



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

Communication No. 396/2009

Decision adopted by the Committee against Torture at its forty-seventh session, 7 May–1 June 2012

<i>Submitted by:</i>	Combey Brice Magloire Gbadjavi
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	18 August 2009 (initial submission)
<i>Date of decision:</i>	1 June 2012
<i>Subject matter:</i>	Risk of complainant's deportation to Togo
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Deportation of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture
<i>Article of the Convention:</i>	3

[Annex]

Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (forty-eighth session)

concerning

Communication No. 396/2009

Submitted by: Combey Brice Magloire Gbadjavi
Alleged victim: The complainant
State party: Switzerland
Date of complaint: 18 August 2009 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 1 June 2012,

Having concluded its consideration of complaint No. 396/2009, submitted to the Committee against Torture by Combey Brice Magloire Gbadjavi under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention against Torture

1.1 The complainant is Combey Brice Magloire Gbadjavi, a national of Togo born in 1969. He claims that his deportation to Togo would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel, Guido Ehrler.

1.2 Under rule 108, paragraph 1, of its rules of procedure, the Committee requested the State party not to expel the complainant to Togo while his complaint was under consideration.

The facts as submitted by the complainant

2.1 In 1994, the complainant joined the Union des Forces de Changement (UFC) as an active member of its security team. His role was to protect party members, distribute leaflets and make statements. In 1999, he was arrested by the Togolese authorities for providing friends in Germany with information on the political situation in Togo. While being questioned at the gendarmerie, he was beaten until he almost lost consciousness. He was then taken to his home in Békpotá (a residential district of Lomé) so that it could be searched by gendarmes. During the search, the gendarmes found documents relating to UFC and, on that basis, they decided to take him back to the gendarmerie, where he was

chained to an object and then beaten and left for dead. Subsequently, he was put in a cell which he shared with two other detainees for a week. During that time, they were forced to walk on their knees over gritty soil. He was then transferred to the Adidogomé prison, where the ill-treatment continued. During physical exercise, detainees were beaten if they showed signs of fatigue or fell. The complainant was forced to do push-ups with sandbags on his back. After two months of this treatment, the complainant had blood in his urine and was so seriously ill that he was released.

2.2 On 18 July 1999, talks were held between the opposition (UFC) and the ruling party, during which it was agreed that the complainant would provide security for Mr. Gilchrist Olympio, the UFC president, on his journey from the Ghanaian border to the capital. However, on the eve of the talks, the Ministry of the Interior decided that Togolese forces should be responsible for ensuring his safety. The UFC security team, made up of supporters such as the complainant, objected to the Ministry's decision and clashes broke out. Faced with the threat of imprisonment, the complainant decided to flee to Ghana. In 2002, he returned to Togo after being introduced to a minister, Mr. H.O. Olympio, who gave him a signed business card and a permit ensuring his safety.

2.3 During the 2003 elections, the complainant denounced a voter for trying to vote twice for the Rassemblement du Peuple Togolais (RPT) candidate in a polling station. This led to clashes during which the complainant lost his wallet with the business card and permit given to him by Mr. H.O. Olympio along with other papers, including his identity card. Some RPT members subsequently told his wife they were going to kill him. The complainant therefore decided to leave the country again and take refuge in Benin. He returned to Togo in January 2004. On 16 April 2005, during a gathering organized by UFC in Atikomé, the security forces opened fire on the crowd. That evening they went to the complainant's home to arrest him, but he was not there. On 28 March 2006, the complainant and his sister were arrested on their way from Lomé to Agouegan and the complainant was taken by gendarmes to the office of the head of the Zébé camp. The complainant was beaten and locked up. During questioning, he was asked about the nature of his relationship with Mr. H.O. Olympio, who was suspected of instigating an attack on a gendarmerie camp on 26 February 2006. The complainant was threatened with death and beaten during his time in detention. On 19 April 2006, the complainant managed to escape from the prison after his brother-in-law bribed a guard. He went to Ghana, but, as he was afraid of being detained by the Togolese secret services in Ghana, he fled by plane to Italy under a false identity. He subsequently travelled to Switzerland, where he arrived on 30 April 2006.

2.4 On 7 November 2006, the complainant's wife and children were forced to flee to Benin because they were still facing persecution.

2.5 On 8 September 2006, the Federal Office for Migration rejected the claimant's asylum application, maintaining that his testimony was not credible and that the threats had occurred too far in the past (1999–2002) to establish a well-founded fear of persecution. The Office also disputed the fact that Mr. H.O. Olympio had been a minister and that the gendarmerie camp had been attacked on 26 February 2006. The complainant appealed the decision on 11 October 2006 and filed a document proving that Mr. H.O. Olympio had been a member of the Government until August 2003 and a newspaper article reporting the attack on the gendarmerie camp on 26 February 2006. He also produced various UFC documents confirming his active involvement with the party. In a statement issued on 9 November 2006, the Federal Office for Migration did not dispute that the claimant had been an active UFC member or that the gendarmerie had been attacked on 26 February 2006. However, the Office considered that the complainant's claims that he would be prosecuted by the Togolese authorities were not credible.

2.6 In his appeal to the Federal Administrative Court the complainant produced a medical certificate confirming trauma resulting from torture and subsequent psychiatric treatment. He also produced a document testifying to the distress caused to his wife by his situation and her own situation in Benin and stating that she had attempted to commit suicide on 5 February 2008. On 1 April 2009, the Court rejected the complainant's appeal, maintaining that the situation in Togo had improved since his departure and that his fear that he would be a victim of a violation of article 3 of the Convention was unfounded. The Court ruled that the medical treatment required by the complainant could be provided in Togo, but it failed to check the evidence produced by the complainant such as medical certificates attesting to post-traumatic stress and his poor state of health, and documents confirming his active participation in UFC as its vice-president in Aargau, Switzerland. Following the Court's ruling against the complainant, the complainant's wife committed suicide on 30 April 2009.

2.7 On 19 May 2009, the Federal Office for Migration rejected the complainant's request for his application to be reconsidered. On 3 June 2009, the complainant filed an appeal with the Federal Administrative Court in which he reported that he had been hospitalized on an emergency basis by the psychiatric services of the canton of Solothurn on 29 May 2009, as he wanted to commit suicide because of his fear of being deported to Togo and tortured to death there. He also stated that he had requested a medical report, which would subsequently be made available to the judicial authorities.¹ In his appeal, the complainant asked the Court to order an effective and thorough investigation. The complainant also submitted a report from the Swiss Refugee Council on the political situation in Togo dated 18 May 2009. On 10 June 2009, the Federal Administrative Court ruled that his appeal was manifestly unfounded. As the complainant was unable to pay an advance on the costs of the proceedings, the case was discontinued.

The complaint

3.1 The complainant submits that the authorities of the State party have not disputed that he was tortured in 1999, that he was an active member of the UFC security team or that he fled to Ghana and Benin. He also submits that the medical certificates confirm that he has been seriously traumatized for many years. The complainant refers to reports from organizations such as Amnesty International, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Swiss Refugee Council indicating that he is likely to be tortured on his return. Although the situation in Togo has improved following the election of some UFC members to parliament, the situation for ordinary UFC members who are not in parliament remains dangerous, with secret arrests, threats and torture.² On 27 April 2009, the army dispersed a peaceful demonstration by UFC members. The complainant further submits that the administrative courts of Brunswick (Braunschweig) and Lower Saxony (Niedersachsen) in Germany ruled on 25 February 2009 and 22 June 2009, respectively,³ that a fugitive could not be deported to Togo because the risk of his being prosecuted or tortured again could not be ruled out. Those courts suggested that the

¹ A medical report from the psychiatric services of Solothurn dated 29 May 2009 was sent to the Swiss authorities in support of his appeal.

² The report from the Swiss Refugee Council notes that UFC members of the opposition with a low political profile may still be subjected to Government reprisals and that those who fled from Togo to Benin and Ghana are viewed with more mistrust, see report "Togo: Mitgliedschaft bei der Union des Forces du Changement (UFC), Auskunft der SFH-Länderanalyse", Alexandra Geiser, Bern, 18 May 2009, p. 6.

³ Decisions of the Administrative Court of Brunswick, Germany, of 25 February 2009, and the Higher Administrative Court of Germany, of 22 June 2009, regarding an asylum seeker fearing deportation to Togo (annexed to the submission to the Committee).

democratization process should be monitored for a further period in order to establish whether persons deported to Togo were no longer at risk of being prosecuted or tortured.

3.2 The complainant adds that, according to the case law of the European Court of Human Rights, the principle of non-refoulement requires an effective and thorough official investigation to be conducted into credible allegations of inhuman treatment.⁴ In the present case, neither the Federal Office for Migration nor the Federal Administrative Court carried out a thorough and effective investigation. The Court concluded that there was no risk on the basis of Amnesty International reports and a 2008 Swiss Refugee Council report, whereas the complainant produced a subsequent report from the Swiss Refugee Council dated 18 May 2009 confirming that individuals in the complainant's situation were at risk. The State party has thus violated the spirit and intent of article 3 of the Convention. Furthermore, the Court merely confirmed the Federal Office for Migration's decision without conducting its own review of the additional elements included in the file. Lastly, the Office's decision of 19 May 2009 rejecting the request to reconsider the application and the 10 June 2009 ruling by the Court upholding that decision show that no investigation took place, since the medical certificates attested to the fact that the complainant had been subjected to torture but were not considered by these two bodies as carrying sufficient weight to warrant reconsideration of the asylum application.

State party's observations on the merits

4.1 On 17 February 2010, the State party submitted its observations on the merits. It notes that the complainant has not provided the Committee with any new elements. On the contrary, the complainant first contests the domestic authorities' assessment of the facts, then describes in general terms the human rights situation in Togo before claiming, on the basis of his own assessment of the facts, that he would face a real, personal and immediate risk of being tortured in the event of his removal to Togo.

4.2 Recalling the provisions of article 3 of the Convention, the State party emphasizes the criteria established by the Committee in general comment No. 1 (1996), on the implementation of article 3 of the Convention in the context of article 22,⁵ in particular paragraphs 6 ff., which require the complainant to prove that he is in personal, present and substantial danger of being tortured if deported to his country of origin.

4.3 According to the State party, the situation in Togo has improved considerably since the complainant left the country. In August 2006, the five main opposition parties signed a global political accord with the ruling party, the Rassemblement du Peuple Togolais (RPT), establishing a Government of national unity. This led to the appointment of a long-standing member of the opposition to the post of Prime Minister, the establishment of a Government that included opposition parties and the formation of the Independent National Electoral Commission, in which the Union des Forces de Changement (UFC) was represented, even though it was still in opposition. The State party adds that a tripartite agreement between Togo, Ghana and Benin was concluded in April 2006 under UNHCR auspices. Under the agreement, the Togolese Government undertook to take all measures to ensure a dignified and safe return for refugees. In June 2008, some of those who had fled Togo during the presidential elections returned to their country, with no persecution being reported. They included Gilchrist Olympio, the UFC president, who returned to Togo after eight years in exile.

⁴ The complainant does not cite specific case law.

⁵ *Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44)*.

4.4 The State party goes on to say that legislative elections were held on 14 October 2007 and that, according to several independent sources, the electoral process was on the whole satisfactory. The State party considers that this development and the improvement of the human rights situation in Togo led the European Commissioner for Development and Humanitarian Aid to consider that the conditions for re-establishing full cooperation between the European Union and Togo had been fulfilled.

4.5 The improvement of the human rights situation in Togo does nothing to favour the complainant's case. Even assuming that his testimony is credible, the mere fact of the complainant's arrest and detention in 1999 and his political involvement in UFC do not now constitute substantial grounds for believing that he would face torture if he returned to Togo. In its decision of 1 April 2009, the Federal Administrative Court reached this conclusion, referring to various independent sources. The main reason why the Administrative Court of Brunswick in Germany and the Higher Administrative Court of Germany⁶ offered a different assessment of the situation in Togo, while acknowledging the progress made, is that those courts applied the criteria of German law regarding the revocation of refugee status, and not the requirements of article 3 of the Convention.

4.6 The complainant alleges that he was tortured in 1999 following his arrest. However, as the Federal Office for Migration noted in its decision of 8 September 2006, it is not strictly necessary to rule on the allegations, since there is no causal link between the alleged acts of torture and the complainant's departure for Switzerland. Furthermore, the medical certificates and reports submitted by the complainant, which were dated at least eight years after the facts, make no mention of acts of torture, but are based explicitly on the complainant's testimony.

4.7 The latest Swiss Refugee Council report notes that less well-known UFC members are at some risk of being arrested, threatened or tortured. However, during the asylum application procedure, the complainant claimed that he benefited from the protection of Mr. H.O. Olympio's family. Thus he cannot be considered to be an ordinary UFC member. With regard to the complainant's activities outside his country of origin, he claims that he has taken part in UFC demonstrations in Switzerland and that he has co-written an article on its activities. However, these are activities that are engaged in by most of the politically active Togolese nationals in Switzerland. In view of the political developments in Togo (see paragraphs 4.3 and 4.4 above) and the complainant's allegation that he is a well-known UFC member, his political activities in Switzerland could not give rise to a risk of torture, especially given that numerous political demonstrations take place in Switzerland, that many of his compatriots also take part in them and that photographs or video recordings, many of them showing large numbers, even hundreds, of demonstrators, are made publicly available by the relevant media.

4.8 In its decision of 8 September 2006, the Federal Office for Migration considered that the complainant's testimony was clearly implausible. It maintained that his allegations were contrary to general experience and not logical. That applied in particular to his alleged arrest on 28 March 2006. At that time, the complainant was in hiding in Agouegan and was wanted by the security forces and young members of the RTP. He claims to have feared for his life. However, despite his fears, he visited his wife in Lomé regularly. Furthermore, the police officer who stopped his car and arrested him is reported to have recognized him immediately. According to the complainant, his arrest was related to the loss in 2003 of his wallet containing a document given to him by Mr. H.O. Olympio. As the Federal Office for Migration pointed out, it is surprising that, several years later, the police were still looking for him so actively that he was recognized immediately. Another element that raises doubts

⁶ *op. cit.*

about the complainant's testimony concerns the circumstances surrounding his release in April 2006. The complainant, wanted for several years and suspected of attacking a gendarmerie in Lomé on 26 February 2006, claims to have been released by a soldier who had been bribed by his brother-in-law. Yet, the perpetrators of the attack on the gendarmerie were arrested and tried on 19 May 2006. The complainant's fears are therefore not justified.

4.9 Furthermore, the complainant made contradictory statements with respect to certain key points. At the registration centre, he stated that he had lived in Benin between 1999 and 2002 and in Agouegan from 1 April 2004 until his departure. In addition, he claims that, in 2002, he received a signed business card from Mr. H.O. Olympio, which he lost in 2003. However, to the cantonal authorities he stated that he had lived in Lomé from the age of 6, that he had gone occasionally to Agouegan and that he had fled to Benin again after his return in 2002 and spent six months there. Moreover, he initially said that Mr. H.O. Olympio had given him a permit, but later declared that he had lost his wallet containing the permit and the business card.

4.10 As to the events surrounding the 2003 elections and the meeting organized by UFC on 16 April 2005, the State party notes that these points, which the complainant apparently considers to be crucial, were not made until late in the proceedings. There are too many inconsistencies and contradictions to be reasonably explained by the fact that a person is facing persecution. Furthermore, they relate to key points and the complainant has failed to set them out in a plausible manner. Consequently, there are no substantial grounds for believing that the complainant would be in danger of being tortured if he returned to Togo.

Complainant's comments on the State party's submission

5.1 On 14 June 2010, the complainant stated that the campaign of repression against UFC party members in Togo was ongoing. According to Amnesty International, the day before the presidential election of 4 March 2010, two members of the opposition party and a dozen other activists were arrested and charged with jeopardizing State security. On 8 March 2010, the Government banned demonstrations on working days. On 9 March 2010, during a protest march against election irregularities, UFC members were stopped and questioned. A UFC office was raided and material evidence of fraud was stolen. In the wake of the presidential elections, demonstrations continued to be violently put down. On 14 April 2010, about 70 people were arrested, including UFC representatives. The International Federation for Human Rights (FIDH) condemned the arrest of political activists and called for civil and political rights to be observed in Togo in the post-election period. The complainant personally took part in a protest on 10 April 2010 outside the United Nations office against the irregularities that had occurred during the presidential election and the ensuing violence. In an article dated 29 April 2009 in the newspaper *Le Triangle des Enjeux*, he had already accused the gendarmerie of presenting falsified evidence when Kpatcha Gnassingbé, the President's brother, was arrested.

5.2 Contrary to the assertions of the State party, the political situation has not improved and the campaign of repression against UFC members was stepped up during the run-up to the presidential election on 3 March 2010. Furthermore, by publishing an article in *Le Triangle des Enjeux* on 29 April 2009, the complainant demonstrated publicly his opposition to the current Government in Togo. Those activities could put the complainant at risk if he returned to his country.

5.3 As to the alleged inconsistencies identified by the State party, the complainant refutes the State party's contention that he went to Lomé to go into hiding. In fact, at the time, his wife was living in the village of Devego in the suburbs of Lomé. Furthermore, surprising as it may seem, a police officer did nonetheless recognize him on 28 March 2006, many years after the events in question. With regard to the attack on the gendarmerie

in Lomé on 26 February 2006, the Federal Office for Migration initially disputed that it had happened, but it did not repeat the argument in its statement of 9 November 2006, which proves that it has accepted that the event did occur. The fact that two perpetrators of the attack have already been arrested and tried proves that if the complainant was arrested, he too would suffer a similar fate. Furthermore, there was no inconsistency regarding the complainant's place of residence in Togo. The Federal Office for Migration acknowledged in its decision of 8 September 2010 that he had been in hiding in Agouegan. At the registration centre, the complainant had been questioned about his last address, which explains why it did not match his official address in Lomé.

5.4 The complainant refutes the allegation that he mentioned the problems he faced in 2003 only at a late stage in the proceedings since he had already mentioned the report he had made about a person attempting to vote twice in 2003 during the first hearing at the registration centre. He had also mentioned at that time the events surrounding the meeting of 16 April 2005.

5.5 The complainant concludes that the statements and evidence submitted show that if he returned to Togo he would be subjected to treatment contrary to article 3 of the Convention.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a complaint, the Committee against Torture must decide whether or not it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee further notes that domestic remedies have been exhausted pursuant to article 22, paragraph 5 (b), and that the State party does not contest admissibility. Accordingly, the Committee finds the complaint admissible and proceeds to its consideration on the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information made available to it by the parties concerned, in accordance with article 22, paragraph 4, of the Convention.

7.2 The issue before the Committee is whether the expulsion of the complainant to Togo would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

7.3 Regarding the complainant's allegations under article 3, the Committee must take into account all relevant considerations, including the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such analysis is to determine whether the complainant runs a personal risk of being subjected to torture in Togo. It follows that the existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient grounds for determining that a particular person would be in danger of being

subjected to torture if expelled to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.⁷

7.4 The Committee recalls its general comment No. 1, which states that the risk of torture need not be highly probable, but it must be personal and present. In this regard, the Committee has established in previous decisions that the risk of torture must be “foreseeable, real and personal”.⁸ As to the burden of proof, the Committee also recalls that it is normally for the complainant to present an arguable case, and the risk of torture must be assessed on grounds that go beyond mere theory or suspicion.

7.5 In assessing the risk of torture in the present case, the Committee notes the complainant’s claims that he is an active member of UFC; that his role was to protect party members, distribute leaflets and make statements; that he was first arrested in 1999 for sending information on the political situation in Togo to friends in Germany; that he was tortured and held in inhuman conditions for two months and then released; that following clashes on 18 July 1999 he fled to Ghana to escape arrest; and that he returned to Togo in 2002 after being introduced to Mr. H.O. Olympio, who gave him a permit and his business card. The Committee notes the complainant’s claim that during the 2003 presidential elections he reported fraudulent voting practices; that, following death threats, he fled to Benin; that he returned to Togo in January 2004; that he was arrested by gendarmes on 28 March 2006 and transferred to the Zébé camp, where he was beaten, threatened with death and accused of taking part in the attack on the Lomé gendarmerie on 26 February 2006; that on 19 April 2006, he managed to escape thanks to bribes paid to a guard by his brother-in-law; and that he subsequently fled to Ghana, from where he departed for Switzerland via Italy. The Committee notes the complainant’s argument that the situation in Togo has not improved for ordinary UFC members, who are at risk of being imprisoned and tortured, as confirmed by the Swiss Refugee Council report of 18 May 2009; and that this report also establishes that those who fled Togo for Benin and Ghana are viewed with greater suspicion. Lastly, it notes his claim that the Swiss authorities have failed to fulfil their obligation to conduct an effective and thorough official investigation into credible allegations of treatment that violates article 1 of the Convention, such as that evidenced by the medical reports submitted by the complainant, including the report of the psychiatric services of Solothurn dated 29 May 2009.

7.6 The Committee notes the State party’s argument that the complainant has not provided the Committee with new information and that he has merely contested the domestic authorities’ assessment of the facts. The Committee notes the State party’s argument that the situation in Togo has improved considerably since the complainant left the country; that, although it is in opposition, UFC is represented in parliament; and that some of those who had fled Togo have returned to their country, with no persecution being reported. The Committee notes the State party’s argument that, even assuming that his testimony is credible, this alone does not constitute substantial grounds for believing that he would face torture if he returned to Togo; that there is no causal link between the complainant’s arrest in 1999 and his departure from Togo for Switzerland; that the medical reports written eight years after the alleged facts make no mention of acts of torture and that they are based explicitly on the complainant’s account; that the Swiss Refugee Council

⁷ See communication No. 282/2005, *S.P.A. v. Canada*, decision adopted on 7 November 2006; *T.I. v. Canada*, communication No. 333/2007, decision adopted on 15 November 2010; and *A.M.A. v. Switzerland*, communication No. 344/2008, decision adopted on 12 November 2010.

⁸ See *A.R. v. Netherlands*, communication No. 203/2002, decision adopted on 21 November 2003, para. 7.3; *A.A. et. al v. Switzerland*, communication No. 285/2006, decision adopted on 10 November 2008, para. 7.6; and *R.T.-N. v. Switzerland*, communication No. 350/2008, decision adopted on 3 June 2011, para. 8.4.

report establishing that some UFC members are at risk of torture refers to members who are not well known whereas the complainant claims he played a key role in UFC and even enjoyed the protection of Mr. H.O. Olympio; and that he cannot therefore be considered to be an ordinary UFC member. The Committee notes that the State party alleges that the complainant's credibility is undermined by inconsistent and contradictory information, in particular regarding his place of domicile, his arrest on 28 March 2006 and his release from the Zébé camp. Lastly, the Committee notes that, according to the State party, many Togolese nationals in Switzerland take part in the same political activities as the complainant and that such activities do not constitute an additional risk for the complainant in the event of his being returned.

7.7 Having taken account of the arguments presented by the parties, the Committee considers that the complainant has submitted sufficient elements to suggest that he would be at risk of receiving treatment that violates article 1 of the Convention if he were returned to Togo. This conclusion is based primarily on the complainant's claim, as corroborated by the Swiss Refugee Council report of 18 May 2009, that members of the opposition UFC with a low political profile may still be subjected to Government reprisals and that those who, like the complainant, fled Togo for Benin and Ghana are viewed with greater suspicion. Thus, regardless of whether he is a well-known or ordinary member of UFC, since UFC continues to be the main opposition party in Togo, the risk of torture is still present. The Swiss authorities have not contested the fact that the complainant has been an active member of UFC in Togo and Switzerland. The serious human rights violations committed during and after the presidential elections of 24 April 2005 have still not been the subject of a judicial inquiry, which creates a climate of impunity conducive to a recurrence of such violations.⁹ The Committee also notes that, despite its recommendations, Togo has still not adopted legislation that explicitly defines and criminalizes torture, which encourages impunity in respect of such practices.¹⁰

7.8 As to the medical certificates and reports submitted in support of the complainant's asylum application, the three medical certificates of 25 July 2007, 7 March 2008 and 29 April 2009 confirm the precarious mental health of the complainant, which is connected to his past experiences. As to the medical report of 18 May 2009 issued by the psychiatric services of Solothurn, the Committee notes that it mentions terrorism or torture as a possible cause of the post-traumatic stress disorder that the complainant was diagnosed as having. The Committee is of the view that such elements should have caught the attention of the State party and constituted sufficient grounds for investigating the alleged risks more thoroughly. The Federal Administrative Court simply rejected them because they were not likely to call into question the assessment of the facts made in previous rulings. By proceeding in thus without considering those elements, even though they were submitted at a late stage in the proceedings, the Swiss authorities failed in their obligation to ensure that the complainant would not be at risk of being subjected to torture if he were returned to Togo.

7.9 On the basis of all the information submitted to it and in the absence of a thorough investigation by the State party showing otherwise, the Committee is of the view that the complainant has provided sufficient evidence for it to consider that his return to his country of origin would put him at a real, present and personal risk of being subjected to torture.

8. The Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

⁹ See concluding observations of the Human Rights Committee (CCPR/C/TGO/CO/4), para. 10.

¹⁰ See concluding observations of the Committee against Torture (CAT/C/TGO/CO/1), para. 10; and concluding observations of the Human Rights Committee (CCPR/C/TGO/CO/4), para. 15.

Punishment, therefore concludes that the return of the complainant to Togo would constitute a breach of article 3 of the Convention.

9. In conformity with rule 112, paragraph 5, of its rules of procedure, the Committee wishes to be informed, within 90 days, of the steps taken by the State party to respond to this decision.

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]
