



Republic of Togo

Joint Submission to the UN Universal Periodic Review

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
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And

Concertation Nationale de la Société Civile du Togo (CNSC-Togo)

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1. (A) Introduction

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 170 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** CNSC (Concertation de la Société Civile du Togo) is a Togolese civil society network with 72 member organisations, working mainly on the themes of democracy, good governance, and the promotion and protection of individual and collective rights of Togolese citizens.
- 1.3** In this document, CIVICUS and CNSC outline concerns related to the environment in which civil society activists and human rights defenders operate in the Togolese Republic, and discuss threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.4** CIVICUS and CNSC are also concerned by restrictions in law and practice on the free exercise of the rights to freedom of assembly and freedom of expression.
- In Section B, CIVICUS and CNSC highlight concerns related to the freedom of association and restrictions on civil society activities.
 - In Section C, CIVICUS and CNSC express concerns involving harassment and arbitrary detention of human rights defenders.
 - In Section D, CIVICUS and CNSC highlight concerns relating to the freedom of expression, including intimidation, harassment and attacks on journalists.
 - In Section E, CIVICUS and CNSC highlight concerns regarding the freedom of assembly.
 - In Section F, CIVICUS and CNSC make a number of recommendations to address the concerns listed.

2. (B) Restrictions on freedom of association and impediments to civil society activities

- 2.1** Article 30 of the 1992 Togolese Constitution of the Fourth Republic¹ guarantees the right to freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Togo is a state party, also guarantees freedom of association. The primary legal instrument regulating the formation of civil society organisations is the 1901 French Law on the Contract of

¹ Revised by Law n° 2002-029 of 31 December 2002.

Associations which was made applicable in Togo by decree n°46-432 of 13 March 1946.

- 2.2** CIVICUS and CNSC believe that the current legal framework does not enable the formation of civil society organisations. According to article 3 of the 1901 Law, the legal registration of an association can be denied if their 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”. Such overbroad provisions allow for excessive discretion and contravene international best practices set forth by the UN Rapporteur on the rights to freedom of peaceful assembly and of association.²
- 2.3** LGBTI organisations cannot be formed or exist and are subjected to institutional discrimination, as article 392 of the 2015 Penal Code criminalises “an indecent act or an act against nature committed with an individual of the same sex”. It is further stipulated that it “any attack on public morals by words, writing, images or any other means” is considered as indecency. Any attack on public morals is punishable with a prison sentence of 1 to 3 years and/or a fine of 1,000,000 to 3,000,000 FCFA (approximately between 1,690 and 5,070 USD).
- 2.4** CIVICUS and CNSC are further concerned by extra-legal limitations on freedom of association, such as intimidation and judicial harassment of CSOs and their representatives working on sensitive issues such as justice for victims of torture by security forces and the rights of prisoners. Mr. Amah Olivier, president of the organisation ASVITTO (Association des Victimes de Torture au Togo – Association of Victims of Torture in Togo) and member of “Sauvons le Togo”, a coalition of opposition and civil society organisations, was arrested in September 2013 on charges of “inciting rebellion” for statements he made during an interview with radio station Legende FM.³ He is reported to have received death threats during his detention. He was summoned again in February 2014, after being released conditionally.⁴ In 2014, Amah Olivier went into exile, fearing further persecution after receiving information that his life and safety would be compromised in the event of his re-arrest.⁵

² A/HRC/ 20/27. Accessible via: <http://freeassembly.net/rapporteurreports/report-best-practices-in-promoting-freedoms-of-assembly-and-association-ahrc2027/>

³ Corps Diplomatique Togo (15 September 2014). *Le Commandant Olivier Amah attendu au Tribunal de Lomé demain mardi*. Accessed on 23 March 2016 via <http://www.corpsdiplomatictogo.com/le-commandant-olivier-amah-attendu-au-tribunal-de-lome-demain-mardi/>

⁴ Amnesty International (2015). *Amnesty International Report 2014/2015. The State of the World's Human Rights*, p.369

2.5 Moreover, the freedom of association remains restricted in practice for many rural community based organisations, as the decentralised state structures (*préfectures* and *communes*) are not authorised to deliver the “récépissés de création d’association” or the receipts of the creation of association, which is necessary to obtain legal personality. This could be an obstacle for smaller and community based organisations that are based far outside of the Togolese capital, Lomé.

3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists

3.1 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, it is a matter of concern that some human rights defenders (HRDs) engaged in legitimate activities continue to face harassment, intimidation, and threats.

3.2 Under Title II, Article 13 of the Togolese Constitution of the Fourth Republic, the State has the obligation to guarantee physical and mental integrity, and the life and security of every person in the country. The constitution further states that no one may be arbitrarily deprived of their liberty of life.

3.3 CIVICUS and CNSC are concerned by the frequent threats, intimidation and harassment of human rights defenders in Togo. Pastor Edoh Komi, president of the human rights movement “Mouvement Martin Luther King (MMLK)– la Voix des sans Voix”, was arrested on 11 March 2016 on charges of contempt of court due to his public criticisms of the Togolese judiciary’s decision to release the suspect in the case of Akossiwa, a young girl who was murdered on 15 January 2015.⁶ Another charge of “disturb the public order” was added for organising a sit-in which was refused by local authorities, in violation of Law n° 2011-010 on the conditions for exercising the freedom of peaceful assembly and demonstrations.⁷ Pastor Edoh Komi complained earlier in 2014 of being subjected to pressure and intimidation by the police and members of the Togolese army in order to prevent him from holding a series of protests on 4,5 and 6 November 2014 as head of the collective “Collectif des populations victimes du barrage de Nangbéto”.⁸ The collective seeks justice and compensation for victims of forced displacement in the 1980s for the construction of the dam Nangbéto in the préfecture Ogoou by the

⁶ Icilome.com (14 March 2016). *Togo. Affaire Pasteur Edoh Komi: Le procureur de la République donne des précisions*. Accessed on 17 March 2016 via <http://news.icilome.com/?idnews=820172&t=affaire-pasteur-edoh-komi--le-procureur-de-la-republique-donne-des-precisions>

⁷ Icilome.com (14 March 2016). *LTDH exige la libération immédiate du Pasteur Edoh*. Accessed on 23 March 2016 via <http://news.icilome.com/?idnews=820190>

⁸ alome.com (5 November 2014). *Le S.O.S. d’un pasteur activiste des Droits de l’Homme qui dit craindre pour sa vie*. Accessed on 14 March 2016 via <http://news.alome.com/h/31870.html>

Togolese state and the Communauté Electrique du Bénin (CEB), an international organisation co-owned by the states of Benin and Togo.

3.4 Fearing for his safety, the president of the National Human Rights Commission (CNDH), Mr. Koffi Kounté, fled the country shortly after the publication of a report in February 2012 which documented allegations of torture and ill-treatment of the accused of an April 2009 coup attempt by the National Security Agency. Although the Ministry of Justice requested the CNDH to investigate the allegations of torture, it dismissed initially the report that documented and denounced the torture of the 32 accused. Afterwards, on 29 February 2012, a total of 13 reforms were announced by the government, including the restructuring of the National Security Agency, the criminalisation of torture, the investigation of the torture allegations, and the expansion of the power of the CNDH to investigate cases of torture.⁹ Mr. Kounté stays currently in exile, although the government has guaranteed his safe return.

4. (D) Concerns regarding freedom of expression, independence of the media, harassment and attacks on journalists

4.1 Article 19 of the ICCPR guarantees the freedom of expression and opinion. Article 30 of the Constitution of Togo guarantees the right to freedom of expression and the freedom of association. Moreover, Article 26 of the Constitution provides for the right to freedom of the press and states that everyone has the freedom to express themselves and to spread their opinions or information, whether by word, written, or any other means, within the limits defined by law. The press cannot be subject to prior authorisation, to censorship or other barriers.” However, in practice, a number of worrying qualifications to these provisions undermine these rights, especially the Penal Code and the Press and Communication Code.

4.2 Article 82 of the 1998 Press and Communication Code¹⁰ mandates fines between 500,000 (equivalent to 840 USD) and 1 million CFA francs (equivalent to 1,680 USD) and temporary suspension of publishing or broadcasting licenses for “dissemination or publication of information at variance with reality in an apparent effort to manipulate the conscience or misrepresent information or facts.” A steeper fine between 500,000 CFA francs and 2 million CFA francs (equivalent to 3,360 USD) and a temporary suspension of their broadcasting or publishing license between 15 days and 3 months can be levelled against a national media body that “reproduces information at variance with reality, published or broadcasted by foreign media sources”. The fines can double in case

⁹ FIDH (1 March 2012). *Un pas décisif pour l'Etat de droit et contra la torture*. Accessed on 23 March 2016 via: <https://www.fidh.org/fr/regions/afrique/togo/Togo-Un-pas-decisif-pour-l-Etat-de>

¹⁰ Law n° 98/004 PR of 11 February 1998, modified by Law n° 2004-015 of 27 August 2004

of repetition of the offence. The Press and Communication Code further provides, in its articles 90 to 96, for fines for defamation, including against public officials.

4.3 Furthermore, since a new Penal Code was adopted on 3 November 2015, offences by the media are additionally criminalised. Article 497 introduces prison sentences from 6 months to 2 years and/or fines between 500,000 and 2 million CFA francs for “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”.¹¹ When the publication, dissemination or reproduction is made in bad faith or of the nature to undermine the discipline or morale of the army or hinder the nation's war effort, the penalties can go up to 3 years' imprisonment and up to 3,000,000 FCFA.

4.4 The state media regulator, the High Authority for Broadcasting and Communications (HAAC), has the power to grant and suspend broadcasting licenses to private television and radio stations. The Law regulating the functions and powers of HAAC¹², was amended in 2009 and 2013¹³ to extend the disciplinary and regulatory powers of HAAC. In practice, the HAAC has been known to discipline critical journalists and revoke and suspend licenses of media outlets.

4.5 The HAAC forbade the launching of the online news site *afrikaexpress.info* on 25 September 2014 and on 1 October 2014 closed the headquarters of the news site. The HAAC alleged that the outlet did not have legal existence because it failed to meet the “formalities required under the legislation in force” despite the fact that Togo does not have legislation regulating online media.¹⁴ *Afrikaexpress.info* has since been allowed to launch.¹⁵

4.6 On 25 July 2013, the day of legislative elections, the HAAC suspended the operations of radio station, *Legende FM*, for one month and shut down the radio

¹¹ RFI (4 November 2015). *Au Togo, le nouveau Code pénal inquiète le média*. Accessed on 17 March 2016 via : <http://www.rfi.fr/afrique/20151104-togo-nouveau-code-penal-inquiete-medias-liberte-presse> ; Fédération internationale des journalistes (05 November 2015). *L'adoption d'un nouveau code pénal au Togo menace la liberté de la presse*. Media statement. Accessed on 17 March 2016 via <http://www.ifj.org/nc/fr/news-single-view/backpid/1/article/ladoption-dun-nouveau-code-penal-au-togo-menace-la-liberte-de-la-presse/>

¹² Organic Law n° 2004-021 of 15 December 2004 on the High Authority of Broadcasting and Communication, modified by Organic Law n° 2009-029 and Organic Law n°2013-016 of 8 July 2013.

¹³ The initial proposed amendments in 2013 included giving the HAAC increased power to suspend and shut down media outlets without a court order. The Constitution Court has qualified 6 articles of the amendments as unconstitutional.

¹⁴ Agence Ecofin (03 October 2014). Togo: le siège du journal en ligne *afrikaexpress.info* a été fermé sur ordre du régulateur des médias. Accessed on 14 March 2016 via <http://www.agenceecofin.com/regulation/0310-23251-togo-le-siege-du-journal-en-ligne-afrikaexpress-info-a-ete-ferme-sur-ordre-du-regulateur-des-medias>

¹⁵ Freedom House. Freedom in the World 2015. Accessible via: <https://freedomhouse.org/report/freedom-world/2015/togo>

station completely in August 2013. The HAAC justified the suspension, without a court order, of a live broadcast on grounds of “inciting the public to violence”. However, despite these accusations, the director of the radio station asserted that these sanctions were a response to the stations’ critical coverage of anti-government protests.¹⁶

4.7 Defamation is a criminal offense under article 290¹⁷ of the 2015 Penal Code of the Republic of Togo, and is punishable with a prison sentence of 1 to 6 months and/or a fine between 500,000 and 2,000,000 FCFA. The former UN Special Rapporteur of the situation of human rights defenders, Margaret Sekaggya, noted in her report on her follow-up visit to Togo in October 2013 that defamation should be decriminalized, in accordance with the spirit of article 19 of the ICCPR and article 6 of the Declaration on Human Rights Defenders.¹⁸

4.8 Attacks, intimidation and harassment of journalists have continued with frequency since Togo’s previous examination under the UPR. For example, journalist and director of publication of the newspaper, *Liberté*, Zeus Aziadouvo, was accused of “complicity with a criminal group” after the newspaper published an article reporting on the torture of Tométy Toussain, one of the detained in the case of the market fires in Lomé and Kara. He was placed under judicial oversight.¹⁹ The case is ongoing and relates to two market fires which took place in the cities of Lomé and Kara in January 2013. During the fires, a total of 35 people, the majority of whom were opposition figures were indicted while 23 were placed in preventive detention. One opposition activists, Etienne Kodjo Yakanou, died while in preventive detention.

4.9 On 9 February 2012, journalist Max Savi Carmel was interrogated for six hours by police officers and intimidated to drop a story he was developing and to reveal his sources. Mr. Max Savi Carmel works for the regional bi-monthly, *Tribune d’Afrique*.²⁰

5 (E) Concerns regarding freedom of assembly

5.1 Article 21 of the International Covenant on Civil and Political Rights guarantees the freedom of peaceful assembly. In addition, article 30 of the Togolese Constitution of

¹⁶ Committee to Protect Journalists (2 October 2013). *Togo shuts down radio station permanently*. Accessed on 17 March 2016 via: <https://cpj.org/2013/10/togo-shuts-down-private-radio-station-permanently.php>

¹⁷ Defamation was also a criminal offense in article 58 of the previous 1980 Penal Code.

¹⁸ A/HRC/25/55/Add. 2: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/113/24/PDF/G1411324.pdf?OpenElement>

¹⁹ Togo Actualité (21 March 2013). <http://www.togoactualite.com/affaire-dincendies-des-marches-le-journaliste-zeus-aziadouvo-accuse-de-complicite-de-groupement-de-malfaiteurs-et-place-sous-contrôle-judiciaire/>

²⁰ Reporters without Borders (10 February 2012). <http://en.rsf.org/togo-tribune-d-afrique-journalist-10-02-2012,41849.html>

the Fourth Republic guarantees the freedom of assembly. Law n°2011-010, approved on 16 May 2011, establishes the conditions for the exercise of the freedom of assembly and peaceful public manifestation. Decree n° 2013-013/PR of 6 March 2013 regulates the maintenance and restoration of public order. Law n°2011-010 establishes certain limitations in citizen's ability to assemble peacefully and freely. Article 17 forbids demonstrations in public places between 10 PM and 6 AM, while article 8 allows administrative authorities to refuse an assembly within 72 hours after a declaration of the organisers²¹.

- 5.2** In practice public authorities often refuse demonstrations, protests and sit-ins, as was the case in recent case of Pastor Edoh Komi, president of the human rights movement "Mouvement Martin Luther King (MMLK)– la Voix des sans Voix", who was arrested on 11 March 2016 on charges of contempt of "disturbing the public order" for organising a sit-in which was refused by local authorities, in violation of Law n° 2011-010 on the conditions for exercising the freedom of peaceful assembly and demonstrations.²²
- 5.3** A temporary two-day ban against protests by "Sauvons le Togo", a collective of opposition and civil society organisations, and the Rainbow coalition (coalition Arc-en-ciel) was imposed in the capital Lomé on 22 and 23 May 2013.²³ The ban followed several protests that took place against the death of an opposition figure in detention and demanded the release of others in detention in the case of the market fires
- 5.4** On 20 August 2015, a two day sit-in organised by the Platform for Action Against Increased Prices was dispersed by the police after the assembly was banned by the authorities of Lomé, due to a lack of consensus on the itinerary of the protest march. Three civil society leaders were arrested by the police during the protest: Emmanuel Sogadji of the Ligue des Consommateurs (Ligue of Consumers – LCT), Pastor Edoh Komi of the Movement Martin Luther King (MMLK) and Kao Atcholi of the Association of Victims of Torture in Togo (ASVITTO). The three were released the same day.²⁴
- 5.5** Security forces continue to use excessive force when confronted with protests, and protestors continue to be arbitrarily detained. Impunity for perpetrators of police brutality also remains routine. On 5, 6 and 26 November 2015, a total of seven civilians and one police officer were killed and at least 117 people were wounded in the city of Mango, in northern Togo, during several protests held in opposition to a

²¹ Article 5 requires organisers to declare an assembly or protest 5 days prior to the event.

²² IciLome.com (14 March 2016). *LTDH exige la libération immédiate du Pasteur Edoh*. Accessed on 23 March 2016 via <http://news.icilome.com/?idnews=820190>

²³ RFI (24 May 2013). *Togo : les opposants interdits de manifestation par la police à Lomé*. Accessed on 16 March 2016 via <http://www.rfi.fr/afrique/20130524-togo-lome-opposants-interdits-manifestation-police>

²⁴ Œil d'Afrique (20 August 2015). *Togo : une manifestation contre la vie chère dispersée par la Police. 3 meneurs arrêtés*. Accessed on 16 March 2016 via <http://oeildafrique.com/togo-une-manifestation-contre-la-vie-chere-dispersee-par-la-police-3-meneurs-arretes/>

nature reserve project proposed by the government. Security forces opened fire on unarmed protestors, including pregnant women. More than 60 people were arrested.²⁵

- 5.6** Two students were killed in the northern town of Dapaong on 15 April 2013, when security forces opened fire with live ammunition on a crowd of students demonstrating in support of a teachers strike. One of the deceased, Anselme Gouyano Sindare, was 12 years old.²⁶ The authorities have failed to initiate a thorough investigation despite publically committing to sanctioning members of the security forces who used excessive force.
- 5.7** A three-day sit-in protest in March 2013 against proposed amendments to the 2009 Press and Communication Code, which would endow HAAC with greater authority to close and revoke the licenses of media outlets without a court order, was violently dispersed by police officers on 14 March 2013. Police officers used tear gas and fired rubber bullets to disperse the protestors. Three journalists were injured as a result.²⁷ The Constitutional Court later – on 21 March 2013 - that 6 of the proposed amendments were unconstitutional.

6. (F) Recommendations to the Government of the Republic of Togo

CIVICUS and CNSC call on the Government of the Republic of Togo to create an enabling environment for civil society to form and operate, in accordance with the rights ensured by the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, 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 light of this, the following specific recommendations are made:

6.1 Regarding restrictions on the freedom of association

- The right of all Togolese to form associations and belong to groups in line with constitutional provisions and international human rights standards should be protected and enabled, including for LGBTI organisations.

²⁵ RFI (12 December 2015). *Togo: Amnesty demande une enquête sur les troubles de Mango*. Accessed on 17 March 2016 via <https://www.amnesty.org/fr/latest/news/2015/12/togo-les-forces-de-securite-ont-tire-a-bout-portant-sur-des-manifestants-non-armes-a-mango/> ; RFI (09 November 2015). *Togo: calme précaire à Mango, après de nouvelles manifestations*. Accessed on 23 March 2016 via <http://www.rfi.fr/afrique/20151109-togo-manifs-mango-reserve-naturelle>

²⁶ Jeune Afrique (23 April 2013). *Togo : une grève, deux morts et une tentative d'apaisement*. Accessed on 16 March 2016 via : <http://www.jeuneafrique.com/171137/politique/togo-une-gr-ve-deux-morts-et-une-tentative-d-apaisement/>

²⁷ Committee to Protect Journalists (18 March 2013). *In Togo, police attack journalists protesting media law*. Accessed on 17 March 2016 via: <https://www.cpj.org/2013/03/in-togo-police-attack-journalists-protesting-media.php>

- The 1901 French Law on the Contract of Associations should be suitably amended to guarantee that undue restrictions on freedom of association are removed in line with the best practices on freedom of association prescribed by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.
- The Government of Togo is urged to develop and implement mechanisms for dialogue between the state and civil society, and to improve relations between the two entities for participatory support for public development policies in Togo.

6.2 Regarding the arbitrary detention and harassment of civil society activists

- Civil society members and human rights defenders should be provided with a safe and secure environment to carry out their legitimate activities. All instances of their violations should be independently investigated.
- The authorities should release all persons arbitrary detained for exercising their legitimate rights to freedom of expression, association, assembly and movement;
- A consolidated process of repeal or amendment of legalisation and decrees which unwarrantedly restrict the legitimate work of human rights defenders should be initiated;
- The Government of Togo should investigate and bring to justice perpetrators of violence against human rights defenders.
- Senior government officials should publicly condemn instances of harassment and intimidation of civil society activists and organisations.
- The Government should apply systematically legal provisions that promote and protect human rights and establish mechanisms that protect human rights activists by adopting a specific law on the protection of human rights activists in accordance with Council resolution 27.31 of the Human Rights Council.

6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists

- The Government of Togo should enhance measures to ensure freedom of expression and opinion, in accordance with the provisions of the International Covenant on Civil and Political Rights;
- The Government of Togo should review and decriminalize article 497 of the new Penal Code in accordance with Article 26 of the Constitution of Togo, which guarantees freedom of expression and the freedom of press;
- The Government of Togo should ensure that all instances of threats against and harassment of journalists are duly investigated.
- The Government of Togo should take steps to ensure that independent media outlets are not harassed or subjected to arbitrary and politically motivated closures.
- The Government should decriminalize defamation in accordance with article 19 of the ICCPR and article 6 of the Declaration on Human Rights Defenders.
- The Government of Togo should take all necessary measures to ensure the independence and the impartiality of the High Authority for Broadcasting and Communications and to ensure that it can play its mission of guaranteeing the protection of the freedom of press in Togo.

6.4 Regarding restrictions on freedom of assembly

- The provisions of Law n° 2011-010 of 16 May 2011 should be repealed or suitably amended in line with best practices on freedom of peaceful assembly prescribed by the UN Special Rapporteur on Rights to Freedom of Peaceful Assembly and Association.
- The use of excessive and brutal force by security forces in the dispersal of protests should be publically condemned by senior government officials. A formal investigation into such instances should be launched, and perpetrators should be brought to justice.
- Security officials should be imparted training on dealing with public

assemblies in line with the UN Basic Principles on the Use of Force and Firearms.

- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities.

6.5 Regarding access to UN Special Procedures mandate holders

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on the Protection of Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Independence of Lawyers and Judges.