



# **Civic space backsliding ahead of elections in Francophone West Africa**

**Case studies: Benin, Côte d'Ivoire, Guinea, Niger and Togo**

October 2020

## About this report

This report was authored by senior human rights research consultant François Patuel<sup>1</sup> with contributions by Ine Van Severen.

The report uses ratings of the CIVICUS Monitor, a research tool that provides quantitative and qualitative data on the state of civic freedoms in 196 countries. The data is generated through a collaboration with more than 20 civil society research partners and input from a number of independent human rights evaluations. Based on our analysis of multiple streams of data on civic space, each country's civic space is rated in one of five categories: 'Open', 'Narrowed', 'Obstructed', 'Restricted' and 'Closed'.<sup>2</sup>

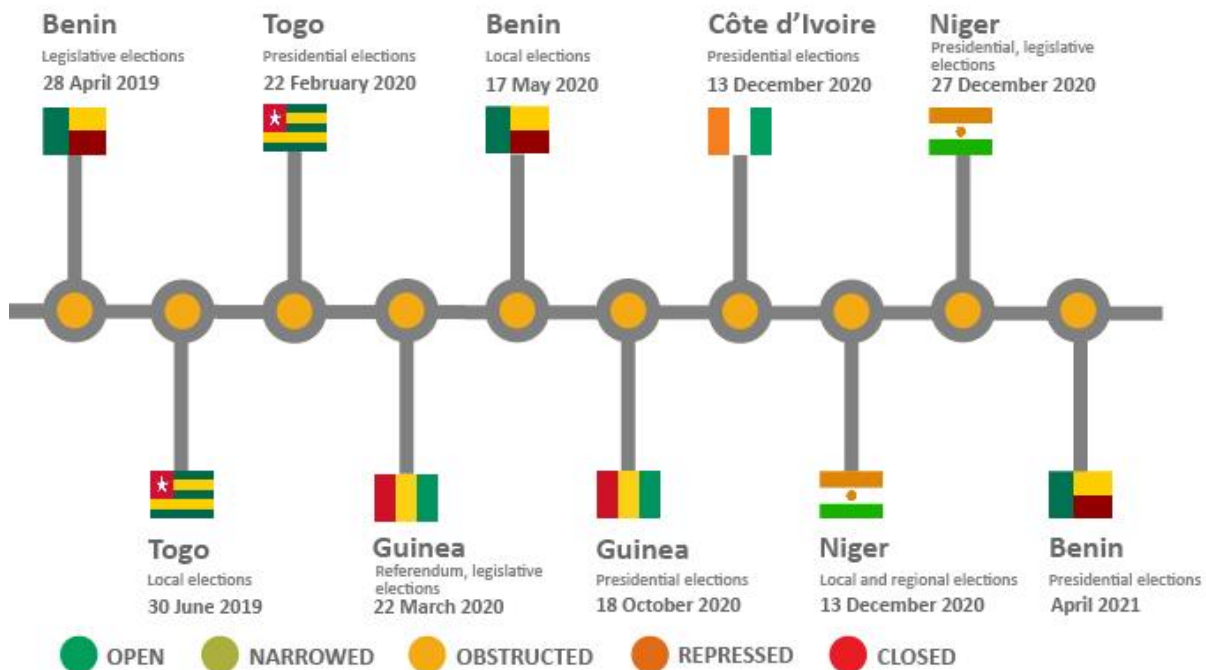
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## Introduction

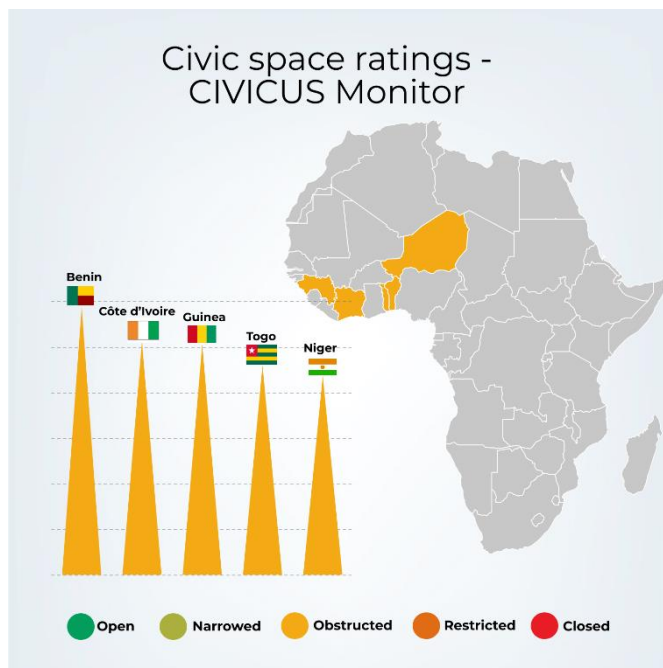
2020 is an intense electoral year for Francophone West Africa with presidential elections in Togo (February 2020), Guinea (October 2020), Côte d'Ivoire (October 2020), Burkina Faso (November 2020), Niger (December 2020 – January 2021) and Benin (April 2021).



The stakes are high for peace, security and human rights in the region. In Côte d'Ivoire, Guinea and Togo, presidents have been evading term limits and are cracking down on pro-democracy groups.<sup>3</sup> In Benin, opposition groups were excluded from the 2019 legislative elections.<sup>4</sup> Burkina Faso, Côte d'Ivoire and Niger are confronting or emerging from violent armed conflicts, which have caused thousands of deaths, and which are being used to justify repressive laws and policies.<sup>5</sup> The looming humanitarian crisis in the Sahel,<sup>6</sup> the restrictions introduced in response to the COVID-19 pandemic<sup>7</sup> and armed groups spilling over from the Sahel to the Gulf of Guinea are making the situation ever more volatile.<sup>8</sup>

In this context, civil society organisations (CSOs) have a key role to play in monitoring and reporting on the evolution of the human rights situation, advocating for human rights change and providing support to survivors of human rights violations. To do this, they need to operate in an enabling environment, where civic space is protected. Civic space in Benin, Côte d'Ivoire, Guinea, Niger and Togo is rated by the CIVICUS Monitor as 'Obstructed'.<sup>9</sup>

The purpose of this report is to assess the status of the rights to the freedoms of association, peaceful assembly and expression – the three pillars of civic space – in West African countries with presidential elections in 2020 and 2021. It focuses on Benin, Côte d’Ivoire, Guinea, Niger and Togo. It highlights advocacy opportunities at regional and international levels to increase pressure on state authorities to open and protect civic space. It concludes with recommendations to international and regional technical and financial partners on the support that could be extended to CSOs in the region to address the threats they are faced



with and to maximise advocacy opportunities.

The report builds on extensive desk research carried out between 12 May and 9 June 2020. This includes analyses of recent legislation, draft legislation and other official documents, as well as media, United Nations (UN) and civil society reports and academic literature. 23 semi-structured interviews were conducted with representatives of civil society groups operating in the countries of focus. The groups interviewed work on diverse issues, including the freedom of expression, democracy, torture, women’s rights and LGBTQI+ rights.<sup>10</sup> Given the

pattern of reprisals against human rights defenders in the region, the names and other identifying details of the interviewees are withheld. The report was updated in September 2020.



Benin's civic space is rated as 'Obstructed' by the CIVICUS Monitor.<sup>11</sup>

### **Main civic space violations**

- 2020 decisions to remove the option of individuals and CSOs to go to the ECOWAS Court of Justice and the African Court on Human and Peoples' Rights.
- Judicial persecution of bloggers, journalists and activists, including on the basis of the 2018 Digital Code.
- April 2019 elections marred by violations: internet shutdown, use of excessive force in protests, bans on protests, killing and arrest of protesters.

### **Political context**

*'From one troubled election to the next, fear has been creeping in.'*

Human rights defender, Cotonou, 19 May 2020.

Benin is heading towards a challenging presidential election in April 2021, possibly without opposition candidates.<sup>12</sup> According to Article 132 of the 2019 Electoral Code – adopted by a National Assembly where opposition parties are not represented – presidential candidates need to be sponsored by 10 per cent of the members of parliament and mayors. Opposition candidates may struggle to reach this mark given that there are currently no opposition groups represented in parliament and the only opposition party that was allowed to run for the local elections, and won seats, is fraught with internal disputes that have led its founder, former president Boni Yayi, to resign a month before the polls. The 2019 legislative elections and 2020 local elections that led to this situation have been widely contested.

Despite the order of the African Court on Human and People's Rights to suspend the local elections<sup>13</sup> and concerns over the COVID-19 pandemic, local elections were held on 17 May 2020. Several opposition groups, including Sébastien Ajavon's *Union Sociale Libérale* (Social Liberal Union) and Candide Azannai's *Restaurer l'Espoir* (Restore Hope), boycotted the elections, citing concerns over the revision of the electoral laws in 2018 and 2019 and disputing the legitimacy of the 2019 legislative elections.

Opposition groups were barred from running in the legislative elections held on 28 April 2019, fuelling political tensions and sparking mass protests across the country. The *Commission électorale nationale autonome* (National Autonomous Electoral Commission, CENA) invalidated their candidacies on 5 March for non-compliance with the 2018 Electoral Code.<sup>14</sup> Civil society activists and opposition leaders, including members of parliament, were arrested in the context of the protests. At least four people died from bullet wounds.<sup>15</sup> The turnout rate was the lowest in the country's history (27.12 per cent).<sup>16</sup> Following the elections former president Yayi Boni fled the country for six months, citing concerns over judicial harassment.<sup>17</sup> The African Union (AU) Electoral Observation Mission noted that the 'breakdown of consensus among the political stakeholders' undermined 'the open, inclusive and competitive nature that has traditionally characterised electoral processes in Benin'.<sup>18</sup> The African Commission on Human and People's Rights (ACHPR), the Parliamentary Assembly of the Francophonie, the Economic Community of West African States (ECOWAS) and the UN Office for West Africa and the Sahel (UNOWAS) also raised concerns about the deterioration of the situation.<sup>19</sup> In November 2019, Benin expelled the Ambassador of the European Union (EU), accusing him of meddling in the politics of Benin after he questioned the legitimacy of the legislative elections.<sup>20</sup>

These political tensions are happening in a context where Benin's security situation has been deteriorating, with armed groups spilling over from the Sahel into Benin's northern border region.<sup>21</sup> On 9 February 2020, a group of armed men opened fire on a police post in the village of Keremou, on the border with Burkina Faso, killing a police officer.<sup>22</sup> While the authorities have distanced the incident from the violence unfolding in the Sahel, the circumstances of the attack and the motivation of the attackers remain unclear.<sup>23</sup> On 1 May 2019, two French tourists were abducted and their guard killed in the same border area. The tourists and two other hostages were released 10 days later in Burkina Faso.<sup>24</sup>

## **Threats to civic space**

Human rights groups have expressed concerns about the restriction of civic space in Benin, including by the adoption of repressive laws, internet shutdowns, the arrest of journalists, bloggers and activists, crackdowns on protests and interference in the activities of associations.<sup>25</sup>

### **1. Freedom of expression**

The Benin authorities have adopted legislation that violates the right to the freedom of expression and that has been used against journalists, bloggers and political activists who have expressed dissent. The Digital Code, promulgated in April 2018, criminalises the publication of false information, press offences online and incitement to rebellion online.<sup>26</sup> The new Criminal Code, promulgated on 28th December 2018, criminalises 'offences against the symbols and



values of the State, the Republic, communities and religions’ and expression that leads people to abstain from voting using ‘false news’, slander or other fraudulent means.<sup>27</sup>

Amnesty International reported that at least 17 people, including bloggers, journalists and political activists, had been charged under the Digital Code since its promulgation.<sup>28</sup> On 3 January 2020, the police arrested journalist Aristide Fassinou Hounkpevi following a complaint filed by the Minister of Foreign Affairs for ‘harassment via electronic means’. The journalist had published Twitter posts questioning whether the minister had been nominated to an ambassadorial post in France.<sup>29</sup> He was released on bail after seven days in detention. Journalist Ignace Sossou was arrested on 20 December 2019 and sentenced four days later to 18 months in prison and a fine 200,000 CFA (approx. US\$360) for ‘harassment via electronic means’ after he tweeted statements made by Benin’s Public Prosecutor during a conference.<sup>30</sup> On 19 May 2020, an appeal court reduced his sentence to 12 months in prison, with six months suspended, but increased his fine to 500,000 CFA (approx. US\$900), even though Reporters Without Borders provided the appeal court with a video recording demonstrating that Ignace Sossou’s quotes were accurate.<sup>31</sup> He was released on 24 June 2020 after serving his sentence. Previously, on 12 August 2019, Ignace Sossou had been sentenced to a one-month suspended jail term and a fine of 550,000 CFA (approx. US\$988) for ‘publishing false information on the internet’ after he published articles on tax evasion in Benin.<sup>32</sup> Journalist Casimir Kpedjo was arrested on 18 April 2019 following a complaint filed by the legal representative of the state because he had declared on Facebook that the country’s debt was close to US\$725 million (approx. 400 billion CFA) and that this went against the 2019 Finance Law. He was charged with publishing ‘false information’. He was released on bail on 23 April 2019. His trial has been postponed 10 times and is currently scheduled for December 2020.<sup>33</sup>

The High Authority of Audio-visual and Communication (HAAC) has arbitrarily sanctioned journalists and media houses. On 19 June 2019, it notified Emmanuelle Sodji, journalist for France 24, that she was banned from working in Benin following reports she produced on the security situation in the north.<sup>34</sup> As of June 2020, she still had not recovered her accreditation. On 6 May 2020, the HAAC warned her of ‘extreme solutions’ if she continued to operate despite the withdrawal of her accreditation.<sup>35</sup> In December 2019, radio station *Soleil FM*, owned by opposition political figure Sébastien Adjavon, had to suspend broadcasting as the HAAC considered it could not validate the application to renew its licence.<sup>36</sup> On 28 April 2019, the day of the legislative elections, the authorities shut down the internet, which undermined the work of journalists and CSOs.<sup>37</sup> According to the US State Department, a ‘Ministry of Communications official told a diplomatic representative that the internet blackout was done to prevent the circulation of ‘fake news’ on election day’.<sup>38</sup>

## **2. Freedom of peaceful assembly**

*‘We saw the violence used against those who took to the streets for the 2019 legislative elections. We saw how the authorities covered it all up with the amnesty law. So, when the local elections happened, no one dared to say anything. Everybody is scared.’*

Human rights defender, Cotonou, 19 May 2020.

The Criminal Code, adopted in 2018, curtails the right to the freedom of peaceful assembly. It has been used to arrest and detain peaceful protesters. It criminalises ‘unarmed gatherings that could disturb public tranquillity’ and ‘provocations to unarmed gathering’.<sup>39</sup>

From February to March 2019, in the run-up to the April 2019 legislative elections, local authorities issued blanket bans on protests in several cities, including Abomey Calavi, Allada, Glazoue, Parakou and Porto-Novo.<sup>40</sup>

The security forces used excessive force to disperse demonstrators, including teargas, batons and live ammunition. Military forces were deployed at some of the demonstration sites. At least four people were killed by firearms in the context of the protests.<sup>41</sup>

Over 70 people, including political opposition members and civil society leaders, were arrested in the context of the legislative elections. Among them, Joseph Aïmasse, a member of the *Confédération syndicale des travailleurs du Bénin* (Union’s Confederation of Workers in Benin) was arrested on 28 March 2019 and sentenced to two months in prison and a fine of 200,000 CFA (approx. US\$360) for having called for an unauthorised protest.<sup>42</sup>

In May 2019, 60 people were charged with violence and assault, participation in an armed gathering and direct incitement to an armed crowd. They were released on 8 November 2019 after the adoption of an amnesty law that also shields members of the security forces from prosecution for the human rights violations committed in the context of the demonstrations.<sup>43</sup>

## **3. Freedom of association**

Over the last three years, the authorities in Benin have interfered in the activities of CSOs, including by withdrawing their ability to refer cases to regional courts and restricting the right to strike.

On 30 April 2020, the Constitutional Court of Benin ruled that the additional protocol of the ECOWAS Court of Justice, which allowed individuals to seize the court, was no longer enforceable in Benin and that all acts undertaken under the protocol were void.<sup>44</sup> The Constitutional Court argued that the protocol had never been ratified by law. The ECOWAS Court of Justice had on several occasions examined cases of human rights violations perpetrated in Benin. For instance, in 2017, the ECOWAS Court of Justice ruled against Benin in a case of unlawful detention and ordered the state to pay the victim eight million CFA (approx. US\$14,400) in compensation.<sup>45</sup>

On 21 April 2020, Benin announced its withdrawal from the protocol that allowed individuals and CSOs to bring cases to the African Court on Human and People's Rights, just days after the Court ordered the suspension of the local elections.<sup>46</sup>

The authorities in Benin have also undermined the activities of unions by restricting the right to strike, with the adoption of law No. 2018-34 of 5 October 2018.<sup>47</sup> The law limits the duration of strikes to 10 days a year, seven days per semester and two days per month.<sup>48</sup> The law prohibits the right to strike for certain professional categories, including those working in the police, customs, water and forestry.<sup>49</sup> It also prohibits solidarity strikes<sup>50</sup> and provides vague definitions of the minimum service to be ensured in the event of a strike (art. 8).<sup>51</sup>

A draft bill on association has been under review since 2012. CSOs have raised concerns about the draft bill, including the increase in the duration of the registration process and discriminatory provisions regarding vaguely defined 'foreign associations'.<sup>52</sup> Human rights defenders have expressed concerns that the draft law could be adopted without addressing the human rights concerns raised and used to place further restrictions on CSOs.<sup>53</sup>

## **Advocacy opportunities**

- Several international bodies, including the AU, the ACHPR, ECOWAS, the Organisation Internationale de la Francophonie (OIF), the EU and UNOWAS, have issued statements marking the deterioration of the human rights situation in Benin since the legislative elections of 2019.<sup>54</sup> Keeping these bodies engaged, through regular submissions and dialogue with CSOs in Benin, represents an opportunity to maintain pressure on the authorities to respect and protect human rights ahead of the 2021 presidential elections, including to challenge Benin's decision to withdraw the rights of individuals to seize the ECOWAS Court of Justice and the African Court on Human and People's Rights;
- The Committee on Economic, Social and Cultural Rights issued its concluding observations on Benin in March 2020.<sup>55</sup> It prioritised the recommendation to bring the legal framework on the right to strike into line with the International Covenant on Economic, Social and Cultural Rights within 24 months. The Committee Against Torture issued its concluding observations in June 2019 and prioritised recommendations on providing CSOs with ongoing access to detention facilities and respecting the right to peaceful protests.<sup>56</sup> Civil society groups, in particular trade unions, have an opportunity to make submissions to the committees through the follow-up procedure;
- The next UN Human Rights Council Universal Periodic Review (UPR) of Benin is scheduled for November 2022. The UPR process gives multiple opportunities for CSOs to undertake advocacy with the Benin authorities, UN member states and UN mechanisms. CSOs can file submissions to the Office of the High Commissioner for Human Rights (OHCHR) until 31 March 2022 to be included in the Summary of

stakeholders' information.<sup>57</sup> CSOs can present their reports to the Benin authorities, UN member states and UN mechanisms ahead of the review, including at UPR pre-sessions.<sup>58</sup> Following the review, CSOs will be able to engage with the Benin authorities and UN member states on the recommendations raised.



Côte d'Ivoire's civic space is rated as 'Obstructed' by the CIVICUS Monitor<sup>59</sup>

#### **Main civic space violations:**

- Use of restrictive provisions curtailing the freedom of expression against activists, journalists and cyberactivists.
- Protests and violence following President Alassane Ouattara's announcement to run for a third term in August 2020: several people killed, over 100 protesters arrested, arrest of a CSO activist.
- Withdrawal from protocol allowing individuals and CSOs to go directly to the African Court on Human and People's Rights.

#### **Political context**

*'The authorities' priority is to muzzle opposition groups ahead of the presidential elections.'*

Human rights defender, Abidjan, 13 May 2020

Ten years after the election crisis which left 3,000 dead and saw President Alassane Ouattara take office,<sup>60</sup> Côte d'Ivoire is heading towards presidential elections in October 2020. The country has been projecting an image of relative stability.<sup>61</sup> With an average economic growth of 8 per cent per year since 2011, Côte d'Ivoire is 'one of the fastest growing countries in the world' according to the World Bank.<sup>62</sup> It has secured a seat on the UN Security Council (2018-2019) and the presidency of the ECOWAS Commission in 2018. President Ouattara, who has spent two terms in office, announced in March 2020 that he would not run for the presidency again in 2020.<sup>63</sup> However, Following the death of his chosen successor Amadou Gon Coulibaly on 8 July 2020, Ouattara reversed his decision and declared his intention to seek a third term.<sup>64</sup> This decision has been controversial, as Côte d'Ivoire's 2000 and 2016 Constitutions both set a two-term limit for presidents. Ouattara's supporters claim that the adoption of the new Constitution in 2016 has reset his terms, allowing Ouattara to run in the upcoming presidential elections.

This sudden reversal, coupled with the exclusion of opposition leaders Laurent Gbagbo and Guillaume Soro from the electoral lists on grounds of criminal convictions,<sup>65</sup> sparked protests and exacerbated existing political tensions. At least 12 people were killed and over 100 people arrested during protests in August 2020.<sup>66</sup>

Political tensions were already flaring up ahead of the 2020 presidential election, including among President Ouattara, former President Henri Konan Bédié and former Prime Minister and armed group leader Guillaume Soro, former allies. As Soro, who had spent several months abroad, was returning to Abidjan on 23 December 2020 to start his campaign for the 2020 presidential election, Côte d'Ivoire issued an arrest warrant against him. He postponed his return and was charged with attempts to undermine the authority of the state and territorial integrity. In a separate case he was also charged with misappropriation of public funds, concealment of misappropriated public funds and money laundering. Between December 2019 and January 2020, 17 of Guillaume Soro's supporters and relatives were arrested, some in conditions amounting to enforced disappearances.<sup>67</sup> On 28 April 2020, despite an order of the African Court on Human and People's Rights calling on the Ivorian authorities to remove the arrest warrant against Soro and to release his supporters,<sup>68</sup> Soro was sentenced in absentia to 20 years in prison, a fine of 4.5 billion CFA (approx. US\$8.1 million) and the deprivation of his civil rights for embezzlement of public funds and money laundering, in relation to a house he purchased in 2007.<sup>69</sup>

In 2018, the municipal and regional elections were marked by violent clashes between supporters of President Ouattara's *Rassemblement des Houphouëtistes pour la Démocratie et la Paix* (Rally of Houphouëtists for Democracy and Peace, RHDP) and of former president Bédié's *Parti Démocratique de Côte d'Ivoire* (Democratic Party of Côte d'Ivoire, PDCI), leaving at least five people dead.<sup>70</sup>

In addition to the rivalries between the former political allies, the acquittal and release of former President Gbagbo by the International Criminal Court (ICC) in January 2019 fuelled further political uncertainty. There are concerns that he may attempt to return to Côte d'Ivoire and seek political power in order to disrupt appeal proceedings at the ICC and subject survivors who testified in the trial to reprisals.<sup>71</sup> In 2018, Gbagbo was sentenced, in absentia, to 20 years in prison for the looting of the Ivorian National Agency of Central Bank of West African States and other commercial banks during the 2010-2011 post-electoral crisis.<sup>72</sup>

Despite having been struck off the electoral list, supporters of Soro and Gbagbo submitted their candidacies for the upcoming presidential elections.<sup>73</sup> The Constitutional Court later invalidated both applications on 14 September 2020.<sup>74</sup> On 15 and 25 September 2020 respectively, the African Court on Human and People's Rights ordered Côte d'Ivoire to 'take all necessary measures to immediately lift all the obstacles preventing' Soro from enjoying his rights to elect and be elected, and to allow Gbagbo to register on the electoral list.<sup>75</sup>

The security situation in Côte d'Ivoire remains fragile and could rapidly deteriorate ahead of the presidential election. On 11 June 2020, an armed group attacked the military post of

Kafolo, close to the border with Burkina Faso, killing at least 10 members of the security forces.<sup>76</sup> A series of mutinies and clashes between the security forces and demobilised soldiers left at least 10 people dead in 2017.<sup>77</sup> In March 2016, an attack claimed by armed group al-Mourabitoun on a beach resort in Grand-Bassam killed 22 people, including three assailants.<sup>78</sup>

The reduced international scrutiny caused by the closure of the UN Operation in Côte d'Ivoire (UNOCI) and the end of the mandate of the UN Independent Expert on capacity building and technical cooperation in Côte d'Ivoire in 2017 only adds to the volatility of the situation.<sup>79</sup>

## Threats to civic space

*'Local human rights groups do not take up sensitive political cases for fear of reprisals. Even lawyers are scared.'*

Woman human rights defender, Abidjan, 15 May 2020.

In this context, CSOs in Côte d'Ivoire have a crucial role to play, including to monitor and report on human rights violations committed in the context of the elections. Yet human rights defenders are expressing concerns about restricted civic space following the adoption of laws curtailing the freedom of expression, harassment of journalists and human rights activists and violent dispersal of peaceful demonstrations.

### 1. Freedom of expression

Côte d'Ivoire is the first state in Africa to have adopted a law on the protection of human rights defenders, passed in June 2014. The law enshrines the rights to the freedoms of association and expression and protection from reprisals and codifies the obligation of the state to protect human rights defenders, their families and their homes from attacks, and to investigate and punish any attacks against them. In February 2017, the government passed a decree of implementation creating a protection mechanism under the joint responsibility of the state and the National Human Rights Commission.<sup>80</sup>

While these were positive steps, Côte d'Ivoire simultaneously adopted laws curtailing the freedom of expression, leading one human rights defender to describe the law on the protection of human rights defenders as a 'public relations exercise to get Côte d'Ivoire elected on the UN Human Rights Council in 2015'.<sup>81</sup>

On 28 April 2020, Côte d'Ivoire withdrew the possibility for individuals and CSOs to seize the African Court on Human and People's Rights, contesting the Court's order in the case of Guillaume Soro published six days earlier.<sup>82</sup> This withdrawal is a major setback for human rights defenders, who will no longer be able take matters to the Court.<sup>83</sup>

On 26 June 2019, Côte d'Ivoire adopted a new Criminal Code that contains provisions that violate the right to the freedom of expression, including criminalising offending the head of

state, publishing 'false news', 'uttering offensive remarks' online and 'publishing data which may undermine public order'.<sup>84</sup>

On 27 December 2017, Côte d'Ivoire adopted a new law on the press.<sup>85</sup> While the law explicitly excludes prison terms and detentions for press offences, it contains vague references to other applicable laws which could be used to sentence journalists to prison terms, for instance for offending the head of state. The law also provides for hefty fines of more than five million CFA (approx. US\$9,000) for insults, for publishing, broadcasting, divulging or reproducing 'false news' or offending the head of state. It also stipulates that, even if the facts are established, a statement may qualify as defamatory if the facts in question happened more than 10 years ago or concern the private life of a person. Finally, the law establishes the National Authority of the Press, whose functions include sanctioning media houses and journalists. The independence of the National Authority of the Press is undermined by the way its members are nominated. For instance, its president is designated by the President of the Republic.<sup>86</sup>

The 2015 law amending the Criminal Code also contains broad provisions that could be used to target people who express dissenting views, including the crime of 'participating in an attempt to demoralise the Army or the Nation' in times of war, which carries a life sentence.

Finally, the 2013 law on combatting cybercrime<sup>87</sup> provides for prison terms and hefty fines for using data 'fraudulently obtained', uttering 'any offensive expression, term of contempt or invective devoid of factual accusation' through an information system and dissemination through an information system of 'false information suggesting a destruction, degradation or deterioration of property or harm to individuals has been or will be committed'.

Human rights defenders expressed concerns that these laws have been misused to silence activists and journalists and to create a climate of fear ahead of the elections.<sup>88</sup>

Media organisations Reporters without Borders and the Media Foundation for West Africa reported that at least six journalists had been sentenced to pay hefty fines since March 2020.<sup>89</sup> At least two others were detained without being sentenced. On 6 May 2020, journalist Claude Dasse was detained for four hours and subjected to ill-treatment at Abidjan's main prison where he was investigating extortion claims.<sup>90</sup> Vamara Coulibaly and Paul Koffi, respectively the publication directors of *Soir Info* and *Nouveau Réveil*, were sentenced on 31 March 2020 to pay a fine of 2.5 million CFA (approx. US\$4,500) each for publishing 'false news'. On 29 March 2020, they had published a letter from the lawyers of imprisoned member of parliament and pro-Soro supporter Alain Lobognon expressing concerns about his prison conditions.<sup>91</sup> *Générations Nouvelles* journalists Cissé Sindou and Marc Dossa were sentenced to a fine of five million CFA (approx. US\$9,000), the maximum penalty for the offence, on 25 March 2020 for publishing 'false news' after reporting on two cases of COVID-19 infections at Abidjan prison.<sup>92</sup> On 3 March 2020, the director of publication of *Le Temps*, Yacouba Gbané, and a journalist, Barthélémy Téhin, were detained by the search brigade, brought to justice through the 'flagrante delicto' procedure and sentenced to a fine of five million CFA (approx. US\$9,000) each for defamation over an article published on corruption in Côte d'Ivoire.<sup>93</sup> On



2 March 2020, journalist Monique Kacou was summoned by the police of Port Bouët, a neighbourhood of Abidjan, and questioned for two hours over a Facebook post on a shortage of oxygen in a local hospital. She was released without charge the same day and warned about posting ‘false publications’ online.<sup>94</sup>

On 12 March 2020, a court in Toumodi, a town about 200km north of Abidjan, sentenced journalist and human rights defender Konan Yao Hubert to five years in prison and a fine of three million CFA (approx. US\$5,400) for ‘incitement and disturbance of public order’ and ‘assault and battery of gendarmes on duty’.<sup>95</sup> He had been arrested on 4 August 2019 by officers of the gendarmerie in relation to a protest in the village of N'da-kouassikro against the opening of a gold mine. The gendarmes refused to show a warrant and used violence to handcuff him, including beatings. He reportedly injured a gendarme as he resisted arrest.<sup>96</sup> As of September 2020, he is still suffering from the injuries he sustained at the time of his arrest.<sup>97</sup>

Several cyberactivists who are perceived to be close to opposition groups have been arrested and subjected to unfair trials since 2019. On 7 May 2020, Yapo Ebiba François, also known as Serge Koffi Le Drone, was arrested by policemen in Abidjan in relation to Facebook posts presented by the prosecution as ‘false news’ and ‘incitement to destroy equipment for the construction of a COVID-19 testing centre’.<sup>98</sup> He was held in police custody for six days at the Serious Crime Unit headquarters, where he was interrogated without access to his lawyer and subjected to torture and other ill-treatment, including beatings, sleep deprivation and stress positions.<sup>99</sup> On 12 May 2020, the police brought him before the prosecutor who charged him with undermining national defence, undermining public order, defamation and contempt on social media, dissemination of computer data obtained fraudulently and dissemination of false information suggesting that harm to individuals was being committed.<sup>100</sup> In a public statement about this case, the prosecutor sent a reminder that the dissemination of ‘false news’ with the ‘objective of defaming physical or moral persons, or to undermine the morale of the population and public order by discrediting institutions and their functioning constitute a criminal offence’.<sup>101</sup> He also announced the arrest of a member of the political opposition, N’Ponon Daïpo Etienne, who he presented as an accomplice of Yapo Ebiba François. As of September 2020, both men remain in pre-trial detention.

On 5 November 2019, a group of gendarmes arrested cyberactivist Ben Amar Sylla in Odienné, a town about 795km Northwest of Abidjan, after he published a Facebook post expressing concerns about corruption and the deterioration of public services in his locality. He was charged with defamation by the prosecutor acting upon the complaint filed by the mayor.<sup>102</sup> On 7 November 2019, he was released on bail on medical grounds.<sup>103</sup> Despite the mayor withdrawing her complaint after Ben Amar Sylla expressed a public apology, the court found him guilty of defamation and handed him a six-month suspended sentence and a fine of 100,000 CFA (approx. US\$180).<sup>104</sup>

On 7 June 2019, a court sentenced cyberactivist Soro Tangboho, also known as *Carton Noir* (Black Card), to one year in prison for ‘undermining public order’ and ‘incitement to

xenophobia’, without a lawyer present. Soro Tangboho was arrested on 8 November 2018 while livestreaming a video on Facebook showing police officers who, according to him, were extorting money from motorists. He was beaten during the arrest and subjected to torture and other ill treatment. The Ivorian authorities told Amnesty International that he had been under investigation by the police branch in charge of combatting terrorism and cybercrime but failed to present details on the implicated Facebook posts.<sup>105</sup>

## **2. Freedom of peaceful assembly**

The new Criminal Code, adopted in 2019, retains provisions that criminalise spontaneous protests, which are used by the authorities to justify the dispersal of peaceful demonstrations.<sup>106</sup> Human rights defenders have expressed concerns that these provisions are even more likely to be used in the context of the elections, when political tensions are high and protests are prone to be spontaneous in reaction to emerging political and social developments.<sup>107</sup>

Following President Ouattara’s announcement that he will be running for a third term, protests broke out in several cities in August 2020 and clashes between protesters and security forces were reported.<sup>108</sup> According to the Minister of Security and Civil Protection, Diomandé Vagondo, between 11 and 13 August 2020 five people were killed – three in Daoukro, one in Bonoua and one in Gagnoa – and 104 people were injured, including police officers and gendarmes.<sup>109</sup> Amnesty International, who obtained testimonies during the protests, said that police officers in Abidjan seemed to have allowed groups of men, some of whom were armed with machetes and sticks, to attack protesters.<sup>110</sup> Seven other people died in clashes between political groups in Divo between 21 and 22 August 2020.<sup>111</sup>

Over a hundred people, including human rights defenders, were arrested for ‘disturbance to public order’, ‘incitement to revolt’, ‘violence against law enforcement agencies’ and ‘destruction of property of others’.<sup>112</sup> Pulchérie Edith Gbalet of CSO *Alternatives citoyenne ivoirienne*, who had called for protest against a possible third term for President Ouattara, and two of her colleagues, Djehi Bi Cyrille and Gbaou Gedeon Junior, were detained on 15 August 2020 by armed men at a hotel in Abidjan where Gbalet was staying. They were placed under an arrest warrant and are being prosecuted for ‘undermining public order’, ‘participation in an insurrectionary movement’, ‘undermining state authority’, ‘wilful destruction of public goods’ and ‘provocation to a gathering’.<sup>113</sup> As of September 2020, Gbalet and her colleagues remained in pre-trial detention.

Following the protests in August, on 19 August 2020 the Council of Ministers announced a ‘suspension’ of all protests on public roads until 15 September 2020.<sup>114</sup>

On 11 March 2020, the police arrested at least 10 peaceful protestors during a demonstration organised by the pro-democracy group *Tournons la page – Côte d’Ivoire* (Turn the page – Côte d’Ivoire) in Yopougon, a neighbourhood of Abidjan. They were protesting and handing out

flyers against the adoption of a constitutional revision by the parliament, arguing that it should have been put to a referendum. They were detained for six hours before being released without charge.<sup>115</sup>

Samba David, president of the *Coalition des Indignés de Côte d'Ivoire*, four other members of the Coalition and a journalist were arrested on 23 July 2019 in front of the Independent Election Commission in Abidjan ahead of a protest. They were questioned without a lawyer and released the next day without charge.<sup>116</sup> Samba David had already served almost three years in prison between September 2015 and July 2018 following protests he organised against the rise in fuel prices. He was subjected to torture and other ill treatment and his trials were fraught with irregularities, including lack of access to a lawyer during interrogation.<sup>117</sup>

## Advocacy opportunities

- On 19 February 2020, the Council of Ministers announced Côte d'Ivoire's candidacy for a seat at the UN Human Rights Council for the period 2021-2023.<sup>118</sup> When reviewing Côte d'Ivoire's candidacy in October 2020, the UN General Assembly will take into account the state's 'contribution to the promotion and protection of human rights', as well as its 'voluntary pledges and commitments in this regard'.<sup>119</sup> This gives an opportunity to civil society to call on the Ivorian authorities to demonstrate their commitment to human rights by taking immediate measures for the protection and promotion of human rights in the context of the elections, particularly with regard to the right to the freedoms of expression and peaceful assembly, but also to make voluntary human rights pledges in the longer term. If it is to become a member of the UN Human Rights Council, Côte d'Ivoire should demonstrate its attachment to human rights mechanisms, including the UPR and the African Court on Human and People's Rights.
- In May 2019, under the UPR, Côte d'Ivoire received 247 recommendations, including on elections and the freedoms of expression and peaceful assembly. The Ivorian authorities explicitly rejected recommendations aiming to protect LGBTQI+ people against violence and to decriminalise libel and insults against the head of state.<sup>120</sup> CSOs can continue to engage with the UPR process by undertaking advocacy with the Ivorian authorities on the implementation of the recommendations raised and with the UN member states who raised them.
- Civil society has an opportunity to undertake advocacy with the Ivorian authorities, the AU and UN member states to reverse Côte d'Ivoire's decision to remove the possibility of individuals and CSOs to seize the African Court on Human and People's Rights.<sup>121</sup>



Guinea's civic space is rated as 'Obstructed' by the CIVICUS Monitor <sup>122</sup>

### **Main civic space violations:**

- Excessive use of force, including live ammunition, by security forces in protests, killing protesters and bystanders, with near complete impunity. Dozens of people have been killed since October 2019 in protests against a new constitution and a third term for President Alpha Condé.
- Access to social media sites was blocked ahead of, during and after the combined referendum and legislative elections between 21 and 23 March 2020.
- Arbitrary arrest, judicial harassment and prosecution of pro-democracy activists and human rights defenders.
- Repressive legislation curtailing fundamental freedoms, such as the 2019 Law on the Prevention and Repression of Terrorism and the 2016 revised Criminal Code.

### **Political context**

*'The country is in a political deadlock and we are heading for the worst.'*

Woman human rights defender, Conakry, 21 May 2020

Following a contested referendum in March 2020, Guinea adopted a new constitution allowing President Alpha Condé, in power since 2010, to run for a third term in the presidential elections scheduled for 18 October 2020.

The organisation of the controversial constitutional referendum, coupled with legislative elections, which had been delayed since 2018, was marred by violence. The AU, ECOWAS and OIF refused to monitor the elections, citing concerns about the electoral register.<sup>123</sup> Opposition groups, including the *Union Nationale des Forces Démocratiques de Guinée* (National Union of the Democratic Forces of Guinea) and the *Union des Forces Républicaines* (Union of Republican Forces), boycotted the elections and are refusing to recognise the new constitution and parliament.<sup>124</sup>

The ACHPR, the Special Representative of UNOWAS, ECOWAS, the EU, the governments of France and the USA and Amnesty International and Human Rights Watch have all condemned or expressed concern about the violence around the referendum.<sup>125</sup> The *Front National de Défense de la Constitution* (National Front for the Defence of the Constitution, FNDC), a coalition of opposition parties and CSOs created in April 2019 in response to President Condé's plans to amend the constitution, estimated that at least 37 people were killed in the context of the elections, between 22 and 24 March 2020.<sup>126</sup> In May 2020, the Office of the Prosecutor of Kankan announced that 30 people had died in the violence in the northern town of Nzérékoré alone.<sup>127</sup>

Guinea has a long history of election-related violence. Dozens of demonstrators and two law enforcement officers were killed in the context of the parliamentary elections in 2013. At least 12 people were killed in relation to the presidential elections in 2015 and at least 15 people were killed in relation to the local elections in 2018.<sup>128</sup>

With political parties having ethnic affiliations, such political tensions at times deteriorate into inter-ethnic violence, particularly in the Guinea Forest region.<sup>129</sup> In 2010, the UN expressed concerns about the risk of genocide.<sup>130</sup>

## **Threats to civic space**

Rather than recognising the key role CSOs can play in such a tense political environment, the Guinean authorities have been closing civic space by restricting the rights to the freedoms of association, peaceful assembly and expression. Human rights activists have condemned efforts to instil a climate of fear in Guinea ahead of the presidential elections.<sup>131</sup>

### **1. Freedom of expression**

Since 2015, the Guinean authorities have curtailed the freedom of expression, including by adopting legislation criminalising dissent, shutting down access to social media sites and arresting and intimidating journalists, pro-democracy activists and other human rights defenders.

In terms of legislation, the Law on the Prevention and Repression of Terrorism, adopted in July 2019, contains unclear provisions criminalising 'contesting the commission of an act of terrorism', with such acts poorly defined in the law.<sup>132</sup> The revised Criminal Code, adopted in 2016, criminalises contempt, defamation and insult, including of public figures, with penalties of up to five years' imprisonment and a fine. The Law on Cyber-Security and Personal Data Protection, passed on 2 June 2016, criminalises uttering insults online, the dissemination and communication of 'false information' as well as the production, distribution or transfer to third parties of data 'likely to disturb law and order or public security or jeopardise human dignity'.

The law likens the disclosure of data ‘that should be kept confidential’ for national security reasons to the crimes of treason or espionage, making it punishable by life imprisonment.<sup>133</sup>

The Guinean authorities blocked access to social media sites, including Twitter, Facebook Messenger and Instagram ahead of, during and after the combined referendum and legislative elections between 21 and 23 March 2020.<sup>134</sup> This shutdown prevented human rights defenders from undertaking human rights monitoring and reporting during the elections.<sup>135</sup>

Pro-democracy activists and other human rights defenders, particularly those close to the FNDC, have been arrested and subjected to unfair trials, torture and other ill-treatment, including under the COVID-19 state of emergency.<sup>136</sup> According to the FNDC, over 287 of ITS members are currently held in arbitrary detention.<sup>137</sup> Some have been detained in non-official detention centres, including the military base of Soronkoni in eastern Guinea, 700km away from Conakry.<sup>138</sup>

On 7 May 2020, members of security forces wearing civilian clothes and balaclavas arrested Saïkou Yaya Diallo, executive director of the *Centre de Promotion et de Protection des Droits Humains* (Centre for the Promotion and Protection of Human Rights) and legal officer of the FNDC, in Hamdallaye, a neighbourhood of Conakry, without presenting an arrest warrant. He was forced into a pick-up truck and was taken to the headquarters of the intelligence services. The following day, he was transferred to the *Direction centrale de la police criminelle* (Central Directorate of the Criminal Police). The Guinean authorities refused to share information about his whereabouts with his relatives and he only gained access to a lawyer on 11 May 2020. On 12 May he was charged with ‘assault, violence, threats and public insults’ in relation to FNDC members singling out an individual who they suspected was a member of the intelligence services during a meeting on 25 March 2020.<sup>139</sup> On the same day he was transferred to the Conakry prison. Saïkou Yaya Diallo has diabetes and did not receive adequate treatment. On 21 May 2020, his lawyers were informed that his request for bail had been granted, but the prosecutor’s office refused to order his release.<sup>140</sup> As of September 2020, he remained in arbitrary detention.

On 17 April 2020, the deputy coordinator of pro-democracy group *Tournons la Page - Guinée* (Turn the Page – Guinea, TLP Guinée) and FNDC member Oumar Sylla, also known as Foniké Mengué, was arrested outside his house in Conakry by police officers who did not present a warrant. On 24 April 2020 he was charged with disseminating false information. He was arrested an hour after a radio interview in which he blamed the government for the violence in Nzérékoré and called for new protests against the constitutional change. On 11 May 2020, the Appeal Court of Conakry rejected his request for bail and he remained in detention at Conakry Prison until he was acquitted on 27 August 2020.<sup>141</sup> On 29 September 2020, Oumar Sylla was again arrested while mobilising people in Conakry to protest against the candidacy of President Condé and was reportedly taken to *Direction centrale de la Police Judiciaire* (Central Direction of the Judicial Police).<sup>142</sup>

On 21 March 2020, journalist Amadou Tidiane Diallo, a reporter with the news website *Objectif224*, was arrested by police officers on the eve of the elections as he was filming clashes between protestors and the security forces. He was released the following day.<sup>143</sup> He had already been arrested and detained in similar circumstances in January and March 2020.<sup>144</sup>

On 7 March 2020, national coordinator of TLP – Guinée, Ibrahima Diallo, and national coordinator of *Balai Citoyen*, Sekou Koundono, both also members of the FNDC leadership, were arrested in Conakry by 20 agents of the Brigade de Recherche et d'Investigation (Research and Investigation Brigade) who raided Ibrahima Diallo's house without a warrant. The two were charged with assault, assaulting a public officer and production and dissemination of data threatening public order and security. They were released on bail on 13 March 2020 and remain under judicial supervision.<sup>145</sup> Ibrahima Diallo and Sekou Koundono had already been arrested on 12 October 2019 and sentenced to six months in prison for 'inciting to an unarmed gathering' with three other members of the FNDC leadership. They were released on bail on 28 November 2019.<sup>146</sup>

On 19 February 2020, three women, Néné Camara, Yarie Camara and Mariam Diallo, all members of the FNDC, were arrested during a protest in Conakry. On 9 March 2020 they were sentenced to a six-month suspended prison sentence for 'inciting to an unarmed gathering' and released after 19 days in detention.<sup>147</sup>

## **2. Freedom of peaceful assembly**

In the past few years, Guinea adopted legislation restricting the right to peaceful assembly. For instance, the 2016 revised Criminal Code criminalises spontaneous protests, provides vague grounds to ban protests and exposes protest organisers to prison terms for unlawful acts committed by other demonstrators.<sup>148</sup> The 2015 law on maintaining public order provides a regulatory framework for the use of force. However, it is not in line with international standards. It refers to the principles of legality, necessity and proportionality only in passing. This regulatory framework is further undermined by the 2019 law on the use of arms by the *gendarmerie* that sets out several justifications for the use of force – including to defend positions *gendarmes* occupy – without making clear that firearms can only be used when there is an imminent threat of death or serious injury.<sup>149</sup>

Using these repressive legal provisions, the Guinean authorities have violently repressed mass protests organised by opposition groups and CSOs such as the FNDC. Dozens of protests were banned on arbitrary grounds in 2019, including through blanket bans on any FNDC protests in the Nzérékoré region.<sup>150</sup> According to Amnesty International, at least 29 people have been killed in protests between January 2019 and March 2020, with a majority of these deaths implicating members of the security forces, based on eyewitness testimonies, testimonies from medical staff and the type of ammunition used.<sup>151</sup> According to a collective of CSOs

defending human rights in the Guinea Forest region, 36 people died in election-related violence in Nzérékoré between 25 March and 2 April 2020, with some of those killed buried in mass graves.<sup>152</sup> The authorities acknowledged 30 deaths in Nzérékoré.<sup>153</sup>

Despite commitments that these killings would be investigated, impunity prevails. More than a hundred people have been killed in Guinea in protests since 2010 and only one police captain has been sentenced, in February 2019 in relation to the death of a demonstrator in 2016.<sup>154</sup> Families of people killed during protests and human rights defenders have mentioned on multiple occasions that it is increasingly difficult to get access to medical records, death certificates, autopsy reports and information from medical staff and the prosecutor's office related to these deaths.<sup>155</sup>

### **3. Freedom of association**

CSOs and other associations in Guinea face obstacles to their legal registration, which affects their ability to access funding and to engage in legal proceedings.<sup>156</sup> The 2005 Law on Associations sets out a notification regime. According to articles 5 and 7, associations should notify the authorities of their existence and receive a temporary receipt pending formal accreditation within 90 days. However, dozens of associations, including well established national human rights CSOs, have been granted 'temporary registration certificates' instead of a permanent accreditation, without any legal basis. This unnecessarily increases the already onerous and time-consuming administrative requirements.<sup>157</sup> Several associations have experienced difficulties in the renewal of these 'temporary registration certificates', including having to pay bribes for their applications to be reviewed, or the authorities refusing to respond to their requests for renewal.

The *Plateforme des Citoyens Unis pour le Développement* (Platform of United Citizens for Development, PCUD), an association that promotes good governance and development, received a three-year registration certificate in 2011 that was renewed in 2013. When the association sought to renew its certificate in 2017, the *Service National de Règlementation et de Promotion des Organisations Non Gouvernementales et Mouvements Associatifs* (National Service for the Regulation and Promotion of Non-Governmental Organisations and Associative Movements, SERPROMA) informed it that they would only provide a one-year registration certificate. After more than nine years of activities, PCUD is yet to receive a permanent registration certificate. The Guinean authorities have invoked PCUD's lack of a permanent registration certificate to refuse the organisation accreditation for election monitoring activities.<sup>158</sup>

Women of Africa Guinea (WAFRICA Guinea) opened its office in Conakry in 2005. WAFRICA Guinea was first registered as an international CSO before being granted national CSO status in 2008. Since 2017, when seeking to renew its certificate, WAFRICA Guinea obtained receipts serving as a temporary registration certificates for the duration of a year. In May 2020, a



SERPROMA official requested a payment of €300 (approx. US\$352) to deliver a permanent certificate.<sup>159</sup>

In 2019, the Guinean authorities introduced a draft bill to replace the 2005 Law on Association. If adopted, the draft bill would mark a step back in terms of the freedom of association. The draft law limits the scope of activities of associations by stating that they should be ‘apolitical’ and not pursue objectives that are ‘unlawful, disregard laws and good morals’, a provision that could be used against LGBTQI+ groups. It further provides for a cumbersome and lengthy registration process, meaning that it may take up to seven years to obtain permanent accreditation. It makes a vague distinction between ‘foreign’ and ‘national’ associations, placing additional requirements on associations considered ‘foreign’. The law establishes that associations may be dissolved by the Minister of Territorial Administration without a court order. The final provisions of the law, which are vaguely worded, may require CSOs that already have registration certificates to reapply under the new law.<sup>160</sup> The status of the bill is unclear, but activists fear that the new parliament may attempt to adopt it prior to the 2020 presidential election.<sup>161</sup>

There has been no progress in the review of the draft bill on human rights defenders initiated by the Ministry of National Unity and Citizenship in 2017. While the bill represents a unique opportunity to protect human rights defenders, it contains provisions that could be used to muzzle dissenting voices, as it provides that the activities of defenders ‘must contribute to the preservation and reinforcement of solidarity, national unity, national independence and territorial integrity’.<sup>162</sup> The bill also fails to create an independent protection mechanism.

## **Advocacy opportunities**

- Several international bodies, including the AU, the ACHPR, ECOWAS, OIF, the EU and UNOWAS, as well as influential UN member states, have taken a strong stance against the deterioration of the human rights situation in Guinea ahead of and following the 2020 constitutional referendum and legislative elections.<sup>163</sup> Keeping these institutions and bodies engaged, through regular submissions and dialogue with CSOs in Guinea, represents an opportunity to maintain pressure on the Guinean authorities to respect and protect human rights.
- Advocacy towards EU institutions around potential sanctions against Guinea could be of particular relevance in light of recent EU decisions. In October 2019, the EU Council extended the sanction regime against Guinea until October 2020.<sup>164</sup> While the Council lifted an arms embargo in 2014,<sup>165</sup> asset freezes and travel bans against members of the military junta who committed human rights violations in 2009 are still in force. The EU Parliament also adopted a resolution on Guinea in February 2020. It ‘urges the European Union to closely monitor the situation in the Republic of Guinea, and to hold the Government to account for any violation of commitments to international human

rights law and agreements', including through article 96 of the Cotonou Agreement,<sup>166</sup> which could lead to a cessation of aid and development cooperation.

- Guinea went through its third-cycle UPR on 21 January 2020.<sup>167</sup> UN member states made 213 recommendations to the Guinean authorities, including on the protection of the freedoms of expression and peaceful assembly, on holding free and fair elections and combatting impunity. At the 44<sup>th</sup> session of the Human Rights Council, the Guinean authorities accepted 203 out of 213 recommendations, but noted 10 recommendations relating to LGBTQI+ rights, criminal defamation, policing demonstrations and use of force.<sup>168</sup> There is an opportunity for CSOs to continue to engage with the UPR process. This includes undertaking advocacy and engaging with the Guinean authorities on implementing key recommendations; following up with the UN member states that made these recommendations to ensure they raise their implementation with the Guinean authorities during bilateral and multilateral dialogues; and monitoring the implementation of the recommendations by the Guinean authorities.
- In October 2018, the UN Human Rights Committee adopted its concluding observations on Guinea and raised concerns on a number of civil and political rights, including guarantees of free and fair elections, the freedoms of association, peaceful assembly and expression and the protection of journalists and human rights defenders.<sup>169</sup> It marked its recommendation relating to combating corruption, addressing past human rights violations, combating impunity and promoting national reconciliation, as well as torture and cruel, inhuman or degrading treatment, for follow-up by 2 November 2020. Guinean civil society groups have an opportunity to make submissions to the Human Rights Committee through the follow-up procedure.



Niger's civic space is rated as 'Obstructed' by the CIVICUS Monitor and was added to the Monitor Watchlist in June 2020 due to immediate and urgent threats to the country's civic space.<sup>170</sup>

#### **Main civic space violations:**

- Adoption of repressive laws, including the 2020 law on the interception of electronic messages (2020).
- Use of the 2019 Law on Combatting Cybercrime against activists and journalists.
- Judicial harassment and prosecution of human rights defenders, including journalists.
- Systematic banning of civil society protests, excessive use of force and arrest of peaceful protesters.

#### **Political context**

Niger is due to hold three elections by the end of the year. The local elections, delayed since 2015, the legislative and presidential elections are scheduled for December 2020.<sup>171</sup> Political tensions are high, with opposition groups refusing to sit on the Independent National Eligibility Commission and organising mass protests against the new Electoral Code, which was adopted in June 2019 during a parliamentary session they boycotted. Opposition groups consider that the code was not 'consensual' and was developed to exclude opposition leader Hama Amadou, who came second in the 2016 presidential election, from running in 2020.<sup>172</sup>

The security and humanitarian situation in Niger is marked by clashes between armed groups, including Boko Haram, and the security forces, with human rights abuses committed by both sides against civilians.<sup>173</sup> According to the UN, an estimated 500 civilians were killed or abducted in Niger in 2019 and 2.9 million people, one in ten of people in Niger, would need humanitarian assistance in 2020.<sup>174</sup> The region of Diffa has been under a state of emergency since 2015 and the regions of Tahoua and Tillabery since 2017, granting extraordinary powers to the security forces.<sup>175</sup>

## Threats to civic space

Human rights defenders in Niger have expressed concerns about restrictions on civic space with the adoption of repressive legislation, arrests of people who express dissent, bans on protests, arrests of protesters and organisations facing difficulties when registering.<sup>176</sup>

### 1. Freedom of expression

Since 2019, Niger has adopted legislation that curtails online freedom of expression. The Law on the Repression of Cybercrime, adopted in June 2019, criminalises ‘defamation’, ‘insults’ and the ‘dissemination of information which may undermine public order and human dignity’, with prison terms of up to three years and fines of up to 5 million CFA (approx. US\$9,000).<sup>177</sup> On 29 May 2020, the National Assembly adopted a law on the interception of electronic messages that threatens the right to privacy. It provides that requests for the interception of communications should be authorised by the President of the Republic, without judicial control.<sup>178</sup> It creates a National Commission of Controls of Security Interceptions which lacks independence – six out of eight members are chosen by the executive – and whose decisions are not legally binding.<sup>179</sup>

Human rights defenders expressed concerns that the 2019 law on cybercrime was being used to target activists.<sup>180</sup> According to Amnesty International, since March 2020, at least 11 people have been arbitrarily arrested under this law for ‘disseminating information which may undermine public order and human dignity’.<sup>181</sup> Samira Sabou, a journalist and the president of the Association of Bloggers for Active Citizenship, was arrested on 10 June 2020 and charged with ‘defamation by a means of electronic communication’ for a publication she posted on Facebook about embezzlement in the Ministry of Defence.<sup>182</sup> She was acquitted on 28 July 2020 after spending 48 days in detention.<sup>183</sup> Judicial police summoned *Le Courrier* journalist Ali Soumana for questioning on 12 July 2020 on accusations of ‘writing and publishing false information’ in relation to a Facebook post in which he alleged that sources indicated that companies implicated in embezzlement in the procurement of military equipment were renegotiating repayment to avoid legal action. Soumana, who has been judicially harassed several times in the past, was held in detention for two days before being presented before a judge and provisionally released.<sup>184</sup>

Amina Maiga was arrested on 29 April 2020 in Niamey on the basis of a WhatsApp conversation where she questioned the authorities’ response to the COVID-19 pandemic. On 7 May 2020, a court sentenced her to a three-month suspended prison term.<sup>185</sup> On 9 April 2020, Ali Idrissa, national coordinator of *Réseau des Organisations pour la Transparence et l'Analyse Budgétaire* (Network of Organisations for Budgetary Transparency and Analysis, ROTAB) was summoned to a police station and arrested following a complaint by the former army chief of staff. He was charged with defamation and dissemination of information that may undermine public order under the law on cybercrime in connection with the corruption

scandal involving the Ministry of Defence. Ali Idrissa was released on bail on 14 April.<sup>186</sup> On 5 March 2020, journalist Kaka Touda Mamane Goni was arrested in Niamey after publishing Facebook and Twitter posts on a potential case of COVID-19 infection at the Niamey Hospital. On 26 March 2020, a court in Niamey sentenced him to a three-month suspended prison term for ‘dissemination of information which may undermine public order’.<sup>187</sup>

## **2. Freedom of peaceful assembly**

The authorities in Niger continue to repress peaceful demonstrations, including by banning protests and arresting protesters. Security forces frequently resort to excessive force, leading to injuries and death during protests.<sup>188</sup>

Peaceful protests organised by CSOs in Niger are almost systematically banned. Between March 2018 and March 2020, pro-democracy movement *Tournons La Page – Niger* (Turn the Page – Niger, TLP-Niger) documented at least 24 civil society protests banned in Niamey and in Dosso, Tahoua and Zinder, often on vague grounds such as ‘undermining public order’. The authorities communicated their decisions at short notice, sometimes less than a day before protests, which undermined the ability of protest organisers to challenge bans in court.<sup>189</sup>

Scores of protestors, including civil society activists, have been detained and subjected to excessive use of force in relation to protests organised since 2017. On 15 March 2020, TLP-Niger organised a protest against alleged corruption in the purchase of military equipment. They had notified the local authorities as required by law and did not get a response. On the day of the protest, security forces were deployed to prevent people from gathering and used teargas to disperse demonstrators. The police arrested 15 people, including eight leaders of CSOs such as *Alternative Espaces Citoyens* (Alternative Citizens’ Space) and TLP-Niger. They were charged with organising an unauthorised gathering and complicity in damaging public property, arson and manslaughter. Five of the civil society activists have been released on bail. Three activists – Halidou Mounkaila, Moundi Moussa and Maikoul Zodi – remained in detention for over six months until they were released on bail on 29 and 30 September 2020. They still face charges. They were detained in separate prisons, some more than 100km away from their relatives and lawyers.<sup>190</sup>

Between March and April 2018, security forces arrested at least 26 people, including 10 leaders of CSOs, in relations to protests against the 2018 Finance Law. While some of the activists were released after three months, others were detained for more than a year. On 24 July 2018, Ali Idrissa from ROTAB, Moussa Tchangari from *Alternative Espaces Citoyens* and Nouhou Arzika, President of the *Mouvement Pour la Promotion de la Citoyenneté* (Movement for the Promotion of Responsible Citizenship) were given three-month suspended sentences for organising an ‘illegal assembly’ and released the same day.<sup>191</sup> Ibrahim Diori of *Alternative Espaces Citoyens*, Maikoul Zodi, coordinator of TLP-Niger, and Karim Tanko, president of *Union des Jeunes pour la Protection de la Démocratie et les Droits de l’Homme* (Youth Union for the

Protection of Democracy and Human Rights) were released on 5 October 2018 after being cleared of charges of ‘organising and participating in a banned demonstration’ and ‘causing damage to public property’.<sup>192</sup> On 6 December 2018, Yahaya Badamassi from *Alternative Espaces Citoyens* was released after being cleared of charges of ‘organising and participating in a banned demonstration’, ‘causing damage to public property’, ‘participation in an insurrectional movement’ and ‘conspiracy against state security’.<sup>193</sup> On 13 July 2019, lawyer and human rights activist Lirwana Abdourahamane was released after serving one year in prison. On 23 July 2018 he had been sentenced to 24 months in prison, with 12 months suspended, for contempt of court.<sup>194</sup> Sadat Illiya Dan Malam from the *Mouvement patriotique pour une citoyenneté responsable* (Patriotic Movement for Responsible Citizenship) was released on 20 November 2019 after serving more than 19 months in prison. Initially charged with ‘participation in an insurrectionary movement’ and ‘conspiracy against state security’, a court downgraded these charges to ‘insult against members of the political party PNDS Tarayya’ (Nigerien Party for Democracy and Socialism) and ordered his release in May 2019. However, the prosecutor appealed against the decision and Sadat Illiya Dan Malam remained in detention until the appeal court decision in November.<sup>195</sup>

### 3. Freedom of association

Human rights defenders have expressed concerns about the authorities interfering in the activities of CSOs, including by delaying their registration and suspending them arbitrarily.<sup>196</sup> In March 2020, the authorities informed human rights defenders and financial and technical partners that they were planning on revising the law on association.<sup>197</sup>

The *Association des Blogueurs pour une Citoyenneté Active* (Association of Bloggers for Active Citizenship) submitted its application for registration in January 2019 to the administrative authorities in Niamey. They were provided with a temporary receipt under which they could operate. However, as of June 2020, the association had still not been granted formal authorisation from the Ministry of Interior, something that could, for instance, facilitate access to foreign funding. In December 2019, four members of the association, including its president Samira Sabou, were summoned by the *Direction de la Surveillance du Territoire* (Directorate for Territorial Surveillance) in relation to the creation of the association. They were questioned about their political affiliation, the matrimonial status of their parents and their Facebook publications, even though the legal framework on association does not refer to such investigations being necessary.<sup>198</sup>

On 30 October 2017, the Minister of the Interior issued a decree banning the *Association de Défense des Droits des Consommateurs des Technologies, de l’Information, de la Communication et de l’Energie* (Association for the Defence of the Rights of Consumers to Information Technology, Communication and Energy, ACTICE) from operating throughout the country. The association was outspoken against the 2018 Finance Bill and organised a demonstration on 29 October 2017 denouncing the Bill as ‘anti-social’. ACTICE members Abass

Abdoul Aziz Tanko, Abdoulaye Harouna and Djibo Issa were arrested and charged with ‘participation in an unauthorised protest and armed gathering’. They were acquitted on 24 November 2017, but the ban on the association was never lifted.<sup>199</sup>

## **Advocacy opportunities**

- The UN Human Rights Committee reviewed Niger in 2019 and prioritised a recommendation on the freedoms of expression and peaceful assembly and the protection of journalists and human rights defenders for follow-up by March 2021.<sup>200</sup> Civil society groups have an opportunity to make submissions to the Human Rights Committee through the follow-up procedure.
- The next UPR of Niger is scheduled for April/May 2021. The UPR process gives multiple opportunities for CSOs to undertake advocacy with the authorities of Niger, UN member states and UN mechanisms. CSOs can file submissions to the OHCHR until 15 October 2020 to be included in the Summary of stakeholders’ information.<sup>201</sup> CSOs can present their reports to the Niger authorities, UN member states and UN mechanisms ahead of the review, including at UPR pre-sessions.<sup>202</sup> Following the review, CSOs will be able to engage with the authorities of Niger and UN member states on the recommendations raised and monitor their implementation.



Togo's civic space is rated as 'Obstructed' by the CIVICUS Monitor<sup>203</sup>

### **Main civic space violations**

- Regular disruption and shutdown of access to internet and social media, including on the day of the presidential elections on 22 February 2020.
- Crackdown on protests: protest bans and excessive use of force against protesters, including lethal force.
- Adoption of restrictive legislation, such as the 2019 modification on the Law on conditions and exercise of Peaceful Meetings and Protest, and the 2018 Cybersecurity Law.
- Arbitrary arrest and prosecution of human rights defenders and pro-democracy activists.
- National media regulator frequently sanctions media houses and journalists

### **Political context**

*'Civil society calls for electoral reforms have been ignored for years. The legislative elections were held, then the vote on the constitutional reform, then the local elections and finally the presidential elections. We will continue to protest.'*

Interview with a pro-democracy activist, Lomé, 14 May 2020

On 22 February 2020, President Faure Gnassingbé was elected for a fourth term, consolidating his family's 50-year rule.<sup>204</sup> On the day of the election, access to social media was disrupted.<sup>205</sup> Days before the election, two civil society groups were barred from observing the elections and staff of the National Democratic Institute (NDI) were expelled from Togo.<sup>206</sup>

President Gnassingbé has been in power since 2005, following elections marred by political violence in which up to 500 people were killed.<sup>207</sup> In May 2019, the National Assembly, in which the ruling party has a clear majority after the main opposition groups boycotted the 2018 legislative elections,<sup>208</sup> amended the constitution to allow President Gnassingbé to run for re-election in 2020 and again in 2025, meaning he could potentially stay in power for



another 10 years.<sup>209</sup> The revised constitution shields him from arrest, detention and prosecution for acts committed in office.<sup>210</sup>

The constitutional review process sparked a series of mass protests from pro-democracy and opposition groups over the last three years, which were violently repressed. Armed forces were deployed to demonstration sites and Peaceful demonstrations were dispersed by force leaving dozens dead, including children. The internet was shut down and scores of opposition and civil society leaders were arrested. Laws were revised to further curtail peaceful dissent.<sup>211</sup>

Political tensions remain high. On 21 April 2020, former Prime Minister Agbéyomé Kodjo was arrested at his house after he challenged the results of the presidential election, along with several other people. Charged with 'jeopardising state security', 'disseminating false news' and 'aggravated breach of public order', he was released on bail on 24 April 2020. He is banned from leaving Togo without authorisation, 'making statements questioning the results of the presidential elections' and 'making any remarks or statements or adopting any attitude calling into question and undermining constitutional and institutional order'.<sup>212</sup>

Tikpi Atchadam, the leader of the *Parti National Panafricain* (National Pan African Party, PNP) who has been leading mass protests since 2017, has been accused of undermining public order and incitement to hatred, and had to leave the country.<sup>213</sup> In April 2019, following a protest, the security forces raided his house without presenting a warrant and arrested three of his guards. The three men were charged with aggravated disturbance of public order, violence and assault, and were tried and convicted. Two were sentenced to one year in prison, with six months suspended, and were released in late October 2019. One received a sentence of two years' imprisonment with one year suspended and was scheduled for release in April 2020.<sup>214</sup>

Several other PNP members have been targeted. PNP treasurer Sébabé Guéffé Nouridine, the permanent secretary Kéziré Azizou and the special advisor Ouro-Djikpa Tchatikpi were arrested in April 2019. Nouridine and Azizou were accused of rebellion, assault and not respecting the ban and restrictions on protests' itineraries. On 7 May 2019, they were sentenced to 24 months in prison, with suspended sentences of 12 to 24 months respectively. Accused of organising an unauthorised protest, Tchatikpi was released on bail on 10 August 2019.<sup>215</sup>

The risk of armed groups spilling over from the Sahel to coastal countries including Togo<sup>216</sup> adds to the volatility of the situation and is already leading to increased repression in the name of combatting terrorism.<sup>217</sup>

## Threats to civic space

*‘Civic space was always restricted in Togo. But recent laws are making things worse.’*

Interview with a pro-democracy activist, Lomé, 14 May 2020

Since the repression of mass demonstrations started in 2017, civic space has further deteriorated in Togo through the adoption of repressive legislation, crackdown on protests, silencing of dissenting voices and curtailing of the right to the freedom of association.

### 1. Freedom of expression

*‘On paper, the right to freedom of expression is supposed to be protected. But in practice, journalists are intimidated when they write on sensitive topics such as land rights, police brutality and corruption.’*

Interview with a human rights defender, Lomé, 14 May 2020

The Togolese authorities have disrupted internet traffic on several occasions, undermining people’s ability to exercise their rights to the freedom of expression and freedom of access to information online. On 22 February 2020, the day of the presidential election, social media sites, including WhatsApp, Facebook Messenger and Telegram, were blocked on two state-owned providers.<sup>218</sup> The authorities shut down the internet for nine days across all networks in September 2017 amid opposition-led protests.<sup>219</sup> On 25 June 2020, the ECOWAS Community Court of Justice ruled that the 2017 internet shutdowns constituted violations of the right to the freedom of expression and called on the Togolese authorities to take measures to guarantee non-repetition.<sup>220</sup>

A recent investigation by The Guardian and Le Monde revealed that the phones of at least six Togolese government critics were targeted by the spyware Pegasus, developed by the Israeli company NSO Group. Those targeted include opposition members and members of the clergy: Catholic Bishop Benoît Alowonou, priest Pierre Chanel Affognon and opposition affiliates Raymond Houndjo and Elliott Ohin.<sup>221</sup>

The National Assembly passed a law on national security in August 2019 which restricts the right to the freedom of expression and could be used against people who express dissent. The law empowers the Minister of Territorial Administration and, in some cases, local authorities to order house arrests, identity controls, detention of up to 24 hours and deportation of foreign nationals.<sup>222</sup> It also allows the Minister of Territorial Administration to order the removal or blocking of access to online content and to shut down online communications.<sup>223</sup>

In December 2018, the National Assembly passed a cybersecurity law that severely restricts the right to the freedom of expression by introducing prison terms for uttering insults online, disseminating false news, undermining public morality and disseminating data that undermines ‘order, public security or human dignity’.<sup>224</sup> In addition, the law also confers

additional powers on the police, in particular in terms of surveillance of communications or IT equipment, without adequate judicial oversight.<sup>225</sup>

The revised Criminal Code, passed in November 2015, retains the criminalisation of defamation and offending public officials and increases penalties for these offences.<sup>226</sup> It creates a new and overly broad charge of publishing, broadcasting or reproducing ‘false news’, prescribing prison terms of up to five years.<sup>227</sup> The revised Code criminalises the uttering of seditious chants in public spaces or assemblies.<sup>228</sup>

These laws have been used to arrest and detain journalists, pro-democracy activists and other human rights defenders.

On 21 April 2020, two human rights defenders and members of the anti-torture organisation *Collectif des Associations Contre l’Impunité au Togo* (Collective of Associations Against Impunity in Togo, CACIT) and two journalists were arrested outside the house of opposition leader Agbeyomé Kodjo.<sup>229</sup> They were monitoring security forces who had been deployed in the area prior to Agbeyomé Kodjo’s arrest. The two members of CACIT were detained for 10 hours at the *Service central de recherches et d’investigations criminelles* (Central Service of Research and Criminal Investigation) before being released without charge. They did not have access to a lawyer and were asked for their phones and passwords.<sup>230</sup> One of the journalists was released shortly after her arrest; the other was detained overnight and released the following day.<sup>231</sup>

On 19 January 2019, the Criminal Court of Lomé sentenced activist Foly Satchivi of the movement *En aucun cas* (Under No Circumstances) to 36 months in prison, with 12 months suspended, for ‘rebellion’, ‘apology of crimes and offences’ and ‘aggravated public disorder’. He had been arrested on 22 August 2018 before a press conference on police brutality during protests. On 10 October 2019, the Court of Appeal reduced his sentence to 28 months in prison, with six months suspended.<sup>232</sup> He was released on 16 October 2019 following a presidential pardon.<sup>233</sup>

On 12 December 2018, Assiba Johnson, President of the *Regroupement des jeunes africains pour la démocratie et le développement* (Group of Young Africans for Democracy and Development) was sentenced to 18 months in prison, with six months suspended, for spreading ‘false news’ and insulting public officials following the publication of a report on the repression of protests in 2017 and 2018.<sup>234</sup> He was released on 5 April 2019 after serving his sentence.<sup>235</sup>

On 23 January 2018, Atikpo Bob, a leader of the *Mouvement Nubueke* (Nubueke Movement), a pro-democracy group, was arrested by agents of the *Service central de recherches et d’investigations criminelles* before being taken to the civilian prison in Lomé. He was interrogated without a lawyer and charged with publishing ‘false news’ and defamation for sharing a photo montage of the Minister of Security and Civilian Protection on social media. On 2 March 2018, he was sentenced to 12 months in prison, with nine months suspended. He

was released after serving his sentence. At least two other *Mouvement Nubueke* members were detained over several months.<sup>236</sup>

On 12 October 2017, four human rights defenders, representatives of the Africans Rising movement, were prevented from leaving Togo. Their equipment, telephones and passports were seized during their arrest at their hotel. They were questioned for several hours, without access to a lawyer. The human rights defenders' possessions were not returned until 17 October 2017 and they were later informed that the unit questioned local CSOs about their meetings with the delegation.<sup>237</sup>

The *Haute Autorité de l'Audiovisuel et de la Communication* (High Authority for Audiovisual and Communication, HAAC) frequently sanctions journalists and media houses. On 23 March 2020, the HAAC sanctioned newspapers *L'Alternative* (The Alternative) and *Liberté* (Freedom) in relation to articles published respectively about an official of the French Ministry of Foreign Affairs and the French Ambassador in Togo. *L'Alternative* was suspended for two months and *Liberté* for two weeks on the grounds that the veracity of the articles 'was not established'.<sup>238</sup> On 30 March 2020, the HAAC sanctioned the newspaper *Fraternité* (Brotherhood) over an article describing the sanctions against *Liberté* and *L'Alternative* as 'zealous'. *Fraternité* was suspended for two months on the grounds that the remarks made in the article were 'disrespectful, offensive and defamatory'.<sup>239</sup> On 25 March 2019, the HAAC withdrew the licence of the newspaper *La Nouvelle* on the grounds that it published 'unverified information', incited ethnic and religious hatred, abused the privacy of citizens and uttered slander and insults.<sup>240</sup>

## **2. Freedom of peaceful assembly**

Human rights defenders have expressed concerns about restrictions to the right to peaceful assembly, reporting that it is now impossible to organise a peaceful demonstration within sight or sound of the targeted institution.<sup>241</sup>

In August 2019, the National Assembly adopted a law amending the law on assembly, drastically restricting the right to the freedom of peaceful assembly. It provides that organisers of meetings and assemblies in private settings must inform local authorities in advance.<sup>242</sup> It sets a blanket ban on protests on national roads, in areas of high economic activity in urban centres and in areas close to state institutions, embassies and premises of international organisations.<sup>243</sup> The law allows local authorities to limit the number of assemblies per week in their area<sup>244</sup> and to ban a protest on short notice.<sup>245</sup>

The revised Criminal Code, adopted in November 2015, criminalises the participation in and organisation of assemblies that have not been subject to the necessary administrative formalities, regardless of the size of the assembly, with penalties ranging from a fine of 50,000 CFA (approx. US\$90) to five years' imprisonment.<sup>246</sup> It also provides that the organisers and

peaceful demonstrators are responsible for any violent or criminal behaviour by other protesters and are liable for any corporal or material damage caused.<sup>247</sup>

Local authorities often impose itineraries on protests organised by political parties and CSOs or ban them on vague grounds such as potentially undermining public order.<sup>248</sup> Security forces, including police, gendarmerie and armed forces, are deployed to demonstration sites and have repeatedly used excessive force to disperse peaceful protesters, leading to dozens of people being killed since 2017, including minors. Scores of people have been arrested for participating in demonstrations.

On 13 April 2019, the PNP organised protests across Togo to call for constitutional reforms. The protests were banned by the Ministry of Territorial Administration, except in Afagnan, Lomé and Sokodé, on the grounds that they would ‘undermine public order’. Security forces used teargas and batons to disperse demonstrators. Dozens of protesters and bystanders were injured. At least one man died during demonstrations in the northern town of Bafilo. Over 30 people were arrested in relation to these protests.<sup>249</sup>

Between August and December 2017, opposition groups held mass demonstrations in major cities. Security forces, including armed forces, dispersed these demonstrations with teargas, batons, water cannon and live ammunition. They raided houses and places of prayer, beating people, including those who had not participated in demonstrations. At least 10 people were killed, including two members of the armed forces and three children aged between 11 and 14. Hundreds were injured, including members of security forces. More than 200 people were arrested, including the secretary general of the PNP. At least 60 people were sentenced to prison terms of up to 60 months on charges including rebellion, wilful destruction, assault, violence against state officials, aggravated disruption of public order and aggravated theft.<sup>250</sup>

### **3. Freedom of association**

In addition to the arrests of journalists and human rights defenders, the authorities have undermined the work of CSOs by adopting repressive legislation, delaying registration processes and interfering in their activities.

The 2019 law on national security enables the Minister of Territorial Administration and, in some cases, local authorities to suspend associations and order the closures of ‘meeting places’.<sup>251</sup>

In April 2016, the Council of Ministers adopted a bill on the right to the freedom of association that contains discriminatory provisions against vaguely defined ‘foreign or international associations’. It states that associations must respect national laws and morals, a provision that could be used to further discriminate against LGBTQI+ people, as consensual same-sex sexual relations remain criminalised under the Criminal Code. The bill also provides that associations may be dissolved by members of the government, without any recourse to an independent and impartial determination by a court of law after a fair hearing.<sup>252</sup> While the

bill has not yet been scheduled for adoption at the National Assembly, human rights groups are concerned it could be adopted in the near future.<sup>253</sup>

Several human rights groups reported difficulties in registering their organisations.<sup>254</sup> For example, the *Association des Victimes de Torture du Togo* (Association for Victims of Torture in Togo) has been waiting for the receipt of its registration since 2012, undermining its ability to raise funds, particularly from international donors.<sup>255</sup>

The Togolese authorities have on repeated occasions interfered with the activities of pro-democracy and human rights groups.

Ahead of the 2020 presidential election, the *Commission Electorale Nationale Indépendante* (Independent National Electoral Commission, CENI) barred CSOs from monitoring the elections. On 17 February 2020, CENI revoked the accreditation for election monitoring of the civil society coalition *Concertation Nationale de la Société Civile du Togo* (National Consultation of Civil Society of Togo) on the grounds that it was about to 'interfere' with the electoral process.<sup>256</sup> With the support of the NDI, the coalition had planned to deploy 500 election observers. On 20 February 2020, three NDI staff were expelled from Togo.<sup>257</sup>

On 16 January 2020, the Minister of Territorial Administration refused to grant the *Conseil épiscopal justice et paix* (Episcopal Council for Justice and Peace) its accreditation to observe the election, citing its 'partisan positions on the political situation' and a lack of transparency on its sources of funding.<sup>258</sup> The Episcopal Council had planned to deploy 9,000 observers.

On 15 October 2019, pro-democracy activists from the national chapters of the TLP coalition in Côte d'Ivoire and Niger were denied access to Togo. They were due to attend a meeting to formalise two Togolese associations becoming members of the TLP.<sup>259</sup>

## Advocacy opportunities

- The UN Human Rights Committee will examine the state party report of Togo under the list of issues procedure in October/November 2020. CSOs are invited to submit shadow reports to the Committee and will have an opportunity to attend the review session;
- The next UPR of Togo is scheduled for January 2022. The UPR process gives multiple opportunities for CSOs to undertake advocacy with the Togo authorities, UN member states and UN mechanisms. CSOs can file submissions to the OHCHR until July 2021 to be included in the Summary of stakeholders' information.<sup>260</sup> CSOs can present their reports to the authorities of Togo, UN member states and UN mechanisms ahead of the review, including at UPR pre-sessions.<sup>261</sup> Following the review, CSOs will be able to engage with the Togo authorities and UN member states on the recommendations raised, and monitor their implementation.

## **Conclusion and recommendations**

With political tensions rising ahead of or in the aftermath of contested presidential elections in Benin, Côte d'Ivoire, Guinea, Niger and Togo, civic space conditions are worsening in Francophone West Africa. CSOs are facing restrictive laws, obstacles to registration processes, interference in their activities and reprisals when they speak out, particularly online or through peaceful protests. Hundreds of activists and journalists have been arrested across the region in the last three years; dozens of peaceful protesters have died in protests organised by pro-democracy groups.

Targeted in their country, CSOs need support from regional and international partners to remain safe, to ensure their voices are heard in international and regional forums and to increase the pressure on national authorities to create changes in their respect of human rights. Below are some recommendations of what this support may look like based on existing advocacy opportunities.

### **General recommendations**

- Ahead of presidential elections, support civil society groups in undertaking advocacy for presidential candidates to make pledges for practical measures towards human rights change, when appropriate. This support can include financial support but, even more importantly, political support, such as undertaking joint fact-finding or advocacy missions to the countries of focus and getting organisations in other countries to take up this advocacy when presidential candidates travel to their respective countries;
- Provide hands-on capacity development support, including training and coaching, on engaging with human rights mechanisms at international (UN treaty bodies, special procedures and UPR processes), regional (ACHPR, AU) and sub-regional levels (ECOWAS). These training sessions should be focused on how to engage with the mechanisms, with practical sessions leading to actual submissions and shadow reports;
- Provide strategic campaigning, social media and media engagement training to civil society groups to ensure their voices are heard, including by regional and international media. Whenever possible, facilitate contacts between civil society groups and regional and international media outlets;
- Provide financial and political support, such as support to set up meetings and obtain visas, for groups to undertake advocacy visits to present their reports and submissions to human rights mechanisms or to countries and organisations with influence;
- Support capacity development activities for CSOs to develop their research skills, particularly in human rights investigations, to ensure advocacy efforts are evidence-based. Whenever possible, facilitate contacts between civil society groups and investigation experts, including in ballistics, forensics and digital security;

- Support CSOs in strategic litigation to regional instruments, in particular the African Court on Human and People's Rights, the African Committee of Experts on the Rights and Welfare of the Child and the ECOWAS Community Court of Justice, including through funding, advice on litigation strategies, facilitating contacts with experienced lawyers and filing amicus curiae ('friend of the court') briefs;
- Systematically include pro-democracy groups and women's rights and LGBTQI+ rights organisations in the training and other capacity development activities offered. It is important to include pro-democracy groups in such training sessions even though they may be considered 'political', to encourage them to adopt a human rights-based approach to their work;
- Set-up a pool of lawyers who can provide CSOs with judicial support if members are arrested or facing judicial harassment;
- Develop an advocacy project with CSOs across Africa to protect the African Court on Human and People's Rights, including to:
  - Challenge states that are withdrawing the possibility for individuals and CSOs to seize the Court;
  - Urge the AU to take measures against states that fail to abide by the decisions of the Court;
- Develop an advocacy project with CSOs in West Africa to increase the participation of civil society in ECOWAS decision-making processes and for ECOWAS to take stronger positions on human rights issues. This includes:
  - ECOWAS inviting CSOs to its summits and sharing information about the agenda of the summit in a timely manner, providing space for CSOs to participate in ECOWAS summit discussions;
  - ECOWAS developing formal, easily accessible and open consultation mechanisms for CSOs to feed information about human rights developments in their countries to the ECOWAS Commission, including its Early Warning Directorate;
  - ECOWAS taking measures against states that fail to abide by the decision of the ECOWAS Community Court of Justice.

## **Country-specific recommendations**

### **Benin**

- Support civil society groups in following up with Committee on Economic, Social and Cultural Rights on the implementation of the recommendations it prioritised during the 2020 review, including by delivering training in advocacy with UN mechanisms, coaching civil society groups to develop a shadow report and providing financial and



political support (weighing in with embassies and UN mechanisms for visas and meetings) for advocacy trips to UN headquarters for CSOs to present their report and meet other UN mechanisms;

- Support civil society groups in actively contributing to the 2022 UPR process, including by delivering training in human rights monitoring and reporting through the UPR process, coaching civil society groups to make submissions by 31 March 2021 and providing financial and political support (weighing in with embassies and UN mechanisms for visas and meetings) for advocacy trips to UN headquarters and influential member states.

#### **Côte d'Ivoire**

- Support civil society groups in developing a campaign to get Côte d'Ivoire to make strong human rights pledges ahead of the UN Human Rights Council membership election, including by providing them with training in UN advocacy;
- Support CSOs in undertaking follow-up on and monitoring the implementation of UPR recommendations, including by providing them with training in UPR advocacy, coaching them to submit a mid-term report and providing financial and political support (weighing in with embassies and UN mechanisms for visas and meetings) for advocacy trips to UN headquarters and influential member states.

#### **Guinea**

- Support CSOs in their advocacy with ECOWAS, including by providing them with training and financial and political support to meet ECOWAS officials;
- Support CSOs in undertaking follow-up on and monitoring of the implementation of UPR recommendations, including by providing them with training in UPR advocacy, coaching them to submit a mid-term report and providing financial and political support (weighing in with embassies and UN mechanisms for visas and meetings) for advocacy trips to UN headquarters and influential member states.

#### **Niger**

- Support CSOs in actively contributing and engaging in the UPR of Niger in January 2021. This includes delivering training in human rights monitoring and reporting through UN and regional mechanisms, and providing financial and political support (weighing in with embassies and UN mechanisms for visas and meetings) for advocacy trips to the ACHPR, UN headquarters and influential member states.

#### **Togo**

- Support CSOs in actively contributing to the review of the state party report under the UN Human Rights Committee in October/November 2020 and the UPR of Togo in January 2022. This includes delivering training in human rights monitoring and

reporting through UN mechanisms, coaching civil society groups to make submissions (by July 2021 for the UPR) and providing financial and political support (weighing in with embassies and UN mechanisms for visas and meetings) for advocacy trips to UN headquarters and influential member states.

## ENDNOTES

<sup>1</sup> François Patuel is a senior researcher with 14 years of experience in human rights investigations, advocacy and protection. After leading Amnesty International's human rights research work on West Africa for seven years from Dakar (Senegal), he founded FP Research Consultants in March 2020. FP Research Consultants is a consultancy firm mobilising research and advocacy skills for non-governmental organisations and international organisations.

<sup>2</sup> For more information, visit <https://monitor.civicus.org/>

<sup>3</sup> 'West African Leaders Are Rolling Back Democratic Gains', Foreign Policy, 17 March 2020, <https://foreignpolicy.com/2020/03/17/west-african-leaders-are-rolling-back-democratic-gains>.

<sup>4</sup> 'Benin's local elections further reduce the political space', Institute for Security Studies, 27 May 2020, <https://issafrica.org/iss-today/benins-local-elections-further-reduce-the-political-space>.

<sup>5</sup> 'Human Rights in Africa: Review of 2019', Amnesty International, 8 April 2020, <https://www.amnesty.org/download/Documents/AFR0113522020ENGLISH.PDF>.

<sup>6</sup> 'Sahel Crisis: Overview of Humanitarian Needs and Requirements (May 2020)', United Nations Office for the Coordination of Humanitarian Affairs, 13 May 2020, <https://reliefweb.int/report/nigeria/sahel-crisis-overview-humanitarian-needs-and-requirements-may-2020>.

<sup>7</sup> 'Covid-19 and Elections in sub-Saharan Africa: what risks for democracy and human rights?', International Federation for Human Rights, 14 May 2020, <https://www.fidh.org/en/region/Africa/covid-19-and-elections-in-sub-saharan-africa-what-risks-for-democracy>.

<sup>8</sup> 'The Risk of Jihadist Contagion in West Africa', International Crisis Group, 20 December 2019, <https://www.crisisgroup.org/africa/west-africa/c%C3%B4te-divoire/b149-lafrique-de-louest-face-au-risque-de-contagion-jihadiste>.

<sup>9</sup> The 'Obstructed' category is defined as 'Civic space is heavily contested by power holders, who impose a combination of legal and practical constraints on the full enjoyment of fundamental rights. Although civil society organisations exist, state authorities undermine them, including through the use of illegal surveillance, bureaucratic harassment and demeaning public statements. Citizens can organise and assemble peacefully but they are vulnerable to frequent use of excessive force by law enforcement agencies, including rubber bullets, tear gas and baton charges. There is some space for non-state media and editorial independence, but journalists face the risk of physical attack and criminal defamation charges, which encourage self-censorship.

<sup>10</sup> The breakdown of the interviews is as follows:

- Benin: three interviews with representatives of human rights groups, including one LGBTQI+ group;
- Cote d'Ivoire: five interviews with representatives of human rights groups, including with one LGBTQI+ group;
- Guinea: four interviews with representatives of two human rights groups, one association of bloggers and one pro-democracy movement;
- Niger: three interviews with representatives of two human rights groups and one association of bloggers;
- Togo: six interviews with representatives of three human rights groups, one women's rights group, one pro-democracy movement and one LGBTQI+ group;
- Regional level: two interviews, one with an expert on advocacy to the Economic Community of West African States and one with an expert on pro-democracy movements in the region.

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<sup>13</sup> 'Sébastien Germain Marie Aïkoué Ajavon v. Republic of Benin – Order of provisional measures, Case N°062/2019', African Court on Human and Peoples' Rights, 17 April 2020, <https://fr.african-court.org/images/Cases/Orders/Ajavon--ordonnance-mesures-provisoires0001.pdf>, para 69.

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