

UNITED NATIONS  
TRUSTEESHIP  
COUNCIL



Distr.  
GENERAL

T/1392/Add.1  
13 August 1958  
ENGLISH  
ORIGINAL: FRENCH

REPORT OF THE UNITED NATIONS COMMISSIONER FOR  
THE SUPERVISION OF THE ELECTIONS IN TOGOLAND  
UNDER FRENCH ADMINISTRATION

Addendum

Election disputes (continued)

1. In paragraph 550 of my report on the supervision of the elections in Togoland under French administration (T/1392 of 30 June 1958), I pointed out that the results announced for the following six electoral circonscriptions had been contested: Tabligbo-Ouest, Pagouda-Centre, Sokodé-Est, Mango-Sud, Mango-Nord and Tsévié-Est.<sup>1/</sup>

2. The Permanent Mission of France to the United Nations forwarded to me on 24 July 1958 the six dossiers in question. All the appeals were rejected by the Administrative Tribunal. The essential features of the six dossiers are set out below.

I. Electoral circonscription of Tabligbo-Ouest: Case of Gabriel Koudaya against Michel Ayassou

(a) Application of Mr. Koudaya

3. Mr. Koudaya, candidate of the CUT in the electoral circonscription of Tabligbo-Ouest, requested the Administrative Tribunal to annul the elections in that circonscription, in which Mr. Ayassou, candidate of the PTP, had been declared elected, because, he said, there had been very many irregularities in the electoral operations which had obviously falsified the results of the voting and, in particular, because the freedom and secrecy of the ballot had not been safeguarded at a number of polling stations.

<sup>1/</sup> In addition, two applications had been submitted regarding the results announced in the electoral circonscriptions of Niamtougou-Ouest and Lama-Kara-Nord. The Administrative Tribunal declared them inadmissible because they had not been submitted in time.

4. He particularized the alleged irregularities at four polling stations as follows:

"(1) Polling station No. 1 (Kouvé-Atchavé)

"1. The voting booths were not placed in the voting-room of the polling station, but in a corridor leading to it;

"2. These booths were placed against doors and windows of rooms occupied by supporters of Chief Ayassou, who were thus able to watch the voters as they put the ballot papers in the envelopes;

"3. Persons selecting any other ballot papers than those of Chief Ayassou in defiance of the threats of the Chief's supporters were manhandled on leaving.

"(2) Polling station No. 2 (Kouvé-Gbouli)

"All the representatives of the CUT candidate were expelled from the polling station except for Mr. Tadjin Dodjagni, who the Chairman of the polling committee compelled to sign the record by force.

"Messrs. Honoré Samboe, Aziafa Akpadjovi, Kossi Badagbo, Charles Ayassou, Assogba Ebli, Kossi Djamba and Kodjo Assogba, henchmen of Chief Ayassou, armed with sticks, took possession of the premises and intimidated any voters who attempted to vote for the CUT candidate; Mr. Caprario, United Nations Observer, was violently upbraided by agitators.

"(3) Polling station No. 10 (Zafi)

"At about 2 p.m., Mr. Lawson Innocent, Chairman of the polling committee left for Ahépé three kilometres away from Zafi, leaving it to the representatives of the PTF candidate to conduct the electoral operations.

"Upon his return, he decided to close the polling station, thus preventing over 200 CUT members from participating in the elections.

"(4) Polling station No. 6 (Ahépé-Assikor)

"When the polling station opened and the ballot-box had been inspected, Mr. Ayi Sitti, Chairman of the polling committee and PTF member, ordered all the representatives of the parties to fetch the ballot-papers, envelopes, ink and office supplies which had been left at Chief Louis Agbokou's house. He remained alone with the ballot-box.

"When the agents and assessors returned, he refused to allow the ballot-boxes to be inspected again.

"Chief Louis Agbokou organized a group of henchmen including Messrs. Abalo Kpessékou, Mawoulé Adjokou, Koudekpo, Koudufio, Afantodji,

Ado Adabadji and Kouami Koudoufio. They were instructed to accompany the voters into the booths and to compel them to put the pink ballot-paper into the envelope."

(b) Defence of Mr. Ayassou

5. Mr. Ayassou, after pointing out that he had been declared elected by 4,176 votes to 3,276 for his opponent, i.e. by a majority of 900 votes, made the following replies to Mr. Koudaya's allegations concerning irregularities at the four polling stations:

"(1) Polling station No. 1 (Kouvé-Atchavé)

"The voting-room and the voting booths were all in one; moreover, the booths were arranged in a single continuous line, one next to the other, and the only door against which they were placed was the door of the first-aid room.

"That door, moreover, was locked and hermetically sealed. It should be noted that the key of that door was in the possession of the medical orderly of the dispensary who, on that day, happened to be sitting as Chairman of the Kouvé-Ecole polling committee.

"The window opening on the courtyard had also been bolted on the inside and boarded up by the workers of the Subdivision.

"When the elections were over, the locks and bars sealing the door and window were found intact. Consequently, nobody could have entered the room.

"Moreover, from the table on which the ballot-box stood, the polling committee was in a position to keep a constant watch on the operation of the voting booths, which were directly facing the committee table and could clearly be seen from there.

"The five members of the committee, and particularly the two agents of the parties, patrolled the voting-room in all directions and no irregularity could have occurred.

"Besides, why were these irregularities not brought to anybody's attention and noted in the record of operations by the representatives, agents and assessors of the CUT?

"No such observation was made during the day's operations.

"Moreover, all the members of the Committee would have signed the record willingly, were it not for the fact that towards 9 p.m., my opponent, knowing that he was defeated, peremptorily ordered his supporters not to sign the record although they had already signed the tally sheets.

"In conclusion, the arrangements at this polling station had been made two weeks prior to 27 April, and the Chief Administrator, the Chargé de mission and the Observers had had an opportunity to visit the place and to check those arrangements and did not make any unfavourable comment on them.

"They were the same arrangements as those made in all the polling stations set up in the standard dispensaries of the Subdivision.

"At no time did my supporters interfere in the operations and they neither threatened nor manhandled the voters, for they had no way of knowing how the latter had voted.

"The number of persons manhandled must have been very large, for my opponent in fact obtained 338 votes at this polling station.

"Why, then, did those voters not complain, and why did the CUT representatives on the polling committee fail to report these facts in the record of the operations?

"(2) Polling station No. 2 (Kouvé-Gboli)

"Everything was perfectly normal at this station. No member of the CUT was expelled, as you can verify.

"First of all, when the station opened, the agent of each party introduced his assessor. The CUT assessor was Agbablo Adaka.

"The polling station was then opened for business and the electoral operations had been going on for a half-hour when Mr. Tadjin Dodjagni, accredited agent of the CUT, introduced the alternate agent, Amousou Adodokpo, and asked him to take a seat.

"The Chairman of the polling committee told him that he was not entitled to sit on the committee, since the accredited agent already occupied his seat. Only after a long argument did he consent to leave the station.

"A few minutes later, agent Dodjagni said that he wanted to replace assessor Adaka Agbaglo by Yémi Agbekossi because Adaka Agbaglo was illiterate. The Chairman, wishing to avoid a disturbance, agreed to the replacement. Mr. Adaka left the premises and Yémi Agbekossi took his seat.

"Before noon, the Chairman of the committee discovered that the second assessor, Yémi Agbekossi, was not a voter in the Subdivision. He had left Kouvé a long time ago and had only been back for a week or so. Acting in accordance with the law, the Chairman told the agent that Mr. Agbekossi could not be a member of the committee and asked him to produce another assessor. The agent, however, refused.

"In the course of the afternoon, the same Todjin Dodjagni once again brought the alternate representative of the CUT into the voting-room. The Observer, to whom I had reported the earlier actions of Mr. Todjin, was still present.

"He pointed out to Todjin that the Parti du Progrès had only one representative on the committee and there was no reason why the CUT should have two, and he at once asked the alternate representative to withdraw.

"Those are the circumstances in which Koudaya is attempting to argue that the representatives of the CUT candidate had been expelled from the voting-room, although Mr. Todjin, the accredited agent, never left the voting-room and countersigned all the documents relating to the electoral operations.

"Mr. Koudaya adds that Dodjagni was forced to sign the record; I will not dwell on that point. A man of the stamp of Todjin Dodjagni, who demonstrated his obstinacy and bad faith all day long, cannot have signed anything under pressure.

"If any of the alleged facts had been true, the representative of the CUT could have entered them in the record.

"(3) Polling station No. 10 (Zafi)

"Mr. Koudaya's complaint concerning the Zafi station appears frivolous.

"The Chairman had admittedly left the voting-room for a short while, leaving the responsibility in the hands of the other six members, including the representatives of the CUT.

"When he returned, at about 4 p.m., he resumed the Chair and declared the ballot closed at the hour prescribed by law. Contrary to Koudaya's assertion, there were only four people outside the polling station at that time, people who had already voted.

"Besides, regardless of the number of voters outside the station, it was the duty of the Chairman to close the voting operations at the hour prescribed by law (5 p.m.).

"I repeat: no comment on that subject was entered in the record of the operations.

"The members of the CUT left the polling station at about 10 p.m. on the instructions of the candidate Koudaya, who already knew that he had been defeated.

"(4) Polling station No. 6 (Ahépé-Assikor)

"The committee for Ahépé-Assikor was regularly constituted. The Chairman showed the members of the committee and the various persons present that the ballot-box was empty. Then, having closed the box, he gave one of the two keys to Mr. Amouzou Agogolovi, CUT agent on the committee. The voting began almost immediately afterwards.

"A half-hour later, the Chairman went out. When he came back, he found two men from Ghana in front of the committee table, who were not voters in the Subdivision and who requested that the ballot-box be reopened.

"The Chairman, acting in accordance with the law, refused to comply. I think there is no point in explaining this any further. Mr. Koudaya himself admitted that the ballot-box had been passed around for inspection; why then should he have wanted it to be inspected again, contrary to the law?"

"As for the alleged threats and pressure in the polling booths, these are pure inventions by an opponent short of arguments. If those complaints were valid, why didn't the CUT agents enter them in the record of the electoral operations?"

6. In conclusion, Mr. Ayassou made this further observation:

"I could say a great deal myself about the operation of the polling stations which gave Mr. Koudaya a wide majority, in particular those at the Ahépé-Apédomé dispensary and at Tchékpo-Dédékpé, where members of the CUT, at the entrance to the polling station, took away the voting cards of the supporters of the Parti du Progrès and assaulted the voters of my own party. I will simply say that two of them were sentenced to prison terms for those offences, on Saturday, 3 May 1958, by the magistrate of Aného."

(c) Written observations of the Togoland Government

7. The Togoland Government submitted the following observations on Mr. Koudaya's application:

"(1) At polling station No. 1 (Kouvé-Atchavé), the physical arrangements in the polling stations were not as stated by the applicant in support of his application. The polling booths were all under the effective direct supervision of the polling committee. The door against which they were placed had been locked with a key and boarded up with three thick planks,

which were intact when they were subsequently removed. The only opening in the room on which the booths gave, apart from the sealed door, was a window, which was also sealed up, so that no one can have entered that way.

"Similar arrangements were made at the Ahépé-Apédamé dispensary and did not evoke any criticism.

"The United Nations Observers visited the station on several occasions and did not criticize these arrangements, which they had previously approved.

"The assessors and agents of candidate Koudaya refused to sign the record of electoral operations, without, however, formulating any observations.

"(2) At polling station No. 2 (Kouvé-Gboli), Mr. Koudaya's agent first appointed one assessor and then replaced him by another, stating that the former was illiterate. Then he tried to appoint an alternate assessor. Finally, while the count was in progress, an elector pointed out that Mr. Koudaya's assessor, a man called Agbekossi, was not an elector. The Chairman of the polling committee then asked Mr. Koudaya's agent to replace this man; after some discussion, the agent refused to designate anyone else. Mr. Koudaya's agent signed the record when the operations were finished but without formulating any observations. He was a man of character and it seems unlikely that he would respond to pressure.

"The voters were in no way maltreated and the United Nations Observer, who remained at this polling station for some considerable time, made no comments on this point.

"(3) At polling station No. 10 (Zafi), the Chairman certainly was absent from 3 to 3.45 p.m., as he is entitled to be provided that at least three assessors remain. In actual fact, the four assessors and the two candidates' agents all remained on the spot.

"The ballot was closed at 5 p.m. and the Chairman allowed voters then in the room to vote. The only persons outside the polling station were four electors who had already voted.

"(4) At polling station No. 6 (Ahépé-Assikor), after the Chairman had declared the ballot open in the normal way, he noted that the bottle of indelible ink was missing. He left the voting-room under the supervision of the committee and went to fetch the bottle. No member of the committee asked for another check of the ballot-box. Nobody attempted to exert any kind of pressure in the voting-room and the CUT assessors did not formulate any objections in the record, which they refused to sign on Mr. Koudaya's instructions.

"In conclusion, the Minister of State in charge of the Interior does not consider that there were any irregularities likely to affect the freedom or fairness of the voting."

(d) Decision of the Administrative Tribunal of Togoland

8. The Administrative Tribunal gave its ruling in the case of Gabriel Koudaya against Michel Ayassou on 29 May 1958. The relevant parts of the decision read as follows:

"Whereas an application for the annulment of the election of Ayassou has been made on the grounds that the freedom and secrecy of the voting were allegedly not ensured at polling station No. 1 (Kouvé-Atchavé), No. 2 (Kouvé-Gboli), No. 6 (Ahépé-Assikou) and No. 10 (Zafi) and that the complaints formulated by the plaintiff with regard to each of these polling stations must be considered;

"Whereas it is maintained with regard to polling station No. 1 that:

"1. the voting booths were not placed in the voting-room of the polling station, but in a corridor leading to it;

"2. these booths were placed against doors and windows of rooms occupied by the supporters of candidate Ayassou, who were thus able to see what ballot papers were being put in the envelopes;

"3. those who selected the ballot paper of an opponent despite such supervision were manhandled on leaving;

"4. Whereas the plan of the premises provided by the applicant has been found to be inaccurate, for it is clear from the documents attached to the observations of the Minister of the Interior that the polling booths were opposite the committee table and that they were not placed against doors and windows but merely, to a limited extent, in front of an opening which had been properly boarded up with planks, in the same manner as the only window in the room, on which this opening usually gave; in consequence of which, none of Ayassou's henchmen could have seen how the electors voted;

"Whereas there is no other proof of the alleged assault and the application merely gives the names of two witnesses without even specifying who is supposed to have suffered the maltreatment;

"Whereas, furthermore, it is strange that no protest concerning any of the plaintiff's complaints, as set out above, was included in the record of electoral operations at polling station No. 1; and the refusal of Mr. Koudaya's representatives to sign this record at the Chairman's suggestions is entirely meaningless, especially as the said representatives had previously approved the tally-sheets recording the considerable number of votes received by their candidate;

"Whereas, regarding polling station No. 2, Koudaya's representative was allegedly made to sign the record of electoral operations by force and Ayassou's henchmen, armed with sticks, allegedly prevented voters from voting for the candidate of the Comité de l'Unité togolaise;

"Whereas these allegations, in support of which only one witness is mentioned although the occurrences are supposed to have been widely known, flatly contradict the signed statements of the Chairman of the polling committee and his assessors, who mention, in particular, that the United Nations Observer spent some considerable time at the polling station;

"Whereas it is also alleged that henchmen of Ayassou were present at polling station No. 6, with instructions to accompany the voters into the booths in order to make them place their candidate's ballot papers in the envelopes; and that, furthermore, immediately after the opening of the polling station and after the ballot box had been checked, the Chairman of the polling committee ordered the candidates' representatives to fetch the ballot papers, envelopes, ink and other office supplies, which had been left at Chief Louis Agbolou's house, and refused to check the ballot box again when they returned, although it had been in his care;

"Whereas the latter manoeuvre seems to have been meaningless, as the record of electoral operations signed by the polling committee and the candidates' agents shows that the number of ballot papers in the ballot box was exactly the same as the number of voters; and whereas this fact alone removes any possibility of fraud, particularly in view of the fact that the representatives of the applicant candidate could check whether the number of unused envelopes was equal to the difference between the number of envelopes supplied to the committee and the number of envelopes found in the ballot box;

"Whereas, regarding the presence of Ayassou's henchmen, the same record mentions the assistance given by some voters 'to their more inexperienced brothers', but specified that this did not affect the freedom of the voting, and the explanations given later by the Chairman reveal in addition that no one was authorized to accompany a voter into the booth; and whereas the assistance given to the voters, so frankly mentioned in the record and denounced by the plaintiff, was purely practical (how to open the envelopes, put in the ballot paper, etc.), in conformity with a practice which was noted and accepted at nearly all polling stations; and whereas, in any event, this assistance did not affect either the sincerity of the voting or the majority;

"Whereas the fact that the Chairman of the committee at polling station No. 10 did leave the station while electoral operations were in progress is unimportant, as there is no evidence or offer thereof to show

that, as a result of his departure, there were fewer than three members of the committee present and, also, as the record of electoral operations states that the polling station was closed at the proper time, namely, 5 p.m.;

"THE ADMINISTRATIVE TRIBUNAL DECIDES:

"Sole article: The above-mentioned application of Mr. Koudaya, is hereby dismissed."

II. Electoral Circonscription of Pagouda-Centre: Case of Bessi Gabriel against Blakime Valentin

(a) Application of Mr. Bessi

9. Mr. Bessi, an independent candidate in the electoral circonscription of Pagouda-Centre, applied for the annulment of the election of his opponent Mr. Blakime, the UCPN candidate. The grounds of the application were as follows:

"(1) The Chairman of the polling committee at polling station No. 3 (Farendé) kept both keys of the ballot box and was thus able to open the ballot box while electoral operations were in progress.

"(2) Voters were given envelopes containing the pink ballot paper by the Chairman's servant (who was under age).

"(3) The polling station was opened at 7.30 a.m. and closed at 11.40 a.m.; the reason given was that the election and voting were completed, all the voters on the check-list having been exhausted, although the list was not signed either by the Chairman or by the voters.

"(4) The ballot box was opened by the Chairman while voting was in progress; it was closed again as soon as I entered the voting room, which was empty, and observed envelopes containing pink ballots on the desk and a number of pink ballots, folded and not in an envelope, which the Chairman's servant had brought.

"(5) The polling committee was composed of only one member. The Chairman's servant was skulking in a corner. My representative did not participate in the work of the polling committee because he was illiterate.

"(6) Village chiefs and chefs de quartier had taken up positions in the twelve polling stations so as to force the voters to select the pink ballot paper.

"(7) At all polling stations voters were instructed to take only one ballot paper before going in to the polling booth; as a precaution, men were deliberately stationed in front of the polling booths to induce any voters who might have two ballot papers to put the pink one in the envelope.

"(8) Cantonal Chief Pré was guilty of intimidation and of threatening voters with fire, torture and imprisonment on election day."

(b) Defence of Mr. Blakime

10. Mr. Blakime replied to each of Mr. Bessi's allegations as follows:

"(1) The Chairman of the polling committee kept both keys of the ballot box at Farendé.

"Great difficulty was experienced in constituting the polling committee at polling station No. 3 (Farendé). Although he made every effort, the Chairman could find only one assessor who fulfilled the conditions laid down by law, i.e., an elector of the circonscription who could read and write; this was Mr. Ayewa Tassidja. That was why the Chairman felt obliged to keep both keys of the ballot box in his own possession. This fact alone could not vitiate the ballot.

"(2) Voters were given envelopes containing pink ballot papers by the chairman's servant.

"This is incorrect. The voters themselves took whatever ballot papers they wished. I visited this polling station about 9 a.m. and I noted that the voting was proceeding normally.

"(3) The polling station was opened at 7.30 a.m. and closed at 11.40 a.m.

"The polling station was opened at 7.30 a.m. for the reasons given above (assessors were being sought).

"If there was no voting after 11.40 a.m., that was because no more voters came to vote. It is not alleged that any voter was in fact prevented from voting.

"The absence of assessors prevented the Chairman and his one assessor from checking the lists of voters in the normal way. Furthermore, these lists did not give the numbers of the voters' cards.

"(4) The ballot box was opened by the Chairman while voting was in progress.

"This is true. The Chairman made a mistake in opening the ballot box before the legal hour for closing the ballot, namely 5 p.m. I myself was present, at about 3 p.m., when the report on this was drawn up by the Commandant de cercle and the United Nations Observer.

"I must, however, point out that the ballot box was opened by the Chairman in the presence of his assessor and of Mr. Bessi Gabriel's representative. If there had been any irregularity, his representative would not have failed to object to it.

"(5) The polling committee was composed of only one member.

"The explanation given above shows why the polling committee was incomplete. No electors who could read and write could be found to join the chairman and the assessor.

"The presence of the chairman's servant, even if proved, is not evidence of irregularity. As Mr. Bessi Gabriel's representative was illiterate, he could not be an assessor on the committee but he observed all the electoral operations at this polling station.

"(6) Village chiefs and chefs de quartiers were present.

"The presence of these chiefs is merely alleged and not proved. Furthermore, their presence alone would not be enough to vitiate the results of the electoral operations. It is also difficult to understand why their presence should constitute grounds for annulment of the electoral operations only in polling stations where I obtained a majority. It is clear from the results that Mr. Bessi had a majority at four polling stations (stations Nos. 2 and 3 (Pessaré) and station Nos. 1 and 4 (Farendé); polling station No. 2 at Pessaré is in fact in my own village).

"(7) At the polling stations voters were instructed to take only one ballot paper.

"No such instruction was ever given. Furthermore, Mr. Bessi and I had representatives at every polling station, who would have prevented such a thing from happening. Nobody was stationed to influence the voters as they entered.

"(8) Threatening behaviour by Cantonal Chief Pré.

"The Cantonal Chief stayed at home all day until the official report on the opening of the ballot box in polling station No. 3 (Farendé) was drawn up; he was therefore quite unable to make threats, which in any case are merely alleged."

11. In conclusion, Mr. Blakime stated:

"To sum up, there is only one authentic fact in all of Mr. Bessi's allegations: the irregular opening of the ballot box at polling station No. 3 (Farendé). But there is no proof that, when the ballot box was opened, votes cast in favour of Mr. Bessi were replaced by votes for me. Furthermore, even admitting that the electoral operations at polling station No. 3 (Farendé) were completely irregular, that is to say that all the votes cast for me should be attributed to Mr. Bessi, there would be no change in the result of the ballot.

"I obtained 4,257 votes and Mr. Bessi 1,619. If we deduct the 569 votes cast for me at this polling station, I still have 3,688 votes. If we add 569 votes to Mr. Bessi's total, he obtains 2,188 votes. My majority is still 1,500 votes. Therefore, the irregularity reported by Mr. Bessi could not have affected the results of the ballot.

"By reason of the foregoing and of all other considerations that may be shown, or established by the Tribunal itself, I request the President and members of the Administrative Tribunal to dismiss the application of Mr. Bessi with all the consequences contemplated by the law."

(c) Written observations of the Togoland Government

12. The Togoland Government made the following observations on Mr. Bessi's application:

"(1) With regard to the irregularities noted at polling station No. 3 (Farendé), the report drawn up on 27 April 1958 at 4 p.m. by the Commandant de cercle of Lama-Kara and the observations included in that report seem to afford sufficient evidence of the true facts.

"It appears that the irregularities were committed without any fraudulent intent and, in any case, could not affect the result of the ballot because of the very large majority obtained by the candidate Blakime, which exceeded the total number of electors registered at polling station No. 3 (Farendé).

"(2) With regard to the irregularities which are alleged to have occurred at the other polling stations, the records do not contain any observations and are signed by the members of the polling committees concerned. In the circumstances, it seems that the allegations of irregularities at these polling stations are unfounded.

"In conclusion, the Minister of State in charge of the Interior does not consider that there are any grounds for annulling the elections in the circonscription of Pagouda-Centre."

(d) Decision of the Administrative Tribunal of Togoland

13. The Administrative Tribunal gave its ruling in the case of Bessi Gabriel against Blakime Valentin on 29 May 1958. The relevant parts of the decision read as follows:

"Whereas the applicant alleges irregularities in the electoral operations at all the polling stations of the circonscription, particularly at polling station No. 3 (Farendé);

"Whereas it is established that the ballot box at this polling station was opened by the Chairman of the polling committee while the voting was in progress and that 126 (one hundred and twenty-six) envelopes removed by him were not returned to the ballot box;

"Whereas, notwithstanding the gravity of the irregularity, that act did not materially affect the majority obtained, particularly as the 126 ballot papers which were not counted were all for Blakime, as the Election Returns Board has confirmed;

"Whereas there is no evidence, not even prima facie, of the various other pressures or irregularities alleged by the applicant, and there are no observations on these points in the records of the polling stations although the candidate had representatives present;

"Whereas, consequently, Blakime Valentin must be considered to have been duly elected;

"THE ADMINISTRATIVE TRIBUNAL DECIDES:

"Sole article: The above-mentioned application of Mr. Bessi Gabriel is hereby dismissed."

III. Electoral Circonscription of Sokodé-Est: the case of Do Rego Tairou and Odou Pascal against Paul Brassier

(a) Application of Mr. Do Rego and Mr. Odou

14. Three applications were submitted concerning the elections in the electoral circonscription of Sokodé-Est, where Mr. Brassier, independent candidate, had been declared elected: two applications, dated 29 April and 3 May 1958, by Mr. Do Rego, CUT candidate, and one petition, dated 3 May 1958 by Mr. Odou, UCPN candidate.

15. In the two applications of 3 May, drafted in identical terms, Mr. Do Rego and Mr. Odou asked the Administrative Tribunal to annul the elections in the electoral circonscription of Sokodé-Est because, as they contended, many irregularities which had occurred during the elections had quite obviously falsified the results of the ballot, and particularly because at some polling stations the freedom and secrecy of voting had not been ensured; they also alleged that Mr. Abdoulaye Titinpina, the Cantonal Chief of Tchamba, had asked his "subjects" at the Friday prayers at the mosque to vote for Mr. Paul Brassier and on the eve of the ballot had instructed the village criers to summon the voters to him for the following morning.

16. They then gave the following particulars of the alleged irregularities committed at three Tchamba polling stations:

"(1) Polling station No. 1 (State boys' school at Tchamba)

"1. The Chief arrived at the polling station at 7.30 a.m. at the head of a procession including his Secretary, who was Chairman of the polling committee, his retinue of notables and the electors who were to vote at this polling station.

"He reminded them of his recommendations regarding the selection of Mr. Brassier and remained at the polling station after having himself voted for that gentleman without passing through the booth, voted for all to see, in order to set an example.

"Not only was no voter allowed to take a ballot paper other than that of Mr. Brassier; but the members of the Chief's suite, including a Mr. Bourahima, were responsible for ensuring inside the booth that the voters did not put into the envelope other ballot papers which they might have brought with them.

"2. Many voters' cards not distributed by the distribution committees were handed to the Cantonal Chief, who distributed some of them to young people aged between fifteen and eighteen whom his followers had collected in the streets; thirty-four of these cards were seized by the United Nations Observer and taken to the polling station.

"(2) Polling station No. 2 (State girls' school at Tchamba)

"The same method was used at this polling station under the supervision of Mr. Idrissou, Village Chief of Lareani, acting on instructions from the Cantonal Chief of Tchamba.

"(5) Polling station No. 3 (Dispensary at Tchamba)

"The same system was applied at this station, the ballot being supervised by Mr. Aléwé, a notable of the Cantonal Chief's suite.

"The procedure was so obviously disgraceful that following a protest by Mr. Akakpo Célestin, agent of the CUT candidate, the United Nations Observer had to ask Aléwé to leave the polling station. Mr. Paillère, Commandant de cercle, brought him back once the United Nations Observer had left."

17. In his application of 29 April 1958, which, of course, preceded his petition of 5 May, Mr. Do Rego asked for the annulment of the elections in the village of Tchamba because of alleged irregularities committed at the three polling stations in the village; the particulars he gave were as follows:

"During my visits to the polling stations, I found to my great astonishment that Mr. Abdoulaye Kokou, the Cantonal Chief, was at the voting table and that two provincial gardes were posted at the station. As this was contrary to the instructions, I told my official representative to ask Mr. Albaraka Zakari, the Chairman of his committee, to order these persons out of the station during the ballot; failing this, any departures from the electoral decrees would have to be entered in the official records in the evening, before signature by the electoral committee.

"At the second polling station, Mr. Abibou Allewoue, Sub-Chief of Tchamba, and three other notables were found to be present, obviously in order to influence the electors and to carry out the instructions received from the Chief of Tchamba.

"At the third polling station, Mr. Idrissou, the Village Chief of Larni, played the same role as the Cantonal Chief at the first polling station. Mention must also be made of the fact that two provincial gardes were posted in each polling room."

(b) Defence of Mr. Brassier

18. After pointing out that he had obtained 2,642 votes against Mr. Do Rego's 1,887 and Mr. Odou's 1,494, Mr. Brassier replied to the charges in the three applications as follows:

"The arguments in the three applications are identical and this respondent will therefore reply to them in a single statement of defence.

"(1) The applicants allege firstly that the ballot was initiated by the intervention of Mr. Abdoulaye Titinpina, the Cantonal Chief of Tchamba, who supposedly ordered his subjects during prayers at the mosque to vote and who assembled the voters on the morning of the ballot at his residence.

"Even if those facts were admitted to be correct - and the statements of the applicants do not appear to be corroborated - they would not constitute grounds for annulment.

"Like anyone else, the Cantonal Chief of Tchamba is free to campaign in favour of any candidate he may choose.

"If the voters really assembled at the Chief's residence on the morning of the ballot - an allegation which is also unproven - they were merely following a very widespread African practice: the inhabitants of the various villages normally go to the polling station in groups, led by their chief.

"There is nothing in this practice which can be said to infringe the freedom and secrecy of the ballot.

"(2) The voting at Tchamba polling station No. 1 is alleged to have been vitiated by the presence of the Cantonal Chief, who supposedly remained in the polling room throughout the voting.

"Contrary to the allegations of Mr. Do Rego, the Cantonal Chief was not at the voting table but was available at the station in order to facilitate the identification of voters and to help maintain order, if necessary. His presence did not give rise to any comments on the part of the United Nations Observers.

"The gardes-cercle, against whose presence Mr. Do Rego has protested, were outside the polling station to assist in the maintenance of external order. This is the regular practice, authorized by law.

"The applicants also allege that nobody was permitted to take ballot papers other than those of this respondent. In reality, no pressure was exerted on the electors during the voting operations and nobody was in the booths while the ballot was in progress.

/...

"Lastly, if voters' cards were handed by the Distribution Committee to the Cantonal Chief, the Committee was free to use this method of distribution (cf. the decision of the Conseil d'Etat of 1957 in the Atayi case). The Chief distributed the cards to young persons who, in turn, distributed them among the voters. The young persons could not have voted themselves without proving their identity, and it is difficult to see how persons aged fifteen to eighteen could have used those cards when all the representatives and agents present at the polling station were men who normally know almost every inhabitant of the electoral circonscription to which they belong.

"(3) The voting at Tchamba polling station No. 2 is alleged to have been vitiated by the presence of the Village Chief of Larcani.

"The Chief was admittedly present during the proceedings, but only for the time required by the voters of his village to cast their vote. His presence was justified because, like the Cantonal Chief of Tchamba, he could assist the polling committee in the identification of the electors and, if necessary, in the maintenance of order.

"(4) The voting at Tchamba polling station No. 3 is alleged to have been vitiated by the presence of Mr. Aléwé, notable in the suite of the Cantonal Chief of Tchamba.

"In this case, too, there were very obvious reasons for the presence of Mr. Aléwé, Cantonal Sub-Chief. Like the Cantonal Chief of Tchamba and the Village Chief of Larcani, he did not sit at the voting table and did not intervene in the voting operations. When the United Nations Observer asked the Chairman of the polling committee that Mr. Aléwé leave the room, the request was complied with.

"Shortly afterwards, however, two groups of voters from different villages, each wishing to discharge its electoral duties speedily, began an argument so heated that the presence of Mr. Aléwé, who was near the voting room, was found to be indispensable by the polling committee. He did, in fact, immediately succeed in calming the voters and restoring order in the voting room.

"Generally speaking, the presence of cantonal or village chiefs or of notables is the established practice in the cercles of Northern Togoland and facilitates the rapid identification of voters.

"This is what happened in most of the polling stations of the circonscription of Sokodé-Est. Thus at Koussountou, the Cantonal Chief, who was incidentally an uncle of candidate Odou Pascal Samson but could neither read nor write, sat at the voting table itself. Similarly, the various chiefs of the circonscription of Cambolé were present at the polling stations during the voting, including the chief who is in charge of the local CUT group.

"By reason of the foregoing and of all other considerations that may be shown, or established by the Tribunal itself, this respondent requests the Administrative Tribunal to dismiss the objections submitted against his election with all the consequences contemplated by the law."

(c) Written observations of the Togoland Government

19. Regarding the application of Mr. Odou of 3 May,<sup>1/</sup> the Togoland Government submitted the following observations:

"(1) Tchamba polling station No. 1 (boys' school)

"It appears from the report of the polling committee chairman that the Chief remained present at the request of the chairman himself, in order to assist in the identification of the voters, and did not engage in any canvassing.

"The observations submitted by the representative of candidate Odou Pascal Samson do not mention any such canvassing on election day itself.

"The chairman's report emphasizes the freedom of the ballot and the official record does not mention any distribution of voters' cards by the Chief, but only the withdrawal of ten cards from persons whose identity was contested.

"The distribution of cards was carried out in the statutory manner by a distribution committee, which had full discretion in deciding on the method of distribution.

"(2) Tchamba polling station No. 2 (girls' school)

"The official record does not mention that a notable was present in the voting room during the ballot and does not refer to any canvassing on his part.

"The Chairman's report emphasizes that the notable present in the voting room helped both in identifying the voters and in maintaining order at the station. The Chairman notes that the Sub-Chief made no attempt to intimidate anyone.

"(3) Tchamba polling station No. 3 (dispensary)

"The official record mentions only canvassing outside the station by a certain Amadou in favour of candidate Brassier.

---

<sup>1/</sup> As has been pointed out above, this application is identical with that submitted by Mr. Do Rego on the same date.

"It appears from the Chairman's report that neither he nor the committee found any evidence of canvassing during the voting.

"It appears from the reports of chairmen of polling committees other than those referred to by the applicant that chiefs had been asked to participate in the identification of electors.

"In conclusion, the Minister of State in charge of the Interior does not think that there were any irregularities likely to affect the freedom or fairness of the ballot."

20. With regard to the petition of Mr. Do Rego of 29 April, the Government submitted the following observations:

"The chairmen of several polling committees, not only those referred to by the applicant, asked chiefs to remain in the voting room, but at a certain distance from the voting table, in order to take part in the identification of the voters.

"It appears clearly from the report of the Chairmen of Tchamba polling stations Nos. 1, 2 and 3 that the chiefs in question did not engage in any canvassing.

"The gardes were posted outside the polling stations to ensure order, and no Chairman protested against their presence.

"In conclusion, the Minister of State in charge of the Interior does not think that there were any irregularities likely to affect the freedom or fairness of the ballot."

(d) Decision of the Administrative Tribunal of Togoland

21. The Administrative Tribunal gave its ruling in the case of Do Rego and Odou Pascal against Paul Brassier on 29 May 1958. The essential part of the decision reads as follows:

"Whereas it is claimed that the election of Brassier should be rescinded on the sole ground that notables present during the voting operations at polling stations Nos. 1, 2 and 3 of the circonscription concerned allegedly compelled persons under their administration to vote in a sense previously determined by them;

"Whereas, in reality, the official records of the aforesaid polling stations and the written explanations subsequently furnished by their respective Chairmen show that the traditional authorities in question, although admittedly present at the polling station, kept at a distance from the voting tables, the ballot boxes and the booths, into which they could not see; and whereas those documents show:

/...

"1. That the intervention of those persons was made necessary by the unruliness of the voters, who cast their votes amid great disorder;

"2. That the assistance given to some voters was limited to showing them outside the booths how to open the envelope which they subsequently had to fill inside the booth;

"3. That, lastly, the practices impugned had no influence whatever on the votes cast; and that they were adopted regularly and without protest on anyone's part at other polling stations, where the majority favoured one or the other of the applicants;

"THE ADMINISTRATIVE TRIBUNAL DECIDES:

"Article 1 - The applications of Mr. Odou Samson Pascal and Mr. Do Rego Taïrou, candidates in the electoral circonscription of Sokodé-Est, contesting the election of Brassier, candidate in the same circonscription, are consolidated in order that they may be disposed of in a single decision.

"Article 2 - The said applications are dismissed."

IV. Electoral circonscription of Mango-Sud: the case of N'Djambara Fambaré against Kokou Emmanuel

(a) Application of Mr. N'Djambara

22. Mr. N'Djambara, CUP candidate in the electoral circonscription of Mango-Sud, who had obtained 2,700 votes against 2,862 for Mr. Kokou, the successful UCPN candidate, requested the Administrative Tribunal to rescind the elections in the circonscription on the grounds that many irregularities during the voting operations had obviously falsified the results of the ballot.

23. With regard to the alleged irregularities in the circonscription, he gave the following particulars:

"(1) Registration in the electoral lists

"A large number of applications submitted to the Commandant de cercle had not been referred to the magistrate;

"(2) Distribution of voters' cards

"Contrary to the provisions of the law, voters' cards not distributed by the committees were handed to the secretaries of cantonal chiefs, on the instructions of the Commandant de cercle.

"Thus, 163 cards were handed to a certain Nanakpin Bawa, Secretary of the Cantonal Chief of Mogou, who did not distribute them. (These included twelve cards for the village of Makpadjoka, thirty-six cards for the village of Mogou and 115 cards for the village of Mabou.)

"(3) Selection of agents

"The applicant was not able to choose his agents and assessors freely, as the Commandant de cercle had rejected, after the expiry of the time limit, the list duly submitted, prohibiting the inclusion of any civil servant other than a schoolmaster, although the civil servants selected had given their consent and had already been trained for their functions.

"The Commandant de cercle himself, using a red pencil, had crossed out the names of the civil servants before issuing a circular four hours later, on 26 April 1958 at about 11 a.m., in which he asked the heads of local government services not to allow their subordinates to accept appointment as agents or assessors on polling committees.

"This decision made it impossible for the applicant to find new agents and assessors for all the polling stations; he was able to find assessors as well as an agent for two stations only (Koumongou and Takpamba Nos. 2 and 8).

"In the circumstances, he could not arrange for the supervision of the polling stations with all the necessary safeguards.

"(4) Freedom of the ballot

"At certain polling stations, the electors were prevented from voting either by being threatened and turned away before the closing of the poll or because the stations were closed before the stipulated time.

"(a) Station No. 6 (Gando)

"Three followers of Paramount Chief Nambiema Tabi, namely, Nama Nadjo, Nasoumano Nassoma and Labo Aboudou, all three from Mango, and three gardes-cercle turned away the voters before closing time.

"(b) Station No. 10 (Payo)

"The polling-station at Payo was closed well before the prescribed closing time and the counting of the ballots was concluded before 3.50 p.m., as verified by the United Nations Observer."

(b) Written observations of the Togoland Government

24. The Togoland Government submitted the following observations on Mr. N'Djambara's application:

"(1) The statements of the Commandant de cercle show that all the applications submitted to him were checked and forwarded to the competent magistrate.

"(2) The distribution committees decided to hand over to the secretaries of the chiefs the voting cards which they had been unable to distribute themselves during their visit to each village, whenever the persons entitled, although present, had not collected them from the committees. The latter took this decision unanimously and no complaint was submitted at the time to the Commandant de cercle.

"(5) As early as the morning of 25 April the Commandant de cercle had asked the two opposing candidates not to choose agents or assessors for the polling committees from among the civil servants of some departments which were scheduled to operate as usual on 27 April, i.e. the meteorological service, the postal and telecommunications service, the customs service and the public health service with the exception, as regards the latter, of the SGHMP (Service général d'hygiène mobile et de prophylaxie).

"On 26 April, candidate N'Djambara submitted his list to the Commandant de cercle. This candidate was represented at each station, as shown in the records of the polling-stations.

4. (a) Gondo Station

"No observation was entered in the records signed by members of the committee.

"The deposition of the Chairman of this Committee ..... shows that the proceedings were normal and that all the electors present had voted.

(b) Païo Station

"It is true that, contrary to the statement entered in the record, the voting ended at 3.50 p.m. and not at 5 p.m. No observation is entered in the record signed by members of the committee.

"In conclusion, it does not appear to the Minister of State in charge of the Interior that there were any irregularities likely to affect the freedom and fairness of the voting."

(c) Decision of the Administrative Tribunal of Togoland

25. The Administrative Tribunal gave its decision in the case of N'Djambara Fambaré against Kokou Emmanuel on 29 May 1958. The essential part of the decision reads as follows:

"Whereas the election of Kokou Emmanuel is alleged to have been marked by serious irregularities so far as concerns registration on the electoral lists, the distribution of voters' cards, the freedom to choose agents and assessors for the polling committees and the freedom of the ballot itself;

"Whereas, with respect to the first complaint, there is no evidence whatsoever of the failure of the Commandant de cercle to forward to the magistrate a large number of applications for the purpose of emergency registration;

"Whereas there is a similar absence of evidence in support of the second complaint, and the distribution of voters' cards was in fact carried out in the most efficient manner which local conditions permitted;

"Whereas the refusal of the Commandant de cercle to accept on the polling committees some of the agents and assessors selected by the applicant is easily explained by the fact that the persons so rejected were civil servants attached to the security services; whereas a similar rule was also applied to Kokou; and whereas even if the complaint were founded its effect on the result of the elections would be impossible to determine, particularly since, in the end, the candidates succeeded in being represented at every station of the circonscription;

"Whereas it is alleged that the freedom of the ballot was not ensured at stations No. 6 (Gando) and 10 (Paño);

"Whereas no evidence has been produced in support of the allegation that the Gando station was closed before the hour prescribed by law; and whereas no observation to this effect was entered in the record of the elections which was nevertheless signed by all members of the committee, including the agents of the two opposing candidates;

"Whereas, in the case of the Paño station, which was admittedly closed before 5 p.m., the explanations subsequently given by the Chairman of the committee indicate that the action was taken with the consent of the members, who signed the record without entering any observations; and whereas the measure was adequately justified by the fact that no voter had appeared for several hours; and whereas the committee nevertheless did not disband until 11.30 p.m. and, according to the same explanations given in writing by the Chairman, no voter had appeared by that late hour;

"Whereas the weakness of the complaint is adequately demonstrated by the fact that voting was as heavy at this station as at the other stations of the circonscription;

"THE ADMINISTRATIVE TRIBUNAL DECIDES:

"Sole article: The above application of Mr. N'Djambara Fambaré is hereby dismissed."

V. Electoral circonscription of Mango-Nord: Issaka el Hadji against Djangbedja Francois

(a) Application of Mr. Issaka

26. Mr. Issaka, CUI candidate in the electoral circonscription of Mango-Nord, who had received 2,504 votes against 2,765 for Mr. Djangbedja, the successful UCPN candidate, applied to the Administrative Tribunal for an annulment of the elections in that circonscription because, he said, the elections had been marked by a number of irregularities which had clearly falsified the results of the vote.

27. With regard to the alleged irregularities, he gave the following particulars:

"(1) Registration on the electoral lists

"A large number of applications submitted to the Commandant de cercle had not been forwarded to the magistrate.....

"(2) Distribution of voters' cards

"Contrary to the provisions of the law, the cards which the committees had not distributed were, on the instructions of the Commandant de cercle, given to the secretaries of the Cantonal Chiefs, who did not forward them to the persons for whom they were intended; for example, Mr. Ampie Nadjé, secretary to the Cantonal Chief of Barkoissi, kept sixty-four voters' cards, telling the persons who called on him that they had not been registered.

"(3) Selection of agents and assessors

"The applicant was unable freely to choose his agents and assessors on the polling committees, because the Commandant de cercle, acting after the required time limit, had rejected the list duly submitted to him as he objected to the inclusion of civil servants other than school teachers, in spite of the fact that the civil servants chosen had agreed to serve and had been trained in their functions; the Commandant de cercle himself, using a red pencil, had crossed out the names of the civil servants contained in the list before issuing a circular four hours later, around 11 a.m. on 26 April 1958, in which he asked the heads of the local government services not to allow their subordinates to accept appointment as agents or representatives on polling committees.

"As a result of that decision, he had been unable to find agents and representatives for all the polling stations and had in fact been represented by the agent alone at stations 5, 6 and 8 (Calangachi, Nagboni and Sadori).

"In the circumstances, he had been unable to arrange for the supervision of the polling stations with all the necessary safeguards.

"(4) Freedom of the ballot

"His voters had been prevented from casting their ballot at some polling stations:

"(a) At stations Nos. 1, 2 and 3 at Mango the voters had been made to stand in line by Chairmen Issifou Moussa (No. 1), Tiem Mama (No. 2) and Johnson Pacôme (No. 3), who would not let them in until summoned, and who arbitrarily arranged to have the CUT members stand at the end of the line; the elections were conducted at a slow pace calculated to prevent the CUT members from voting and discussions with the Commandant de cercle on the matter proved unavailing; thus, a large number of CUT members, although present from the time the polling stations opened, were unable to cast their ballot because the station was closed before it was their turn to vote and, in fact, as soon as the closing hour drew near.

"The following were thus unable to cast their ballot:

"40 voters at station No. 1;  
"59 voters at station No. 2;  
" 6 voters at station No. 3;

"(b) As a result of the deliberately slow pace of the elections and the closing of the station before 5 p.m., seventeen voters were also prevented from voting at Nagbeni, although they had been on the premises for several hours.

"At around 4.30 p.m. the gardes-cercle dispersed the voters awaiting their turn.

"At the Nangbeni station, three gardes-cercle, including Adjudant Komlan, were posted at the entrance and gave orders to the voters to take pink ballot papers. As a result of this intimidation, 165 voters were compelled to throw their white ballot papers away and to place empty envelopes in the ballot-box.

"(c) In the villages of Komongoukan, Padori and Napiemou, which form part of the canton of Sadori and where the CUT has a great many supporters, the local chiefs instructed criers to announce, on the night of 26 April 1958, an order of the Cantonal Chief of Sadori prohibiting the inhabitants from leaving the villages to vote, under threat of reprisal.

"(d) Station No. 1 at Mango had been set up on the concession held by Paramount Chief Nambiema Tabi, influential leader of the UCPN and avowed opponent of the CUT in the area.

"All attempts to prevent this proved unavailing.

/...

"At this station, while the CUP supporters were unable to reach the ballot-box, multiple voting, the personation of electors and voting by persons unable to meet the age requirements were the order of the day...."

(b) Written observations of the Togoland Government

28. The Togoland Government submitted the following observations with respect to Mr. Issaka's application:

"(1) The statements of the Commandant de cercle show that all the applications submitted to him were checked and forwarded to the competent magistrate.

"(2) The distribution committees decided to hand over to the secretaries of the chiefs the voters' cards which they had been unable to distribute themselves during their visit to each village, whenever the persons entitled, although present, had not collected them from the committees. The latter took this decision unanimously and no complaint was submitted at the time to the Commandant de cercle.

"(3) As early as the morning of 25 April the Commandant de cercle had asked the two opposing candidates not to choose agents or assessors for the polling committees from among the civil servants of some government services which were scheduled to operate as usual on 27 April, i.e. the meteorological service, the postal and telecommunication service, the customs service and the public health service with the exception, as regards the latter, of the SGHMP (Service général d'hygiène mobile et de prophylaxie).

"On 26 April, candidate Issaka submitted his list to the Commandant de cercle. This candidate was represented at each station, as shown in the records of the polling committees.

"(4) (a) The statement of the Commandant de cercle clearly shows that the elections at stations Nos. 2 and 3 at Mango proceeded normally and that no voter was prevented from casting his ballot. No observation is entered in the records signed by the members of the committee.

"Voting was admittedly slow at station No. 1 at Mango, but it was continued until 7 p.m. No observation is entered in the record signed by the members of the committee.

"(b) At Nagbeni voting continued until 5.15 p.m. to allow all the voters present to cast their ballot. The Commandant de cercle, who was present from 4.30 p.m. onwards, states that the elections he witnessed had proceeded normally. No observation is entered in the record signed by the members of the committee.

"(c) The extent to which the voters in the above-mentioned villages participated in the vote can be verified from the check lists, which show that the number of abstentions was quite normal.

"(d) Station No. 1 at Mango had been set up in the customary court situated on the edge of a square, at a point 35 metres from the Paramount Chief's concession and beyond it. The choice of the site had been discussed and previously agreed to by the candidates and the United Nations Observer.

"In conclusion, it does not appear to the Minister of State in charge of the Interior that there were any irregularities likely to affect the freedom and fairness of the voting."

(c) Decision of the Administrative Tribunal of Togoland

29. The Administrative Tribunal gave its decision in the case of Issaka el Hadji against Djangbedja François on 29 May 1958. The essential part of the decision reads as follows:

"Whereas the election of Djangbedja is alleged to have been marked by irregularities so far as concerns registration on the electoral lists, the distribution of voters' cards, the freedom to choose agents and assessors for the polling committees and the freedom of the ballot itself;

"Whereas, with respect to the first complaint, there is no evidence whatsoever of the failure of the Commandant de cercle to forward to the magistrate a large number of applications for the purpose of emergency registration (the number given is 187);

"Whereas there is a similar absence of evidence in support of the second complaint, and the distribution of voters' cards was in fact carried out in the most efficient manner which local conditions permitted;

"Whereas the refusal of the Commandant de cercle to accept on the polling committees some of the agents and assessors selected by the applicant is easily explained by the fact that the persons so rejected were civil servants attached to the security services; whereas a similar rule was also applied to Djangbedja; and whereas even if the complaint were founded its effect on the result of the elections would be impossible to determine, particularly since, in the end, the candidates succeeded in being represented at every station of the circonscription;

"Whereas it is alleged that the freedom of the ballot was not ensured:  
(1) at stations Nos. 1, 2 and 3 at Mango; (2) at the station at Nangbeni;  
(3) in the canton of Sadori;

"Whereas it is alleged that station No. 1 at Mango was set up on the concession held by Paramount Chief Nambiena Tabi, political opponent of the candidate of the Comité de l'unité togolaise;

"Whereas in fact the polling station was set up at the customary court, which is a public building even if actually owned by the Chief;

"Whereas it is alleged that the Chairmen at stations Nos. 1, 2 and 3 at Mango conducted the elections in such a manner as to make it impossible for a total of 95 CUF voters to cast their ballot;

"Whereas this fact, even if substantiated, would not have reversed the majority vote, and it is also significant that station No. 1 did not close until 7 p.m.;

"Whereas the station at Nangboni closed at 5.45 p.m., in other words after the hour prescribed by law, and the allegation to the contrary by the applicant, as well as his statements concerning acts of intimidation carried out by the gardes in order to influence the voters, are rebutted by the fact that no observation is entered in the records of the elections;

"Whereas, lastly, the allegations concerning the notice by public or traditional crier, on behalf of the Cantonal Chief of Sadori, ordering the inhabitants not to leave their village for purposes of voting is disproved by the fact that the number of abstentions in this circonscription did not exceed the normal proportion;

"THE ADMINISTRATIVE TRIBUNAL DECIDES:

"Sole article: The above application of Mr. Issaka el Hadji is hereby dismissed."

VI. Electoral circonscription of Tsévié-Est: Passah Seth against Fiawoo Emmanuel

(a) Application of Mr. Passah

30. Mr. Passah, CUT candidate in the electoral circonscription of Tsévié-Est, applied to the Administrative Tribunal for an annulment of the elections in that circonscription, in which Mr. Fiawoo, the FTP candidate, had been declared elected. He contended that the elections had been marked by a number of irregularities which had clearly falsified the results of the vote and that, among other things, the registration on the electoral lists as well as the distribution of voters' cards and the freedom and secrecy of the ballot had not been adequately safeguarded.

31. With regard to the alleged irregularities, he gave the following particulars:

"(1) Registration

"Contrary to the promise of the Government of the Republic of Togoland that it would place a broad interpretation on the provisions of the Act of 28 August 1946 concerning emergency registration, so as to register on the electoral lists 'any person qualified to vote but not included on the electoral list, even if no previous action was taken before the administrative and adjudicating committees', most of the applications submitted by the voters in the circonscription were rejected by the magistrate after the Chef de circonscription had refused to provide the required documentary evidence.

"(2) Distribution of voters' cards

"In view of the fact that the committees did not have a check list, the distribution of the cards could not be supervised in any way.

"(3) Freedom and secrecy of the ballot

"The freedom and secrecy of the ballot was not observed in nine out of fourteen polling stations. This is evident from the many complaints to the head of the administrative circonscription and to the Procureur de la République, and will be proved if denied.

"1. Mr. Fiawoo Emmanuel took over the control of polling stations No. 1 (customary court of Tsévié) and No. 3 (State school at Kpali).

"The voters were literally terrorized by gangs armed with sticks, whom he stationed permanently in the voting booths, and were compelled to place only pink ballot papers in the envelopes.

"2. The same terrorist organization was in operation at polling stations No. 4 (Gblainvié rural centre) and No. 5 (Gblainvié market) under

1...

the control of Chief Apédo. When Mr. Conrad Assah, Chairman of polling committee No. 4, tried to refuse to carry out the Chief's orders, he was seriously manhandled by the latter's henchmen.

"3. The same organization was apparent at polling stations No. 6 (State school at Davié), No. 7 (customary court at Davié) and No. 8 (Davié-Tsekpo), under the control of Chief Yao Dogbla.

"4. At polling station No. 9 (Davié-Assome), Aziato Kadjahlo, the Village Chief, ejected all the representatives of the CUT candidate.

"5. At polling station No. 10 (Adangbe) Mr. Stephen Agna, Village Chief of Adangbe, directed the elections, using his henchmen for purposes of intimidation.

"6. Lastly, at polling station No. 13 (Yebomé camp) the representatives of the CUT candidate were ejected and Tengué Afaihoun, the Village Chief, directed the ballot.

"In conclusion, a number of persons voted with cards made out to others, engaged in multiple voting or voted although they did not meet the age requirement, as indicated in detail in letters addressed to the Procureur de la République, copies of which are attached to this application. 1/

(b) Defence of Mr. Fiawoo

32. Mr. Fiawoo replied to Mr. Passah's contentions as follows:

"(1) Irregularities in the matter of registration

"Mr. Passah contends, contrary to the evidence, that most of the applications submitted by the voters in the circonscription were rejected, the Chef de circonscription being to blame.

"If an application was justified, it was up to the voter to appeal the decision.

"However, it is common knowledge that the magistrates were most liberal in considering the applications submitted to them and that a large number of registrations were thus effected.

"In the circumstances, the submission is not receivable.

"(2) Irregularities in the distribution of voters' cards

"This submission has been made without any particulars being given, and in such a manner that, if it were entertained, the elections would have to be annulled in all the circonscriptions.

"It is therefore not receivable.

"(3) Irregularities in the voting operations

"It is alleged that this respondent personally assumed supervision of polling stations Nos. 1 and 3 in order to terrorize the voters; that he terrorized the voters registered at polling stations Nos. 4 and 5 through the agency of Mr. Apédo and those registered at polling stations Nos. 6, 7 and 8 through Chief Dogbla; that he caused the representatives of the applicant to be expelled by Mr. Kadjahlo from polling station No. 9; that he caused the voting operations at polling station No. 10 to be managed by Mr. Agna; and, finally, that he caused the representatives of the applicant to be expelled from polling station No. 15.

"The applicant submits, in support of his application, letters from his representatives alleging that this respondent compelled voters to vote for him and caused those who refused to do so to be assaulted, and claiming that persons of less than fifteen years of age had been allowed to vote by the chairman of the polling committee; lastly, it is stated by those representatives that they had to flee in haste at the time of the counting of the votes.

"This respondent emphatically denies having instigated any act of brutality; he also denies the allegation that he organized armed gangs to influence the voters.

"As to the allegation that he supervised the voting, the truth is that, on the day of the vote, he merely visited the various polling stations, as did Mr. Passah himself, in order to ascertain that the voting operations were proceeding in a normal manner.

"In fact, the only persons to display a menacing attitude were the group of individuals who had come from a neighbouring country to support this respondent's opponent; these individuals threatened and insulted persons known to favour this respondent and actually prevented some of them from voting.

"1. As to points of law

"It is an established rule of the courts that the facts adduced, even if they constitute punishable offences, can only be taken into consideration if it can be shown that they influenced the results of the vote (Conseil d'Etat, decision of 10 January 1950, R.C.E. 1950.38).

"An inquiry can only be ordered if there is sufficient prima facie evidence of concrete facts indicating that the results of the vote have been distorted (Conseil d'Etat decision of 4 January 1936).

"Accordingly, it has been held that:

"Where the number of committee members present falls below the statutory minimum, the voting can be declared null and void only if that circumstance was conducive to the commission of fraud (Conseil d'Etat, decision of 5 July 1920);

"The fact that the ballot-boxes were opened during the voting is not sufficient grounds for annulling the elections if that circumstance did not lead to the commission of fraud (Conseil d'Etat, decision of 12 January 1923, R.C.E. 1923.41);

"The absence of a booth does not constitute grounds for annulment except where the subtraction of the number of votes cast in the station concerned from the total vote would change the results.

"2. As to points of fact

"(a) Voting by minors

"The letters produced by the applicant, emanating from his representatives, claim that forty-two minors voted.

"If that fact were true, it would not have influenced the results of the vote.

"No evidence, however, has been produced by the representatives of Mr. Passah; they admit that, as a general rule, the voters' cards were issued to persons of full age.

"The contention thus rests solely on the statements of those representatives, statements which cannot be entertained because they carry no more weight than those of the candidate himself.

"It is moreover surprising that, so far as forty-one of those votes were concerned, the representatives of the candidate made no effort to ascertain the name of the alleged minors in order to facilitate a subsequent check.

"(b) Multiple voting

"The same remarks apply in this context.

"Seven cases of multiple voting are alleged to have occurred.

"In fact, one individual was arrested at polling station No. 1. He had voted for Passah. The fact was entered in the official record.

"As regards these two submissions, it should be noted that they are the usual resort of all defeated candidates who file an objection.

"(c) Acts of violence

"The above remarks concerning the possible effect on the results of the vote apply also in this context.

"It does not therefore appear that the cases invoked can have influenced the results of the vote.

"Not only is this submission, like the others, vigorously denied, but this respondent would point out that the statements made by the applicant's representatives contain allegations which defy belief.

"One of them claims that armed gangs accompanied each voter into the booth (letter from Sabah). 1/ The Tribunal may wonder what was the size of these booths and at what hour the voting operations could have ended, for the time stipulated by law would have been clearly insufficient.

"Another of the applicant's representatives alleges that this respondent compelled voters to hand over the envelopes so that he could place them in the ballot-box himself, and that this was done not at one polling station but at three; this allegation raises a tricky problem of ubiquity.

"Yet another of the applicant's representatives speaks of atrocious tortures, etc.

"No names are given in connexion with these alleged facts, even in the most serious cases. No particulars are given concerning the alleged victim.

"Only one of the applicant's representatives mentions the name of an assessor who was supposedly beaten without cause, which would suggest that the incident was not connected with the voting.

"The above allegations are therefore formulated in such a manner that they not only fail to make out a prima facie case but are also so incredible that no offer of evidence would even be admissible.

---

1/ As indicated above, the documents attached to the application have not been reproduced.

"3. Contradictions

"The above statements made by the representatives of the applicant contradict some of the basic allegations contained in his own application, according to which he was totally unable to inspect the polling stations, his representatives were expelled, etc.

"It would seem, in reality, that the representatives in question were at all times present at the polling stations and had ample opportunity to verify the voting operations, as they apparently had no difficulty in noting the numbers of the voters' cards, in placing an observer and in following every movement of this respondent.

"These facts completely refute their assertions.

"Moreover, those representatives seem to have taken certain precautions to ensure that they were in a position to dispute the official records.

"Thus, for example, Mr. Dogli's letter states that, after the vote, an inspector obliged him and his colleague Azianou to sign the official record against their will.

"4. Results of the vote

"For Fiawoo: 5,776 votes; for Passah: 2,946 votes. Majority in favour of Fiawoo: 2,830. The winner thus obtained twice as many votes as his opponent.

"It is therefore clear that the facts relied upon, which are both unsupported by evidence and denied, could have had no influence on the results of the vote.

"5. Reports of the chairmen of committees

"The reports known at present to this respondent contradict the allegations of the applicant's representatives.

"In brief, therefore, the applicant's submissions are based on alleged facts which, even if they were established, would not have affected the results of the vote so as to prevent this respondent from being elected.

"In addition, these alleged facts are as a general rule put forward without any particulars or prima facie evidence, and in so contradictory and incredible a manner as to render any offer to prove them inadmissible. They are furthermore contradicted by the chairmen of the polling committees."

(c) Written observations of the Togoland Government

33. The Togoland Government submitted the following observations concerning Mr. Passah's application:

"(1) Regarding registrations

"A claim of this nature cannot be submitted to the Administrative Tribunal. Such disputes fall within the jurisdiction of the ordinary courts (Decision of the Conseil d'Etat, 19 June 1957; Atayi Salomon).

"(2) Regarding the distribution of voters' cards

"There is no statutory provision requiring a copy of the electoral list to be handed to the distribution committee. That list is held permanently at the disposal of all voters wishing to consult it or to make a copy of it, as was the case at Tsévié. Moreover, the cards were distributed by the distribution committees provided for in article 17 of the Act of 6 February 1952; these committees have full discretion, in choosing the method of distribution, as was clearly stated by the Conseil d'Etat in its above-mentioned decision in the Atayi case.

"(3) Regarding the alleged violation of the freedom and secrecy of the ballot

"Polling station No. 1. The representative of candidate Passah merely noted in the official record the following:

"Multiple voting by the holders of voters' cards Nos. 18, 132 and 668, to which he does not in fact appear to have objected;

"The disputed identity of the holders of voters' cards Nos. 100 and 1281;

"An act of canvassing within the polling station by the FTP candidate.

"On the other hand, the representative of candidate Fiawoo disputed the identity of the holders of voters' cards Nos. 3 and 168.

"It appears from the report of the Chairman of the committee, attached to the present observations, 1/ that the applicant, like the candidate who was declared elected, visited the polling stations during the day of the vote, as he was fully entitled to do.

---

1/ The documents attached to the observations have not been reproduced.

"Neither the Chairman's report nor the observations entered in the official record bear out the claim that armed gangs had been placed in the booths in order to interfere with the freedom and fairness of the ballot.

"Polling station No. 3. The assessor of candidate Passah refused to sign the official record on the grounds that candidate Fiawoo had entered the voting room to instruct his representative. The record does not contain any other entry. As to the considerable number of voters who abstained from voting, it is not out of proportion to the number of abstentions recorded in other stations of the same circonscription.

"Polling station No. 4. Neither the Chairman nor the members of the polling committee made any observation on signing the official record (at page 2, not at page 4).

"Polling station No. 5. No observations were entered in the official record signed by the Chairman, the secretary and two agents of the candidates.

"The Chairman's report confirms the contents of the official record and refutes the allegation that armed persons were present and that the voting was supervised in the booths. Candidate Fiawoo came to the station only on one occasion and did not distribute any ballot papers.

"Polling station No. 6. The official record states merely that 'three fraudulent voters', holding cards Nos. 577, 675 and 27,720, were not permitted to vote.

"Candidate Passah's assessors and agent left the room before the official record was signed.

"The Chairman's report confirms the contents of the official record and reports an observation made by Mr. Pinelli, Chargé de mission, with a view to speeding up the voting operations by means of a better arrangement of the booths.

"Polling station No. 7. No observations were entered in the official record, except for the reference by the Chairman to the refusal of the representatives of candidate Passah to sign the official record.

"The Chairman's report shows that candidate Passah took his agent and assessors back to Tsévié in his car before the official record was signed.

"Polling station No. 8. The official record indicates that the agent and assessors of candidate Passah were present throughout the voting and refused to take part in the counting of the votes.

"The committee refused permission to vote to four persons holding cards which did not appear to be in order.

"The report of the committee Chairman shows that candidate Passah visited the station in the course of the day without hindrance.

"Polling station No. 9. The official record refers to the departure of candidate Passah's assessor, who left with the key to one of the locks. The counting of the votes took place, but the official record was not signed by candidate Passah's representatives.

"According to information given by the Commandant de cercle, candidate Passah's representatives voluntarily left the polling station at the beginning of the afternoon and did not reappear.

"Polling station No. 10. The assessor representing candidate Passah made several observations not entered in the official record, which he refused to sign. He complained of the domineering attitude of the Chairman, of the fact that three minors had voted, of acts of canvassing in the voting room by the representatives of candidates Fiawoo and Aziati and, lastly, of the fact that the Village Chief held the cards of absent voters.

"The report of the Chairman of this committee shows that two Cabrais voters were admitted to vote after their identity had been verified by the committee.

"Polling station No. 13. No observations were entered in the official record, which was signed by all the members of the committee and by the three agents of the candidates.

"As to the allegation that armed gangs had been placed near the polling station, the Commandant de cercle visited polling stations Nos. 1 and 3 at Tsévié and polling stations Nos. 1 and 2 at Gblainvié. He saw no armed gangs in or near the voting rooms, still less near the booths. The Chargé de mission visited Gati, Adangbé, Davié and Assomé and did not note any irregularity.

"In conclusion, the Minister of State in Charge of the Interior does not consider that there were any irregularities likely to affect the freedom and fairness of the vote."

(d) Decisions of the Administrative Tribunal of Togoland

34. In the case Passah Seth against Fiawoo Emmanuel, the Administrative Tribunal, before deciding on the merits of the case, made a preliminary order on 10 May 1958 requiring the immediate production to the Tribunal of all documents relating to the election operations at Tsévié-Est on 27 April 1958; at the same time, it requested the Vice-President of the High Court of Appeal to hear the head of the circonscription administrative of Tsévié in order to ascertain

the manner in which the necessary documentary evidence in support of applications for magistrates' orders of registration had been collected and any other person whose testimony the said judge might consider helpful in order to establish the circumstances and places in which voters registered under the emergency registration procedure had been permitted to vote.

35. The decision on the merits of the case was rendered on 29 April 1958. The essential part of that decision reads as follows:

"Whereas the election of Fiawoo is alleged to have been marked by irregularities so far as concerns registration on the electoral lists, the distribution of voters' cards and, lastly, the freedom and secrecy of the ballot at many polling stations of the circonscription;

"Whereas, regarding the first submission, it is claimed that most of the applications made by voters from Tsévié-Est in virtue of Part II of the Act of 28 August 1946 were rejected by the magistrate following the refusal of the Commandant de cercle to issue the necessary documentary evidence;

"Whereas the inquiry carried out in virtue of the preliminary order of 10 May 1958 failed to establish that any such refusal had taken place; and in reality it appears that all applications submitted were examined either by the Police Superintendent or by the assistant Commandant de cercle;

"Whereas the Administrative Tribunal is not empowered to rule on the propriety of a magistrate's decision rejecting an application for registration, or to endorse the contention of the applicant that the certificates issued by the administrative authorities falsely indicated to the magistrate that the parties concerned did not fulfil the requirements stipulated by electoral legislation;

"Whereas the large proportion of applications rejected (1,950 out of 2,840) is not decisive, as it has not been shown that those refusals of registration were the result of an artifice designed to interfere with the fairness of the vote;

"Whereas, regarding the second submission, it is in fact clear, from the very brief indications given by the applicant himself, that the distribution of voters' cards was carried out in accordance with the law by a committee the official records of which are on file;

"Whereas, in the third place, it is alleged that candidate Fiawoo placed henchmen at twelve polling stations of the circonscription in order to compel persons to vote in his favour, and witnesses are relied upon in that connexion;

"Whereas it is alleged that the pressure in question was particularly marked at polling stations Nos. 1, 2 and 3, but the applicant's statements in that respect are contradicted by the mere fact that at the first station Passah obtained 245 votes and Fiawoo 747 while at the second station Passah obtained a majority, polling 489 votes against 200 for Fiawoo;

"Whereas it has been established that acts of duress were committed against the chairman of polling station No. 4 and there is reason to believe that those acts had an influence on the fairness of the voting operations, so that the 621 votes cast at that station in favour of candidate Fiawoo have to be deducted;

"Whereas, so far as polling station No. 10 is concerned, the objections entered in the official record of the voting operations show that the voters were subjected to pressure in order to make them vote for Fiawoo; and accordingly, the 292 votes cast at that station in favour of that candidate have to be deducted;

"Whereas, on the other hand, the inquiry carried out by the Procureur de la République after the elections failed to establish beyond doubt the applicant's contention that acts of duress had been committed against voters and members of polling committees;

"Whereas the votes deducted from the total cast in favour of candidate Fiawoo are not sufficient in number to make any material difference to the result;

"THE ADMINISTRATIVE TRIBUNAL DECIDES:

"Sole Article. The above-mentioned application of Mr. Seth Passah is hereby dismissed".

-----