



Republic of Benin
Joint Submission to the UN Universal Periodic Review
42nd Session of the UPR Working Group

Submitted 14 July 2022

Submission by **CIVICUS: World Alliance for Citizen Participation,**
NGO in General Consultative Status with ECOSOC
And
Coalition des Défenseurs des Droits Humains-Bénin (CDDH-Bénin)
And
Réseau Ouest Africain des Défenseurs des Droits Humains - West African
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And
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1. Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2 The Coalition des Défenseurs des Droits Humains-Bénin (CDDH-Bénin) is a Beninese CSO bringing together human rights defenders (HRDs) in Benin and CSOs working in this field. The coalition works to build the capacity of HRDs on security and the documentation of human rights violations. It also advocates for the advent of a legislative framework that guarantees and protects the work of HRDs in Benin.
- 1.3 The West African Human Rights Defenders Network (WAHRDN/ROADDH) is a CSO that works to promote the work of HRDs. It is made up of national coalitions of human rights and individual focal points. It has Observer Status at the African Commission on Human and Peoples Rights' and is a member of the Executive Committee of the NGO Forum at the Commission.
- 1.4 Réseau des Femmes Leaders pour le Développement (Network of Women Leaders for Development, RFLD) is a CSO with a vision of building effective partnerships for development cooperation with the aim of promoting and protecting the rights of young people and women and to ensure their participation in decision-making in Africa. RFLD's areas of intervention are civic space, economic justice, the fight against harmful practices, human rights, political advocacy and peace and security.
- 1.5 In this submission, the authors examine the Government of Benin's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Benin's fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on HRDs since its previous UPR examination in November 2017. We assess Benin's implementation of recommendations received during the 3rd UPR cycle relating to these issues and provide follow-up recommendations.
- 1.6 During the 3rd UPR cycle, the Government of Benin received two recommendations relating to the space for civil society (civic space). One recommendation was accepted and one was noted. An evaluation of a range of legal sources and human rights documentation demonstrates that the Government of Benin has not implemented either recommendation relating to civic space.
- 1.7 Since its last UPR examination, the government has failed to address unwarranted restrictions on civic space. Instead, these restrictions and violations have increased. As a result, in May 2021, Benin's civic space was downgraded from obstructed to

repressed by the CIVICUS Monitor, indicating the existence of severe civic space restrictions.¹

- 1.8** We are deeply concerned by the adoption of repressive laws, particularly the Criminal Code and Digital Code, with provisions used against HRDs, journalists and bloggers.
- 1.9** We are further alarmed by restrictions and violations of the freedom of peaceful assembly, which includes blanket bans on protests, the militarisation of law enforcement and the use of excessive force, including live ammunition, against protesters, along with increasing legal restrictions to the right to protest.
- Section 2 of this submission examines Benin's implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
 - Section 3 examines the protection of HRDs, civil society activists and journalists.
 - Section 4 examines the freedom of expression and media freedom.
 - Section 5 examines the freedom of peaceful assembly.
 - Section 6 contains recommendations to address the concerns raised and advance implementation of recommendations under the 3rd cycle.
 - An annex on the implementation of 3rd cycle UPR recommendations related to civic space is in Section 7.

2. Freedom of association

- 2.1** During Benin's examination under the 3rd UPR cycle, the government received one recommendation on the right to the freedom of association and creating an enabling environment for CSOs. The government committed to 'revise the Bill on the freedom of association, the freedom of expression and the freedom of assembly, submitted in 2012, which is currently pending review by the Supreme Court, with a view to adopting legislation that will protect the rights of civil society'. This recommendation was accepted. However, as evidenced below, the government has failed to take adequate measures to realise it.
- 2.2** Article 25 of the 1990 Constitution² guarantees the right to the freedom of association. Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Benin is a state party, also guarantees the freedom of association.

¹ 'Benin downgraded as civic freedoms deteriorate', CIVICUS, 19 May 2021, <https://www.civicus.org/index.php/media-resources/media-releases/5079-benin-downgraded-as-civic-freedoms-deteriorate>.

² The Constitution was amended in November 2019, but a decision in November 2020 by the African Court for Human and Peoples' Rights (ACHPR) ordered the annulment of the amendment. On 24 April 2020, Benin issued a notice of withdrawal from the ACHPR. 'Crisis of confidence in Benin deepens', Institute of Security Studies, 17 December 2020, <https://issafrica.org/iss-today/crisis-of-confidence-in-benin-deepens>.

However, the draft bill on associations has not yet been adopted while the authorities have interfered in activities of CSOs through the withdrawal of direct access to the African and West African Courts. Additionally, the right to strike has been restricted.

- 2.3** The freedom of association is regulated by the French Law of 1 July 1901 on the contract of associations and its implementing Decree of 16 August 1901. Both were retained in Benin's legal framework following independence in 1960. The legal framework establishes a declaration regime for associations. NGOs, defined as 'any national or foreign, non-for-profit association, established by private initiative, regrouping physical and legal persons in view of exercising activities of a general interest, solidarity or voluntary cooperation for development activity',³ are regulated by Decree No. 2001-234 of 12 July 2001 on the formation and operation of NGOs and their umbrella organisations.
- 2.4** Since 2012, the draft bill on associations has been under review. Some concerns from civil society include the duration of registration processes and discriminatory provisions for vaguely defined 'foreign associations'.⁴ HRDs have also raised concerns about the prospect of the draft law being adopted without such issues being addressed, enabling it to be used to further restrict CSOs.⁵
- 2.5** On 21 April 2020, Benin announced its withdrawal from the protocol that allows individuals and CSOs with observer status to the African Commission on Human and Peoples' Rights to apply directly to the African Court on Human and Peoples' Rights directly after national legal avenues have been exhausted.⁶ The move follows the Court's ruling on 17 April 2020 ordering Benin to suspend local elections after a complaint from opposition leader Sébastien Ajavon. A few days later, on 30 April 2020, Benin's Constitutional Court ruled that additional protocol A/SP.1/01/05 of 19 January 2005, which allows individuals and CSOs to appeal directly to the Court of Justice of the Economic Community of West African States, is not valid as it was never ratified by law, rendering all decisions made under this protocol null and

³ Article 1, Decree No 2001-234 of 12 July 2001.

⁴ 'Enabling Environment National Assessment of Civil Society Organisations in Benin', Groupe d'Action pour le Progrès et la Paix, July 2016, https://www.civicus.org/images/EENA_Benin_En.pdf; 'Réforme du droit à la liberté d'association au Bénin: enjeux et perspectives. Rapport de l'atelier de réflexions, d'échanges et de partage', Groupe d'Action pour le Progrès et la Paix, November 2018, <http://gappafrique.org/wpcontent/uploads/2018/11/Rapport-Atelier-R%C3%A9forme-du-droit-%C3%A0-la-libert%C3%A9-association.pdf>.

⁵ 'Civic space backsliding ahead of elections in Francophone West Africa', CIVICUS, October 2020, <https://www.civicus.org/index.php/media-resources/reports-publications/4678-civil-and-political-rights-are-backsliding-in-west-africa-ahead-of-elections>.

⁶ 'Les droits de l'homme s'amenuisent au Bénin', Le Point, 24 April 2020, https://www.lepoint.fr/afrique/les-droits-de-l-homme-s-amenuisent-au-benin-24-04-2020-2372768_3826.php.

⁷ 'Court de la justice de la CEDEAO: la Court Constitutionnelle de Bénin rend une decision lourde des conséquences', Office de Radiodiffusion et Télévision du Bénin, <http://ortb.bj/politique/3165-cour-de-la-justice-de-la-cedeao-la-cour-constitutionnelle-rend-une-decision-lourde-de-consequences-au-benin>.

void.⁷ As a result, CSOs will be unable to legally challenge the Benin authorities at the regional level.

2.6 The right to strike has been undermined by the adoption of Law No. 2018-34 of 5 October 2018, which complements and modifies Law No. 2001-09 of 21 June 2002 on the exercise of the right to strike in Benin.⁸ Article 13 limits the duration of strikes to 10 days per year, seven days per six months and two days per month. Designated professions in the public sector, such as customs, military and police officers, are prohibited from striking⁹ while others in the public and semi-public sector, and sectors that provide essential services, such as magistrates, need to provide a minimum service.¹⁰ Additionally, article 2 forbids solidarity strikes.

3. Harassment, intimidation and attacks against HRDs, civil society activists and journalists

3.1 Under Benin's previous UPR examination, the government received no recommendations on the protection of HRDs, journalists and civil society representatives. Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR further guarantees the freedoms of association, peaceful assembly and expression. However, in spite of these protections, journalists and activists are often arrested under the 2018 Digital Code. Additionally, Benin does not have a law protecting HRDs.

3.2 The Digital Code, adopted by Benin's National Assembly in June 2017 and promulgated in April 2018, has been used by the authorities to silence dissent, targeting HRDs, journalists and bloggers.¹¹ Despite the decriminalisation of most press offences in 2015, journalists and people in general can still be prosecuted under the Digital Code. The UN Working Group on Arbitrary Detention, in its opinion issued in 2020, described certain provisions of the Code as 'vague and imprecise'.¹²

⁷ 'Court de la justice de la CEDEAO: la Court Constitutionnelle de Bénin rend une décision lourde des conséquences', Office de Radiodiffusion et Télévision du Bénin, <http://ortb.bj/politique/3165-cour-de-la-justice-de-la-cedeao-la-cour-constitutionnelle-rend-une-decision-lourde-de-consequences-au-benin>.

⁸ Loi N° 2018-34 du 5 octobre 2018 modifiant et complétant la loi n°2001-09 du 21 juin 2002 portant exercice du droit de grève en République du Bénin, <https://sgg.gouv.bj/doc/loi-2018-34>.

⁹ Article 2 of Law No 2018-34 of 5 October 2018.

¹⁰ Article 14 of Law No 2018-34 of 5 October 2018.

¹¹ In a report published in January 2020, human rights group Amnesty International said that at least 17 people had been charged under the Digital Code. See 'Bénin. Au moins 17 personnes poursuivies en moins de deux ans', Amnesty International, 20 January 2020, <https://www.amnesty.org/fr/latest/news/2020/01/benin-au-moins-personnes-poursuivies-en-moins-de-deux-ans/>.

¹² 'Avis adoptés par le Groupe de travail sur la détention arbitraire à sa quatre-vingt-huitième session (24-28 août 2020. Avis n° 46/2020, concernant Ignace Sossou', Human Rights Commission, Working Group on Arbitrary Detention, 6 October 2020, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_46_Advance_Edited_Version.pdf.

The Digital Code's vaguely defined article 550, a provision that is often used by the authorities, criminalises 'harassment through electronic means', which includes false information about a person, and foresees prison sentences from one month to two years and a fine of 500,000 to 10 million CFA francs (approx. US\$800 to US\$16,000). Provocation to rebellion via online means is punishable with a prison sentence of sixth months and fines between 2 million and 10 million CFA francs (approx. US\$3,200 to US\$16,000).¹³

- 3.3** On 18 January 2021, good governance and social media activist Jean Kpoton was arrested in Porto-Novo for having made claims on Facebook that President Patrice Talon used a car for a cross-country tour at the price of six million CFA francs (approx. US\$9,660).¹⁴ A court in Cotonou sentenced Kpoton to a one-year prison sentence and a fine of 200,000 CFA francs (approx. US\$326) under article 550 of the Digital Code.
- 3.4** Journalist Aristide Fassinou Hounkpèvi, editor of the online media outlet L'autre Figaro, was arrested on 3 January 2020 by officers of the Central Office for the Suppression of Cybercrime (OCRC) on accusations of 'harassment via electronic means' under article 550 of the Digital Code.¹⁵ These accusations followed a complaint by the Minister of Foreign Affairs in relation to a tweet by the journalist wondering about the Minister's possible nomination as ambassador in Paris.¹⁶ He was released after spending seven days in detention and had to remain at the disposal of the police investigation.
- 3.5** OCRC officers arrested Ignace Sossou, investigative journalist and head of production for Bénin Web TV, in Cotonou on 20 December 2019 and subsequently interrogated him over Facebook and Twitter posts where he quoted public prosecutor Mario Metonou's remarks at a media workshop on the topic of 'fake news' on 18 December 2019. On 24 December 2019, a court sentenced him to a prison term of 18 months and a fine of 200,000 francs CFA (approx. US\$326).¹⁷ Press freedom organisation Reporters without Borders, after comparing Sossou's social media posts with the transcripts of the workshop, stated that his posts reflected what Metonou had said, namely that internet cuts 'in Benin and elsewhere' had been 'an admission on the part of the political authorities vis-à-vis the phenomenon of

¹³ Article 553, Digital Code.

¹⁴ 'Bénin: L'activiste Jean Kpoton condamné à 12 mois de prison ferme', La Nouvelle Tribune, 9 February 2021, <https://lanouvelletribune.info/2021/02/benin-lactiviste-jean-kpoton-condamne-a-12-mois-de-prison-ferme>; 'Bénin: l'activiste Jean Kpoton déféré à la prison civile de Cotonou', aCotonou.com, 19 January 2021, <http://news.acotonou.com/h/132026.html>.

¹⁵ Amnesty International, 20 January 2020, op. cit.

¹⁶ Ibid.

¹⁷ 'Journalist Jailed 18 Months for "Misquoting" Public Prosecutor on Social Media', Media Foundation for West Africa, 26 December 2019, <https://www.mfwa.org/country-highlights/journalist-jailed-18-months-for-misquoting-public-prosecutor-on-social-media>.

fake news’, and that the Digital Code was a ‘gun pointed at journalists’ heads’.¹⁸ On appeal on 19 May 2020, Sossou’s prison sentence was reduced to 12 months, of which six were suspended, while the fine was increased to 500,000 francs CFA (approx. US\$800).¹⁹ In October 2020, the UN Working Group on Arbitrary Detentions issued an opinion that Sossou’s detention was arbitrary, his trial was unfair and his conviction lacked legal basis, resulting from Sossou’s exercise of his freedom of expression.²⁰

- 3.6** In August 2019, Sossou was convicted of ‘publishing false information on the internet’ under article 550 of the Digital Code and sentenced to a suspended prison term of one month and a fine of 550,000 CFA francs (approx. US\$880).²¹ The charges and conviction followed a complaint by Beninese business leader Jean Luc Tchifteyan in relation to two articles Sossou published alleging tax evasion by Tchifteyan.²²
- 3.7** On 18 April 2019, police officers arrested Casimir Kpedjo, editor of newspaper Nouvelle Economie, in Cotonou.²³ He was charged on 23 April 2019 with ‘dissemination of false information’, among other charges, by the Court of Repression of Economic Offences and Terrorism (CRIET), a special court dedicated to prosecuting economic and terrorism-related crimes, for having shared on social media two Nouvelle Economie articles deploring the state of the economy in Benin. He was released the same day but summoned for further investigation.²⁴ His trial before CRIET was postponed more than 15 times.
- 3.8** In addition to judicial harassment through the use of restrictive legislation such as the Digital Code, several HRDs and journalists have been subjected to intimidation,

¹⁸ ‘Beninese reporter jailed for tweets, quoted official accurately’, Reporters without Borders, 4 January 2020, <https://rsf.org/en/beninese-reporter-jailed-tweets-quoted-official-accurately>.

¹⁹ ‘Bénin: le journaliste Ignace Sossou condamné en appel à 12 mois de prison dont 6 mois ferme’, RFI, 10 May 2020, <https://www.rfi.fr/fr/afrique/20200519-b%C3%A9nin-le-journaliste-ignace-sossou-condamn%C3%A9-en-appel-%C3%A0-12-mois-prison-dont-6-mois-f>.

²⁰ ‘Avis adoptés par le Groupe de travail sur la détention arbitraire à sa quatre-vingt-huitième session (24-28 août 2020. Avis n° 46/2020, concernant Ignace Sossou’, Human Rights Commission, Working Group on Arbitrary Detention, 6 October 2020, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_46_Advance_Edited_Version.pdf.

²¹ ‘Business Tycoon Gets Investigative Journalist Sentenced to One-Month Suspended Jail Term’, Media Foundation for West Africa, 17 August 2019, <https://www.mfwa.org/issues-in-focus/business-tycoon-gets-investigative-journalist-sentenced-to-one-month-suspended-jail-term>; ‘Press Freedom Fears After West Africa Leaks Reporter Convicted in Benin’, International Consortium of Investigative Journalists, 25 August 2019, <https://www.icij.org/investigations/west-africa-leaks/press-freedom-fears-after-west-africa-leaks-reporter-convicted-in-benin>.

²² Media Foundation for West Africa, 17 August 2019, op cit.

²³ ‘Bénin: Le journaliste Casimir Kpédjo gardé à vue’, La Nouvelle Tribune, 18 April 2019, <https://lanouvelletribune.info/2019/04/benin-le-journaliste-casimir-kpedjo-garde-a-vue>.

²⁴ ‘Bénin: le journaliste Casimir Kpédjo libéré après sa présentation au Procureur’, Benin Web TV, 23 April 2019, <https://archives.beninwebtv.com/2019/04/benin-le-journaliste-casimir-kpedjo-libere-apres-sa-presentation-au-procureur>.

creating an environment of fear for speaking out. For example, John Gbenagnon of Réseau des Femmes Leaders pour le Développement received threats following the publication of a press statement by CIVICUS Monitor in May 2021, which included a quote from Gbenagnon on the downgrading of Benin's civic space.²⁵

3.9 Dutch journalist Olivier van Beemen said that he and his Beninese colleague Flore Nobimè, while reporting in February 2022 on Africa Parks, a CSO subcontracted by the government to manage the Pendjari and W National Parks, were interrogated by police in Tanguiéta, accused of not having asked permission for their mission from the authorities and later taken into custody. Despite an instruction by the public prosecutor of Natitingou to lift the custody after the journalists had been cleared, they were not released but taken to Parakou, where they were interrogated again by police who said they were under suspicion of espionage. They were taken to Cotonou before Nobimè was released. Van Beemen was deported.²⁶

3.10 Political opposition have also been targeted with judicial persecution. Joël Aïvo, a law professor and constitutional expert, was arrested on 16 April 2021 in Cotonou, reportedly in relation to pre-electoral protests and arrests.²⁷ He was sentenced in December 2021 by CRIET to 10 years in prison for 'threats against state security' and 'money laundering'.²⁸ Reckya Madougou, a former Minister of Justice and member of the opposition party Les Démocrates, was arrested on 3 March 2021 in Porto-Novo,²⁹ and sentenced by CRIET in December 2021 to 20 years in prison for 'complicity in terrorist acts'.³⁰ Both were candidates for the presidential elections on 11 April 2021, but their candidacies were invalidated. Critics have accused CRIET of lacking independence and of being instrumentalised by the Talon administration to crack down on opposition.³¹

²⁵ CIVICUS, 19 May 2021, op. cit.

²⁶ 'Au Bénin, la folle garde à vue de deux journalistes "espions"', Afrique XXI, 20 May 2022, <https://afriquexxi.info/article4987.html>.

²⁷ 'Bénin: Joël Aïvo mis en examen pour "atteinte à la sûreté et blanchiment de capitaux"', RFI, 16 April 2021, <https://www.rfi.fr/fr/afrique/20210416-au-b%C3%A9nin-l-opposant-jo%C3%ABl-a%C3%AFvo-est-en-garde-%C3%A0-vue>.

²⁸ 'Au Bénin, l'opposant Joël Aïvo, condamné à dix ans de prison, dénonce une "vengeance politique"', Le Monde, 7 December 2021, https://www.lemonde.fr/afrique/article/2021/12/07/au-benin-l-opposant-joel-aivo-condamne-a-dix-ans-de-prison-denonce-une-vengeance-politique_6105020_3212.html.

²⁹ 'Bénin: arrêté, Reckya Madougou est accusée de tentative de sabotage de l'élection présidentielle', RFI, 5 March 2021, <https://www.rfi.fr/fr/afrique/20210305-b%C3%A9nin-arr%C3%AAt%C3%A9e-reckya-madougou-est-accus%C3%A9e-de-tentative-de-sabotage-de-l-%C3%A9lection-pr%C3%A9sidentielle>.

³⁰ 'She could have been Benin's first female president. She was just sentenced to 20 years in prison', Washington Post, 11 December 2021, <https://www.washingtonpost.com/world/2021/12/10/benin-opposition-reckya-madougou>.

³¹ 'Bénin: Joël Aïvo et Reckya Madougou espèrent une solution politique', Jeune Afrique, 6 February 2022, <https://www.jeuneafrique.com/1292772/politique/benin-joel-aivo-et-reckya-madougou-esperent-une-solution-politique>.

4. Freedom of expression and media freedom

- 4.1** Under the 3rd UPR cycle, the government received one recommendation relating to the freedom of expression, media freedom and access to information. The government pledged to 'ensure that all national legislation complies with international standards on freedom of expression and media freedom and take steps to prevent arbitrary suspension of media outlets'. This recommendation was noted, and the government did not take any measures to implement it.
- 4.2** ICCPR article 19 guarantees the right to the freedoms of expression and opinion. Constitutional article 23 guarantees the right to the freedom of expression and article 24 safeguards media freedom. Despite the adoption in 2015 of the Information and Communication Code, which decriminalised most press offences, the Digital Code criminalises online speech while the 2018 Criminal Code includes provisions that infringe on the freedom of expression.
- 4.3** Despite the removal of harsh prison sentences for defamation in the Information and Communication Code, individuals can still be subjected to excessive fines ranging from 500,000 to 10 million CFA francs (approx. US\$800 to US\$16,000) for insults and contempt under Law 2015-07 on the Information and Communication Code.³² The Code, in article 268, further punishes the republishing or repeating of statements that are considered defamatory. Defamation of the President can lead to a fine of 1 million to 10 million CFA francs (approx. US\$1,600 to US\$16,000). In article 277, the same fine applies for the defamation of heads of state, heads of government and ministers of foreign affairs of foreign countries. Article 278 penalises the act of public contempt of the head of state, ministers, ambassadors and other diplomatic envoys with a fine of between 500,000 and 2 million CFA francs (approx. US\$800 to US\$3,200). Article 318 establishes that newspapers, periodicals and radio and television stations and websites that have broadcast or published a defamatory statement can be suspended for up to three months (newspapers and periodicals) and 15 days (radio and TV stations).
- 4.4** The advances made by removing prison sentences for media offences were undermined by the adoption of the Digital Code and Criminal Code. The Digital Code's article 550 and article 553, on provocation to rebellion via online means, provide for prison sentences of between one month and two years and high fines (see 3.2). Despite the decriminalisation of press offences, several journalists have been prosecuted and imprisoned under the Digital Code (see section 3).

³² This law replaced various laws and regulations regulating press freedom: Law 60-12 of 30 June 1960 on the freedom of press; Decree No. 69-22/PR/MJL of 4 July 1969 on suppressing the spread of publications, dissemination and reproduction of false news; Law No 84-007 of 15 March 1984 on public posters; Law No. 97-010 of 20 August 1997 on the liberalisation the audio-visual space and special legal provisions on crimes related to the press and audio-visual communication in the Republic of Benin.

- 4.5** The Criminal Code³³ criminalises the freedom of expression in some of its provisions, particularly articles 254 and 280. Expression, including through ‘false news’, slander and other fraudulent means, that leads to people abstaining from voting is punishable with a prison sentence of between a month and a year, along with a fine, while the offence of ‘crimes against the symbols and values of the State, the Republic, communities and religions’ can penalise a wide range of expression. This can lead to prison sentences from five to 10 years and fines of between 10 million and 20 million CFA francs (approx. US\$16,000 to US\$32,000).
- 4.6** Benin’s national media regulatory agency, the Haute Autorité de l’Audiovisuel et de la Communication (HAAC), which is given the responsibility to protect press freedom by article 24 of the Constitution, has frequently used undue discretion to arbitrarily suspend and harass media outlets, particularly those critical of the ruling party. On 19 June 2019, Emmanuelle Sodji, a journalist and correspondent for France 24, was notified by HAAC that she was banned from working in Benin. This decision reportedly came following her reporting on the security situation in northern Benin.³⁴
- 4.7** In July 2020 and June 2022, HAAC ordered all online media outlets ‘without prior authorisation’ to cease all publications and broadcasts.³⁵
- 4.8** Soleil FM, an opposition-owned radio station, was forced to suspend broadcasting from 18 December 2019 following a HAAC decision to reject the radio station’s application to renew its licence. According to HAAC, the application was not signed by the station’s owner, political opposition figure and former presidential candidate Sebastien Avajon, who at the time lived in exile in France.³⁶ Soleil had previously been suspended in 2016.³⁷
- 4.9** On 23 May 2018, HAAC suspended the La Nouvelle Tribune newspaper until further notice. Grounds given by HAAC included violations of the Code of Information and Communication and Code of Ethics of the press. HAAC accused the newspaper of having engaged in ‘a crusade of insults and outrageous reporting on the private life

³³ Loi No. 2018-16 portant code pénal, <https://assemblee-nationale.bj/wp-content/uploads/2020/03/le-nouveau-code-penal-2018.pdf>.

³⁴ ‘Human Rights in Africa. Review of 2019’, Amnesty International, 8 April 2020, <https://www.amnesty.org/en/documents/afr01/1352/2020/en>.

³⁵ ‘Au Bénin, les médias en ligne sommés de cesser leur activité’, Le Monde, 15 July 2020, https://www.lemonde.fr/afrique/article/2020/07/15/au-benin-les-medias-en-ligne-sommes-de-cesser-leur-activite_6046253_3212.html; ‘La HAAC met en garde les médias en ligne sans autorisation’, 24 Heures Au Bénin, 7 June 2022, <https://www.24haubenin.info/?La-HAAC-interpelle-les-medias-en-ligne-sans-autorisation>.

³⁶ ‘Soleil FM : le gouvernement du Bénin dégage sa responsabilité’, Deutsche Welle, 19 December 2019, <https://www.dw.com/fr/soleil-fm-le-gouvernement-du-b%C3%A9nin-d%C3%A9gage-sa-responsabilit%C3%A9/a-51743019>.

³⁷ ‘Republic of Benin. Joint Submission to the UN Universal Periodic Review. 28th Session of the UPR Working Group’, CIVICUS and GAPP, March 2017, <http://www.civicus.org/images/Benin.JointUPRSubmission.pdf>.

of the Head of State, using very demeaning words' in articles published in January 2018.³⁸ On 1 June 2018, tax authorities ordered the freezing of the newspaper's bank accounts on grounds of non-compliance with tax regulations, although the newspaper's editor said that an agreement had previously been reached on payment of its tax obligations in instalments.³⁹ On 16 May 2019, the Cotonou Court of Appeal ordered HAAC to lift the ban.⁴⁰

4.10 On the day of legislative elections, 28 April 2019, internet and social media access was blocked. Internet freedom CSO NetBlocks reported that network data showed that the internet had been cut across the country from 11am local time for 15 hours.⁴¹ Prior to the shutdown, access to social media networks and communication platforms, including Facebook and Twitter, was blocked by internet providers. NetBlocks also found that several VPN services were unavailable on the morning of 28 April 2019.⁴²

4.11 Occasionally, media outlets are physically attacked. On the night of 5 April 2021, unidentified perpetrators ransacked and looted the headquarters of radio station Urban FM, based in Parakou. The attack occurred in the context of protests, called by some exiled opposition leaders, against an extension of President Talon's term of office by 45 days beyond the official term end according to the Constitution.⁴³ The radio station was unable to broadcast until 12 April 2021.⁴⁴

5. Freedom of peaceful assembly

5.1 During Benin's examination under the 3rd UPR cycle, the government received no recommendations on the right to the freedom of peaceful assembly. Constitutional article 25 guarantees the right to the freedom of peaceful assembly. ICCPR article 21 also guarantees this right. However, as evidenced below, legal restrictions on the freedom of peaceful assembly have been introduced while violations such as

³⁸ 'Le Journal Nouvelle Tribune suspendu par la HAAC', 24 Heures au Bénin, 23 May 2018,

<https://www.24haubenin.info/?Le-Journal-Nouvelle-Tribune-suspendu-par-la-HAAC>.

³⁹ 'State Actors in Suspected Proxy War Against Critical Newspaper', Media Foundation for West Africa, 8 June 2018, <https://www.mfwa.org/country-highlights/state-actors-in-suspected-proxy-war-against-critical-newspaper>.

⁴⁰ 'Procès "La Nouvelle Tribune" : voici l'intégralité de l'arrêt de la Cour d'appel condamnant la HAAC', La Nouvelle Tribune, 21 June 2019, <https://lanouvelletribune.info/2019/06/proces-la-nouvelle-tribune-voici-lintegralite-de-larret-de-la-cour-dappel-condamnant-la-haac>.

⁴¹ 'Internet blocked in Benin on election day', NetBlocks, 28 April 2019, <https://netblocks.org/reports/internet-blocked-in-benin-on-election-day-aAwqknyM>.

⁴² Ibid.

⁴³ 'MFWA Condemns Attack on Urban FM by Demonstrators', Media Foundation for West Africa, 9 April 2021, <https://www.mfwa.org/country-highlights/mfwa-condemns-attack-on-radio-urban-fm-by-demonstrators>.

⁴⁴ 'Bénin : Après les actes de vandalisme, Urban FM reprend ses programmes', La Nouvelle Tribune, 12 April 2021, <https://lanouvelletribune.info/2021/04/benin-apres-les-actes-de-vandalisme-urban-fm-reprend-ses-programmes>.

arbitrary bans on protests, excessive use of force, use of live ammunition against protesters and arrests of protesters occurred frequently during the period under examination.

- 5.2** Peaceful assembly is regulated by the French Law of 30 June 1881 on public meetings, which remains in force. Under this law, the organisers must notify the mayor of the municipality or the prefect of the department where an assembly is due to take place at least 24 hours beforehand. However, despite this positive notification regime, the law, under article 6, contains time and place restrictions on assemblies, including precluding protests on public roads or those which take place after 11pm, or later in localities where public establishments close later.
- 5.3** The Criminal Code⁴⁵ articles 237 and 240 introduce restrictions on the freedom of peaceful assembly. Article 237 prohibits any unarmed gathering that could disturb public tranquillity while ‘provocation to an unarmed gathering’, whether through speech, writings or the display or distribution of printed material, is punishable with a one-year prison sentence when the call to protest was followed, and one month to six months when it was not followed. Fines range 100,000 to 250,000 CFA francs (approx. US\$160 to US\$400).⁴⁶ In April 2019, Sanni Yibatou Glele, then a member of parliament for the Parti du Renouveau Démocratique, was arrested in Porto-Novo for disturbing public order and attempting to organise an unauthorised demonstration.⁴⁷
- 5.4** In practice, the authorities often ban protests, at times imposing blanket bans, and have used excessive force against protesters, in particular protests related to the electoral process and the exclusion of the political opposition.
- 5.5** A protest planned for 21 September 2018, against government plans to introduce taxes on the use of online services and social media, was banned by the mayor of Cotonou.⁴⁸ On several occasions, local authorities have issued blanket bans on protests. For example, on 28 October 2020, Cotonou mayor Luc Atrokpo issued municipal decree No. 114/MCOT/SG/SGA/SA prohibiting all public gatherings, protests and demonstrations of a festive or political nature on the territory of the

⁴⁵ Loi No. 2018-16, op. cit.

⁴⁶ Article 240, Criminal Code.

⁴⁷ ‘La police arrête l’élan de l’honorable Ybatou Sanni Glèlè au marché de Ouando’, 24 heures au Bénin, 23 April 2019, <https://24haubenin.info/?La-police-arrete-l-elan-de-l-honorable-Ybatou-Sanni-Glele-au-marche-de-Ouando>.

⁴⁸ ‘Interdiction d’une manifestation contre la hausse du prix d’internet au Bénin’, VOA Afrique, 21 September 2018, <https://www.voafrique.com/a/interdiction-d-une-manifestation-contre-la-hausse-du-prix-d-internet-au-b%C3%A9nin/4581590.html>.

Cotonou municipality until further notice.⁴⁹

5.6 Prior to the 28 April 2019 legislative elections, several municipalities and localities issued blanket bans on protests. In March 2019, the prefect of the department of Collines, who was also acting as the temporary prefect of the department of Zou, issued an order prohibiting all protests related to the electoral process until further notice.⁵⁰ On 25 February 2019, the mayor of Parakou, Charles Toko, prohibited all protests until further notice via a radio statement, stating that the blanket ban was required to preserve social peace and the protection of people and goods in a period of ‘social disruption’.⁵¹ However, on 16 July 2020, the Constitutional Court ruled that the decision was unconstitutional.⁵² Other municipalities and localities, including Allada and Glazoué, introduced blanket bans on protests during the same pre-electoral periods.⁵³

5.7 In the past few years, security forces have resorted to the use of excessive force, including live ammunition, in the face of protests. The periods surrounding the 2019 legislative elections and 2021 presidential elections were characterised by the prevention and repression of protests and excessive use of force, including batons, live ammunition, compressed air launchers and teargas. In the lead-up to the legislative elections, opposition protests erupted as only two political parties were authorised to stand. On 26 February 2019, at least one person was killed in Kilibo in clashes between security forces and protesters.⁵⁴ Four people, protesters and bystanders, were killed by bullets between April and June 2019.⁵⁵ Additionally, dozens of people were arrested and prosecuted for protesting peacefully. According to Amnesty International, at least 60 people were detained for months without trial,

⁴⁹ ‘Rassemblements et diverses manifestations interdits’, 24 Heures au Bénin, 29 October 2020, <https://24haubenin.info/?Rassemblements-et-diverses-manifestations-interdits>; ‘Bénin-Cotonou: Trois jurists attaquent le Maire Luc Atrokpo devant le cour constitutionnelle’, Le Grande Angle, 12 November 2020, <http://www.legrandangle.info/2020/11/benin-cotonou-trois-juristes-attaquent-le-maire-luc-atrokpo-devant-la-cour-constitutionnelle>.

⁵⁰ ‘Bénin: les manifestations de protestations interdites dans le Zou et le Collines’, Benin Web TV, 20 May 2019, <https://archives.beninwebtv.com/2019/03/benin-les-manifestations-de-protestation-interdites-dans-les-zou-collines/#:~:text=Jusqu'%C3%A0%20nouvel%20ordre%2C%20toute,paix%20et%20la%20qui%C3%A9tude%20sociale>.

⁵¹ ‘Parakou: le maire Charles Toko interdit les manifestations à caractère revendicatif’, La Nouvelle Tribune, 25 February 2019, <https://lanouvelletribune.info/2019/02/parakou-le-maire-charles-toko-interdit-les-manifestations-a-caractere-revendicatif>.

⁵² Decision DCC 20-536 of 16 July 2020. See ‘Bénin: La Cour déclare contraire à la constitution une décision de l’ex-maire Toko’, La Nouvelle Tribune, 21 July 2020, <https://lanouvelletribune.info/2020/07/benin-la-cour-declare-contre-a-la-constitution-une-decision-de-charles-toko>.

⁵³ ‘Interdictions des manifestations à caractère revendicatif dans certaines communes au Bénin: une violation de la Constitution’, Citoyen 229, 5 March 2019, <https://citoyen229.org/en/interdiction-des-manifestations-a-caractere-revendicatif-dans-certaines-communes-au-benin-une-violation-de-la-constitution>.

⁵⁴ ‘Bénin – Manifestation réprimée de l’opposition: un mort par balle et plusieurs blessés à Kilibo’, Bénin Web TV, <https://archives.beninwebtv.com/2019/02/benin-manifestation-reprimee-de-lopposition-un-mort-par-balles-et-plusieurs-blesses-a-kilibo>,

⁵⁵ ‘Amnesty International, 8 April 2020, op. cit.

with a decision made by a judge to retain them in pretrial detention on 28 May 2019.⁵⁶ They were released on 8 November 2019 following the adoption of an amnesty law.⁵⁷

- 5.8** On 28 March 2019, Joseph Aimassè, a member of trade union confederation Confédération syndicale des travailleurs du Bénin, was arrested in Porto-Novo after having ‘called for an unauthorised protest’.⁵⁸ On 1 April 2019, he was sentenced to a prison term of two months and a fine of 200,000 francs CFA (approx. US\$325).⁵⁹
- 5.9** Opposition protests erupted prior to the 2021 presidential elections, with protesters demanding the departure of President Talon.⁶⁰ At least five people were killed in Bantè and Savè when security forces used live ammunition.⁶¹ In Savè, two people were killed on 8 April 2021 and several people injured after military forces were deployed to break up a protest roadblock. Military officers reportedly used live ammunition and teargas.⁶²
- 5.10** On 24 March 2020, student Dieudonné Djaho was killed by bullets in a student protest at the University of Abomey-Calavi. The protest came when police arrested student leaders during a COVID-19 awareness-raising information session. The protest called for their release. Prior to this, the university administration introduced measures to contain the spread of COVID-19, including a prohibition on protests of more than 50 people, which was followed by the National Federation of Students of Benin issuing a memorandum to demand the suspension of classes at

⁵⁶ Ibid.

⁵⁷ For more information on the amnesty law, see ‘Bénin: la loi d’amnistie sur les violences post-électorales adoptée au Parlement’, Jeune Afrique, 1 November 2019, <https://www.jeuneafrique.com/850721/politique/benin-la-loi-damnistie-sur-les-violences-post-electorales-adoptee-au-parlement>.

⁵⁸ ‘Bénin: Un syndicaliste déposé en prison à Porto-Novo, pour appel à manifestation non autorisée’, La Nouvelle Tribune, 29 March 2019, <https://lanouvelletribune.info/2019/03/benin-un-syndicaliste-depose-en-prison-a-porto-novo-pour-appel-a-manifestation-non-autorisee>.

⁵⁹ ‘Bénin: Arrêté la semaine dernière, Joseph Aimassé condamné à deux mois de prison’, Bénin Web TV, 1 April 2019, <https://archives.beninwebtv.com/2019/04/benin-arrete-la-semaine-derniere-joseph-aimasse-condamne-a-deux-mois-de-prison>.

⁶⁰ A political crisis amounted from electoral reforms introduced in 2019 which require candidates for the offices of president and vice-president to be sponsored by at least 10 per cent of the total members of parliament and/or mayors. Following the disputed legislative elections in April 2019 – in which opposition parties could not participate due to stringent requirements under the 2018 Electoral Code – and the municipal elections in April 2020, in which only one opposition party gained a majority of councillors in seven municipalities, only three candidates could run for president in the April 2021 elections.

⁶¹ ‘Rapport sur l’état des droits de l’homme au Bénin 2020-2021’, Commission Béninoise des Droits de l’Homme, December 2021, <https://cbdh.bj/home/wp-content/uploads/2022/03/RAPPORT-EDH-BAT-Decembre-2021.pdf>.

⁶² ‘Repression au Bénin avant la présidentielle: le bilan monte à deux morts’, Africa Radio, 9 April 2021, <https://www.africaradio.com/news/repression-au-benin-avant-la-presidentielle-le-bilan-monte-a-deux-morts-184759>.

6. Recommendations to the Government of Benin

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

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

16.1 Freedom of association

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the freedom of association.
- Promote a meaningful political dialogue that allows and embraces diverging views, including those of CSOs, HRDs, journalists, political activists and others.
- Review the 2012 draft law on associations and remove undue restrictions on the freedom of association to bring it into compliance with ICCPR articles 21 and 22.
- Guarantee the effective and independent functioning of autonomous trade unions by removing undue limitations on the right to strike. In particular, review law No. 2018-34 of 5 October 2018, which complements and modifies Law No. 2001-09 of 21 June 2002 on the exercise of the right to strike in Benin.
- Review the decision to withdraw from the protocol that allows individuals and CSOs to seize the African Court on Human and Peoples' Rights and additional protocol A/SP.1/01/05 of 19 January 2005, which allows individuals and CSOs to appeal directly to the Court of Justice of the Economic Community of West African States.

⁶³ 'Mort d'un étudiant à l'université: Le Bénin doit respecter la liberté de manifestation pacifique et proscrire le recours injustifié et disproportionné à la force', Amnesty International, 28 March 2020, <https://www.amnestybenin.org/le-benin-doit-respecter-la-liberte-de-manifestation-pacifique-et-proscrire-le-recours-injustifie-et-disproportionne-a-la-force-lors-de-la-gestion-des-manifestations-publiques>.

16.2 Protection of HRDs

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Ensure that HRDs are able to carry out their legitimate activities without fear or undue hindrance, obstruction, or legal and administrative harassment.
- Undertake a consolidated process of repeal or amendment of legislation and decrees that unwarrantedly restrict the legitimate work of HRDs, in line with the UN Declaration on Human Rights Defenders.
- Specifically, amend the 2018 Digital Code to bring it into line with the ICCPR, in particular Observation No. 34 paragraph 44 of the United Nations Human Rights Committee and the UN Declaration on Human Rights Defenders.
- Immediately and unconditionally release all HRDs, including journalists and bloggers, detained for exercising their fundamental rights to the freedoms of association, peaceful assembly and expression, and review their cases to prevent further harassment.
- Publicly condemn at the highest levels of government instances of harassment and intimidation of CSOs and activists.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect HRDs, including by adopting a specific law on the protection of HRDs in accordance with Human Rights Council resolution 27.31.

16.3 Freedom of expression and media freedom

- Ensure the freedom of expression and media freedom by all bringing national legislation into line with international standards.
- Review the 2018 Digital Code and 2018 Criminal Code in order to bring them into line with best practices and international standards in the area of the freedom of expression.
- Reinstate all media outlets that have unwarrantedly been closed.

- Reform defamation legislation in conformity with ICCPR article 19 and review excessive fines in the 2015 Information and Communication Code.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government may deem sensitive.
- Take steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Refrain from blocking access to the internet and social media platforms.
- Organise inclusive consultations with journalists and the media in order to resolve disputes that exist concerning current and proposed media and disinformation laws.
- Refrain from adopting any laws providing for censorship or undue control over social and conventional media content.
- Refrain from censoring social and conventional media and ensure that the freedom of expression is safeguarded in all arenas, including in the arts.

6.4 Freedom of peaceful assembly

- Adopt best practices on the freedom of peaceful assembly, as put forward by the 2012 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which calls for simple processes for the notification of assemblies being held rather than permission being required, and by General Comment No. 37 on the right to peaceful assembly adopted by the UN Human Rights Committee in 2020.
- Amend articles 237 and 240 of the 2018 Criminal Code in order to guarantee fully the right to the freedom of peaceful assembly.
- Unconditionally and immediately release all protesters, HRDs and journalists detained for exercising their right to the freedom of peaceful assembly and review their cases to prevent further harassment.
- Immediately and impartially investigate all instances of extrajudicial killing and excessive force committed by security forces in the context of protests.

- Review and if necessary update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Publicly condemn at the highest levels all instances of the use of excessive and brutal force by security forces in response to protests, launch formal investigations into such instances and bring the perpetrators to justice.
- Provide recourse to judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to the freedom of peaceful assembly by state authorities.

6.5 Access to UN Special Procedures mandate holders

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; 3) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; 4) Special Rapporteur on the independence of judges and lawyers; 5) Special Rapporteur on extrajudicial, summary or arbitrary executions; 6) Special Rapporteur on the right to privacy; and 7) Working Group on Arbitrary Detention.

6.6 State engagement with civil society

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

