

# THE TOGOLESE CHIEFS

## CAUGHT BETWEEN SCYLLA AND CHARYBDIS? <sup>1</sup>

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### INTRODUCTION

In November 1989, I ran into a German couple sitting on the terrace of 'Pablo's Grass Hut' in Lomé, the capital of the West African Republic of Togo. They were a typical example of that particular class of expatriates who do not feel at home in the country in which they earn their living, but who nevertheless do not wish to return home to a country where, they complain, "you get so much junk mail in your letterbox nowadays". I had met them there previously and had felt irritated by the gruff, colonial attitude of both Germans and other Europeans towards Africans. However, the beer was enticingly cool and refreshing, and it had often proved to be a

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good spot to sit to work out the data from my fieldwork.

In this particular instance the topic of our conversation fitted in nicely with the theme of my study of the relationship between chiefs and the state in Togo. The German couple ran a surfing school on the *Lac du Togo*, a pleasant location where the entire white community likes to take a spot of exercise, waited on hand and foot by Africans. These Africans, of course, serve rather than surf. The prices of the latter are much too high for them.

The wife told me indignantly how, in her opinion, the Togolese judicial system was a hopeless non-starter. She had lent a fairly large amount of money to a Togolese friend to buy a secondhand lorry for his business. The borrower failed to make the necessary repayments. He persisted in this failure even after the lady had gone to the state court, in this case the *Tribunal de Première Instance*. Next she had sought the intervention of the Minister of Home Affairs, a powerful man with whom she was acquainted through other acquaintances, but this also was ineffective. Finally she had turned to the head of state, General Gnassingbé Eyadéma, who has made a habit of lending a ready ear to anyone with a problem (Van Rouveroy van Nieuwaal 1987a). All these peregrinations through the official channels proved fruitless, and the 'criminal' continued to drive around in the lorry.

Her husband, on the other hand, had adopted a different approach following the theft of a number of surfboards ("What the hell are they going to do with them?"). He had gone to the local chief, and had actually recovered the majority of the stolen goods through the village council. He had a self-satisfied look on his face that seemed to be saying: 'That's the way to deal with these people here. That's how you get results!'

My purpose in telling this much condensed story is to introduce the contrasting Togolese institutions of the state and the chief. I am aware that in the story I am comparing two disputes about fundamentally different matters: a failure to repay a loan and a theft of property. In African eyes a loan is an expression of a two-way relationship. People do not generally expect lenders to demand repayment of a loan at short notice, particularly if they are not evidently suffering as a result of the non-repayment. In such circumstances taking steps to recover a loan

amounts to the expression of a desire to end a social relationship (Baerends and Van Rouveroy van Nieuwaal 1981). The action may even be regarded as socially reprehensible. No-one is prepared to be seen as being even partially responsible for ending a relationship in this way. On the other hand, an infringement of a person's property rights by theft is regarded as an entirely different matter, justifying and even demanding a strong reaction.

In this paper my primary concern is not the apparent lack of efficacy of the modern judicial systems and governmental authority in African countries like Togo. This has already been abundantly described by others (Bgoya and Hyden 1987; Jackson and Rosberg 1985; Myrdal 1968 II: 895-900; Spittler 1981). My concern is the balance of power between two actors: on the one hand the Togolese state and on the other the Togolese chieftaincy.

I consider this balance of power as a 'zero-sum game', in that the expansion of the power of the state nearly always is at the expense of the chief.<sup>2</sup> It is not always very evident how the respective fields of action of the two actors act separated from each other. Sometimes they in fact overlap. Both actors try to enhance their influence and power; both resist vehemently, in different ways, any attack on their power. Because this is a zero-sum game, both actors have only one possibility: to seek to consolidate their own positions by fighting each other. If neither actor sought to consolidate his position and both accepted a status quo there would be no competition. Their relationship would be clear, stable and in equilibrium. But as soon as one tries to enhance his influence and power, there is instability.

On the other hand, however contradictory it may seem, there is also an interdependency between the state and the chief. The state is dependent on the chief to implement its policies, and also to get specific information concerning the local community. The state badly needs this inside information to execute its legal, administrative and economic policies. The chief on the other hand needs the support of the central government to legitimate his power and obtain economic favours which he can distribute to his people. This interdependency has its own dynamics and is a colourful pallet for socio-political research. It also entails the risk that either actor may seek to exploit his indispensability to enhance his power, thus producing instability in the zero-sum game.

The arrival of the colonial regime, France, introduced not only a new political

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<sup>2</sup> See, however, for a different view Bienen 1970: 120, arguing that "...power should not be conceived as existing in a zero sum game..."

leadership and authority in Togo, but also a concept of state involving the centralization of power and bureaucratization.<sup>3</sup> It is part of this concept that the exercise of power and violence is one of the prerogatives, or even a monopoly of the state.<sup>4</sup> This state monopoly of violence, which has already been a rich field of research for political scientists and sociologists, seems to me to offer interesting research possibilities for legal anthropologists also. Hitherto it has received little attention from legal anthropology. In the classical studies, such as Gluckman (1955), Bohannan (1968), and Holleman (1969), the state figured mainly as an ideal type of political organization, often in an evolutionary perspective, which the tribal and village peoples of Africa had not yet attained. In the period of field work in colonial settings, the presence of the state was largely ignored. It appeared on the research scene during the phase in which legal anthropology, at least in England and America, was largely reduced to the study of dispute settlement processes. Under the labels of 'selective use of legal systems', 'forum shopping', or more generally 'legal and institutional pluralism', state courts, administrative institutions and law entered the legal anthropological research agenda (F. Von Benda-Beckmann 1990). During the last twenty years there has been increasing interest in fields other than dispute behaviour, and the state has received renewed attention from sociologists and political scientists (Tilly 1985). The issue has become subject to increasing critique and debate. Legal anthropologists themselves have given critical evaluations of earlier accounts of tribal and village social and legal systems, and sociologists have complained that in legal anthropology the state has been undertheorized.<sup>5</sup>

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3 In generalizing the pre-colonial situation, one may say that African societies were not organized in 'states' in the modern sense. Centralization of power and bureaucratization had not developed or were only at the most embryonic stages. Some of the reasons for this were the rarity of writing, the non-existence of wheeled vehicles which limited long-distance travel, the late arrival of firearms, which prevented state absolutism until recent times, the absence in large parts of Africa of religions with ambitions of universality, and the rarity of unifying language (Bgoya and Hyden 1987: 8).

4 This legitimate monopoly of state violence, which has already been a rich field of research for political scientists, seems to me an interesting subject for legal anthropologists as well. See for instance: *La Deuxième Rencontre Franco-Allemande* with its theme, *La Violence et l'État - formes et raisons d'un monopole*, 22-24 November 1990, Saint-Riquier, France.

5 We find these criticisms also in the circle of German scholars working on law and political organization in non-western societies (Spittler 1981; von Trotha 1987, 1990).

The colonial state and its administration had in Togo,<sup>6</sup> as elsewhere in colonial Africa, an oppressive and despotic character. But its violence was effective only so far as the colonial administration was effective, which was mostly not the case (Spittler 1981). The use of violence might even be attributed to the fact that the colonial administrator had limited knowledge of the colonized people, and used violence in an attempt to compensate for the lack of information.

Most African peasant societies had a simple defence against coercion: migration. The practitioners of this self-defence have been known, since Hyden's famous book about the Ujamaa system in Tanzania (1980), as the 'uncaptured peasants'. They are comparable to those peasants who in pre-colonial days withdrew from their chief's authority by moving away and resettling somewhere else.<sup>7</sup> This image of the uncaptured peasant is nevertheless too simple. Farmers have to pay taxes, and to raise brideprices, and they like to buy transistor radios, motorcycles and so on (Geschiere 1984). Therefore they are forced to grow other crops than they use for their own consumption, and they have, although sometimes very reluctantly, to enter the national market economy (De Haan 1988).

After more than 25 years of independence, many African states hardly meet Weber's definition of a 'state' as an apparatus of government with a monopoly of force over a territory and population. African states with a few exceptions came into existence without possessing force required to compel the colonial power to withdraw. Since Independence, moreover, some African governments have for extended periods been unable to exercise an effective monopoly of force throughout their territories (Bgoya and Hyden 1987; Jackson and Rosberg 1985).

Whereas the colonial state was run by a small but ruthless bureaucracy, many emergent states - at least in former French and Belgian colonies - lacked the administrative structures, personnel and culture necessary for the efficient management of a state. The only response to this problem was 'statization' of almost all aspects of socio-economic and political life, necessitating the expansion of bureaucracy. This did not increase the efficiency of the state and its

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6 See for the German colonial period Sebald 1988; von Trotha 1990.

7 Such instances are also comparable to the example given by F. Von Benda-Beckmann (1989) of foot-dragging by Indonesian village people in carrying out development projects of which the development bureaucrats had such neat mental images, but which often had little to do with whatever had been planned on higher levels by the same bureaucrats.

political and legal institutions.

In both colonial and post-colonial years, Togo experienced 'unlimited government', especially after the creation of the One Party, the *Rassemblement du Peuple Togolais* (RPT, the National Unity Party). As a result the Togolese people felt intimidated. The emphasis on the state as the principal development actor has further reinforced an attitude of apathy. Let me give an example:

In Aného, South Togo, filming in March 1990 a public meeting organized by the leadership of the One Party for a "révalorisation des valeurs et des concepts de notre Parti Unique", one had the uncomfortable feeling that the people sat back and were not involved at all in the affair. No interest was shown, except when an old man shouted: "What we need is simply the reopening of the railway track to Lomé [Togo's capital] which was already constructed by the German colonialists!".

A thunder of applause followed, although the old man was pushed back immediately into his seat.

Togo is a country without popular participation in public affairs, although nowhere else has the idea of the people's participation been more emphatically embraced. Eyadéma, the Head of State since 1967, asserts that the RPT is the *creuset national*, the national melting-pot in which everybody can and must participate.

The other actor in the balance of power is the traditional chief. I have called the chief elsewhere the 'neo-traditional authority' (Van Rouveroy van Nieuwaal 1976, 1980, 1987a, 1987b), because through many legal reforms, some started in colonial days, chieftaincy was robbed of its legitimacy and went underground (Bayart 1989; Moore 1978; Van Rouveroy van Nieuwaal 1987a).<sup>8</sup> Nevertheless, despite legal and administrative reforms in Togo (Laloum 1961; Van Rouveroy van Nieuwaal 1976), chiefs continue to play an important role. They are not only mediators between the bureaucrats of the state and the villagers, but also the personification of a moral and political order, the protection against injustice, unseemly behaviour, evil and calamity.<sup>9</sup> In these respects chiefs are 'uncaptured'. In practice they are still active in Togo in the fields of dispute

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<sup>8</sup> But we also know that legal reforms in almost every field of law fall radically short of their intended aims (F. Von Benda-Beckmann 1989; Griffiths 1986).

<sup>9</sup> See, for an interesting example in Zimbabwe, Holleman 1969; Ladley 1991.

settlement and local policy formation.<sup>10</sup> However, what is untrue of peasants cannot be true of chiefs. The power of the chief has been curtailed by legal reforms, the effects of which will be mentioned later.

In considering popular attitudes to chieftaincy in Togo, it is necessary to take account of a development in the election of chiefs. A candidate for a chief's position has to be screened by a so-called *enquête de moralité*, first introduced by the colonial government. This *enquête de moralité* is carried out meticulously by the local police and gendarmerie. The government has thereby been able to form a body of chiefs which was - on the surface at least - loyal to the regime of Eyadéma. Thus the government in Togo has continued colonial practices and is still the most important player in the game leading up to the election and appointment of a chief.

This leads us to the intriguing question of how ordinary people in Togo view the election campaign. People are undoubtedly aware that they will be asked to support, during the campaign conducted by various pretenders to the vacant throne, candidates who will owe their primary loyalty to the state. It is clear that today the chiefs owe part of their political power and legitimacy to the state. Against this background, it would be hardly surprising if the people were no longer willing to expend their energy on candidates. Why should they take any heed of the election campaign, abandon their work in the fields, and devote both time and money to the campaign, if they believe that the outcome of the election has already been determined by the state, frequently through the intervention of the Head of State?

If this hypothesis is true, it destroys the image of a democratic interdependency between the traditional political leaders and the people. Anthropological literature paints a picture of a kind of democracy involving the participation by the entire local community in the election of a new chief (Busia 1951; Gbiki-Bénissan 1976; Goldschmidt 1981; Iliffe 1987; Ladouceur 1979; Ogot 1964; Ottenberg 1971; Seepapitso IV 1989). The system is organised in such a way that the most senior chiefs solicit the approval of people who are unable to hold any sort of political post on account of their low social status. Nowadays because of state intervention people tend to feel that the election campaign is not conducted for their benefit, and that they have no real influence over the result.

On the other hand, the destruction of this interdependency between chief and people has the effect of undermining the authority of the Togolese chief. The

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<sup>10</sup> See my documentary film Van Rouveroy van Nieuwaal 1992.

people might on this ground be inclined to welcome state intervention. This suggests that a key stimulus for the Togolese state's penetration of the traditional system of power could be the knowledge that people see state intervention as a means of relieving the pressure which chiefs were previously able to exert. People would, according to this hypothesis, appreciate being freed from the whims and economic and political exploitation of the traditional ruling classes. This means in terms of election campaigns that the people finally have an opportunity, thanks to the intervention of the Togolese state, to liberate themselves from the oppressive material and mental burden of such events.<sup>11</sup> They can now play the undemanding role of 'amused onlookers'.

## CHIEFTAINCY AND THE TOGOLESE GOVERNMENT

In addition to the control of elections through the *enquête de moralité*, there was another mechanism through which the Togolese government smoothly captured the traditional political élite. It was integrated into the RPT, and thus into the Togolese state. In 1968, the National Union of Togolese Chiefs (*Union Nationale des Chefs Traditionnels au Togo*, UNCTT) was founded. Shortly afterwards it offered its full support to Eyadéma to set up the RPT (see below). This support was highly appreciated by Eyadéma, who had acceded to power in 1967 and badly needed public assistance to gain legitimacy. The relations between chiefs and the state at national level will be examined further in later sections. Here I consider relations at local levels.

In Togo the chiefs still play an important role in the interaction between local government and the administration (Van Rouveroy van Nieuwaal 1987b). Scholars have given little attention to the role of chiefs, with all their social, legal and political activities. This is surprising, since their authority under folk law could be a crucial factor in future attempts to bring about socio-economic and governmental changes in Africa (Skalník 1983, 1986).

After Independence in the 1960s, there was often a strained relationship between the new, modernised state governments and the chiefs, who were accused of having corruptly collaborated with the colonial authorities. Chiefs were

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<sup>11</sup> This is merely a supposition. Some of my informants in Sokodé, the capital of the Tchadjo District (North Togo), gave me in September 1988 a colourful account of the election campaign in the period 1980-1986 in which a new paramount chief was elected. Unfortunately, my field data lack information on this highly interesting point, which might have given a balanced description of their sufferings.



frequently regarded by post-colonial governments as representing all that was old and conservative, and as obstacles to modernisation. In certain cases, the tension erupted into open conflict.<sup>12</sup> It resulted in problems particularly in those cases in which there was no clear delineation of the powers of the two systems of government. This situation still exists in various African states including Togo. The following is an interesting example from southern Togo.

At the end of November 1987, I met in Lomé a former *chef de la circonscription* (known as a *préfet* since 1981). He had spent only one year in office. It was not unusual for such government officials to spend only a short period in office, but nevertheless removal from such an important position (the most important below the Minister of the Interior) so soon was an indication that something might have gone wrong. So it had, but my informant's difficulties had been not with his superior, but rather with the local chief in Vogan.

My informant had been trained and worked as a school teacher. However, during a period when Togo was faced with a dearth of well-trained government officials, the ranks of the civil service were replenished with people who had not had directly relevant training. He was appointed *chef de la circonscription* in 1975. It was not long before he realised that he was being dragged into a hotbed of problems, presented to him not only by his own staff, but also and especially by the chiefs, each of whom was interested only in pursuing his own interests.

One of these problems was the direct cause of his fall. Shortly after taking office he noticed during a tour of the district that there was a small, but very lively, market next to the chief's palace in the district capital. He enquired, and learned that the market tolls were being paid to the chief, who was not passing them on to the tax authorities. The *chef de la circonscription* made it clear that this was against the governmental rules, and instructed one of his clerks to collect the tolls in future. He informed his superior, the Minister of the Interior, of his action, but received no response. Nor was there any response from the chief. The latter, however, also contacted the

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12 See for a good example my film Van Rouveroy van Nieuwaal 1979.

Minister.

The *chef de la circonscription* had grossly underestimated the power of the chief. Not only was he the leader of his people, but this chief was also known throughout the country, a devout catholic who had been received by Pope Pius XII in Rome, on excellent terms with the ruler of the country, and, last but not least, chairman of the UNCTT. The Minister had no choice but to summon both officials to his ministry. The best that the *chef de la circonscription* could achieve was a compromise by which the market tolls were to be divided equally between the chief and the district authorities. The chief grudgingly gave his consent to this, but he made it clear that he felt he had been wronged, not only by the removal of a source of income, but also by the *chef de la circonscription's* behaviour, which he regarded as an encroachment on his authority. The *chef de la circonscription* was dismissed six months later.

However, the social, legal and political reality is that the position and authority of chiefs in Togo, as in many other African states have been severely eroded, and that some of them are in fact no more than puppets of central government (Van Rouveroy van Nieuwaal 1979, 1987a, 1987b). Everyone is aware of this, the chiefs themselves included. The focus of power has shifted to the prefects, some of whom even have their offices in buildings previously used by the colonial government. Their power is given an unmistakable, visible aspect by the presence of policemen, soldiers and flags, and the continuous arrival and departure of cars carrying party bosses. In this respect, nothing has changed since the colonial era (Von Trotha 1990). In the view of the central government of Togo, the chiefs are in the first instance civil servants who are accountable to the local representative of central government, the prefect. Through the *enquête de moralité* the government has become a significant factor in the appointment of chiefs, awarding itself the role of 'kingmaker' (Busia 1951; Goldschmidt 1981).

This state intervention does, however, also lead to some competition between 'traditional' leaders (who derive their rights from folk law) and others who are pushed forward by the government. Because of this, tensions can arise in a community and the differences between 'old' and 'new' loyalties can become more pronounced (Geschiere 1982). Moreover, there is not always a guarantee that the state will prevail in the appointment of a chief. Sometimes it has to pay a price for its exercise of power, or at least to try to reach a compromise with the local community. A striking example of this was provided by an incident in the prefecture of Tchaüdjo, in the north of Togo.

Under folk law, the highest leader is the paramount chief (the *chef supérieur*). In this particular prefecture the paramount chief resides in Sokodé; he holds the honorary title of *uro essò* (literally 'Chief-God'), with six other chiefs under him. Although originally he was *primus inter pares*, he was promoted to *chef supérieur* under French colonial rule.

When the then *chef supérieur* of Tchaüdjo, Ayéva Issifou, died in 1980, a fierce battle began among the various candidates for his succession. Within the seven family groups who had a claim to the title under the complex system of rotation laid down in folk constitutional law, dozens of candidates came forward. An expensive and exhausting propaganda war began for the favour of the voters. Most candidates found themselves on the brink of bankruptcy after a while, and some went over the edge and were forced to withdraw from the race. In addition, the government conducted its own *enquête de moralité*. Eventually, six years after the post had first become vacant there were just four candidates left. These were given a fine, ceremonial reception by the Head of State, who then subjected them to a further lengthy interrogation, in the presence of various politicians, high-ranking military officers and police officers, on their loyalty to the ideals of the National Unity Party. The President then sent them all outside, before calling them in again one by one. To three of them he gave large sums of money to defray the costs of their campaign. The fourth, Ayéva Foudou, the son of the late *chef supérieur*, received nothing, however. For everyone this was a sign that he had finally been chosen by the government. During a triumphant journey from Lomé back to the north of the country, Ayéva Foudou was acknowledged as *chef supérieur*, and preparations were made for the ritual ceremony to celebrate his installation.

He was, in fact, a fairly natural choice. He well educated (having trained as an agronomist), and he had served for many years as secretary of the local branch of the National Unity Party. But the effectuation of his appointment by the President, rather than under folk law, was not secured without a price. Ayéva Foudou's close supporters managed to force the government to agree 'in camera' that he could still use the title of *chef supérieur*, and be paid accordingly, despite the

fact that the title had been explicitly abolished by a ministerial order of 1982 as no longer appropriate in present-day Togo. Nevertheless, this concession was little more than window-dressing. During my stay in November 1988 people were still complaining, albeit in private, that the President had ignored the system of rotation in appointing a candidate who would not have been eligible under folk law. In this respect the Togolese government had adhered closely to the policy of the French colonists by appointing someone who was acceptable to them rather than the appropriate candidate under folk law.

This particular case also illustrates the resistance of political traditions to modern authority (Skalniĳ 1983, 1986). The traditional custom is not to appoint a successor after the death of a chief until the burial rites have been completed (Van Rouveroy van Nieuwaal 1987a). This takes a long time, during which there is no chief. For many years the government has sought to limit the period to two years. In 1980 the UNCTT itself made recommendations on these lines to the government, stating that action was needed in order to "put an end to the abuse of power and the machinations of ambitious power-seekers whose only aim is to disrupt law and order in our villages". Tough language though this may be, one wonders whether it was spoken by the chiefs themselves without prompting from the high-ranking National Unity Party officials who sit on the UNCTT. In a letter written in 1982 the Minister of the Interior (who is responsible for the chiefs) complained that this recommendation remained ineffective, and claimed that the reason why the interregnum was generally much longer than two years was simply the delay there would seem to be on each occasion before a successor was appointed. The government must, however, have noticed the administrative stagnation that occurs during such an interregnum, given that the local authorities are not able to carry out their duties in all corners of their districts - which are often immense in size - without the assistance of the chiefs.

## TOGO AND EYADÉMA, 1967-1990

Togo was a German colony from 1884 to 1914. In two weeks in August 1914 it was conquered by British troops from the Gold Coast (Ghana) and by the French, coming from Dahomey (Benin). The larger part came under French rule and decided in 1956 to join the French community. Four years later, it became fully independent (Cornevin 1987; Church 1988).

For a long period following independence the country was in a permanent state of tumult, which provided a reason for Eyadéma to seize power on 13th January 1967. He is now one of the longest-serving presidents in Africa. Until 1990 it

could be said that Eyadéma was Togo.<sup>13</sup>

Immediately after Eyadéma's coup the constitution was suspended and all political parties were dissolved. It was not until 1979 that a new constitution came into force (Leclercq 1980). During the intervening period the country was ruled by presidential ordonnances and decrees. Unlike many others this particular military regime apparently did not feel any immediate need to provide a legitimate basis for its authority through a constitution (Reyntjens 1986; Van Rouveroy van Nieuwaal 1989; Vangah 1990). The origins of the Togolese constitution of 1979 are closely connected with the RPT. During a RPT congress on 30 August 1979, Eyadéma decided - ten years after the party's foundation - that the military regime needed a constitution. Eyadéma also announced during the same congress that he intended to step down to pave the way towards a multi-party system. This was nothing new; he had made identical announcements in 1969 and 1971. The effects in 1979 were exactly the same as in previous years: the people assembled (of their own accord?) in large numbers around the presidential palace in Lomé, and demanded that Eyadéma stay on. Telegrams and other messages of support poured in from many kinds of sources, all urging the president not to resign. The general gave in to the demands, and continued as head of state.

Whatever the reasons may have been for Eyadéma's declaration of desire to resign from office, there can be no doubt that his image and charisma benefited from it. The personality cult became more intense afterwards, to such an extent that even the Togolese inclined to be irritated by it. Eyadéma must undoubtedly have known at the time that there was little likelihood of the country returning forthwith to its old multi-party system. In order to provide the RPT with a constitutional basis, a resolution was passed at an extraordinary party congress (27 to 28 November 1979) in which the RPT's policy-making committee was 'invited' to give effect to an earlier resolution to draw up a draft constitution. The draft was accepted on 30 December 1979. On the same date, the sole presidential candidate, Eyadéma, was re-elected virtually unanimously as head of state (Church 1988: 1043).

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13 Until October 1990 Eyadéma was referred to by a number of epithets, such as *le Guide de la Nation*, the *Leader Bien-Aimé*, *le Timonier National*, and sometimes *l'Homme du 13 janvier*, the reference here being to the date on which he came to power (Toulabor 1986: 16-19). Eyadéma was depicted by a well-known statue in Lomé showing him with his right arm raised so high that not only European visitors identified it with a well-known salute.

## THE RASSEMBLEMENT DU PEUPLE TOGOLAIS AND THE CHIEFS

On 30 august 1969 Eyadéma launched the idea of a national unity party, the 'Rassemblement du Peuple Togolais', to act as a "melting-pot in which all the country's *forces vitales* could blend together", as he put it (Cornevin 1987; Feuillet 1976; Prouzet 1976; Toulabor 1986; Verdier 1978; Yagla 1978). Togo's one-party system was born. The first major positive reaction came from the chiefs, who at their annual congress on 21 September passed a resolution expressing unanimous support for the new movement and its founder. This was just a year after the foundation of the UNCTT (Gbiki-Bénissan 1976: 383). Very little was heard from the UNCTT during the subsequent years until 1986, when the RPT decided to incorporate the UNCTT into the National Unity Party. Almost 20 years after its foundation, the UNCTT became member of the RPT, a so-called *aile marchante*, a marching wing of the RPT. In public the chiefs praised the President for that decision, but in interviews I had with some of them, they showed, in guarded terms, that they regarded this forced integration as a further step in the absorption of the chief into the state and its political institutions, a further loss of autonomy. In the same year, the UNCTT was given a direct line to the Central Committee of the RPT when the chairman of the UNCTT was appointed to the Central Committee and thus became, from a political viewpoint, one of the most prominent chiefs in the country.

As a result of their position in relation to the central government and the National Unity Party, the chiefs in Togo occupied during Eyadéma's regime an ambivalent, and sometimes a pivotal position (Van Rouveroy van Nieuwaal 1987b). On the one hand, they had regular relations with administrators and party officials; on the other, they acted as the representatives of their subjects vis-à-vis the government and the party. The chiefs thus acquired two power bases: the administrative and political machinery of the state, and the network associated with it; and a form of government founded on folk law in which the chief was both a member and the leader, forming the centre of an extremely extensive network of 'subjects'. The existence of two networks might strengthen a chief's position. Whether it did depended on whether the chief was capable of performing his pivotal function well, taking due account of both sides of the fulcrum, the people and the state. Let me illustrate this by an example taken from day-to-day legal practice.

After the land reforms were enacted in 1974 (Améga and Van Rouveroy van Nieuwaal 1979), an attempt was made to follow the principle that land was to be managed only by people who were capable of using it successfully, i.e. *distribuer la terre à ceux qui peuvent l'utiliser*. Local government was given the

task of enforcing this. It always seemed doubtful whether the government had the necessary instruments at its disposal for putting this principle into practice. A seemingly minor, but nevertheless significant, incident confirming this doubt occurred in September 1988 on the outskirts of Lomé. The city was expanding northwards, and the city council therefore wished to extend its boundaries to include the territory of a neighbouring village, Agoe Nyeve. The villagers were fiercely opposed, and serious disorder broke out. The *chef de canton*,<sup>14</sup> who also happened to be the chairman of the UNCTT, and as such a member of the Central Committee of the RPT, was torn between two loyalties. He proved unable to calm his people's emotions. The state then brought in the gendarmes, on the ground that it was obliged to enforce the Land Tenure law of 1974. They too were unsuccessful.

The Togolese chief, forced to be entirely loyal to Eyadéma and his One Party, became a mere puppet of government, almost entirely dependent on the state and its institutions such as the prefect. Among many others, a striking example of this dependency on the state concerns a dispute about the position of Essò Erateï, *chef de canton* in the prefecture of Bafilo (northern Togo).

The qualities of Essò Erateï are praised far and wide. He is said, for example, to possess supernatural powers which allow him to identify witches. His election in 1977 was the cause of great controversy. It was the President himself who cut the final knot and chose him as *chef de canton*. The election was exciting to the very last: eye-witnesses claim without reservation to have seen poisonous snakes under the rostrum on which Essò Erateï was standing, and say that these had been placed there by his opponents. However, they add, his supernatural powers meant that he was immune to any danger.

His authority was nonetheless dealt a forceful blow in September 1988, when he became involved in a marital conflict between a Fulbe (or Fulani/Peuhl) couple. He took sides with the wife, fell in love with her, and took her into his home. Some say in private that she even bore him a child.

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14 For the administrative divisions of Togo see Van Rouveroy van Nieuwaal 1987a.

The husband, whom many feared on account of his knowledge of supernatural forces, swore that Essò Erateĩ would not die a chief. Essò Erateĩ tried to have the curse lifted. Many attributed to the curse his failure to behave with the dignity required of a *chef de canton* during a subsequent public meeting. He repeatedly interrupted the prefect's speech and was unable to control his bladder. Eyadéma dismissed him from his post. The district officer then intervened. He did not believe the story of the curse and had heard the results of a medical examination on Essò Erateĩ, which had shown that he was suffering from an inflamed prostate. Subsequently the chief was reinstated.<sup>15</sup>

This story illustrates, apart from a number of other interesting matters, the political dependence of Togolese chiefs on the central government. The story of Essò Erateĩ might be compared with that of Na Tyaba Tyekura, the paramount chief of the Anufom (a people in N'zara, Mango, in northern Togo) who reigned from 1963 to 1977, when he was deposed (Van Rouveroy van Nieuwaal 1979). Once he had fallen into disfavour with the central government (see Van Rouveroy van Nieuwaal 1980), his position became untenable, partly because a faction within his own community, which maintained close relations with President Eyadéma, had managed to bring him into discredit. He died a year after his deposition in suspicious circumstances in a hospital in Lomé.

Despite the evidence provided by these examples, I would hesitate to claim, as I have done in a different context (Van Rouveroy van Nieuwaal 1989), that the Togolese state was omnipresent and omnipotent. A distinction needs to be made between the administrative presence of the state in the daily lives of all Togolese citizens, and the political presence of representatives of the National Unity Party. It was particularly by the political presence of the latter class of state representatives that the state appeared to be 'all-embracing' and dominant. The state itself persistently made this clear, not only by its representatives, but also by an extensive network of spies, which turned the state into a despotic system and largely ruled out effective internal opposition. It was against this background that the foundation of the National Commission of Human Rights in 1987 proved of vital importance (Van Rouveroy van Nieuwaal 1990b).

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<sup>15</sup> During my stay in Lomé in September-October 1991 I met chief Essò Erateĩ at the Ministry of Interior. I was a little surprised to see him still in function, as I had been told in 1988 that many believed his political career, and even his life, to hang by a thread, as long as the curse placed on him by the Fulbe was not lifted.



In a relatively small country like Togo, every citizen undoubtedly regarded the presence of the state through a network of spies as a threat. Nonetheless, the mere fact that the chiefs still played a prominent role in the day-to-day practice of law, despite various legal reforms and the resistance they encountered from within the administrative and legal systems, tended to contradict the idea of an 'all-embracing state'. The following example provides a good illustration of this point.

On 16 March 1990, a public meeting was held in front of the prefect's residence in Aného (southern Togo). The *Ministre d'Aménagement Rural* had been instructed to draw a number of matters relating to the reassessment of the ideals of the National Unity Party to the attention of the local authorities, the chiefs and the local people. Similar meetings were being held at the same time in every prefecture all over Togo by other members of the government.

All the chiefs of the prefecture, ranging from village chiefs to the *chefs de canton*, had come together, along with a large number of the townspeople. Such meetings are very colourful events. The chiefs are dressed in their full regalia, including magnificent headdresses decorated with gold or silver and an umbrella or a beautifully carved walking-stick. At that time it was usual for further lustre to be added to the occasion by the local *choc-groupe*, consisting of pupils of primary and secondary schools who had been trained to praise the noble deeds of the RPT in dance and song. Most of their praise was intended naturally for the founder himself, *le Général Gnassingbé Eyadéma, Président de la République Togolaise, Président-Fondateur du RPT*.

On this occasion, the *choc-groupe* was accompanied by a local youth band. One of the band members dared (although not loudly) to describe the meeting as a lot of 'blah-blah' to the greater glory of the RPT, during which no one was prepared to listen to the views of young people. This was enough for the police to have him put behind bars immediately.

The prefect wished to secure the boy's release. The course he took in this regard is significant. He took the matter up straightaway with one of the most prominent and most influential chiefs. He did this because he knew that the chief

was on good terms with senior government officials in Lomé.<sup>16</sup> The prefect's hope in doing this was to secure the boy's release.

It is in the same spirit of mutual consultation between the local government and the traditional leaders that the prefect holds a session every Friday in his office to deal with conflicts about land rights which have not been resolved by the *Tribunal de première Instance* and which are in urgent need of resolution. Such sessions have now become a permanent feature in all prefectures, since the government realises that the chiefs are eminently well-placed, particularly on questions relating to land rights, to make an accurate assessment of the many complex relations involved.

Apart from the chief's political dependency, his loss of social position, authority and respect is the subject of complaints. Many chiefs in Togo believe today that this loss is due to the creation of the National Commission of Human Rights. Chiefs have expressed their worries about citizens who have declined to attend when summoned in court. While this may be considered as a kind of civil disobedience, the chiefs feel themselves dishonoured. The concern over this is illustrated by the minutes of the first round-table conference of the Commission in 1989, devoted to the theme 'Civil Rights in respect to authority' (Van Rouveroy van Nieuwaal 1990b). A chief from the Kloto prefecture in southern Togo, Yao Gassou IV, was recorded as expressing his worries as follows:

In his speech, Chief Gassou stressed the fact that the traditional chiefs, who had been all-powerful during the pre-colonial era, had seen their power eroded step by step during the period starting with the colonisation of the country and stretching right up to the present day. As far as he was concerned, the law enacted in 1961 to reorganise the court system (Laloum 1961; Van Rouveroy van Nieuwaal 1976) had reduced the chiefs' powers considerably by discontinuing their right to do justice and confirming them in a simple conciliatory role.

The second reason for the chiefs' loss of authority, explained Chief Gassou, was a lack of familiarity with matters at hand, which certain of their number had demonstrated. The usurpation of the chiefs' power, of which a number of local

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16 This was chief Nana Quam Dessou XIV of Aného. See my film van Rouveroy van Nieuwaal 1992.

party bosses had been guilty during the years up to 1967, had also contributed to the loss of authority among the "guarantors of tradition", as he described the village chiefs. In Chief Gassou's opinion, the loss of authority among the village chiefs was not caused by the creation of the National Commission of Human Rights, but was a social phenomenon evolving from the countless changes affecting our modern world. In order to solve the problem before the situation became irreversible, Chief Gassou proposed granting powers to the village and district chiefs, organising regular refresher courses and regularly reminding those under their jurisdiction of their duties in order to instil a sense of respect towards the chiefs.<sup>17</sup>

This loss of authority touches immediately the functioning of chieftaincy in daily life. As I have already shown extensively in a number of publications and films (Van Rouveroy van Nieuwaal 1975, 1976, 1978, 1987a, 1987b, 1989, 1990a, 1992; Baerends and Van Rouveroy van Nieuwaal 1981, 1982) one of the primary functions of chiefs is dispute settlement. Formally, however, Togolese law denies this role of the chiefs, and it is my opinion that the law-makers pay insufficient attention to the social function of chiefs as settlers of disputes working alongside the judicial system established by the state. The members of the judiciary also generally seem not to wish to acknowledge the importance of their traditional counterparts. At the same time, I should add that a considerable number of judges whom I have met in the last few years have appreciated the value of the chiefs in local legal matters, particularly with regard to cases of witchcraft (Van Rouveroy van Nieuwaal 1990a). On the other hand, one has to admit that their (forced) loyalty<sup>18</sup> to Eyadéma during more than twenty years undermined people's respect for chiefs and reduced their authority, both of which factors a chief needs in his function as dispute settler. This leads us to the next question.

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17 Proceedings of the first Round Table Conference, organised on 5 May 1989 in Lomé by the National Commission of Human Rights, pp. 9-10.

18 A striking example of this 'loyalty' is given in my recent film, by chief Togbé Kpelly III of village Mission-Tové, southern Togo: "If Eyadéma said 'Kill!' - you killed!" (van Rouveroy van Nieuwaal 1992).

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## WHAT ARE THE PROSPECTS FOR THE TOGOLESE CHIEFTAINCY?

Many citizens of Togo regard the chiefs as personifications of the moral and political order, to a certain extent as their protectors against evil (Van Rouveroy van Nieuwaal 1987a). Consequently chiefs continue to settle disputes, and Togo's judicial system is built on the two cornerstones of the government and the chiefs.<sup>19</sup> On the other hand, the Togolese chief is firmly integrated into the administration of the state (Van Rouveroy van Nieuwaal 1987b).

In Togo, as in other African states, the chiefs therefore play an important administrative and legal role. It is difficult for the central government to acknowledge this openly, since it entails a deficiency in governmental power. On the other hand, a chief's authority is determined by the quality of his relations with his people, which depends partly on what he can provide to them. That would seem (and the word 'seem' is operative) to be declining at the moment, with chiefs' subjects deriving ever more from the state the satisfaction of their socio-economic needs: through facilities such as schooling, health care, technology and farming loans. In addition, the state is now one of the largest employers, if not the largest employer, in the country.

Social, economic and political changes have greatly affected the authority of the chiefs. They will survive as an institution only if they adapt themselves to the changing reality, both inwardly towards their own people, and outwardly towards the state. If they prove incapable of doing so, their role will soon come to an end, and historians will write of their having committed political suicide.

The Togolese President gave the impression of understanding the extremely complex situation of the Togolese chiefs. During a conversation I had in 1989 with the President's right-hand man, the Minister of the Interior, I was told that the President was frequently at a loss to comprehend why people should want to hold the office of chief, particularly as there was, officially at least, hardly any financial reward. Moreover, he seemed to understand how the chief was caught between Scylla and Charybdis, needing to achieve a balance between with the state with its own interests, and his own people with their aims sometimes totally at variance with the first. Thus the President offered the chiefs a moral boost by regularly praising them as 'guardians of our cultural values and identity'. The chiefs in the Lomé area were always invited to welcome important guests upon

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<sup>19</sup> This can be a problem for people wishing to remedy an injustice: which of the two judiciary systems should they use? See K. von Benda-Beckmann 1984; van Rouveroy van Nieuwaal and Baerends 1977; Silliman 1981.

their arrival at Lomé Airport. The Togolese television company had strict instructions to broadcast footage of the chiefs greeting President Eyadéma at such meetings, to illustrate the good relationship between them. (Of course, it was of the essence of the relationship that the chiefs were not entirely free to refuse such invitations. Absence would have been interpreted as disloyalty to the regime, and have led to suspension or dismissal from office.)

The general belief in Togo was that Eyadéma appreciated that the chiefs still satisfied a number of social requirements. He was therefore willing to allow them to exercise certain powers under folk law, within limits formulated by the government. Moreover, by his behaviour towards the chiefs in public, the President gave the impression of realising that good relations with them were beneficial to his own legitimacy, in spite of its constitutional basis after 1980. On the other hand, he missed no opportunity of letting the chiefs know clearly who was in charge of the country.

What did this policy mean in practice? Was the President's support for the chiefs nothing more than lip service paid to the traditional leaders who, the government realised, played an important role in the everyday lives of the people? Had the government effectively deprived the chiefs of all autonomy?

The present precarious situation of Togolese chiefs puts at stake an African-style democracy. Better understanding and more respect for the chief's authority could encourage decentralization and debureaucratization. These are essential if the effects of the recent oppressive and near-suffocating role of the One Party are to be removed. Decentralization in this sense would not mean what Bgoya and Hyden (1987: 25) warned against when they wrote of the "transfer of power to lower levels of a centrally controlled government". They observed further:

Such an exercise, as experience from many African countries suggests, only multiplies bureaucratic structures. It enhances state capacity for oppressing. Decentralization, therefore, must in the future entail strengthening various forms of local government as well as non-governmental organizations. Only by reducing the stake at each level and in every public institution - as chieftaincy is - will there be a way of bringing about greater democracy.

The obstacle, as already noted, is that, if the Togolese government formally acknowledges the chiefs' authority in this way, the state will be recognising that its own authority has failed, or at least that it has not been fully effective.

## DEVELOPMENTS SINCE 1990

Eventually the Togolese people, like others in Africa, revolted against the system of the One Party State, and in particular against its founder, General Eyadéma. The process started with a strike of taxidriviers and dockworkers in October 1990. In July 1991, after violent riots, especially in the quartier Bè in Lomé, Eyadéma's Party, the RPT, was dissolved and Eyadéma accepted a National Conference. After this Conference Joseph Koffigoh, a well known lawyer and the then President of the National Commission of Human Rights and Dean of the Bar Association, was chosen as Prime Minister and formed an interim government. However, Eyadéma remains Head of State, and, more important, Commander in Chief of the Army, the best organized and most powerful state organization.<sup>20</sup>

The National Commission of Human Rights has played an important role in these events. In July 1990 the entire membership of the Commission threatened to resign in protest at forced integration into Eyadéma's Party. Today more than twenty political parties have been formed and are preparing for the presidential elections in 1992. As far as I know Eyadéma is excluded from standing as a candidate in those elections.

One of the main problems in the period of transition is a serious lack of administrative authority. Crime is increasing. At night-time gangs of young people terrorize the streets claiming to be 'guardians for democracy'. Everybody fears to leave home. Assaults, arson, and even murder are quite common. There is a kind of chaos which seems to be of great interest to the pro-Eyadéma faction. The police and gendarmerie do not function properly. Considered as mere puppets of the Eyadéma regime, people do not take them seriously.

Similarly chiefs have almost completely lost their authority. They are criticised for their support of Eyadéma, and people speak of the 'barons' and the 'footmen' of the RPT. With the dissolution of the Party, the UNCTT has also been dissolved. Only one chief among several hundred was a member of the Haut Conseil de la République, a Consultative Committee created during the meetings of the National Conference in July-August 1991. In an interview with this chief in October 1991, I was told that many chiefs were completely

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20 Repeatedly small groups of soldiers attempted coups d'état with or without Eyadéma's secret support. Although in most cases unsuccessful, the army at one stage succeeded in arresting the Prime Minister and forcing him to cooperate with Eyadéma and to form a new interim government in which Eyadéma's political clan was represented.

disorientated, and without any authority over or respect from their own people. There have been many requests to the National Commission of Human Rights to repair that loss of authority, but these have been without effect.

One of the most criticised instances of support for Eyadéma was that given by the local chief Aklassou III in April 1991 after the riots in Quartier Bè. During these 29 young people were drowned in the lagoon or beaten to death by soldiers. Chief Aklassou made no protest, and did not dare to show his face during these awful events.<sup>21</sup> The following day he, together with several other chiefs from the Lomé area, appealed on television to his people for calm and for the cessation of threats against and damage to the property of their co-residents of the Kabye people. Eyadéma himself is a Kabye, and rumours went around that the chiefs were bribed by Eyadéma to make this broadcast.

One gains the impression in conversation that nobody in Togo wants to abrogate the institution of chieftaincy. The general view is, however, that state nomination to the post, introduced by the colonial legislator, must be abolished. Moreover, a chief should no longer be able to manipulate his people to vote, as one man, for the chief's political party. The chief's position must be *dépolitisé*. He should be elected purely according to local customary constitutional law without any state intervention. If this policy is carried out, many chiefs will be deposed in the near future, as Eyadéma nominated many of them only because of their political services in the RPT without their having any traditional entitlement.

The new leaders realize that chiefs fulfill many social-legal functions, such as dispute-settlement and the registration of births, deaths and marriages, especially

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21 A. Dovi, a merciless faultfinder of Eyadéma's regime, President of the Bar Association and President of the National Commission of Human Rights, said of chief Aklassou during an interview I had with him on 5 October 1991 in Lomé:

Je vais jusqu'à penser que le chef Aklassou dans cette peur viscérale de la réaction de l'armée, a préféré avoir une attitude même que je taxe de complice et de coupable....je ne sais s'il faut le considérer comme étant responsable ou si lui-même est victime d'un certain système...vous savez...les chefs de cantons sont pris dans un étau. En réalité ils ont leur personnalité complètement anéanti par ce pouvoir [d'Eyadéma], qui a réussi à faire d'eux des laquais. Tout simplement, c'est en cela peut-être qu'on peut le [i.e., chief Aklassou] considérer qu'il est victime, lui-aussi de ce système.

See my documentary film: van Rouveroy van Nieuwaal 1992.

in non-urban areas. There is still a belief that chiefs remain important as a kind of local-level intermediary between the state and the people. As chieftaincy is still regulated by French colonial legal rules (Van Rouveroy van Nieuwaal 1976), new law will be proclaimed. As a legal anthropologist I know that any such legal innovation, is likely to have side-effects, mostly unexpected (F. Von Benda-Beckmann 1989; Griffiths 1986; Van Rouveroy van Nieuwaal 1991). Trying to establish his position in this process towards democratization, the Togolese chief may unfortunately not expect much support from the National Commission of Human Rights. Chieftaincy is not one of the Commission's priorities.

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