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TOGO

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Introduction

1. ADF International is a faith-based legal advocacy organisation that protects fundamental freedoms and promotes the inherent dignity of all people. As well as having ECOSOC consultative status with the United Nations (registered name 'Alliance Defending Freedom'), ADF International has accreditation with the European Commission and Parliament, and the Organisation of American States. ADF International is also a participant in the FRA Fundamental Rights Platform.
2. This report explains why Togo must take urgent steps to protect the freedom of expression and protect the freedom of religion and belief within its borders.

(a) Freedom of Expression

3. Article 25 of the Togolese constitution protects the freedom of expression. "Every person has the right to the freedom of thought, of conscience, of religion, of belief, of opinion and expression."¹ Article 26 provides for the freedom of the press and of expression. It indicates that every person has the freedom to express his or her opinions in speech, writing, or any other means within respect for limitations defined by law. The press is not to be subject to prior authorization or censorship.
4. Article 30 protects the freedom of association, assembly, and peaceful demonstration without violence. Article 21 states that no person "may be submitted to torture or to other forms of cruel, inhuman or degrading treatments".
5. Togo has several vaguely worded statutes that further government efforts to curtail freedom of expression and repress dissent.
6. Togo's revised Penal Code of 2015 provides harsher punishments for defamation, which permits up to four years in prison and fines of CFA four million for reoccurrences.² It creates the new crime of disseminating "false news", which is punishable by up to three years in jail for the one who publishes and up to five years in jail for the author.³ Offending the Head of State and other government officials is punishable by fine or imprisonment.⁴
7. The Penal Code also criminalises "[a]ll seditious shouts and chants uttered in public places or meetings".⁵ Even insults against the memory of the dead are punishable.⁶

¹ *Togo: Constitution de la IVe République*, 14 Oct. 1992, available at: <https://www.refworld.org/docid/48ef43c72.html> [accessed 27 March 2021].

² Loi N° 2015-010 du 24 novembre 2015 portant nouveau code pénal, article 290–296.

³ *Id.*, article 665.

⁴ *Id.*, article 301–302.

⁵ *Id.*, article 552.

⁶ *Id.*, article 300.

8. Togo's 2018 Cyber Security Law provides prison sentences for those who disseminate or make data available to others that disturbs "order, public security or violate[s] human dignity".⁷
9. Togo's Press and Communications Code makes it a crime to offend public officials either with drawings or with broadcasting or publishing information "contrary to reality" for the purpose of "manipulating consciences" or distorting information.⁸
10. At the request of the High Authority for Audiovisual and Communication (HAAC), licenses for newspapers and broadcasters can be suspended or revoked by court order for lack of professionalism.⁹
11. Under the rationale of combatting terrorism, Togo's 2019 National Security law permits the closure of hotels, theaters, and meeting places—including houses of worship—for renewable periods of three months for activities that risk serious harm to public order or for remarks inciting violence or hatred.¹⁰ The law also permits the government to shut down the internet and remove online content.¹¹
12. In June 2020, the Economic Community of West African States ("ECOWAS") Community Court of Justice ruled that the Togolese government violated the freedom of expression of its citizens on two occasions in 2017 when it initiated a nine-day shutdown of the internet.¹² The shutdown included social media and WhatsApp.¹³ The court further directed the government to enact protections "to meet its obligations with respect to the right to freedom of expression in accordance with international human rights instruments".¹⁴ This ruling is a significant precedent because it "is the first ECOWAS decision to confirm that internet shutdowns are unlawful".¹⁵
13. Citizens advocating for Togo's transition to democracy and constitutional reforms have been met with restrictions on their freedom of expression and freedom of assembly. The violation of these fundamental freedoms has fostered other violations such as violence against peaceful protestors, arbitrary arrests, detentions, torture, and killings by security forces.¹⁶ Internet shutdowns and "the adoption of restrictive legislation" are some of the

⁷ Loi N° 2018 - 026 du 07 décembre 2018 portant sur la cybersécurité et la lutte contre la cybercriminalité, article 28.

⁸ Loi N° 2020-001 du 07 janvier 2020, article 153.

⁹ Noevelle Loi Organique relative a la HAAC.

¹⁰ Loi N°2019-009 portant sécurité intérieure, article 40.

¹¹ Id., article 49–50.

¹² Natalia Krapiva, *ECOWAS Togo Court Decision: Internet Access is a Right That Requires Protection of the Law*, 14 Jul. 2020, <https://www.accessnow.org/ecowas-togo-court-decision/>.

¹³ Liberty Bridge, *ECOWAS Court Finds Togo Violated Freedom of Expression During 2017 Protests*, LEIGH DAY (July 24, 2020) <https://www.leighday.co.uk/latest-updates/blog/2020-blogs/ecowas-court-finds-togo-violated-freedom-of-expression-during-2017-protests/>.

¹⁴ Id.

¹⁵ Id.

¹⁶ Amnesty International, *Togo: Shadow Report to The African Commission on Human and Peoples' Rights*, 63rd Ordinary Session: 24 October-13 November 2018 (Index: AFR 57/8202/2018).

tools reportedly used by the authorities to violate freedom of expression.¹⁷ Religious leaders, human rights defenders, journalists, are disproportionately vulnerable to these violations.

14. In 2017, before and after the election, hundreds of protestors were arrested, and some were killed by security forces. As Amnesty International reported, “The security forces 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.”¹⁸
15. In light of the human rights abuses, in 2019 the bishops of Togo issued a statement that, while they would “stay above the political fray” not endorsing “one party over another”, the church simply could not stay silent in the face of violence, detentions, and the deaths of citizens. “We must oppose acts which in our understanding are against human dignity.”¹⁹ While there is freedom of religious belief in Togo, the disregard for freedom of expression makes religious leaders a target alongside other human rights defenders and journalists who express themselves in relation to various conditions in Togo or to the government.
16. It is reported that between April and May 2019 two religious leaders in Togo were among those targeted by spyware attacks via their mobile phones.²⁰ The attack, which used NSO Group spyware that impacted 1,400 WhatsApp users around the world, was “the first known case of its kind involving members of the clergy”.²¹ Monseigneur Benoît Comlan Alowonou, the bishop of Kpalimé, and Father Pierre Marie-Chanel Affognon were both targeted. The Catholic church of Togo has expressed its support for human rights and has been critical of the regime’s abuses. Father Affognon is the founder of a movement promoting constitutional and electoral reforms. After the attack, he “was the target of a smear and disinformation campaign” suggesting “that the authors of this campaign may have had access to personal information only available on his phone”.²² The perpetrator of the spyware attack remains unknown.
17. After the election of February 2020, the 89-year-old retired Archbishop of Lomé who supported the opposition candidate was placed under house arrest after he questioned

¹⁷ Civicus, *People Power Under Attack 2020 Africa: Country Case Studies*, <https://findings2020.monitor.civicus.org/africa.html#case-studies>

¹⁸ Amnesty International, *Amnesty International Report 2017/18 - Togo*, 22 February 2018, available at: <https://www.refworld.org/docid/5a99384b4.html> [accessed 29 March 2021]

¹⁹ *Togo Bishops: Clergy Can't be Indifferent to Nation's Suffering*, CRUX, 21 Jan. 2019, <https://cruxnow.com/church-in-africa/2019/01/togo-bishops-clergy-cant-be-indifferent-to-nations-suffering/>

²⁰ John Scott-Railton, Siena Anstis, Sharly Chan, Bill Marczak, and Ron Deibert, *Nothing Sacred: Religious and Secular Voices for Reform in Togo Targeted with NSO Spyware*, Citizen Lab, 3 Aug. 2020, <https://citizenlab.ca/2020/08/nothing-sacred-nso-sypware-in-togo/>.

²¹ Stephanie Kirchgassner and Jennifer Rankin, *WhatsApp Spyware Attack: Senior Clergymen in Togo Among Activists Targeted*, THE GUARDIAN, 3 Aug. 2020, <https://www.theguardian.com/technology/2020/aug/03/senior-clergymen-among-activists-targeted-by-spyware>.

²² Railton, *supra* note 20.

the legitimacy of the election results and encouraged public demonstrations.²³ The house arrest not only restricted the Bishop's freedom of movement, but the security cordon hindered the operation of the adjoining health center and chapel. When vicars and parishioners arrived to participate in the daily mass, they were turned away by security forces thereby prohibiting their worship.²⁴ The candidate was also stripped of his parliamentary immunity and arrested after questioning the results and declaring himself the winner. Two human rights defenders and a journalist covering his arrest were also arrested on the scene and released later that day after having their phones confiscated and being interrogated.²⁵

18. In October 2019, human rights activist, Folly Satchivi, was released after receiving a pardon. He was arrested in August 2018 on his way "to hold a press conference on the crackdown on protests."²⁶ He was sentenced to three years in prison with a one year suspended sentence for "rebellion", "glorification of and incitement to commit crimes and misdemeanors", and "serious disruption of public order".²⁷ After spending fourteen months in jail, on October 10, 2019, the appeals court sentenced him to twenty-eight months in prison with six months suspended sentence for defending crimes and misdemeanors. Thankfully, he was pardoned a few days later.
19. In April 2018, the president of a human rights organization, Assiba Johnson, was arrested after publishing a report, "Togo: More than 100 dead in the repression of the peaceful marches from August 19, 2017 to January 20, 2018". He was charged with "'spreading false news' and 'insulting authorities'".²⁸ He was sentenced to eighteen months with six months suspended.²⁹
20. In March 2018, Atikpo Bob, a leader in a pro-democracy group was arrested after publishing a photomontage of a government official on social media. He was charged with publishing false news and defamation and spent three months in prison.³⁰

²³ *Togo Puts Archbishop Under House Arrest After He Disputes Election Results*, CRUX, 3 Mar. 2020, <https://cruxnow.com/church-in-africa/2020/03/togo-puts-archbishop-under-house-arrest-after-he-disputes-election-results/>.

²⁴ *Id.*

²⁵ *Human Rights Defenders Must Be Protected*, 27 Apr. 2020, <https://www.frontlinedefenders.org/en/statement-report/human-rights-defenders-must-be-protected>.

²⁶ Amnesty International, *Togo: Submission to The United Nations Human Rights Committee, 128th Session, 2 March - 27 March 2020* (Index: AFR 57/1653/2020), p. 12–13.

²⁷ *Togo: Pardoned, Folly Satchivi is Free!*, 17 Oct. 2019, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/togo-gracie-folly-satchivi-est-libre>.

²⁸ *Togo: Continued Judicial Harassment of MM. Folly Satchivi and Johnson Assiba*, FIDH, 15 Jan. 2019, <https://www.fidh.org/fr/themes/defenseurs-des-droits-humains/togo-poursuite-du-harcelement-judiciaire-de-mm-folly-satchivi-et>.

²⁹ *Togo: First Reactions After Abissa Johnson's Release from Prison*, 5 Apr. 2019, https://www.koaci.com/article/2019/04/05/togo/societe/togo-premieres-reactions-apres-la-sortie-de-prison-dassiba-johnson_129591.html.

³⁰ Amnesty International, *supra* note 16.

21. Detaining, arresting, and jailing religious leaders and journalists for exercising their constitutional right to free expression is a clear violation of international human rights law. While the Togolese government has a right to maintain security, it must do so in a manner that upholds fundamental rights.
22. Togo has ratified the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols. Article 19 of the ICCPR protects freedom of expression and Article 21 secures the right to peaceful assembly.³¹ Article 9 protects freedom from arbitrary arrest and Article 7 guards against degrading treatment and torture.
23. During its second cycle Universal Periodic Review, various states made recommendations to Togo to improve compliance its human rights obligations. Togo had accepted general recommendations to protect freedom of expression and assembly, but rejected practical recommendations to review and amend its Criminal Code, which provides prison time for “slander and publication of false information”.³² It rejected a request to revise the Criminal Code, the Press and Communication Code, and Law No. 2011-010.³³ It also rejected a recommendation to change its Penal Code regarding laws “relating to defamation and publication of false news”.³⁴

(b) Freedom of Religion and Belief

24. Togo has a population of about 8.4 million people, which is approximately 43.7 percent Christian, 35.6 percent animist, 14 percent Sunni Muslim, and 5 percent follow other religions.³⁵ Togo requires all religious groups—except Catholics, Protestants, Muslims—to register as religious associations with the Directorate of Religious Affairs (DRA) in the Ministry of Territorial Affairs (MTA).³⁶ While non-registered religious groups are permitted to operate, they are not able to access certain benefits without registration. These benefits include “import duty exemptions for humanitarian and development projects” and “government-provided teachers for private schools and special assistance in case of natural disasters”. Once registered, religious groups are granted the same rights as Catholics, Protestants, and Muslims.³⁷

³¹ International Covenant on Civil and Political Rights, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³² A/HRC/34/4, recommendation 131.20 (Canada).

³³ A/HRC/34/4, recommendation 131.21 (Germany).

³⁴ A/HRC/34/4, recommendation 131.22 (Switzerland).

³⁵ U.S. Dep’t of State, International Religious Freedom Report for 2019, *available at* <https://www.state.gov/reports/2019-report-on-international-religious-freedom/togo/>.

³⁶ *Id.*

³⁷ *Id.*

25. Article 25 of the Togolese constitution protects the freedom of religion and belief: “Every person has the right to the freedom of thought, of conscience, of religion, of belief, of opinion and expression.”³⁸
26. The DRA continues to refuse to accept new applications for registration and as well as act on previous applications. At the end of 2019, the DRA left approximately 900 applications for registrations pending.³⁹
27. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) which Togo ratified in 1984, protects the right to freedom of religion or belief, guaranteeing the right to manifest one’s religion or belief in worship, observance, practice, and teaching. Article 26 commits states to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination,” including on the basis of religion. Article 27 of the ICCPR further guarantees that “[i]n those States in which religious minorities exist, persons belonging to such minorities shall not be denied the right, in community, with the other members of their own group... to profess and practise their own religion.”
28. The Human Rights Committee’s General Comment No. 22 on Article 18 of the ICCPR notes that “The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents of other religions or non-believers.”⁴⁰
29. Refusing to register minority religious groups, while granting special benefits to other religious groups without requiring them to register, violates all three provisions of international human rights law.

(c) Recommendations

30. In light of the aforementioned, ADF International suggests the following recommendations be made to Togo:
 - a. Guarantee the freedoms of expression, peaceful assembly, freedom from arbitrary arrest and torture as enshrined in the ICCPR and the Togolese Constitution.
 - b. Provide a safe environment for religious leaders, human rights defenders, journalists and individuals to conduct their legitimate activities.

³⁸ *Togo: Constitution de la I^{ve} République*, 14 Oct. 1992, available at: <https://www.refworld.org/docid/48ef43c72.html> [accessed 27 March 2021].

³⁹ U.S. Dep’t of State, International Religious Freedom Report for 2019, available at <https://www.state.gov/reports/2019-report-on-international-religious-freedom/togo/>.

⁴⁰ UN Human Rights Committee ‘General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)’ (30 July 1993) CCPR/C/21/Rev.1/Add.4, 9.

- c. Repeal or amend laws restricting freedom of expression such as the Criminal Code, the Press and Communication Code, the Cybercrime law, and other laws used to curtail dissent.
- d. Release all persons who are being arbitrarily detained and cease all acts of arbitrary arrests and torture.
- e. Process religious groups' applications to become registered and grant applications to all completed applications.



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