



Republic of Togo
Joint Submission to the UN Universal Periodic Review
40th Session of the UPR Working Group

Submitted 15 July 2021

**Submission by CIVICUS: World Alliance for Citizen Participation,
NGO in General Consultative Status with ECOSOC
And
Coalition Togolaise des Défenseurs des Droits Humains (CTDDH)
And
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Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2** Coalition Togolaise des Défenseurs des Droits Humains (CTDDH) is a coalition of non-denominational, non-political associations created on 12 April 2002. Its objective is to create a framework of protection of human rights defenders (HRDs) through its activities. CTDDH consists of 20 organisations, including Amnesty International Togo and Action des Chrétiens pour l'Abolition de la Torture (ACAT-Togo). It is a member of the West African Human Rights Defenders Network (WAHRDN/ROADDH).
- 1.3** WAHRDN/ROADDH is a CSO that works to promote the work of HRDs. It is made up of national coalitions of human rights and individual focal points. It covers the 15 Economic Community of West African States (ECOWAS) member states and Mauritania. It has Observer Status at the African Commission on Human and Peoples' Rights (ACHPR) and is a member of the Executive Committee of the NGO Forum at the ACHPR.
- 1.4** In this submission, the authors examine the Government of Togo's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Togo's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on HRDs since its previous UPR examination in October 2016. To this end, we assess Togo's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of follow-up recommendations.
- 1.5** During the 2nd UPR cycle, the Government of Togo received 11 recommendations relating to the space for civil society (civic space). Of these recommendations, seven were accepted and four were noted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrates that the Government of Togo has not implemented any of these recommendations relating to civic space. The government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination and particularly acute implementation gaps were found with regard to the rights to the freedoms of expression and peaceful assembly and the state's duty to protect.
- 1.6** Civic space has been collapsing in Togo since a crackdown on anti-government opposition protests in 2017-2018, which demanded a return to the provisions of the

1992 constitution that included a two-term limit for presidents. We have been deeply concerned by the civic space violations since 2017, which include the killing of protesters, the arrest and prosecution of HRDs, journalists and pro-democracy activists, the banning of civil society and opposition protests, the suspension of media outlets, regular disruption of access to the internet and social media and the adoption of restrictive legislation.

1.7 As a result of these multiple attacks, civic space in Togo is currently classified as 'repressed' by the CIVICUS Monitor, indicating the existence of severe civic space restrictions.¹

- Section 2 of this submission examines Togo's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines Togo's implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 4 examines Togo's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, media freedom and access to information.
- Section 5 examines Togo's implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 6 contains recommendations to address the concerns raised and advance implementation of recommendations under the 2nd cycle.
- An annex on the implementation of 2nd cycle UPR recommendations related to civic space is in Section 7.

2. Freedom of association

2.1 During Togo's examination under the 2nd UPR cycle, the government received two recommendations on the right to the freedom of association and creating an enabling environment for CSOs. Both were noted by the Government of Togo and neither have been implemented.

2.2 Article 30 of the 2019 Constitution of the Fifth Republic guarantees the right to the freedom of association.² Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Togo is a state party, also guarantees the freedom of association. However, despite these commitments, the government has undermined the freedom of association by delaying CSO registration processes,

¹ CIVICUS Monitor: Togo, <https://monitor.civicus.org/country/togo>.

² 1992 Constitution as amended in 2007 and 2019.

interfering in the activities of pro-democracy and human rights CSOs and preventing CSO meetings.

- 2.3** Freedom of association is regulated through the 1901 French Law on Associations, made applicable in Togo by decree 46-432 of 13 March 1946. It contains unwarranted restrictions. According to the Law's article 3, legal registration of an association can be denied if its objectives or purposes are deemed to contravene 'morality or aims to undermine the integrity of the national territory and the good republican form of the government'. These are overly vague concepts that can be used to deny legal registration to associations working on topics considered sensitive.
- 2.4** Additionally, articles 39 and 40 of Law 009-2019 on National Security allow the Minister of Territorial Administration, and under certain conditions local authorities, to suspend the activities of associations and the closure of meeting places in case of 'risks of serious violations of public order'.
- 2.5** A draft Law on Association was adopted by the Council of Ministers in April 2016.³ If approved, the government could, in the Council of Ministers, dissolve an association without judicial intervention. Additionally, the draft law does not recognise informal associations. Further, the draft law states that associations must respect national laws and morals, a provision that could be used to discriminate against LGBTIQ+ people, as consensual same-sex relations remain criminalised under the Penal Code, adopted on 3 November 2015.⁴ The draft law has not yet been passed by the National Assembly.
- 2.6** The freedom of association has been undermined by delays to CSO registration processes and interference in the activities of pro-democracy and human rights CSOs.⁵ Several CSOs reported having had difficulties in registering their associations. The anti-torture organisation Association des Victimes de Torture du Togo, for example, has been waiting for the receipt of its declaration of registration since 2012, undermining its ability to raise funds, particularly from international donors.⁶
- 2.7** Prior to the disputed presidential elections in February 2020, the authorities denied or revoked accreditation to CSOs to observe the elections. On 17 February 2020, the Commission électorale nationale indépendante, Togo's national electoral commission, withdrew the accreditation of civil society platform Concertation nationale de la société civile (CNSC) on grounds of 'interference' in the electoral

³ 'Togo: une nouvelle loi inquiète les associations', RFI, 13 April 2016, <https://www.rfi.fr/fr/afrique/20160413-togo-loi-inquiete-associations>.

⁴ 'Civic space backsliding ahead of elections in Francophone West Africa', CIVICUS, October 2020, https://civicus.org/documents/reports-and-publications/eena-reports/west-africa-report-2020_en.pdf.

⁵ CIVICUS, October 2020, op. cit.

⁶ Ibid.

process.⁷ Three staff members of the US-based National Democratic Institute who were in Togo to assist CNSC were expelled from the country.⁸ In January 2020, the Episcopal Council for Justice and Peace (CEJP) of the Catholic Church saw its application for observing the elections rejected. The Minister of Territorial Administration, Payadowa BoukpeSSI, accused CEJP of a lack of neutrality and transparency in its finances, citing the ‘clear partisan positions on the political situation our country has known since August 2017’.⁹

2.8 The authorities, via the Ministry of Territorial Administration, Decentralisation and Development of Territories, have on several occasions prevented CSO meetings and events from taking place. On 18 July 2020, security forces prevented an event to launch the pro-democracy organisation Mouvement Conscience Mandela (MCM) taking place at a hotel in Lomé, claiming the organisation had no legal basis.¹⁰ MCM was created in 2018 and had submitted its registration documents but had not received its receipt of registration from the authorities.¹¹ On 29 May 2018, a press conference in Lomé by CSO Association pour la Promotion de l’Etat de Droit (APED) on how to end the political crisis was prevented by security forces, which claimed that APED had no legal basis.¹²

2.9 On 30 July 2018, the authorities threatened human rights organisation Ligue Togolaise des Droits de l’Homme (LTDH) with judicial prosecution following the publication of LTDH’s report on human rights violations related to the anti-government opposition protests that started in August 2017 (see 5.5). In a statement, the Togolese government said that the report is ‘a partisan balance and devoid of objective foundation’, further reserving the right ‘to take legal action in

⁷ ‘Présidentielle au Togo: un groupe de la société civile perd le droit de déployer des observateurs’, VOA Afrique, 19 February 2020, <https://www.voaafrique.com/a/pr%C3%A9sidentielle-au-togo-un-groupe-de-la-soci%C3%A9t%C3%A9-civile-perd-le-droit-de-d%C3%A9ployer-des-observateurs/5295222.html>.

⁸ ‘Statement on Expulsion of NDI staff from Togo and Restrictions on Election Monitoring’, National Democratic Institute, 20 February 2020, <https://www.ndi.org/publications/statement-expulsion-ndi-staff-togo-and-restrictions-election-monitoring>.

⁹ ‘Au Togo, des voix chrétiennes se prononcent sur la présidentielle du 22 février’, La Croix, 30 January 2020, <https://www.la-croix.com/Religion/Catholicisme/Monde/Au-Togo-voix-chretiennes-prononcent-presidentielle-22-fevrier-2020-01-30-1201075283>.

¹⁰ ‘Togo – Les forces de l’ordre empêchent le lancement du Mouvement Conscience Mandela’, iciLome.com, <https://news.icilome.com/?idnews=885116/togo-les-forces-de-l-ordre-empêchent-le-lancement-du-mouvement-conscience-mandela>.

¹¹ ‘Togo: la police perturbe la naissance du “Mouvement Conscience Mandela”’, TogoBreakingNews.info, 19 July 2020, <https://togobreakingnews.info/togo-la-police-perturbe-la-naissance-du-mouvement-conscience-mandela>.

¹² ‘La Conférence de presse au CESAL du trio d’avocats Degli-Ajavon-Djovi-Gally empêchée par des gendarmes’, aLome.com, 29 May 2018, <http://news.alome.com/p/73259.html>; ‘Ce que cache la dernière interdiction de la conférence de presse de Togo Debout’, Togoweb.net, 8 June 2018, <https://togoweb.org/ce-que-cache-la-derniere-interdiction-de-la-conference-de-presse-de-togo-debout>.

this case after a complete analysis of the said report'.¹³

3. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

- 3.1** Under Togo's previous UPR examination, the government received two recommendations on the protection of HRDs, civil society representatives and journalists. The government committed to 'improve access to justice for women through legal aid and ensure that women human rights defenders can work safely and are not hindered in their activities'. One recommendation was accepted and one was noted. However, as examined in this section, the government has not implemented either recommendation.
- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR further guarantees the freedoms of association, peaceful assembly and expression. However, in spite of these protections, HRDs, trade unionists and journalists are frequently subjected to intimidation, harassment, arbitrary arrests and judicial prosecution under a range of restrictive laws such as the Penal Code and the Cybersecurity Law.
- 3.3** Several trade unionists of the newly formed Syndicat des Enseignants du Togo (SET) were arrested between 17 and 19 January 2021 following a call for a teachers' strike, sending shockwaves through the trade union movement and motivating others to go into hiding.¹⁴ On 20 January 2021, gendarmes entered the offices of trade union organisation Synergie des Travailleurs du Togo (STT), interrupted a meeting and arrested four trade unionists, including three SET officials, without an arrest warrant. The three were at the STT's offices as it had offered to act as a mediator between SET and the government.¹⁵ A total of eight trade unionists were arrested, seven of whom were released under judicial control on 22 January. The trade unionists were reportedly accused of forgery and the use of false documents.¹⁶ On 22 May 2021, security forces dispersed the constitutive general assembly of SET at a hotel in the Lomé neighbourhood of Kégué, briefly detained several attendees

¹³ 'Togo: des membres de la LTDH menacés de poursuites judiciaires', International Federation for Human Rights, 6 August 2018, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/togo-des-membres-de-la-ltdh-menaces-de-poursuites-judiciaires>.

¹⁴ 'Togo: multiplication des arrestations de syndicalistes', RFI, 22 January 2021, <https://www.rfi.fr/fr/afrique/20210122-togo-multiplication-des-arrestations-de-syndicalistes>.

¹⁵ 'Communiqué de presse. Synergie-Togo dénonce l'arrestation de syndicalistes et les entraves aux libertés au Togo', Synergie-Togo, 22 January 2021, <https://www.synergietogo.com/synergie-togo-denonce-larrestation-de-syndicalistes-et-les-entraves-aux-libertes-au-togo>.

¹⁶ 'Togo: Levée de boucliers de la STT après des arrestations de syndicalistes', Koaci, 22 January 2021, https://www.koaci.com/article/2021/01/22/togo/societe/togo-levee-de-boucliers-de-la-stt-apres-des-arrestations-de-syndicalistes_148285.html.

and reportedly confiscated six motorcycles from participants.¹⁷

- 3.4** On 21 April 2020, two HRDs of the human rights organisation Collectif des associations contre l'impunité au Togo, Kossi Béni Okouto and Degboe Mawuena Doudji and journalist Teko-Ahatefou Aristo of online news site Togo Actualité were detained when they were in the vicinity of the residence of opposition leader Agbéyomé Kodjo to observe and report on Kodjo's arrest. They were held at the Central Research and Criminal Investigation Services and released later that day.¹⁸
- 3.5** On 19 January 2019, the Criminal Court of Lomé sentenced pro-democracy activist Folly Satchivi of the movement En aucun cas to a prison sentence of 36 months, of which 12 months were suspended, on charges of 'glorification of crimes and offences' and 'aggravated disturbance of public order' under articles 552-1 and 495-3 of the Penal Code. He was acquitted on the additional charge of 'rebellion'.¹⁹ Satchivi was arrested on 22 August 2018 while on his way to the office of a CSO where he was to hold a press conference that was deemed illegal by the authorities.²⁰ In October 2019, the sentence was reduced on appeal to 28 months, of which six months were suspended.²¹ Satchivi was released from prison on 16 October 2019 following a presidential pardon.²²
- 3.6** In October 2019, three activists of regional pro-democracy movement Tournons la Page (TLP) – Alexandre Didier Amani of TLP Côte d'Ivoire and Karim Tanko and Maikoul Zodi of TLP Niger – were denied entry to Togo. The three activists were due to attend the ceremony of two Togolese civil society groups joining the TLP

¹⁷ 'Des enseignants dispersés à Lomé par les forces de sécurité', TogoBreakingNews, 22 May 2021, <https://togobreakingnews.info/des-enseignants-dispersee-a-lome-par-les-forces-de-securite>; 'Dispersion de l'Assemblée Générale du syndicat des enseignants du Togo: Les FDR dénoncent une "violation grave et inacceptable de la liberté syndicale"', Afrik Soir, 26 May 2021, <https://afriksoir.net/societe/dispersion-de-lassemblee-generale-du-syndicat-des-enseignants-du-togo-les-fdr-denoncent-une-violation-grave-et-inacceptable-de-la-liberte-syndicale>.

¹⁸ 'Togo: le CACIT dénonce l'arrestation des défenseurs des droits de l'homme', Africa Rendez-vous, 30 April 2020, <https://www.africardv.com/politic/togo-le-cacit-denonce-larrestation-des-defenseurs-des-droits-de-lhomme>; 'Togo: les autorités doivent de toute urgence protéger les défenseurs des droits humains', West Africa Human Rights Defenders Network, 4 May 2020, <https://africandefenders.org/fr/togo-les-autorites-doivent-de-toute-urgence-protoger-les-defenseurs-des-droits-humains>.

¹⁹ 'Lourde peine pour un jeune activiste accusé d'apologie de crime', RFI, 17 January 2019, <https://www.rfi.fr/fr/afrique/20190116-togo-folly-satchivi-peine-prison-jeune-activiste-accuse-apologie-crime>.

²⁰ 'Arrestation de l'activiste Folly Satchivi du mouvement "En aucun cas"', RFI, 23 August 2018, <https://www.rfi.fr/fr/afrique/20180822-togo-arrestation-activiste-folly-satchivi-mouvement-aucun-cas>.

²¹ 'La Cour d'Appel maintient Folly Satchivi en prison pour 8 mois encore', iciLome.com, 10 October 2019, <https://news.icilome.com/?idnews=874365/la-cour-d-appel-maintient-folly-satchivi-en-prison-pour-8-moisencore>.

²² 'L'activiste togolais Satchivi enfin libre', Deutsche Welle, 17 October 2019, <https://www.dw.com/fr/lactiviste-togolais-folly-satchivi-enfin-libre/av-50865695>.

movement.²³

- 3.7** On 4 April 2018, officers of the Intelligence and Investigation Service (SRI) arrested Assiba Johnson, president of the CSO Regroupement des jeunes africains pour la démocratie et le développement, following the organisation's joint publication of a preliminary report on the crackdown on protests between August 2017 and January 2018.²⁴ Johnson was sentenced to 18 months in prison, of which six months were suspended, for 'spreading false news' and 'insulting public authorities'.²⁵ He was released on 5 April 2019 having served his sentence.²⁶
- 3.8** Several members of the Nubuéké movement were arrested between October 2017 and January 2018. SRI officers arrested the movement's coordinator in Kpalimé, Bob Atikpo, who received a prison sentence of 12 months, of which nine were suspended, for 'spreading false news'.²⁷ Two other members of the movement, Messan Kokodoko and Eza Kokou Dodji, were arrested on 17 and 19 October 2017 respectively in relation to their participation in protests. The two remained in preventive detention until their release on 31 January 2019 due to a presidential pardon.
- 3.9** On 12 October 2017, four pro-democracy HRDs from the Africans Rising movement, who were on a solidarity mission to Togo, were arrested and interrogated at the offices of the judicial police for several hours, without their lawyer present. Police searched their hotel room, without a search warrant, and their passports, IT equipment and attendance lists were confiscated. The four were released on 13 October but their passports and equipment were not returned until 17 October. Until then, they were barred from leaving Togo.²⁸
- 3.10** Journalists are also subjected to arbitrary arrests, threats, intimidation and judicial harassment. On 3 February 2021, three journalists, Charles Kponwadan of the media outlet Horizon, Ramuald Lansou of Togoinfos and Anani Vidzraku of Radio Victoire,

²³ 'Yark Damehame au membres de "Tournons la Page": "Le Togo n'est pas un terrain d'expérimentation"', aLome.com, 16 October 2019, <http://news.alome.com/h/122042.html>.

²⁴ 'Le défenseur des droits de l'Homme Johnson Assiba arrêté', iciLome.com, <https://news.icilome.com/?idnews=847734&t=le-defenseur-des-droits-de-l-homme-johnson-assiba-arrete>.

²⁵ 'Poursuite du harcèlement judiciaire de MM. Folly Satchivi et Johnson Assiba', International Federation for Human Rights, 15 January 2019, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/togo-poursuite-du-harcelement-judiciaire-de-mm-folly-satchivi-et>.

²⁶ 'Togo: Johnson Assiba retrouve la liberté', 24heures Info, 5 April 2019, <https://24heureinfo.com/a-la-une/togo-johnson-assiba-retrouve-la-liberte>.

²⁷ 'Bob Atikpo de "Nubuéké" finalement condamné à 9 mois de prison', iciLome.com, <https://news.icilome.com/?idnews=846960&t=bob-atikpo-de-nubueke-finalement-condamne-a-9-mois-de-prison>; 'Togo: the authorities must put an end to the judicial harassment of pro-democracy activists and human rights defenders', Amnesty International, 15 February 2018, <https://www.amnesty.org/download/Documents/AFR5779062018ENGLISH.pdf>.

²⁸ 'Togo: Security forces, political parties must exercise restraint after call for fresh protests today', Amnesty International, 18 October 2017, <https://www.amnesty.org/en/latest/news/2017/10/togo-forces-de-securite-et-partis-politiques-doivent-faire-preuve-de-retenu>.

were arrested after interviewing Togbui Dagban-Ayivon, the head of Adakpamé District who has often been critical of the government, after he attended a hearing, summoned by the Head of Golfe District Komlan Agbotsè. The journalists were reportedly arrested on the orders of Agbotsè and were questioned and taken to the Territorial Brigade of the National Gendarmerie in Lomé, where they were interrogated again for three hours before being released. The journalists' working material and phones were confiscated by Agbotsè's bodyguards.²⁹

3.11 On 29 December 2020, armed security officers detained Carlos Kétohou, editor of the newspaper *l'Indépendant Express*, along with other journalists, in Lomé.³⁰ Kétohou was held for four nights on accusations of defamation. He was released on 2 January 2021.³¹ Two days later, he was summoned before Togo's national media regulator, Haute Autorité de l'audiovisuel et de la communication (HAAC), which accused Kétohou of defamation and violating the Code of Ethics over an article alleging the theft of 'golden spoons' by women ministers. HAAC ordered the newspaper to cease all operations, online and in print, and requested the Court of First Instance to withdraw the newspaper's operating licence; the court granted this request.³²

3.12 On 4 November 2020, journalist and editor Ferdinand Ayité and his bi-weekly newspaper *l'Alternative* were found guilty by the Court of First Instance of Lomé of defamation under articles 160 and 164 of the Press Code. Ayité and the newspaper were each ordered to pay fines of 2 million CFA francs (approx. US\$3,600).³³ Fabrice Adjakly, a member of the Petroleum Product Price Fluctuations Monitoring Committee, made the complaint in relation to the newspaper's article in June 2020 alleging years of embezzlement in the import of petrol and the fixing of petrol prices, implicating Adjakly and his father. Since the publication of the article, Ayité has been subjected to threats, including death threats, particularly through anonymous

²⁹ 'Three Journalists Arrested, Critical Chief Summoned', Media Foundation for West Africa, 17 February 2021, <https://www.mfwa.org/three-journalists-arrested-critical-local-chief-summoned>; 'Trois journalistes arrêtés pour interview à la préfecture', Togoair.com, 3 February 2021, <https://togoair.com/2021/02/03/trois-journalistes-arretes-pour-interview-a-la-prefecture>.

³⁰ 'Togo: le journaliste Carlos Kétohou toujours détenu, sa méthode d'interpellation fait réagir', RFI, 1 January 2021, <https://www.rfi.fr/fr/afrique/20210101-le-journaliste-carlos-k%C3%A9tohou-toujours-d%C3%A9tenu-sa-m%C3%A9thode-d-interpellation-fait-r%C3%A9agir>.

³¹ 'Togo: Les organisations de la presse se réjouissent de la libération de Carlos Kétohou', 24heures Infos, 7 January 2021, <https://24heureinfo.com/justice/togo-les-organisations-de-presse-se-rejouissent-de-la-liberation-de-carlos-ketohou>.

³² Décision n 001/HAAC/21/P, la Haute Autorité de l'Audiovisuel et Communication, 4 January 2021, <http://www.haactogo.tg/wp-content/uploads/2021/01/D%C3%A9cision-de-la-HAAC-portant-saisine-du-Pr%C3%A9sident-du-Tribunal-de-Premi%C3%A8re-Instance-de-Lom%C3%A9.pdf>.

³³ 'Pétrole-gate: Ferdinand et *l'Alternative* condamné à 4 millions d'amende', 24heures Infos, 4 November 2020, <https://24heureinfo.com/a-la-une/petrole-gate-ferdinand-ayite-et-son-journal-condamnes-a-4-millions-damende>.

³⁴ 'Togo: Condamnation de M. Ferdinand Mensah Ayité, directeur du journal *l'Alternative*', International Federation for Human Rights, 12 November 2020, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/togo-condamnation-de-m-ferdinand-mensah-ayite-directeur-de>.

calls.³⁴

4. Freedom of expression, media freedom and access to information

- 4.1** Under the 2nd UPR cycle, the government received seven recommendations relating to the freedom of expression, media freedom and access to information. For example, the government pledged to ‘take steps to protect freedom of expression and opinion, as provided for in the International Covenant on Civil and Political Rights’ and to ‘reform the laws that hamper the exercise of freedom of expression to ensure that they are in line with international human rights norms’. Five recommendations were accepted and two were noted. However, as discussed below, the government has not implemented any of these recommendations.
- 4.2** ICCPR article 19 guarantees the right to the freedoms of expression and opinion. Article 26 of the 2019 Constitution also guarantees the right to the freedom of expression.³⁵ However, in practice, restrictive laws, particularly the Penal Code and Cybersecurity Law, hamper the freedom of expression. Additionally, HAAC regularly suspends and sanctions media outlets while access to internet and social media have been disrupted on several occasions.
- 4.3** The Penal Code contains several restrictions that stifle the freedom of expression.³⁶ Article 497 criminalises ‘the production, dissemination or reproduction, through any means of false news, fabricated pieces, falsified or untruthfully attributed to third parties where, in bad faith, it disturbs the public peace or is likely to disturb it’ with prison sentences from six months to two years and fines of between 500,000 and 2 million CFA francs (approx. US\$900 to US\$3,600). Defamation and insulting public officials remain criminalised in the Penal Code with prison sentences of up to six months and a fine.³⁷ Article 552 criminalises seditious chants in public or in assemblies.
- 4.4** The Cybersecurity Law,³⁸ adopted in December 2018, further restricts the freedom of expression by introducing prison terms for online insults, the dissemination of false news, undermining public morality and disseminating data that undermines

³⁴ ‘Togo: Condamnation de M. Ferdinand Mensah Ayité, directeur du journal l’Alternative’, International Federation for Human Rights, 12 November 2020, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/togo-condamnation-de-m-ferdinand-mensah-ayite-directeur-de>.

³⁵ Op. cit.

³⁶ Law 2015-010 of 24 November 2015 on the new Penal Code.

³⁷ Ibid., articles 291-296 and 301-302.

³⁸ Law 2018-026 of 7 December 2018 on Cyber Security and the Fight against Cyber Crime.

order, public security or human dignity.³⁹ Dissemination of false information can be punished with prison sentences up to three years.⁴⁰ The production, spreading and sharing information that could undermine public order, security or human dignity carries a prison sentence of up to two years.⁴¹ Anyone found guilty of terrorism or treason could be sentenced up to 20 years in prison.⁴² HRDs fear these provisions could be used against whistle-blowers. Additionally, the Cybersecurity Law grants police powers, including for surveillance of communication or IT equipment, without adequate judicial oversight.⁴³

- 4.5** Article 153 of the 2020 Press and Communication Code prescribes fines of between 500,000 and 1 million CFA francs (approx. US\$900 to US\$1,800) for ‘dissemination or publication of information at variance with reality in an apparent effort to manipulate the conscience or misrepresent information or facts’.⁴⁴ The same fine and a temporary suspension of a broadcasting or publishing licence of between 15 days and three months can be levelled against a national media body that ‘reproduces information at variance with reality, published or broadcasted by foreign media sources’. The Code further provides, in articles 159 to 169, for fines for defamation and insulting public officials.
- 4.6** HAAC has extensive powers to grant and suspend licences of media outlets and has continued to use its broad powers to sanction media outlets arbitrarily. On 5 February 2021, HAAC suspended l’Alternative for a period of four months on accusations of publishing false news following a complaint by the Minister of Town Planning, Housing and Land Reform, Koffi Tsolenyanou, over an article published on 2 February 2021 alleging that Tsolenyanou forged documents.⁴⁵
- 4.7** On 4 January 2021, HAAC ordered the l’Indépendant Express newspaper to cease all operations, online and print, and its operating licence was withdrawn by the Court of First Instance (see 3.11).⁴⁶
- 4.8** HAAC suspended three media outlets in March 2020. On 23 March 2020, l’Alternative and the daily Liberté were suspended for a period of two months and 15 days respectively on the grounds that the veracity of articles they had published

³⁹ Ibid., articles 17, 25, 27 and 28.

⁴⁰ Article 25.

⁴¹ Article 28.

⁴² Articles 21, 22, 29.

⁴³ Ibid., articles 40-46.

⁴⁴ Law no. 2020-001 of 7 January 2020 on the Press and Communication Code in the Republic of Togo.

⁴⁵ ‘Togo: Regulator Suspends l’Alternative Newspaper’, Media Foundation for West Africa,

<https://www.mfwa.org/the-haac-suspends-lalternative-newspaper-for-4-months>.

⁴⁶ ‘Togo: la justice retire le récépissé au journal “l’Indépendant Express”’, Africa Rendez-vous, 16 January 2021, <https://www.africardv.com/societe/togo-la-justice-susptogo-la-justice-retire-le-recepisse-au-journal-lindependant-expressend-le-journal-lindependant-express>.

'was not established'.⁴⁷ The action by HAAC ensued after a complaint from the French ambassador to Togo over articles about the ambassador and the Africa advisor to the French president. HAAC further suspended the weekly *Fraternité* on 30 March 2020 for a period of two months over an article, published on 25 March 2020, describing HAAC's decision to suspend *l'Alternative* and *Liberté* as 'overzealous'.⁴⁸

4.9 HAAC withdrew the operating licence of the *La Nouvelle* newspaper on 25 March 2019 on accusations of publishing 'unverified information', incitement of ethnic and religious hatred, abuse of the privacy of citizens and uttering slander and insults.⁴⁹

4.10 A law on national security, adopted in August 2019, allows the Minister of Territorial Administration in conjunction with the Minister of Security to order the removal or blocking of online content and to shut down online communications.⁵⁰ The authorities have disrupted access to the internet and social media on several occasions. On 22 February 2020, the day of presidential elections, access to social media platforms was blocked on two state-owned providers.⁵¹ During the anti-government protests that erupted in August 2017 (see 5.5), the authorities shut down the internet for nine days. The ECOWAS Community Court of Justice ruled on 15 June 2020 that the 2017 internet shutdown was a violation of the right to the freedom of expression and called on the authorities to take the necessary measures to guarantee there would be no repetition.⁵²

4.11 An investigation in 2020 by *The Guardian* and *Le Monde* revealed that the phones of at least six government critics were targeted by Pegasus spyware. Among those

⁴⁷ 'Décision no. 13/HAAC/20/P portant suspension du bihebdomadaire *L'Alternative*', HAAC, 23 March 2020, <http://www.haactogo.tg/wp-content/uploads/2020/03/DECISION-N%C2%B013-ALTERNATIVE-du-23-Mars2020.pdf>; 'Décision no. 14/HAAC/20/P portant suspension du quotidien *Liberté*', HAAC, 23 March 2020, <http://www.haactogo.tg/wp-content/uploads/2020/03/DECISION-N%C2%B014-LIBERTE-du-23-Mars-2020.pdf>; 'Au Togo, deux journaux d'opposition suspendu après une plainte de la France', *Le Monde*, 27 March 2020, https://www.lemonde.fr/afrique/article/2020/03/27/au-togo-deux-journaux-d-opposition-suspendus-apres-une-plainte-de-la-france_6034634_3212.html.

⁴⁸ 'Décision no. 15/HAAC/20/P portant suspension du quotidien *Fraternité*', HAAC, 30 March 2020, <http://www.haactogo.tg/wp-content/uploads/2020/03/D%C3%A9cision-de-la-HAAC-portant-suspension-deFraternit%C3%A9.pdf>.

⁴⁹ 'Media Regulator Revokes Newspaper Editor's License to Publish', Media Foundation for West Africa, <https://www.mfwa.org/country-highlights/media-regulator-revokes-newspaper-editors-licence-to-publish>.

⁵⁰ Article 50, law no. 2019-009 on Internal Security.

⁵¹ 'A shutdown taints Togo's 2020 presidential elections: what happened and what is next', Access Now, 2 March 2020, <https://www.accessnow.org/a-shutdown-taints-togos-2020-presidential-elections-what-happened-and-whats-next>; 'Social media disrupted in Togo on election day', NetBlocks, 22 February 2020, <https://netblocks.org/reports/social-media-disrupted-in-togo-on-election-day-r8VWr4A5>.

⁵² 'ECOWAS Togo court decision: Internet is a right that requires protection of the law', Access Now, 14 July 2020, <https://www.accessnow.org/ecowas-togo-court-decision>.

targeted were opposition members and members of the clergy.⁵³

5. Freedom of peaceful assembly

- 5.1** During Togo's examination under the 2nd UPR cycle, the government received four recommendations on the right to the freedom of peaceful assembly. Among other recommendations, the government committed to 'ensure the right to unrestricted peaceful assembly, avoid arbitrary detention and excessive use of force during those assemblies' and 'to protect freedom of assembly and association by ensuring that peaceful demonstration can take place free from intimidation and harassment'. Three recommendations were accepted and one noted. However, as evidenced below, the government has not implemented any of the recommendations.
- 5.2** Article 30 of the 2019 Constitution guarantees the right to the freedom of peaceful assembly.⁵⁴ ICCPR article 21 also guarantees this right. However, protests have been repressed and banned by the authorities and further legal restrictions on peaceful assembly have been adopted.
- 5.3** In August 2019, Togo's National Assembly adopted modifications to the 2011 law that regulates the conditions for the exercise of peaceful meetings and protests, further restricting the right to the freedom of peaceful assembly.⁵⁵ Modifications include several time and place restrictions: protests are prohibited before 11 am and after 6 pm and cannot take place in certain locations, including all national roads, zones of economic activity, urban centres, zones close to state institutions, areas close to the residences of ambassadors and representatives of international organisations and areas close to military and security camps.⁵⁶ Competent local authorities are given the discretion to limit the number of protests per week according to the availability of security forces⁵⁷ and can ban a protest at short notice.⁵⁸
- 5.4** Additionally, the Penal Code⁵⁹ criminalises the participation in and organisation of assemblies that have not complied with the necessary administrative formalities, including spontaneous assemblies, with penalties ranging from a fine of 50,000 CFA francs (approx. US\$90) to a prison term of five years; this maximum sentence is

⁵³ 'WhatsApp spyware attack: senior clergymen in Togo among activists targeted', The Guardian, 3 August 2020, <https://www.theguardian.com/technology/2020/aug/03/senior-clergymen-among-activists-targeted-by-spyware>.

⁵⁴ Op. cit.

⁵⁵ Law no. 2019-010 of 12 August 2019 modifying Law no 2011-010 of 16 May 2011 on conditions to exercise the freedom of meetings and peaceful public protests.

⁵⁶ Ibid., articles 17, 9-2.

⁵⁷ Ibid., article 9-2.

⁵⁸ Ibid., Article 16.

⁵⁹ Op. cit.

applicable if violence is committed during a protest.⁶⁰ These provisions make the organisers of assemblies criminally liable for any violence or crimes that may occur during protests.

- 5.5** The authorities have repeatedly used excessive force to disperse peaceful protesters, with dozens of people killed since 2017, including minors, and scores of people arrested for participating in protests. Anti-government protests erupted on 19 August 2017, led by opposition, to demand a return to the 1992 Constitution, including a two-term limit for presidents, and to demand the right to vote for Togo's diaspora.⁶¹ Mass demonstrations continued over the following months and were met with excessive use of force by security forces, including the military, which included the use of batons, water cannon and live ammunition. At least 10 people were killed between August and December 2017, including two members of the armed forces and two minors, and hundreds were injured. Over 200 people were arrested, with at least 60 people sentenced to prison terms of up to 60 months on charges including rebellion, wilful destruction, assault, violence against state officials, aggravated disruption and aggravated theft.⁶²
- 5.6** One person was killed in Bafilo and several people injured in a planned protest in several localities by the opposition Parti National Panafricain (PNP) on 13 April 2019, with security forces using batons and teargas to disperse protesters.⁶³ The protest was banned in seven out of 10 localities where protests had been planned to take place. More than 20 people were arrested and tried, with some people receiving prison terms of between 24 and 36 months, of which 12 months were suspended.⁶⁴
- 5.7** A student protest at the University of Lomé on 15 June 2017 was met with force by security forces, which reportedly used teargas and batons to disperse protesters. Student organisation the Ligue Togolaise des Droits des Étudiants (LTDE) intended to protest against the arrest of LTDE leader Folly Satchivi (see also 3.5) and another student on the grounds of 'disturbing public order' when LTDE attempted to organise a general assembly on 14 June 2017. University officials had denied LTDE permission to organise its general assembly. Clashes between students and security

⁶⁰ Ibid., articles 539, 540, 541 and 542.

⁶¹ 'Togo: plusieurs morts dans des manifestations à l'appel du parti d'opposition PNP', RFI, 20 August 2017, <https://www.rfi.fr/fr/afrique/20170819-togo-manifestations-deux-morts-pnp-opposition-constitution-1992-vote-diaspora-lome>.

⁶² 'Togo: Submission to the United Nations Human Rights Committee 128th Session (2 March -27 March 2020)', Amnesty International, February 2020, <https://www.amnesty.org/download/Documents/AFR5716532020ENGLISH.PDF>.

⁶³ 'One Person Killed, Others Injured as Security Forces Clampdown on Demonstrators', Media Foundation for West Africa, <https://www.mfwa.org/country-highlights/one-person-killed-others-injured-as-security-forces-clampdown-on-demonstrators>.

⁶⁴ 'Togo: des responsables du PNP (opposition) incarcéré à Lomé', RFI, 19 April 2019, <https://www.rfi.fr/fr/afrique/20190419-togo-responsables-pnp-opposition-incarceres-lome>.

forces ensued. Several students were reportedly injured in the clashes.⁶⁵

- 5.8** Local authorities often impose itineraries on marches and frequently ban protests, particularly those organised by civil society and the political opposition, on vague grounds such as the potential for protests to undermine public order.⁶⁶ At times the authorities have placed blanket bans on protests. On 5 December 2018, prior to legislative elections later that month, Minister of Territorial Administration Payadowa BoukpeSSI banned all street protests during the electoral period on grounds of ‘a very high risk of severe disturbance of public order’.⁶⁷ Despite the ban, protests organised by a coalition of 14 opposition parties went ahead. At least four people were killed in protest-related violence between 8 and 10 December 2018.
- 5.9** Several civil society protests have been banned by local authorities during the period under review. On 23 April 2019, a protest organised by the movement En aucun cas in Afagnan, Kpalimé and Lomé was banned by the Minister of Territorial Administration on the grounds that there were insufficient security forces for the protest.⁶⁸ The planned protest to denounce human rights abuses and civic space restrictions went ahead on 4 May 2019 despite the ban.
- 5.10** Local authorities in Lomé banned a sit-in organised by the Ligue des consommateurs du Togo against the high prices of gas, electricity and taxes on vehicles, planned for 29 March 2019 in front of the Ministry of Commerce. The authorities justified the ban by claiming that public assemblies cannot take place at the Ministry of Commerce as it is not a public place.⁶⁹

6. Recommendations to the Government of Togo

CIVICUS, CTDDH and WAHRDN/ROADDH call on the Government of Togo to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

⁶⁵ ‘Gendarmes Attack Students Rights Activists on Campus, Arrest Leader’, Media Foundation for West Africa, 16 June 2017, <https://www.mfwa.org/country-highlights/gendarmes-attack-student-rights-activists-on-campus-arrest-leader>; ‘Nouvelles échauffourées entre force de l’ordre et étudiants à Lomé’, TogoBreakingNews.info, 15 June 2017, <https://togobreakingnews.info/nouvelles-echauffourees-entre-force-de-l-ordre-et-etudiants-a-lome/>.

⁶⁶ CIVICUS, October 2020, op cit.

⁶⁷ ‘Togo: l’opposition refuse de se plier à l’interdiction de manifester’, Jeune Afrique, 7 December 2018, <https://www.jeuneafrique.com/679205/politique/togo-l-opposition-refuse-de-se-plier-a-l-interdiction-de-manifester>.

⁶⁸ ‘La marche du 27 avril interdite par Payadowa BoukpeSSI’, iciLome.com, 25 April 2019, <https://news.icilome.com/?idnews=863807/la-marche-du-27-avril-interdite-par-payadowa-boukpeSSI>.

⁶⁹ ‘Interdiction de la Manifestation contre la Vie Chère, la Dérive Autoritaire de Fogan Adégnon’, 27avril.com, 11 April 2019, <https://www.27avril.com/blog/culture-societe/societe/togo-interdiction-de-la-manifestation-contre-la-vie-cherre-la-derive-autoritaire-de-fogan-adegnon>.

At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In the light of this, the following specific recommendations are made:

16.1 Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the freedom of association.
- Abolish criminal responsibility for organising and participating in the activities of non-registered organisations and lift the ban on the activities of non-registered organisations.
- Cease unjustifiable disruptions to legitimate activities organised by CSOs.
- Remove undue restrictions on the freedom of association, including administrative delays in delivering declaration of registration receipts to CSOs.
- Consult, in an inclusive way, with civil society on amending the law on associations that removes undue restrictions on the freedom of association to bring it into compliance with ICCPR articles 21 and 22.
- Guarantee the effective and independent functioning of autonomous trade unions.

16.2 Protection of human rights defenders

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Undertake a consolidated process of repeal or amendment of legislation and decrees that unwarrantedly restrict the legitimate work of HRDs, in line with the UN Declaration on Human Rights Defenders.

- Publicly condemn at the highest levels of government instances of harassment and intimidation of CSOs and activists.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect HRDs, including by adopting a specific law on the protection of HRDs in accordance with Human Rights Council resolution 27.31.

16.3 Freedom of expression, media freedom and access to information

- Ensure the freedom of expression and media freedom by bringing all national legislation into line with international standards.
- Review the Penal Code, the Press and Communication Code and the cybersecurity law in order to bring it into line with best practices and international standards in the area of the freedom of expression.
- Reinstate all media outlets that have unwarrantedly been closed.
- Cease any practices of suspending media.
- Reform defamation legislation in conformity with ICCPR article 19.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.
- Take steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Develop an action plan to ensure that internet laws comply with the government's commitment to guarantee the freedom of expression, media freedom and access to information, including by ensuring free access to electronic media, ceasing surveillance and enabling journalists, bloggers and other internet users to play a full and active role in promoting and protecting human rights.
- Organise inclusive consultations with journalists and the media in order to resolve disputes that exist concerning current laws affecting media freedom.
- Refrain from adopting any laws providing for censorship or undue control over social and conventional media content.

- Refrain from disrupting access to the internet and social media and put in place measures to prevent further disruptions from taking place, in accordance with the decision of the ECOWAS Community Court of Justice.

6.4 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the 2012 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which calls for simple processes for the notification of assemblies being held rather than permission being required.
- Amend Law 2019-010 of 12 August 2019 modifying Law 2011-010 of 16 May 2011 and the Penal Code in order to guarantee fully the right to the freedom of peaceful assembly.
- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces in the context of protests.
- Review and if necessary update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn at the highest levels all instances of the use of excessive and brutal force by security forces in response to protests, launch formal investigations into such instances and bring the perpetrators to justice.
- Provide recourse to judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to the freedom of peaceful assembly by state authorities.

6.5 Access to UN Special Procedures mandate holders

- Extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; and 3) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.

6.6 State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Include CSOs in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society on the implementation of and follow-up on UPR recommendations, including by holding periodical comprehensive consultations with a diverse range of civil society.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

