College of Liberal Arts

Chair
in International Studies

DEPARTMENT OF HOMELAND SECURITY
U.S. CITIZENSHIP AND IMMIGRATION SERVICES
NEWARK ASYLUM OFFICE

In the Matter of In Proceedings for Asylum, Withholding of Removal and Relief Under the Convention Against Torture.	AFFIDAVIT OF: , PH.D.

I, Professor , declare that this statement is true to the best of my knowledge and beliefs.

I. PREPARER'S QUALIFICATIONS AND BASIS OF KNOWLEDGE

1. I am the Professor of International Studies at the , Between 1997 and 2011, I have spent a total of twenty months conducting field research in West Africa.

2. I completed my Doctorate in Philosophy at Stanford University on the subject of socio-economic conditions and politics in West Africa, and Togo in particular. I have written extensively about human rights in Africa (See Curriculum Vitae attached). I have served as an expert witness in the asylum cases of over one hundred and fifty West Africans in the United States, Canada, the Netherlands and the United Kingdom and I am considered a leading international expert on current legal, political, economic and social conditions in West Africa and on the subjects of forced marriage, citizenship, statelessness, human trafficking, female genital mutilation, gender and sexuality discrimination and violence as they pertain to Africa by many law school clinics, human rights and immigration networks including but not limited to the Georgetown University Center for Applied Legal Studies, the University of Denver Center for International Human Rights Law & Advocacy, the University of Tennessee Asylum Law Clinic, Lawyers Committee for Human Rights, Amnesty International, Human Rights Watch, Human Rights First, the Dutch Refugee Council, Hong

Kong Refugee Advice Centre, the Immigration and Refugee Board of Canada, the former Refugee and Migrant Justice (U.K.), the African Refugee Development Center, Tel Aviv, Israel, the U.K. Immigration Advisory Service, and the U.K. Electronic Immigration Network.

3. I last visited Togo in September 2011. To keep abreast of current events in Togo, I read newspapers and scholarly articles and I participate in email newsgroups. I also have many Togolese personal and professional friends and acquaintances, both in the United States and abroad. I discuss particular issues with colleagues in the U.S. Department of State and in the U.S. embassy in Togo, including recently with John Kmetz, the Political and Economic Officer. I am familiar with the U.S. Department of State Country Reports on Togo and find them to be generally accurate, with the important exception of the reports spanning 2006-10, which omitted mention of many human rights violations and illegal detentions of opposition activists that I learned about through personal experience and observation. I know the individuals who wrote many of the recent reports, including Deputy Chiefs of Mission Christopher Davis, Matthew Harrington, and Jack Diffly, and I was interviewed for some of the content of the 2000 and 2001 reports with respect to police brutality. I also communicate with staff at the Washington, D.C.-based National Endowment for Democracy, which monitors political developments in West Africa.

4. I am writing in my capacity as an expert on the customs, practices and law as it pertains to marriage, gender violence and gender discrimination in Togo, in response to a request by Mr. [redacted], Ms. [redacted] and Ms. [redacted] of Covington & Burling LLP. I have been asked to comment on the asylum petition of Ms. [redacted], and in particular to evaluate her claim to have been subjected to an attempted forced marriage by members of her family, including her father. I hereby offer my expert opinion about the asylum application of Ms. [redacted]. I have been asked to comment on the following:
    a. The current political and human rights situation in Togo as it pertains to the enforcement of law and protection of human rights;
    b. The prevalence of forced marriage;
    c. The legality of the pre-arranged marriages;
    d. The role of the *dote* or brideprice;
    e. The prevalence of domestic violence and gendered abuse;
    f. Possible role of religion, geographical origin and ethnicity in risk faced by the applicant;
    g. Possibly jeopardy encumbered by Ms. [redacted] in her efforts to escape a marriage not of her choosing;
    h. Capacity of government agents to protect Ms. [redacted] if she returns and/or prosecute those responsible for acts perpetrated against her.

5. I have reviewed Ms. [redacted]'s statement and supporting documentation in support of her petition to familiarize myself with her situation, including, but not limited to, a copy of her marriage certificate, and affidavits by [redacted], [redacted], [redacted] [redacted]. I have also received responses to specific questions directed at Ms. [redacted]'s legal representation.

6. My report is organized into six substantive parts, namely: general political and social conditions in Togo to the present day as they pertain to civil society and the rule of law; an assessment of the substantive claims of Ms. [redacted]; the prevalence and practices attendant to forced marriage; the prevalence and practices attendant to domestic violence; summary and recommendations.

7. I am familiar with the historical and contemporary social, cultural, and political environment in Togo. I am familiar with the practices of forced marriage and related gender discrimination, and the law governing these matters. I am particularly familiar with the political upheaval that has taken place in Togo over the past two decades, and the continued political crisis tied with the seizure of power by one of the sons of the deceased dictator. The political instability in contemporary Togo makes the enforcement of law and the protection of individual and collective human rights extremely difficult.

8. In summary, Ms. [redacted]'s narrative pertaining to the attempts by her father to force her into a marriage, and her account of the reaction of her family and the man who seeks to make her his wife, are consistent with my knowledge of practices and traditions in Togo. Whereas the law in Togo specifically prohibits forced marriage, there is no objective evidence that the Togolese government has enforced this law. In view of the lack of capacity of the government to protect victims of forced marriage, I respectfully submit that Ms. [redacted] faces extreme jeopardy in Togo, and that to return her forcibly to Togo would place her in very real danger for her life and physical safety.

II. MS. [redacted]'S AFFIDAVIT IS CONSISTENT WITH THE SOCIAL, CULTURAL AND POLITICAL PRACTICES AND CONDITIONS IN TOGO

9. Ms. [redacted] states that she suffered physical abuse and significant persecution in Togo at the hands of her father and his extended family, and that she was targeted, threatened, and beaten. From my understanding of the situation, this was due to:
   a) Her status as a single, unmarried, woman;
   b) Her resistance to being betrothed to a man [redacted] not of her choosing;
   c) Her resistance to being married into a polygynous household;
   d) Her desire to marry independently of her father's wishes;
   e) Her desire to marry monogamously;
   f) [redacted]'s status as an important community individual;
   g) Her lfe ethnicity;
   h) The absence of any government, civil, judicial or security institution that would defend or protect her in any way.

10. Ms. [redacted] indicates that she experienced the following violations of her human rights in Togo at the hands of her father and his accomplices:
    a. Physical beating;
    b. Illegal detention, insofar as she was held against her will by her father;
    c. Threats to her life;
    d. Denial of her rights to freedom of expression and association;
    e. Denial of her right to freedom of movement.

11. Ms. [redacted] indicates that she fears forcible return to Togo. From my understanding of her narrative and the country conditions in Togo today, this is because of:
    a. Her father's attempts to force her to marry [redacted];
    b. Her father's previous and successful efforts to marry four other daughters [redacted];
    c. Her father's previous acts of extreme violence against her sister, [redacted], and her forcible marriage;

d. Her father's repeated acts of physical violence against her and her siblings;
e. Her father's continued and active attempts to locate her and marry her to Mr. [redacted];
f. The payment of a bride-price (*dote*);
g. The repeated attempts of the man who would seek to marry her to effect the marriage;
h. Her attempt to hide from her father for four years;
i. Her fraudulent enactment of a marriage with her boyfriend [redacted] as part of her strategy to protect herself;
j. Those responsible for violations of her human rights remain at large and continue to operate with impunity;
k. The widespread gender bias of the local civil authorities;
l. The widespread corruption of civil and judicial authorities;
m. The absence of any government, civil, judicial or security institution that would defend or protect her.

12. The situations and events described in Ms. [redacted]'s sworn declaration are characteristic of those faced by others subjected to *attempted* forced marriage, and are consistent with public and scholarly knowledge about the prevalence of forced marriage and attendant practices in Togo.

13. Ms. [redacted] claims that after learning of her betrothal to Mr. [redacted], she strongly objected and attempted to persuade her mother to intervene on her behalf. Her parents ignored her complaints.

14. Ms. [redacted] claims that after her objections to the proposed marriage became clear to her father, he beat her very severely.

15. Ms. [redacted] claims that after experiencing multiple and severe beatings she fled her familial household. She first fled to the home of a schoolteacher, Mr. [redacted]. After this, her father placed a curse on Mr. [redacted]. After more violence, she fled to the home of a school friend called [redacted].

16. Ms. [redacted] returned to the home when she believed things were calmer and thought her father absent, but while she was there, both her father and her betrothed came to the house. Her father seized her and beat her more severely than previously. After this event, she fled and relocated for an extended period of time and tried to complete her schooling.

17. In mid 2006, she fled south to Lomé, with the assistance of another teacher, Mr. [redacted]. She hid in Lomé for approximately four years, and during the period kept in touch with her brother [redacted]. He informed her that her father was still actively seeking her, and that the marriage was still pending. Because she needed to remain incognito, she could not work after graduating from school, because she feared being noticed by the authorities and friends or allies of her father.

18. In 2010 she learned that her father had discovered her location, and she made plans to flee to Ghana. Shortly after relocating to Accra, Ghana, she was met in the street by a friend of her father's. Because she had no legal status in Ghana, she fled back to Togo, and again hid with Mr. [redacted].

19. In November 2010, she decided that to protect herself against marriage, she would marry her boyfriend [redacted]. They married in a small private ceremony in [redacted]. According to the marriage certificate, her father witnessed the marriage. In an interview with her counsel, Ms. [redacted] explained that [redacted] asked a friend to pretend to be her father and witness the marriage.

20. She briefly fled to Benin after the marriage, but was unable to reside with the planned family, and returned to Togo. Because she learned from her brother, [redacted], that her father and Mr. [redacted] were still actively seeking her, she agreed to come to the US on an I-20 visa.

21. Since fleeing to the U.S. she has been informed that her father continues to search for her and continues to wish to see the marriage effected with Mr. [redacted]. This was most recently confirmed in a statement from her brother, [redacted].

III. MS. [redacted]'S ACCOUNT IS CONSISTENT WITH PUBLIC AND SCHOLARLY KNOWLEDGE ABOUT THE PREVALENCE OF FORCED MARRIAGE & ATTENDANT GENDER DISCRIMINATION PRACTICES IN TOGO

22. Ms. [redacted]'s accounts of attempts by her father to force her to marry against her will, and successful attempts by her father to marry her siblings to men not of their choosing and against their will, is consistent with scholarly knowledge and publicly available information about the prevalence of forced marriage and attendant gender discrimination practices in Togo. Ms. [redacted]'s father's payment of "bride-price" is a contractual arrangement recognized by Togolese law.

23. Forced marriage is widespread in Togo, and West Africa more generally. It affects young girls and women of adult age. [See Dauvergne, Catherine and Millbank, Jenni. "Forced Marriage as a Harm in Domestic and International Law." *Modern Law Review*, Vol. 73 (2010), pp. 57-88; Goeller, Cara. "Forced Marriage and the Granting of Asylum." *William and Mary Journal of Women and the Law*, Fall 2007, pp. 173-194; Mariam Ouattara, Purna Sen and Marilyn Thomson, "Forced Marriage, Forced Sex: The Perils of Childhood for Girls," *Gender and Development*, 6. 3 (Nov. 1998): 27-33; K. T. Seelinger, "Forced Marriage and Asylum: Making Invisible Harm Visible," http://works.bepress.com/cgi/viewcontent.cgi?article=1000&context=kim_thuy_seelinge r]

24. Gender discrimination exists in the legal codes governing marriage in Togo. Marriage law is governed by the 1980 Code des Personnes et de la Famille. The code recognizes, among other things, "polygamie" (polygyny), difference in ages for marriages for men and women, and the supremacy of the father in all marital matters. ["L'autorité parentale" is the subject of Art. 101, wherein he is referred to as, "le mari est le chef de famille".]

25. The Togolese government has not ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, nor the 2005 Maputo Protocol of the African Union. The NGO, Africa for Women's Rights, has criticized Togo for inadequate legislation with respect to "domestic violence, including marital rape, and on all forms of sexual abuse, including sexual harassment." http://www.africa4womensrights.org/

26. Early marriage, arranged marriage, forced marriage, and spousal abduction (rape), and other

forms of involuntary marital unions operate throughout Togo. Sororat (a man's marriage to his deceased wife's sister) and levirat (a woman's marriage to her brother-in-law after the death of her husband) are both present. [Levirat is the subject of Art. 54 of the 1980 Code des personnes et de la famille, which states that in the event of the death of the husband, levirat is only prohibited if the marriage had been "dissolved by divorce."] A 2006 report produced by Alexandra Kossin, Cécile Trochu and Patrick Mutzenberg of the Organisation Mondiale Contre la Torture reported that the majority of these practices take place in contexts of poverty, and many marital arrangements are made without the consent of one or both parties are a result of financial necessity, debts and related matters. http://www.omct.org/files/2005/09/3070/togo_cat_0406_violences_etatiques_fr.pdf

27. Forced marriage is well documented in the Togolese press, and one focus is the impact forced marriages have on the education of the girls/women in question. [e.g. http://www.icilome.com/nouvelles/news.asp?id=61&idnews=6489&f=]

28. Gender discrimination in marriage is widespread in Togo and contained in marriage law. The OECD Social Institutions and Gender Index reports that, "Women in Togo face severe discrimination within the family context. By law, the minimum age for marriage is 17 years for women and 20 years for men, and both spouses must give their free consent. This law is often ignored in rural areas, where customary early marriage before the age of 17 years is still common and sometimes forced (such marriages are not recognised by the law). A 2004 United Nations report estimated that 20 per cent of girls between 15 and 19 years of age were married, divorced or widowed." http://genderindex.org/country/togo

29. A case I recently evaluated in the U.K. provides some instruction on the level of disinterest the Togolese government has in combating forced marriage. In the case of Ms. A.A., a young Togolese woman fleeing forced marriage, her parents had attempted to marry her to a politician in order to silence her political opposition activities. Not only did they place a photograph and a "wanted" poster in a prominent Lomé newspaper, explaining that she was fleeing a marriage arranged for her to "help her", but they also printed a picture of her in the garb of a Muslim bride. A subsequent article, written by a "journalist" for the paper, proclaimed that the parents were acting in her best interest, and that anyone locating Ms. A.A. should turn her over to the authorities. Ms. A.A. subsequently won protection in the U.K. and is free from the attempted forced marriage. But the case illustrates the level of disinterest on the part of government agents. Both the article and the photograph are in direct violation of current Togolese law, but no action was taken against the parents.

30. Ms. [redacted] indicates that the practices associated with forced marriage are particularly strong in her Ife ethnic group, and that her father's ethnic affiliation plays a prominent role in his decision to follow "tradition" pertaining to marriage. I consider this statement plausible and consistent with practices in other small ethnic groups in Togo, although to the best of my knowledge there is no scholarly publication addressing the Ife group. The 2010 U.S. State Department Report on Human Rights in Togo observes that, "Traditional customs often took precedence over the legal system among certain ethnic groups."

31. In summary, the context of Ms. [redacted]'s claim that she was subjected to an attempt to marry her forcibly and against her will, and that her sisters were subjected to similar forced marriage, is plausible, and supported by the objective evidence.

IV. MS. [redacted]'S ACCOUNT IS CONSISTENT WITH PUBLIC AND SCHOLARLY KNOWLEDGE ABOUT THE PREVALENCE OF DOMESTIC VIOLENCE AND VIOLENCE AGAINST WOMEN IN TOGO

32. Ms. [redacted]'s accounts of extreme physical violence perpetrated against her and her sisters, all of whom attempted to resist marriages arranged for them against their will, is consistent with scholarly knowledge and publicly available information about the prevalence of domestic violence and gender violence in Togo.

33. The World Organization Against Torture released a report about the prevalence of gender violence in Togo in 2002. The executive summary, contained in a press release, recounted, "grave concern at the widespread violence against women in the private and community spheres as well as at the hands of State officials." It continued, "Despite guarantees of equality in Togo's Constitution and its ratification of international and regional human rights instruments which prohibit discrimination on the basis of sex, the subordination of women and girls continues to be part of both law and socio-cultural practices that are based upon male dominance. Women and girls are subjected to discrimination in the family, community and State spheres and this discrimination is perpetuated and condoned in legislation and by social customs. For example, the Personal and Family Code of Togo makes provision for polygamous marriage, specifies that girls may be married at 17 while the age of marriage for men is 20, entrenches men as heads of household and defines the husband as the administrator of common property of the spouses. Domestic violence including battering and marital rape are serious problems in Togo, however, as a result of a combination of different social, economic and legal factors, many women are either unwilling or unable to report this violence. There is no specific legislation for the prevention and punishment of domestic violence and the police are reportedly ill-equipped to handle complaints of family violence. Domestic violence continues to be regarded as a "private affair" by most law enforcement personnel and members of the judiciary who generally urge women to take steps to reconcile with their abusers rather than lodging official complaints. Women and girls in Togo are also subjected to a number of violent cultural practices in the family including; early and forced marriages, dowry-related violence, female genital mutilation and widowhood rituals. While government and NGO action have been reasonably effective in raising awareness of the harmful nature of female genital mutilation in most parts of the country, other violent cultural practices persist and few steps have been taken to eliminate these." http://www.omct.org/violence-against-women/urgent-interventions/togo/2002/10/d16014/

34. The OECD Social Institutions and Gender Index reports that, "Women's physical integrity is not sufficiently protected in Togo and violence against women is a serious problem. To date, there is no specific legislation to address domestic violence. Reliable data is unavailable, ... Most women are unaware of the legal mechanisms available to protect them and the police rarely intervene in domestic matters." http://genderindex.org/country/togo

35. The OECD Social Institutions and Gender Index reports that, "Rape is punishable by between five and ten years in prison, but spousal rape is not legally recognised. As Togolese society attaches a strong stigma to rape, victims seldom press charges. Sexual harassment has been prohibited by a presidential decree, but is still frequent in the workplace: victims rarely report it and perpetrators usually go unpunished. Widows in Togo are obliged to remain barefoot, a ritual that borders on violence." http://genderindex.org/country/togo

36. Violence is considered a standard part of domestic life in Togo, and in marriages and families in particular. A 2006 report produced by Alexandra Kossin, Cécile Trochu and Patrick Mutzenberg of the Organisation Mondiale Contre la Torture reported, "La violence est considérée comme faisant partie de la vie des couples et le mari se sent le devoir de corriger sa femme lorsque celle-ci lui manque de respect. Il en est ainsi d'une couturière qui a été blessée par son mari à l'aide de ciseaux parce que celle-ci lui aurait reproché de faire la cour à l'une de ses apprenties. Tel est également l'exemple d'une jeune dame qui s'est vue jeter de l'acide au visage pour s'être rendue chez son mari pour récupérer ses effets à la suite d'une séparation de corps qui venait d'être prononcée entre elle et son mari. Une autre a été bien molestée par sa belle-mère et son mari qui la trouvaient trop jalouse."[1] http://www.omct.org/files/2005/09/3070/togo_cat_0406_violences_etatiques_fr.pdf

37. Data on domestic violence is difficult to access, but one NGO (Action des Chrétiens pour l'Abolition de la Torture) operating in Togo found that of 1000 women surveyed, 85% indicated they had knew someone who experienced domestic violence, and 52% indicated they personally experienced domestic violence. http://www.omct.org/files/2005/09/3070/togo_cat_0406_violences_etatiques_fr.pdf

38. The 2010 U.S. State Department Report on Human Rights in Togo observes that domestic violence is widespread and that the government makes no efforts to combat it. "The law does not specifically prohibit domestic violence, and domestic violence against women continued to be a widespread problem. Police generally did not intervene in abusive situations, and women were not aware of the formal judicial mechanisms designed to protect them. Although there were no official efforts to combat domestic violence, several NGOs were active in educating women on their rights." http://www.state.gov/g/drl/rls/hrrpt/2010/af/154374.htm

39. The 2010 U.S. State Department Report on Human Rights in Togo, observes that laws on sexual harassment are not enforced. "A 1984 presidential decree prohibits sexual harassment and specifically mentions harassment of female students; however, authorities did not enforce the decree, and sexual harassment was a problem throughout the society. While the law states that harassment is illegal and can be taken to court, no specific punishment is prescribed."

40. In summary, the context of Ms. [redacted]'s claim that she was subjected to physical violence in the home when she attempted to resist the pressure to marry, and that her sisters were subjected to similar violence, is plausible, and supported by the objective evidence. Her claim that government agents cannot and will not protect her is similarly supported by objective evidence.

V. MARRIAGE LAW IN TOGO AND THE IMPLICATIONS OF MS. [redacted]'S ACTIONS

41. Forced marriage is specifically prohibited in Togo by *Loi No.2007-005* of January 10, 2007, concerning "Health and Reproduction." Title Two, Chapter Two, "Des droits en santé et de la

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[1] [Violence is considered part of the lives of couples and a husband feels the duty to "correct" his wife if he feels she is not respectful. There was a seamstress who was injured by her husband with scissors because she was going to complain to the court about one of his apprentices. There is also an example of a young lady who had acid thrown in her face for having her husband retrieve his belongings after a separation that had been ordered between them. Another was harmed by her mother in law when her husband became very jealous.]

reproduction," specifically bans forced marriages. Article 11 accords all Togolese "the right to freedom and security of the individual," including the right to sexual reproduction, health, and legal controls to protect these. The article continues that women are specifically protected against "les mariages forcés, et/ou precoces". Article 16 states that every individual, having reached the age of legal maturity has the "right to chose freely...to marry or not to marry."

42. Notwithstanding, since the passage of the law there have been no prosecutions or convictions of individuals attempting to force other individuals into marriages against their will. Furthermore, there is no evidence of government implementation of the 2007 law.

43. Ms. [redacted] sought to enter into a marriage with [redacted] in 2010 as part of a strategy to protect herself from the intentions of her father to force her to marry Mr. [redacted]. I have reviewed a notarized copy of the marriage certificate. I am aware that Ms. [redacted] claims that she and her would-be spouse produced a witness to the marriage who pretended to be her father. Based on my knowledge of Togolese marriage law, and in view of the fact that both parties conspired to produce a witness, it is my opinion that this marriage is invalid. It is my opinion that Ms. [redacted] is not legally married. Furthermore, based on my conclusion that Ms. [redacted] conspired to violate the Togolese law of marriage, she may be of interest to the Togolese authorities, who may pursue her and her would be spouse for violating the law.

44. Marriage law in the Republic of Togo is governed by Ordonnance Numéro 80-16 du 31 Janvier 1980 portant Code des personnes et de la famille. This legal code revision replaced the civil law pertaining to marriage in effect from 1924.

45. Pursuant to Decrêt Numéro 62-89 of July 2, 1962, portant reorganization de l'état-civil, the adjudicating authority in Togo for all matters concerning marriages is the Procureur de la République.

46. The text of the ordinance is based heavily in French civil law, and also draws upon traditional customary law and practice in Togo.

47. Section Two of the Annex pertaining to marriage law, of the Code des Personnes et de la Famille provides for two forms of marriage; namely civil marriage performed before an officer of the state, or religious or customary marriage performed by a cleric or traditional chief. In the instance of the former, civil marriage, registration of the marriage is immediate. In the instance of the latter, religious or customary marriage, registration before the état-civil must be effected by both parties within.

48. Title 1, Chapter 2, Section 2 (Conditions des Formes), Article 57 of the Annex attached to the family code describes the preparations before a marriage. It provides that approximately thirty days prior to a marriage, both parties must present themselves before a competent officer of the état-civil with a their birth certificates and any documentation pertaining to a "dote" (brideprice, or, erroneously, dowry), that may form part of the marriage contract.

49. Article 60 of the same text provides for the officer of the état-civil to investigate whether either party has been married before, or is currently married or widowed, and whether either party is a minor. Upon conclusion of any investigation, the officer, subject to Article 61, inquires whether the proposed marriage is to be monogamous or polygamous (more accurately polygynous, as women may not have multiple husbands). Fifteen days after these

investigations and statements, the officer of the état-civil advertises the proposed marriage publicly on the "porte" (door) of the central office of état-civil. The advertisement carries information about the identity, filiations, residence and future residence of both parties, and the date of the proposed marriage.

50. Title 1, Chapter 2, Section 4 (La Célébration du Mariage), Articles 75-83 pertain to the formalities of the marriage ceremony.

51. Article 75 observes that in Togo it is "obligatory" that marriages be officiated by either an officer of the état-civil, or by a traditional chief invested with the authority of état-civil by the state in matters concerning marriage.

52. Article 76 observes that "only" a marriage performed by an officer of the état-civil has "legal effect."

53. Article 77 observes that a legal marriage may only be performed in either the office of the état-civil or in one of the residence of the prospective spouses, providing that a minimum of three months residency has been attained in the residence in question. In cases of "extreme and unforeseen difficulty" an officer of the état-civil may be brought to the home of one of the parties to perform the marriage (Art. 78).

54. Article 80 observes that on the date determined for the marriage by the future spouses, at a time determined by the officer of the état-civil, the individuals should present themselves with one witness each, which may be a parent or other person.

55. Article 81 provides for the text of the ceremony, and notes that upon conclusion of the ceremony the newly married parties will receive a document affirming their newly married status.

56. Pursuant to Title 1, Chapter 2, Section 6 (De la Preuve du Mariage), Article 95, no parties may claim to have a lawful marriage without first presenting a certificate of the marriage conveyed at the time of the marriage (Art. 81). The only exception to this is in the event of "loss" or "partial and/or total destruction" of the documents. Articles 96-98 detail how such a substantiation of a marriage would take place.

57. In summary, the objective evidence supports Ms. [redacted]'s contention that the government is unable to protect her against the attempted forced marriage arranged by her father and Mr. [redacted]. Moreover, based on my understanding of Togolese marriage law, Ms. [redacted] is not legally married, and her attempt to marry [redacted] may result in the government pursuing her for a civil violation. Her attempted marriage may have been in part to protect herself against the arrangement her father was affecting with respect to Mr. [redacted], but it provides her with no protection.

VII. IT IS MORE LIKELY THAN NOT THAT MS. [redacted] WILL BE HIGHLY VULNERABLE IF FORCED TO RETURN TO TOGO

58. Ms. [redacted] would be highly vulnerable to further persecution if forcibly returned to Togo. She would be unable to protect herself against the efforts of her father to compel her into a union against her wishes, and she would likely be unable to forestall the advances of her

erstwhile betrothed, Mr. [redacted]. Government agents would be in no position to protect her against either her father or Mr. [redacted]. There is currently no legal mechanism that can provide for the prosecution of a father arranging the marriage of a daughter. Furthermore, the political system, civil enforcement mechanisms, and the judicial are so completely compromised by corruption, inefficacy and years of neglect, that it is hard to imagine why any specific government agent would take an interest in her case.

59. Ms. [redacted]'s father's attempt to marry his daughter to Mr. [redacted] is a very public and widely known narrative. Not only is it likely that the entire extended families of both her father and Mr. [redacted] are aware of the situation, but over several years numerous others have become embroiled too. Notwithstanding, there have been no attempts by government agents to the best of my knowledge to detain or question Mr. [redacted] about this actions.

60. If Ms. [redacted] were forced to return to Togo, she would likely not be able to avoid persecution by moving to a part of the country outside of Lomé. Local chiefs in rural Togo are obliged to report all newcomers to the *Chef de Canton*, a regional governor, and he in turn must report this to the *Préfet*, a government (and frequently military) appointment. Record keeping is not nearly as accurate and extensive as in the United States, for example, but rather selective and focused on new movements and trends that are departures from the ordinary. When I visit an isolated village to speak to an individual chief for example, it is usually only a matter of hours before the *Préfet* has learned of my presence, and it is not uncommon for him to send an escort to bring me before him to explain my purpose. In my opinion, a woman such as Ms. [redacted], would be at considerable risk anywhere in Togo should she be forced to return today.

61. Objective evidence strongly supports the view that the government would not protect Ms. [redacted]. In spite of the fact that a 2007 law prohibits forced marriage, no single conviction or prosecution has been effected.

62. Most troubling for Ms. [redacted], however, is the question of whether she would receive justice and/or civil and legal protections, if (a) she filed a complaint with the Togolese authorities; or (b) if she were pursued by Togolese authorities for intentionally misrepresenting the identity of her witnesses at her marriage ceremony. It is conceivable that her fraudulent marriage could result in her facing prosecution. During my recent visit to Togo I had the opportunity to witness the trial of Kpatcha Gnassingbé, the brother of the president, for an alleged coup d'état approximately two years ago. I have written a report on this trial for Amnesty International USA, and here I excerpt some pre-publication content, which will be shortly posted on the AI Blog:

> "The Supreme Court in Lomé has just sentenced Kpatcha Gnassingbé, the elder brother of Togo's sitting president, Faure Gnassingbé, to twenty years in prison. Kpatcha, and twelve others, were convicted of attempting to overthrow the regime, and related crimes. The trial, which was televised and observed by the press and several human rights NGOs, including Amnesty International, lasted in its entirety barely six days, and failed to meet even basic standards of due process...
> Kpatcha's trial was predetermined from the outset. It was thrust to the highest level because a vague constitutional article permits supreme judicial review of alleged crimes that have national security implications. Local informants on the ground buttress this quasi-constitutional argument with the view that it would eventually end in the Supreme Court anyway. But the absurdity of beginning a criminal prosecution before the highest court in the land was not lost on the

defendants. Leaving aside Faure's heavy hand in appointing judges, the defense counsel protested in vain that to begin in the Supreme Court would be to provide no vehicle for review or appeal.

From the ...failure to halt a process taking place in the wrong jurisdiction, only two defense motions prevailed. The first permitted one of Kpatcha's French attorneys a brief adjournment to bring him up to speed. The second, correctly observing that Kpatcha and his co-defendants were detained in a facility that had no statutory basis to detain individuals, resulted in the transferring of the defendants to a correctional facility in the outskirts of capital. There is no provision for habeas corpus in Togolese law, and this defense motion caught the government prosecutors and the judge off-guard.

Aside from the question of jurisdiction and false imprisonment, the prosecution presented no credible physical evidence or other proof that any crime had been committed. Prosecution rested almost exclusively on a series of 'declarations' by various individuals substantiating the details of a planned coup. Notwithstanding, few of these men were made available for cross-examination by the defense. The sole item on display was a 'thumb-drive' with documents describing plans for an assault on the government. Connecting them to the primary defendant was made possible by Kpatcha's own admission. His flimsy defense rested largely on the argument that he knew of a planned coup, but was himself preparing a 'counter-coup.'

[Furthermore]... allusions to an alleged middleman to the plot, the "discovery" of which led to the withdrawal of the US observation team lead by John Kmetz, the Political and Economic Office at the US embassy, and himself an attorney. The mysterious

'Zak' was never delivered to the court, nor even served with a summons (avis de recherche), despite his ostensible centrality to both the prosecution and defense arguments. The defending counsel failed to request an adjournment for an attempt to be made to locate him and bring him to court. The government prosecutors, for their part, alleged he had fled to Burkina Faso, and was therefore unable to testify. Zak, however, while having briefly visited his ailing mother in Burkina, continues to work at the embassy. Since the conclusion of the trial, no attempt has been made to arrest him.

The extraordinary twenty-year sentence that Kpatcha received after a six-day trial has itself given rise to additional complications. A number of his co-defendants were also convicted, but several were released because the detention time already served was included in the calculation of their sentences.

... [W]hat remains to be seen is how and where Kpatcha and his "co-conspirators" can be securely imprisoned for an extended period. The detention facilities have been roundly condemned in a 2008 report by UN Special Rapporteur for Prisons and Extra-Judicial Killings, Manfred Nowak. Since the resumption of 'co-opération' between the European Union and Togo, a fresh influx of funds has led to the construction of a new modern prison along the road to Kpalimé."

63. While I appreciate that the trial of a brother of the president for treason does not mirror precisely any possible civil or criminal procedure which Ms. [redacted] may become embroiled, were she forcibly returned to Togo, and were she subsequently to attempt to seek protection from the Togolese authorities, it is illustrative of four general issues that compound her jeopardy.

a. There exists no provision for habeas corpus in Togo. If Ms. [redacted] were detained upon return (for example, because of her involvement in a fraudulent marriage) there is no legal protection which will afford her access to an attorney, or to ensure that she is not detained incommunicado in one of Togo's many prison facilities indefinitely without access to assistance;
b. There is no judicial independence in Togo. Judges operate at the behest of the executive, and conduct criminal proceedings at the instruction of the executive. If someone as prominent as the brother of the president, with a French attorney and in the presence of international observers, cannot receive justice, I am hard pressed to see how we would expect as much for Ms. [redacted] were she to pursue her father, for example, for crimes related bodily harm, domestic violence, false imprisonment, etc.;
c. There are no established rules of evidence in Togolese courts. If detained and tried in Togo, the burden of proof of innocence would rest squarely on Ms. [redacted]'s shoulders, and any form of evidence or proof could be used to determine to undermine her claims in a civil process. Similarly, if she were to pursue a civil action against her father, she would face equally difficult obstacles;
d. There is no right to appeal in Togo. If Ms. [redacted] were tried and convicted, there is no guarantee that she will be provided with the right to appeal.

VIII. CONCLUSION AND RECOMMENDATIONS

64. The evidence strongly supports Ms. [redacted]'s contention that she has been and continues to be at risk of being forced into a marriage with a man against her will, and in violation of her human rights.

65. The evidence strongly supports Ms. [redacted]'s contention that if forced to return to Togo, she will in all likelihood be subjected to a marriage with a man not of her choosing, and in violation of her human rights.

66. The government of Togo has no capacity to protect Ms. [redacted] against the attempts by her father to marry her. Whereas forced marriage is prohibited under Togolese law, there is no evidence on the part of the government to implement or enforce this law. Agents of the Togolese government have no interest in protecting Ms. [redacted] against an involuntary marriage; there is also no history of government action in defense of those subjected to forced marriages.

67. The narrative of Ms. [redacted] with respect to her experience of forced marriage is strongly supported by objective evidence about the prevalence of the practice.

68. The narrative of Ms. [redacted] with respect to her experience of physical abuse and extreme acts of violence is strongly supported by objective evidence about the prevalence of the practice.

69. Given my knowledge of marriage law in Togo, it is my opinion that the purported union of [redacted] with Ms. [redacted] was not performed in accordance with Togolese law. These two individuals conspired to produce a marriage in order to escape the possibility of forced marriage being imposed by Ms. [redacted]'s father. The union produced is fraudulent and will

not be recognized under Togolese law. Furthermore, the admission by Ms. [redacted], and her would-by spouse, [redacted] wherein they conspired with one of the witnesses to the "marriage" to fake the presence of Ms. [redacted]'s father as witness exposes Ms. [redacted] to additional jeopardy.

IX. DECLARATION

70. I declare that this statement is true to the best of my knowledge and beliefs, and I understand it may be used in evidence before a Court.

71. I confirm that insofar as the facts stated within this report are within my own knowledge, I believe them to be true. The opinions I have expressed represent my true and complete professional opinion.

72. I understand that my duty in writing this report is to help the Court on the matters within my expertise. I understand that this duty overrides any obligation to the person from whom I have received instructions, or by whom I am paid.

Date: [redacted]

[redacted]

[redacted], Ph.D