's failed 1993 presidential election, extraordinary steps by a government are necessary to restore confidence in the genuineness of the country's political and electoral processes.

International standards require a transparent election process and a political process that provides direct and full participation in the formation of the rules for electoral competition and in the work of electoral bodies. They also require an electoral environment in which political parties and candidates are free to express their messages to the public, have equitable access to and treatment by the mass media to convey their messages, are free to organize peaceful assemblies and other demonstrations of public support and to move freely throughout the country to seek votes. The mass media must be free to convey the candidates' messages and must treat them in an accurate, impartial and balanced manner. The media also must be free to cover accurately and fairly election-related issues. Citizens must be provided with adequate information about how, where and when to register and to vote, and have an adequate opportunity to do

greater the failure to meet these standards the less likely it will be that an election could be considered "free and fair."

Togo's 1993 presidential election, from which all of the major opposition party candidates withdrew in protest, resulted in low voter turnout (approximately 39 percent) and approximately 97 percent of the vote going to the incumbent, General Gnassingbé Eyadéma. Issues that led to the breakdown of the 1993 election process included: failure to meet terms of the July 11, 1993 agreement reached by political parties concerning the election (the Ouagadougou Accords), such as the requirement that troops remain politically neutral and in their barracks during the election period; allegations that the opposition political parties were being blocked from campaigning in some parts of the country, especially in the north; alleged politically-motivated violence and intimidation; disqualification of the candidacy of Gilchrist Olympio on the technicality that he filed medical certificates from non-Togolese physicians; failure to post lists of registered voters in time for adequate verification by the parties and the public; allegations that the voter lists were inflated by large numbers, particularly in areas where the ruling party was traditionally strong; problems in distribution of voter cards that resulted in a large percentage of the cards not being received by voters and large numbers of cards for which there was no account; the number and location of polling stations was not made publicly available in accordance with the law and sufficiently in advance of election day to allow verification; strong bias in the state-controlled news media, which favored the incumbent and his party; failure to accredit Togolese nonpartisan election observers; and lack of government cooperation with the National Election Commission (CEN), especially refusing its recommendation to postpone the elections to complete electoral preparations.

Togo organized multi-party parliamentary elections in 1994 that were generally held to be acceptable by the political parties and international observers. The voter turnout for those elections was approximately 65 percent, and the elections gave a slim majority to the opposition parties. Three seats, which the opposition initially won, were then declared undecided. President Eyadéma's party, the Rally of the Togolese People (RPT), re-established its parliamentary majority as a consequence of winning all three seats in 1995's troubled by-elections.

In addition, the political environment over the last several years has been affected by serious incidents of intimidation against opposition figures and members of the news media. Politically-related violence and threats of violence continued through most of that time. In 1997, for example, two supporters of former Interior Minister Alphonse Kokouvi Masseme were killed while in detention, and the body of a member of his family was found by a road-side the day after he was arrested. Other killings with apparent political motivations occurred in 1994-96.

Togolese law permits incommunicado detention of persons for 48 hours, with a 48 hour extension in serious or complex cases. There are confirmed reports by reputable human rights sources that such detentions have been used to intimidate political opponents and members of the media as recently as last year. While there are no members of the media in jail at this time, a number of journalists live in exile to avoid court actions, and there are credible reports of government-sponsored and/or government-tolerated threats against

This context is important when examining the present electoral environment, because it demonstrates a basis for insecurity among important segments of the population. Moreover, such actions are known widely among the population, which diminishes public confidence. Incidents where political parties and civic groups have been denied an opportunity to exercise freedom of association and assembly also reduce public confidence in the political process. For example, in Kara in February 1997, a seminar on civic education sponsored by a Togolese civic group and a German political party institute (the Konrad Adenauer Stiftung) was banned, and meetings by the Action Committee for Renewal (CAR) were broken up in Mango (March 1997) and attacked in Bafilo (November 1997), where CAR leader Yaowi Agboyibor was slightly injured.

### **III. THE ELECTORAL ENVIRONMENT**

The electoral environment has improved, compared to the 1993 presidential election. The political process generally has been peaceful over the last several months, and there are important, encouraging developments in political participation among the parties and nongovernmental citizen organizations. In addition, there are clear indications that the Togolese electorate wants to exercise the opportunity to vote in a democratic election. At the same time, the electoral environment is characterized by distrust and insecurity among crucial sectors of the population, particularly among the opposition political parties. In addition, adequate safeguards do not appear to be in place to ensure the integrity of the election process.

Several important and immediate steps should be taken to improve transparency and participation in the election process. Such steps would improve chances for an election that would be accepted by the people of Togo, even though possibilities for satisfactorily meeting international standards are not very high. Extraordinary efforts are required of government and electoral officials, therefore, to encourage participation in the election process and to gain sufficient public confidence in the few days remaining before the election. Political parties and civic organizations also must act responsibly and vigorously to ensure the integrity of the process. In addition, efforts should be continued after the election to improve the political process.

Participation in the Electoral Process. Six candidates are competing in this election. They and their political parties are demonstrating determination to participate and to win popular support. The participation of opposition political parties is particularly significant, given the boycott of the 1993 election. That the opposition parties are participating, however, should not necessarily be interpreted to mean that they find the electoral conditions to be acceptable. The delegation observed that, while leaders of the RPT expressed overall satisfaction with the process and some concerns about the nature of the other parties' participation, each opposition party expressed profound dissatisfaction with the election process.

The delegation also noted the participation of nongovernmental citizen organizations (NGOs) that conducted civic and voter education efforts in advance of the election. This is an important and positive development, even though the effort encountered difficulties with governmental officials in certain localities. The delegation also was encouraged by the desire of Togolese nongovernmental organizations to organize an impartial national election observation effort.

o that they would not be authorized by the government to observe the election. This created a deep flaw in the election process and denied citizens an opportunity to help ensure the integrity of the process, despite explicit provisions in the Electoral Code (Article 73) for coordination by the CEN of national observer missions.

Domestic observers are accepted throughout the world as an essential component of providing transparency for election administration and as a crucial way to promote public confidence in an election. National observers successfully monitored presidential and parliamentary elections in recent years in Benin, Côte d'Ivoire, Ghana, Niger, Liberia and Mali. Their participation in Togo's 1998 presidential election could enhance the process and encourage citizen participation in the election. In addition, such observers can help to deter election abuses and detect them if they occur where the observers are present.

While 50 Togolese observers, in combination with the approximately 50 international observers expected by the European Union, are not sufficient to determine definitively whether the election was transparent and fair, the effort can make an important contribution and help set the stage for greater citizen participation in future elections. The inadequacies of a contingent of only 50 international observers to cover approximately 4,700 polling stations raises a question concerning whether that effort should be continued by the international community unless the Togolese national observers are permitted.

**Other Transparency Considerations.** A positive feature of the administration of the election process in Togo is relative parity among the ruling party and the opposition in the National Electoral Commission (CEN) and the Local Electoral Commissions (CEL), which serve as intermediate electoral bodies. In each case, the bodies include an equal number of members drawn from the ruling party and from the opposition, with the head of the body drawn from the judiciary, appointed to their judicial posts by the President of the Republic. Even though this formula gives a practical advantage to the ruling party, the bodies provide the political parties an important avenue for observing and participating in the election process.

Political parity among polling station officials is not required by the Electoral Code. Moreover, polling station members are chosen and trained by the Ministry of Interior and Security, while station presidents are selected from among their members by the CEN. (Articles 53-54) This method of selection is inconsistent with the method for composing the CEN and CELs. This inconsistency has been strongly criticized by the opposition political parties, which insist that the Minister should have used political parity in selecting polling station officials. The Minister reported to the NDI delegation that he did not use political parity as a consideration in this matter. The inconsistency was not corrected when the Electoral Code was amended in September 1997. Unfortunately, the opposition political parties did not offer debate on this or other points, because they boycotted parliament during deliberations and voting on the amendments.

While the law is not explicit on political parity in appointing polling station officials, the Ouagadougou Accords did require it (Accord Article 2.6), and such a consideration would have been consistent with the spirit of the Electoral Code (Articles 74 and 81), concerning

to build confidence in the election process. The CEN could take such considerations into account in appointing polling station presidents. The CEN had not, however, received a list of polling station officials as of June 9, even though the list is required to be public at the district (circonscription) level by 10 days before the election. (Article 55)

Other important transparency provisions in the Electoral Code include: political party representatives attending the work of the CEN and CEL in consultative capacities (Articles 77 and 83); party pollwatchers (Articles 47-49); and as members of the Administrative Commissions charged with enrolling eligible persons on the voter lists and distributing voter cards (e.g., Articles 15 and 18). Parties report that they are organizing pollwatcher efforts; however, the consultative role with the CEN and CEL appears not to be developed. Reports indicate that much of the work of enrolling persons onto the voter lists was done under the direction of the Ministry of Interior and Security before the Administrative Commissions began functioning, while the lateness of card distribution appears to diminish their role in that process as well. Reliable reports from international observers indicate that political party representatives on the Administrative Commissions were not integrated into the work of the Commissions. Transparency provisions that appear in the Electoral Code therefore are reduced in practice.

**Voter Lists and Voter Cards.** In addition to the list of polling station officials not being available, the definitive number and locations of polling stations was not available as of June 9. The preliminary list of polling stations was to be published in the State press 30 days before election day and the complete list 15 days beforehand, that is by June 7. (Article 46) This publication requirement is important, because prospective voters should know where to go to vote, as well as where to check publicly posted election lists for their names and to pick up their voter cards. Each day that passes at this point concerning such matters places more pressure on administrative capacities for election day and increases potential for election-day problems and confusion.

In addition, the process of identifying and removing erroneous multiple entries and other mistakes in the voter lists had not been completed as of June 9. The available voter lists and voter cards, including cards for the multiple entries, were sent by the CEN to the districts on June 7, which is 14 days before the election day. This creates the basis for illegal voting based on the extra voter cards, unless adequate controls are placed on the cards.

The Electoral Code requires that voter cards be distributed one month before the opening of the election campaign, which would have been May 5. (Article 18) Voter lists were to be available by 15 days before election day. (Article 27) This also is important, because the procedures to ensure that a prospective voter can correct a problem with their card or list entry requires 11 days (Articles 21-24), even though most lists and voter cards will not be available for review within that time. The election authorities have announced that voter cards may be obtained in the polling stations up to and including election day. This will place additional burdens on election-day administration and may cause disenfranchisement of prospective voters who fail to meet deadlines under the claims and objections provisions of the Electoral Code.

The stress on election-day administration created by these problems

ample opportunities for persons to register who turned 18 years of age since the last enrollment. If true, this omission could have disenfranchised a substantial number of prospective voters. If such persons stay away from the polls, the problem will be virtually invisible on election day, and should such persons go to polls to demonstrate discontent, security problems could develop. This issue has led to calls for reopening the enrollment, something that would not be likely by June 21. Other approaches for addressing this issue, however, are available. Examples are provided in the delegation's recommendations.

The combination of administrative problems identified above taken together with normal problems that could develop on election day gave the delegation cause for concern. Such administrative problems can easily take on political dimensions, given the atmosphere of distrust.

**Powers of Electoral Administration.** The Electoral Code provides that the CEN is to oversee (*contrôle or est chargé notamment*) electoral administration, while the Minister of Interior and Security is to organize the elections. (Articles 72 and 73) NDI's delegation was informed by many with whom it met -- including the members of the CEN -- that, in practice, the CEN is reduced to the roll of simply observing most electoral matters. For example, members of the CEN also reported that its recommendations made earlier this year to the Minister of Interior and Security had not been accepted thus far in the election process.

The Electoral Code provides that the High Authority for Audiovisual and Communication (HAAC) is charged with ensuring strict application (*est chargé veiller à l'application stricte*) of the Code's requirements for fairness of media coverage of political parties and candidates in the election process. (Articles 40 and 44) Members of the HAAC reported to the delegation, however, that they can only make recommendations to the Minister of Communication.

Weaknesses in the actual operations of bodies such as the CEN and the HAAC highlight the need for additional transparency and accountability measures in electoral administration. This concern is heightened as a consequence of reports that the government and the ruling party are not sufficiently separated and that independence of the judiciary is not adequately established.

#### **IV. OPENING OF THE ELECTION CAMPAIGN**

The official election campaign opened five days ago. The pre-campaign period included significant electoral activity in the month preceding the campaign. Thus far the campaign, like the immediate pre-campaign period, has been relatively calm, with no major violent incidents.

Opposition parties and candidates, however, make claims that it is very difficult to travel to expansive areas in the northern part of the country and to organize any public meetings there. The claims are concentrated on the seven prefectures in the Kara area, where numerous problems have been encountered by Togolese and international NGOs, as well as reliably reported intimidation against supporters of opposition political parties. Thus far in the campaign, candidates have been able to travel to the north, and international election observers organized by the London-based Electoral Reform

opposition-organized meetings.

Mass Media. As noted above, no journalists are in prison for politically-motivated reasons, even though some are living outside the country to avoid prosecution. Freedom of the press has increased in 1998, and opposition newspapers openly criticize the government and the President in strong terms.

Candidates have access to the mass media. On the day the official election campaign opened, each of the six presidential candidates received 10 minutes of television broadcast time to present a message to the electorate. In the 30 days before the opening of the campaign, the government, the ruling party and the opposition were to each receive one-third of the news coverage. This legal requirement, however, was not implemented.

Weekly reports from Reporters Sans Frontières (RSF), the Paris-based NGO that is conducting media monitoring during Togo's election period, show that the State media fail to meet the requirements of international standards and of the Electoral Code. This was true for all of the State media in the pre-campaign period. Improvements in amounts of coverage developed over the course of the pre-campaign; however, the disparities were great. The ratio of President Eyadéma's coverage to all other candidates showed the following: TV Togo, President Eyadéma (71.3 %); Radio Lomé, (71.5 %); Radio Kara (90.8%); Togo Press (53.1%); L'ATOP (59.4 %). Information produced in local languages failed to meet international standards for fair elections by an even wider margin. (RSF report of June 5, 1998) Unfortunately, failing to meet international standards, the human rights obligations found in international instruments to which Togo is a party (e.g., the Banjul Charter), and Togolese law, all concerning media behavior, may have greatly diminished chances of overcoming obstacles to a democratic election.

## **V. RECOMMENDATIONS AND CONCLUSION**

It is the delegation's belief that conditions do not presently exist for conducting a fair and transparent election on June 21. Chances for a meaningful election can be improved over the next few days, if certain steps are taken to increase transparency and effective electoral administration. The delegation noted significant positive aspects of the election process and encouraged those who are taking part in the contest and those seeking to observe the process. The delegation does not believe that a democratic election would be assured if the steps are taken. The possibilities, however, would be increased. International experience has demonstrated that such steps can have important and positive results.

With these points in mind and in the spirit of international cooperation, the delegation offers the following recommendations. All of the recommendations can be accomplished in the days remaining before June 21, can be done within Togolese law and with the limited resources that may be available.

### *1) Nonpartisan Togolese Election Observers*

Approximately 500 volunteers from four Togolese civic groups have been trained in nonpartisan election observation with assistance from the European Union. These observers should be accredited immediately to observe all voting, counting and tabulation processes leading to the announcement of the final election result. Because



the electoral districts in which they will observe. The accreditation process could also include each group submitting a pledge of impartiality and non-interference in the workings of electoral officials, which would be in accordance with Article 58 of the Electoral Code.

### *2) Political Balance of Polling Station Officials*

The Electoral Code does not require political parity between the ruling party and the opposition in selecting polling station officials. These officials may already have been selected and trained. The National Election Commission (CEN), however, has the legal competency to appoint the president of the polling stations. The CEN should apply the principle of political parity when selecting presidents of the polling stations; this would better ensure impartiality of electoral officials and improve public confidence. If a substitution is required for any polling station official, the principle of political parity should be applied. This can be accomplished through a communiqué that supplements training materials for polling station officials.

### *3) Voter Lists*

Voter lists are now available for most polling stations. An immediate review should be conducted by the CEN and the Ministry of Interior and Security (within their respective jurisdictions), as well as by election observers, to determine whether the public is being provided the opportunity to verify the accuracy of the lists. The review should also determine whether prospective voters will have an adequate opportunity to exercise their legal right to seek correction of mistakes in the voter lists. An expedited process should be devised to eliminate multiple entries and other mistakes in the lists and to add those persons whose names should be on the lists but are omitted. That a person was improperly omitted could be established by the person producing documentation or witnesses. This process should be expanded to include persons who turned 18 years of age since the registration of 1994, if they prove their eligibility through two witnesses or proper documentation.

### *4) Voter Cards*

Strict control over voter cards should be implemented immediately. As multiple entries of the same person's name are discovered on the voter lists, the corresponding cards should be removed from the cards being distributed to voters. A record should be made of the extra cards, and they should be sent back immediately to the CEN, where a verification should be done before election day to account for the extra cards.

### *5) Other Matters of Electoral Administration*

A review should be conducted immediately to determine whether the consequences of missed deadlines can be adequately rectified in the days remaining before election day. This should address, among other matters, voter lists. The review should also address distribution of voter cards, public announcement of the complete list of polling stations and their officials, and allowance of adequate time for candidates and their parties to ensure the printing and distribution of their ballots (bulletins de vote). If adequate time to effectively administer the election is not available by seven days before election day, a reasonable postponement should be set to implement measures that would ensure the integrity of election-day administration. It appears to the delegation that this could be done, while remaining within constitutional requirements concerning timing of the election. Failure to effectively administer the election could exacerbate political tensions.

brought immediately into conformance with the Electoral Code. This is particularly important in light of the serious problems with media coverage documented by Reporters sans Frontières.

#### 7) *Public Assurances*

Given the atmosphere of distrust and polarization, the political parties, all of the candidates, the government and the CEN could increase public confidence by making public assurances that they will take steps to ensure a peaceful election and that the will of the people expressed through a democratic election will be respected. The candidates and parties should take actions to ensure that their supporters respect the law and the rights of others to campaign for popular support. The government should reiterate its commitment to the provision of the Togolese constitution that members of the armed forces should remain politically neutral, including throughout the election period. Such assurances can play a positive role and can encourage participation in the election process.

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*The delegation would like to express its sincere appreciation to the candidates, party representatives, government and electoral officials, members of the media, other political and civic leaders and representatives of the international community with whom it met. Had not these individuals taken time at this important moment to meet, provide information and share their views, the delegation could not have completed its work.*

*The delegation was encouraged by the level of participation in the electoral process and the desire of Togolese to take part in a fair and transparent presidential election. An opening of the political process in Togo appears to have taken place over the last few months, and the delegation members hope that this opening will continue. In this respect, the true meaning of the election will only be known in the months following it. The post-election period therefore will equally make up part of the election's context. The delegation members firmly hope that the international community will continue to encourage and assist those in Togo who are working diligently to advance democracy in their country after the election.*