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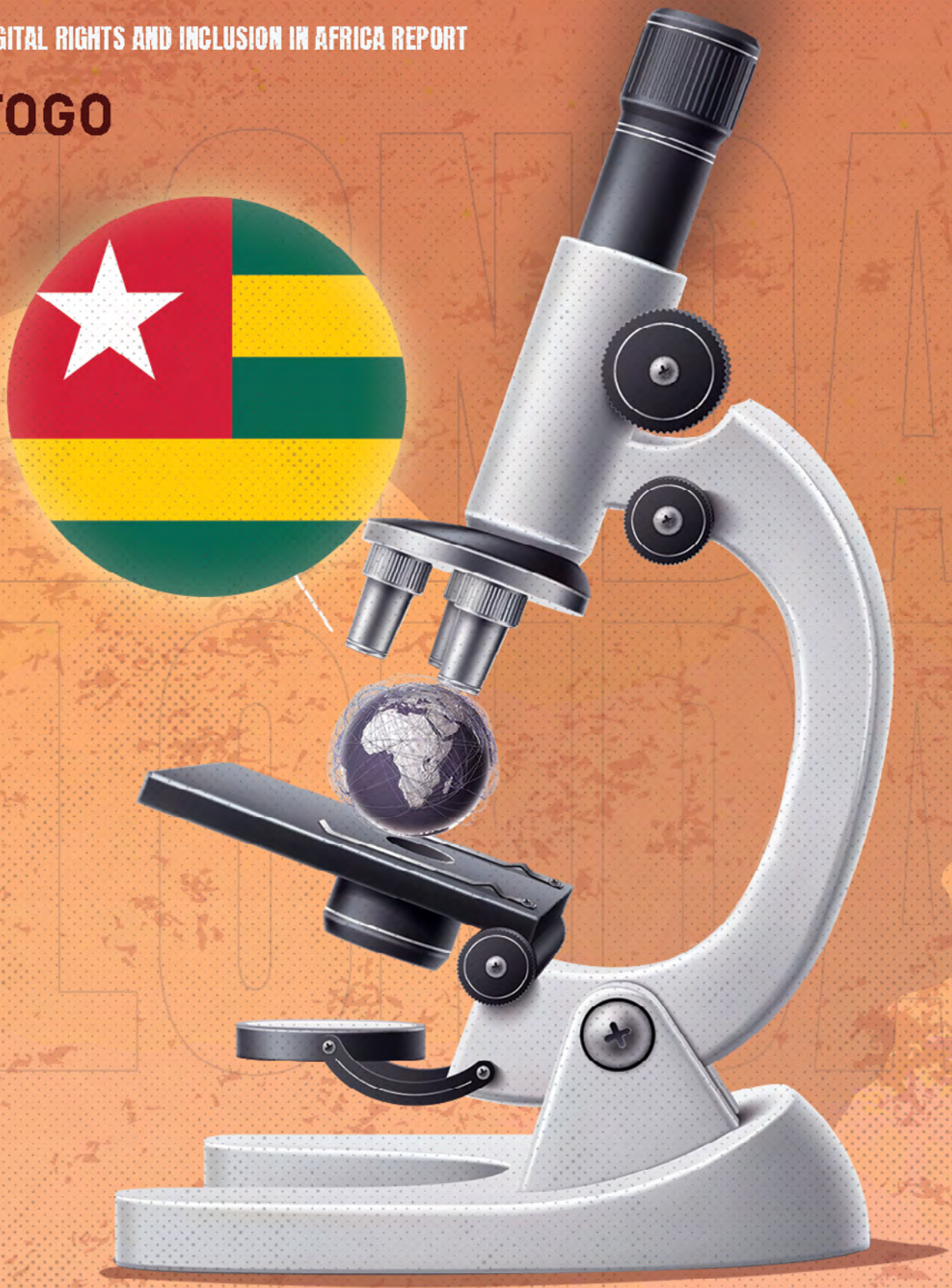
DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

TOGO



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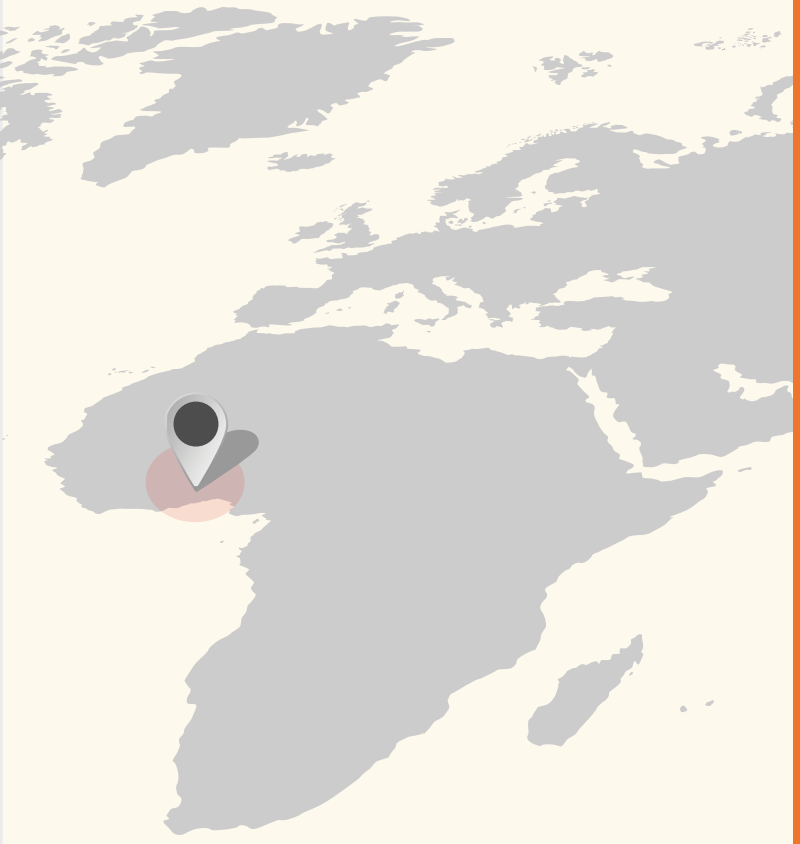


Togo

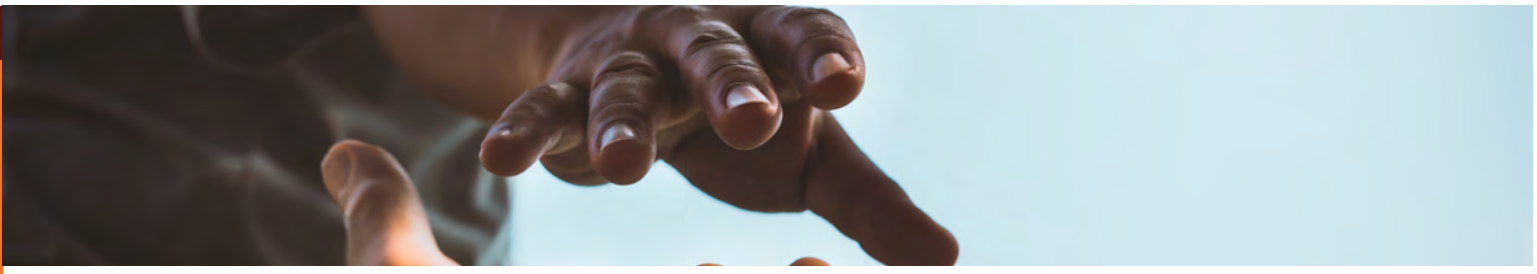
Executive Summary

For many Togolese, access to public, private and social services is a challenge. The government is hoping one solution could be its ambitious e-ID Togo biometric identification program and the recent deal to connect the country to Google's Equiano cable, the first of its kind to reach Africa from Portugal expected to double internet speed for Togo's 8.9 million residents. Google said the cable will indirectly create 37,000 jobs in Togo by 2025 and boost GDP by $193 million[1]. Also, Togo became the first country in West Africa to launch a 5G network in 2020. In recent years, internet penetration in Togo has almost tripled, from about seven per cent in 2017 to about 21 per cent in 2020[2].

However, the political apparatus and the freedom of expression of people and the media remains a challenge. Although the government has launched ambitious projects aimed at creating more jobs through digital skills and connectivity, ICT has not yet been introduced into educational programs in the country and recent policies and programs developed by the government lack the participation of key factors such as civil society organisations, the technical community and academia.

1 *The Equiano Subsea Cable has arrived in Togo, first stop in Africa* (2022) *Official Google Africa Blog*. Available at: https://africa.googleblog.com/2022/03/the-equiano-subsea-cable-has-arrived-in.html (Accessed: January 25, 2023)

2 *BTI 2022 Togo Country Report* (2022) *BTI*. Available at: https://bti-project.org/en/reports/country-report/TGO (Accessed: January 25, 2023)



Introduction

Located in West Africa on the Gulf of Guinea, Togo is bordered to the west by Ghana, to the east by Benin and to the north by Burkina Faso. Sandwiched between these countries, Togo's narrow sliver of land is home to a wide variety of languages, a complex religious history and delicious food.

The majority of Togo's population lives in small villages scattered throughout the rural areas. Lomé, the largest urban centre, is spread along the coast. One of the most crucial minerals of Togo is phosphate, and the country has approximately 60 million tons in reserves, making the West African nation the 19th largest producer of minerals in the world.
The country also has various untapped potential to produce minerals like limestone, gold, and diamonds, iron ore, gypsum, bauxite, manganese, zinc, rutile, and more[3]. Low market prices for Togo's major export commodities, however, coupled with the volatile political situation of the 1990s and early 2000s, had a negative effect on the economy.

Togo's President Faure Gnassingbe, was re-elected for a fourth term in 2020, extending his 15-year rule and a family dynasty that began when his father took power in a 1967 coup. Although the constitution provides for freedom of speech, in practice that right is restricted, and journalists often exercise self-censorship.

The country's total population was 8.9 million in December 2022[4]. According to Kepios' data, Togo's population increased by 201,000 between 2021 and 2022[5]. At the start of 2022, 43.9 per cent of Togo's population lived in urban centres, while 56.1 per cent lived in rural areas.

Kepios analysis indicates that internet users in Togo increased by 259,000 between 2021 and 2022. For perspective, these user figures reveal that 6.35 million people in Togo did not use the internet at the start of 2022, meaning that 74.1 per cent of the population remained offline at the time.

In November 2022, Togo was on the front pages of almost all the tech and telecom newspapers across the globe for being the first African country to be connected to The Equiano cable of

3 *Natural Resources & Mining Industry in Togo* (2022) *Arise IIP*. Available at: https://www.ariseiip.com/natural-resources-mining-industry-in-togo/#:~:text=Phosphate%20mining%20is%20a%20major,of%20minerals%20in%20the%20world (Accessed on January 25, 2023)
4 *Togo population (live)* (2023) *Worldometer*. Available at: https://www.worldometers.info/world-population/togo-population/ (Accessed on January 25, 2023)
5 Kemp, S. (2022) *Digital 2022: Togo - DataReportal – global digital insights*, *DataReportal*. DataReportal – Global Digital Insights. Available at: https://datareportal.com/reports/digital-2022-togo# (Accessed on January 25, 2023)

Google, the first of its kind to reach Africa.

"Togo, which was not on the list of beneficiary countries of the first cohort, was integrated after several months of negotiations and it becomes the first African country to host the cable," rejoiced the Togolese Minister of Digital Economy and Digital Transformation, Cina Lawson, on March 18, on the quay of Togo Terminal of the autonomous port of Lomé.
"This success allows us to meet the requirements of the government roadmap on strengthening internet connection to the global network," added the Togolese minister. The cable, "which must offer 20 times the bandwidth of any other existing cable in West Africa" is synonymous with an increase in internet speed, an improvement in the experience users, and a reduction in data costs of more than 14 per cent by 2025, according to data from her ministry.

In 2020, in the midst of the Covid-19 pandemic, Togo became the first country in West Africa, and the third in Africa, to deploy a 5G network. Commenting on the surprise launch, Cina Lawson, Minister of the Digital Economy and Digital Transformation, said: "5G will facilitate innovative uses by allowing the emergence of new services that meet the needs of various sectors of the economy (energy, health, industry, transport, etc).

In addition, the government's objective is for mobile coverage to benefit all Togolese. It is therefore important to ensure that the deployment of this technology is not limited to large cities alone, but that it contributes to improving the quality of coverage so that all localities in Togo can benefit from 5G services."

Also in the midst of the Covid-19 pandemic, Togo through the Ministry of Digital Economy and Digital Transformation (MENTD) launched the Novissi cash transfer scheme. An unconditional cash transfer (UCT) programme to assist informal workers whose livelihoods have been upended by the coronavirus pandemic, Novissi is a fully digital social assistance programme. As of March 2021, Novissi had reached 819,972 beneficiaries and disbursed approximately US$23.9 million (13,308,224,040 FCFA). The initiative was praised across the world as a giant step for the implementation of the digital economy and social assistance during crises.

With these headlines, an outsider to the country's economy may think that the country has designed a digital roadmap and a clear policy development process that brings actors together to bridge the digital divide. However, the leapfrog process has shown over the time its limit since most of the people outside the capital city are still struggling to connect to 2G networks while the country is launching a 5G network and an ambitious AI project without existing legal framework and the appropriate regulatory frameworks for these technologies.

POLICY LEAPFROG VS MULTI-STAKEHOLDER POLICY PROCESS

In the early 2010s, a report by the International Institute for Sustainable Development explained that the absence of policy development processes was due to the political instability in the West African nation[6]. After a constitutional amendment in 2002 and a presidential election in 2003, the country descended into political chaos. In 2005, the international community and regional bodies urged a power-sharing deal, which lasted until 2007 when the government was reshuffled twice with new ministers. Attempts at engaging the government to formulate an ICT policy were subjected to great risk, even though a political agreement for Togo called the Accord Politique Global (APG) was signed in neighbouring Burkina Faso in August 2006, following a dialogue between the government and various opposition parties. It was nearly impossible under the chaotic political circumstances experienced in Togo in the early 2000s to pay attention to ICT policy concerns, despite the attempts to do so.

Similarly, it was also almost impossible to engage the government with ongoing national and regional policy initiatives such as those

6 "Supporting Multistakeholder Internet Public Policy Dialogue in a Least Developed Country: The Togo Experience," Ben Akoh, *International Institute for Sustainable Development*, July 2012.

spearheaded by the United Nations Economic Commission for Africa (UNECA) under the National Information and Communication Infrastructure (NICI) initiative and the Economic Community of West African States (ECOWAS) ICT reform. In total over 10 attempts have been made to produce a national ICT policy document without yielding much by way of tangible outcomes.

However, the current Minister of Digital Economy and Digital Transformation has been in that position since 2010. Drawing from her over 15 years of experience and expertise in telecommunications policy and regulation, she was tasked to lead Togo through a profound transition to an inclusive digital economy. Again, most initiatives, including laws and regulations during her 12 years at the helm of the ministry, have been isolated leapfrog policy sprints without a strong foundation to build a multi-stakeholder policy process that include the key actors such as users represented by Civil Society Organizations, the technical community and the academia. The secrecy of the processes and lack of accountability, inclusion and transparency are strong indicators that most policy sprints and isolated projects by the government through the ministry are not necessarily for the purpose of laying a strong foundation for the country's digital economy but rather out of concern to adapt state policies to the global digital landscape during their tenure as government officials.

The most recent policy that concerned the Novissi program[7] was composed by only ministers and an advisor from the Presidency. Novissi was expedited through typical budget and policy negotiations with a dedicated in-house team, led by a Senior Economic Advisor to the president, and the Minister of Digital Economy and Digital Transformation. Both worked with the emergency inter-ministerial committee, which was formalised via presidential decree to coordinate emergency policy responses to the pandemic.

The committee is composed of the following officials: the President of the Republic; the Prime Minister; Minister for Digital Economy and Digital Transformation; Minister of Grassroots Development, Handicrafts, and Youth; Minister for the Economy and Finance; Minister for Territorial Administration, Decentralisation, and Local Government; Minister for Infrastructure and Transport; Minister of Mines and Energy; the Minister of Water, Rural Equipment and Waterworks; Secretary of State for the Informal Sector; and Advisor to the President.

The committee ensured that Novissi was developed within this institutional body and process, and reflected the social assistance priorities of the government. Again, the government failed to build a multi-stakeholder team with experts in the field and other important stakeholders.

INTERNET FREEDOM AND NETWORK DISRUPTION

Internet disruption, government surveillance and abuse of citizens' personal data have

7 *Using AI and digital data to target cash transfers in Togo* (2021) *CEGA*. Available at: https://cega.berkeley.edu/research/using-ai-and-digital-data-to-target-cash-transfers-in-togo/ (Accessed: January 25, 2023).

put Togo on the spotlight between 2017 and 2021. The year 2022 has been quite stable in terms of internet freedom aside few cases where a number of web influencers were jailed for their opinions online in the absence of a legal framework regulating the freedom of expression online.

In late 2021, pro-democracy activist Fovi Katakou[8] was also provisionally released under judicial supervision after nine days of arbitrary detention. He was accused of "apology for crimes and offences" (Article 552 of the Togolese Penal Code) and "incitement to revolt against the authority of the State" (Article 495 of the same Code) in relation to a Facebook post dated December 10, 2021 in which he warned about the problems of insecurity, injustice, and lack of infrastructure in Togo.
In 2022, Aristide Soglo, alias Aristo le Blédard, a well-known French-Togolese influencer was arrested several times and condemned on several occasions to pay fines for his opinions expressed online[9]. He was accused of defamation and in the absence of a law regulating online space in Togo, the central direction of the judicial police (DCPJ) has been using Togo's Criminal Code. Other influencers and bloggers including Raoul Le Blanc[10], a well-known comedian, Gogoligo, and gospel artiste, Papson Moutité, have been jailed for expressing opinions on social media networks, especially Facebook[11].

Two years ago, in a landmark case, the Economic Community of West African States (ECOWAS) Community Court of Justice, directed the government of Togo to "enact and implement laws, regulations and safeguards in order to meet its obligations with respect to the right to freedom of expression online in accordance with international human rights instruments" and "take all necessary measures to guarantee non-occurrence of network disruptions and abuse of citizen's freedom of expression."

In early 2022, the Council of Ministers adopted a new code of criminal procedure[12], a draft Bill of 1047 articles "to bring more modernity in the Togolese criminal procedure or to respond to new challenges such as terrorism or maritime piracy." According to the government, the new bill will meet the major international standards in terms of individual freedom and the protection of the dignity of individuals. However, it is unclear if online freedom provisions are included in the new bill. In the absence of public hearings and calls to comment, it is still not possible for other stakeholders to bring their contribution to the Bill.

Regarding network disruption, Togolese have enjoyed network stability in urban communities except a few isolated incidents[13] that were solved within hours or a day. Most incidents were mostly The Electronic Communications and Postal Regulatory Authority (ARCEP) has opened a sanction procedure against GVA Togo, a fibre optic Internet service provider (ISP) following disruptions reported several times on its network[14]. ARCEP accused the ISP

8 HAKA, A. (2021) *Togo-L'activiste Fovi Katakou arrêté chez lui dans la matinée, Icilome*. Available at: https://icilome.com/2021/12/togo-lactiviste-fovi-katakou-arrete-chez-lui-dans-la-matinee/ (Accessed: January 25, 2023).
9 KAMAKO, B.L. (2021) *Aristo le Blédard gardé à vue par la police togolaise pour diffamation, Togo Breaking News*. Available at: https://togobreakingnews.info/aristo-le-bledard-garde-a-vue-par-la-police-togolaise-pour-diffamation/ (Accessed on January 25, 2023).
10 News, B.T.B. (2022) *Showbiz: Raoul le blanc encore jeté en prison, Togo Breaking News*. Available at: https://togobreakingnews.info/showbiz-raoul-le-blanc-encore-jete-en-prison/ (Accessed on January 25, 2023).
11 News, B.T.B. (2021) *Papson et gogoligo en prison dans l'affaire adebayor, Togo Breaking News*. Available at: https://togobreakingnews.info/papson-et-gogoligo-en-prison-dans-laffaire-adebayor/ (Accessed: January 25, 2023).
12 *LOMEGRAPH* (2022) *Le Togo va introduire le bracelet électronique à son code de procédure pénale*,. Available at: https://lomegraph.com/code-de-procedure-penale-bracelet-electronique/ (Accessed on January 25, 2023).
13 Ayi Renaud Dossavi (2022) *Togo: L'ARCEP lance une procédure de sanction contre Canalbox, suite à des dysfonctionnements Récurrents, Togo First - Actualité économique au Togo.* Available at: https://www.togofirst.com/fr/telecoms/0309-10538-togo-l-arcep-lance-une-procedure-de-sanction-contre-canalbox-suite-a-des-dysfonctionnements-recurrents (Accessed: January 27, 2023).
14 Agence Ecofin (2022) *Au Togo, Canalbox Visé par une procédure de sanction conduite par l'arcep, pour dysfonctionnements récurrents*, *Agence Ecofin*. Available at: https://www.agenceecofin.com/communication/0409-100852-au-togo-canalbox-vise-par-une-procedure-de-sanction-conduite-par-l-arcep-pour-dysfonctionnements-recurrents (Accessed: January 27, 2023).

for "non-compliance with the obligations of network stability, availability and continuity of services" and also for failure to notify incidents to customers and the regulator.

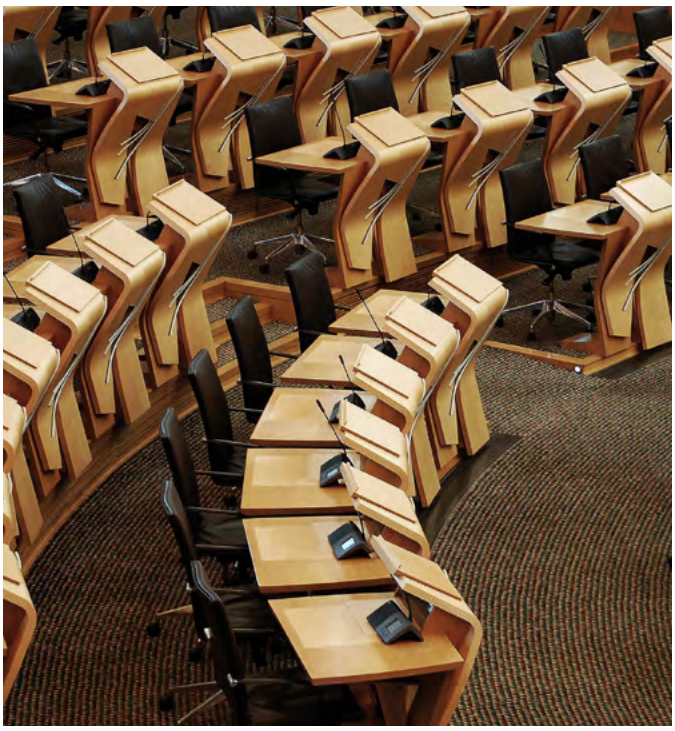
"The Regulatory Authority for Electronic Communications and Posts (ARCEP) has noted with regret for several weeks, serious and recurring shortcomings in the provision of services by the operator Groupe Vivendi Africa Togo (GVA Togo), in particular the multiplication of cases of unavailability of services and more particularly slow speeds below 1Mbps instead of the speeds subscribed by consumers of 50 Mbps and 200 Mbps respectively," a statement said.

GVA Togo has been a game changer in Togo, offering the cheapest fibre optic subscription within ECOWAS. The ISP doubled its subscribers from around 18,000 to 36,000 at the end of December 2021, against a backdrop of strong growth since its arrival in Togo.

A few months earlier, the leader of the telecom market, Togocom had been sanctioned to pay over two billion CFA francs, corresponding to two per cent of its annual turnover of the financial year 2021[15], for serious breaches to its obligation of network stability and to the availability of its mobile electronic communications services, in accordance with article 31 of the law on electronic communications. These sanctions follow a number of benchmark reports and case studies released by the Regulator in 2022 to ensure availability and quality of services from the telecom operators.

DATA GOVERNANCE

The Togolese Constitution of October 14, 1992, lays the foundation for data protection and privacy by guaranteeing the "respect for the privacy, honour, dignity and image"



of every citizen. Apart from that, article 29 of the Constitution states that "the State guarantees the secrecy of correspondence and telecommunications. Every citizen has the right to the secrecy of his correspondence and of his communications and telecommunications."[16] The law dedicated to the protection of personal data in Togo is the Data Protection Act (DPA) n °2019-014 of October 29, 2019, relating to the protection of personal data[17]. It regulates the collection, processing, transmission, storage and use of personal data. It applies to individuals, the State, local communities, private and public companies, as well as to automated or non-automated processing of data carried out within the territory of Togo or in any jurisdiction where the Togolese laws apply.

One of the aims of the data protection law is to empower individuals and give them control over their personal data. It has a chapter on the rights of data subjects (individuals) which includes the right of access, the right to rectification, the right to erasure, the right to

15 *Autorité de Régulation des communications electroniques...* (2022). Available at: https://arcep.tg/wp-content/uploads/2022/06/Decision-2022-006-ARCEP-CD-Portant-sanction-TGC-pour-manquement-obligation-de-disponibilite-permanente-continue-et-reguliere-fourniture-des-services-de-CE.pdf (Accessed: January 25, 2023).

16 *Togo 1992 (rev. 2007) Constitution* (2023) *Constitute*. Available at: https://www.constituteproject.org/constitution/Togo_2007?lang=en (Accessed on January 25, 2023).

17 *Journal Officiel du Togo* (2020). Available at: https://www.jo.gouv.tg/sites/default/files/JO/JOS_11_05_2020%20-%2065E%20ANNEE%20N%C2%B0%2016%20BIS.pdf (Accessed on January 25, 2023).

restrict processing, the right to data portability, the right to object and the right not to be subject to a decision based solely on automated processing. The DPA established seven core principles for the handling of personal data. These principles include: principle of consent and legitimacy; principle of lawfulness and loyalty; principle of finality, relevance and conservation; principle of accuracy; principle of transparency; and principle of confidentiality and security; among others.

This law also provides for the creation of a regulatory agency for the protection of personal data, *Instance de protection des données à caractère personnel* (IPDCP).

According to the law, IPDCP is supposed to be an independent administrative authority responsible for ensuring that the processing of personal data is carried out in accordance with the provisions set out in law.

The challenge regarding data governance in Togo remains the creation of the IPDCP and its members to uphold the law. Despite announcements by the government, the entity has not yet been created.

The other challenge includes the legal framework for biometric identification data that was set by law on the identification of individuals in Togo (e-ID Act), voted on September 3, 2020, by the Parliament[18]. The new law, according to the government, will guide and regulate the collection of citizens' data by the government. The e-ID Act is therefore the second law governing personal data. However, it is still not yet fully implemented.

FREEDOM OF THE PRESS AND MEDIA

With 234 newspapers and magazines, 94 radio stations and a dozen television networks serving 8.9 million people, Togo has a rich media landscape. However, despite the abundance of media outlets, including the appearance of new online sites in recent years, most of them operate under strong political influence.

Since 2004, the press law no longer imposes prison sentences for violations, but the law is often bypassed. Language adopted in 2020 guarantees the independence of journalism and journalists' access to information, on the condition of respecting "classified defence information". Access to information remains difficult for journalists, especially those from

privately owned media outlets that are critical of the authorities. Also, the State is still jailing journalists using other legal instruments such as Togo's Criminal Code. In December 2021, Togo charged two journalists who had been critical of the government with "contempt of authority" and "spreading false statements on social media."

Ferdinand Ayite and Joel Egah, editors of the bi-weekly *L'Alternative* and the weekly *Fraternite*, respectively, were arrested and detained on December 10, 2021 over comments made during an online broadcast. The two journalists

18 Macdonald, A. (2022) *Togo amends law on biometric identification to advance digital ID ambitions: Biometric Update*, *Biometric Update |*. BiometricUpdate.com. Available at: https://www.biometricupdate.com/202206/togo-amends-law-on-biometric-identification-to-advance-digital-id-ambitions (Accessed: January 25, 2023).

and their moderator were released from Lomé civil prison and placed under judicial supervision on the evening of December 31, 2021[19]. Despite their release, the two journalists were still being prosecuted for "contempt of authority" (Article 490 of the Togolese Code of Criminal Procedure), "defamation" (Article 290 of the Togolese Penal Code) and "incitement to revolt against the authority of the State" (article 495 of the same Code). Joel Egah died a few weeks later over health complications due to his time spent in jail, according to his family.

Note that the right to freedom of expression is enshrined in the Togolese Constitution, as well as in several regional and international human rights protection instruments, in particular Article 19 of the International Covenant on Civil and Political Rights and Article 9 of the African Charter on Human and Peoples' Rights, ratified by Togo in 1984 and 1982, respectively.

Bridging the digital divide through education

In his book "*Open letter to fifty-year-old Africa*",[20] Togolese statesman and ex-African Union's Secretary-General Edem Kodjo, urged most African countries to embrace digital transformation of the continent as it's the only way to project the continent. In Togo, the educational reform has not yet touched the inclusion of digital literacy into any official curriculum and there is no university or higher education institution in the country teaching IT policy.

In 2015, as a part of another leapfrog policy process, the government launched a pilot project called "Ecole Numérique Togo" (ENT), a project which aims to introduce digital technology in education and to emphasise the crucial importance of ICT in the education system. Over seven years later, there is no available impact report on the pilot phase and over 1,548,876 pupils and over 85,000 students are yet to benefit from CT curricula.

One of the causes of the educational stagnation in Togo, and regarding ICT in particular, is funding. However, the government got a support of 15 billion CFA Francs from the World Bank to support the ENT initiative which has not established any policy, roadmap or perspective on how the government intends to introduce ICT in educational curricula.

Introducing ICT curricula in Togolese schools is now an emergency as the entire continent is moving toward the fourth industrial revolution. In the 2000s, the digital divide in Togo was considerable. But over the past ten years, with a mobile phone penetration rate of over 90 per cent, with 2.23 million internet users, it is very important to explore other areas of funding to support such ambition beyond international aid, donors funding and loans.

THE UNIVERSAL SERVICE AND ACCESS FUND (USAF)

The Universal Service & Access Fund (USAF), a funding mechanism to draw contributions, usually from telecommunications network operators towards ensuring that ICT services are accessible and affordable to the widest number of people possible, has been instrumental in funding digital inclusion and

19 *Togo: Escalade des attaques contre les défenseurs des droits humains* (2022) *Togo: Escalade des attaques contre les défenseurs des droits humains ~ Tournons la Page*. Available at: https://tournonslapage.org/fr/actualites/togo-escalade-des-attaques-contre-les-defenseurs-des-droits-humains (Accessed on January 25, 2023).

20 Kodjo, E. (2010) *Lettre Ouverte à l'Afrique Cinquantenaire*. Paris: Editions Gallimard.

digital literacy projects.

In other countries on the continent, these funds are also critical institutions in the sense that they have an outsized influence on the online experiences of marginalised populations in a country.

In Togo, the fund's focus since its initiation in 1998 has initially centered on the availability of the 'voice' telephony service and access points in rural areas. Twenty years later, in 2018, the government has adopted a decree to expand the service towards broadband and digital inclusion projects for underserved communities to connect 95 per cent of the population.

Although the regulator has made mention of the use of the fund in its annual reports, there is no impact report or transparency about the process and the various projects funded by the Fund. The Regulator is in charge of executing projects under the fund with supervision from the ministry of ICT.

Conclusion and Recommendations

GOVERNMENT

- Government must establish a multi-stakeholder process for policies, laws and regulations including civil society organisations (CSOs), academia and the technical community
- Government must safeguard free expression, access to information both online and offline
- Government, regulatory authorities and telcos must maintain access to telecom, internet services, digital platforms, and circumvention technologies, particularly during elections, protests, and periods of conflict. Intentional disruptions to internet access and online services impact individuals' economic, social, political, and civil rights.
- Government must enshrine human rights principles, transparency, and democratic oversight in laws that regulate online content in Togo.
- Government should avoid blocking or imposing onerous regulatory requirements on community networks, and imposing outright or arbitrary bans on social media and messaging platforms.
- Through the USAF, the government and the regulator should be able to expand connectivity, create additional demand for internet access, support existing pillars of the country's economy, and deliver on various social goods and government services.
- Through the USAF, with priority to inclusive access to the internet, government and the regulator must subsidise connectivity for those at the margins, such as those living in rural areas as well as women and girls
- The government in collaboration with other stakeholders must set up a multi-stakeholder entity and committee to manage the USAF to help deliver on high-level governmental objectives and support the country's overall economic development.
- Government must support online media and foster a resilient information space. Combating disinformation and propaganda begins with public access to reliable information and local, on-the-ground reporting.
- Government and stakeholders must fully integrate human rights principles in competition policy enforcement and encourage new investment in the

CIVIL SOCIETY

- Civil society organisations must advocate for the immediate, unconditional release of those imprisoned for online expression protected under international standards and encourage redress measures.
- Civil society organisations must conduct early-warning analysis on election interference tactics likely to occur during the country's local and legislative elections, and mobilise advocacy campaigns to prevent negative impacts.

GOVERNMENT	PRIVATE SECTOR
telecom industry. ▪ Government must address the digital divide. Unequal access to the internet contributes to economic and social inequality and undermines the benefits of a free and open internet. In the short term, governments should work with service providers to lift data caps.	▪ Companies must engage in continuous dialogue with civil society to understand the effects of company policies and products and the needs of consumers.

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