

# LONDA

TOGO DIGITAL RIGHTS AND INCLUSION

A PARADIGM INITIATIVE PUBLICATION



2020  
REPORT

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## TOGO DIGITAL RIGHTS AND INCLUSION 2020 REPORT

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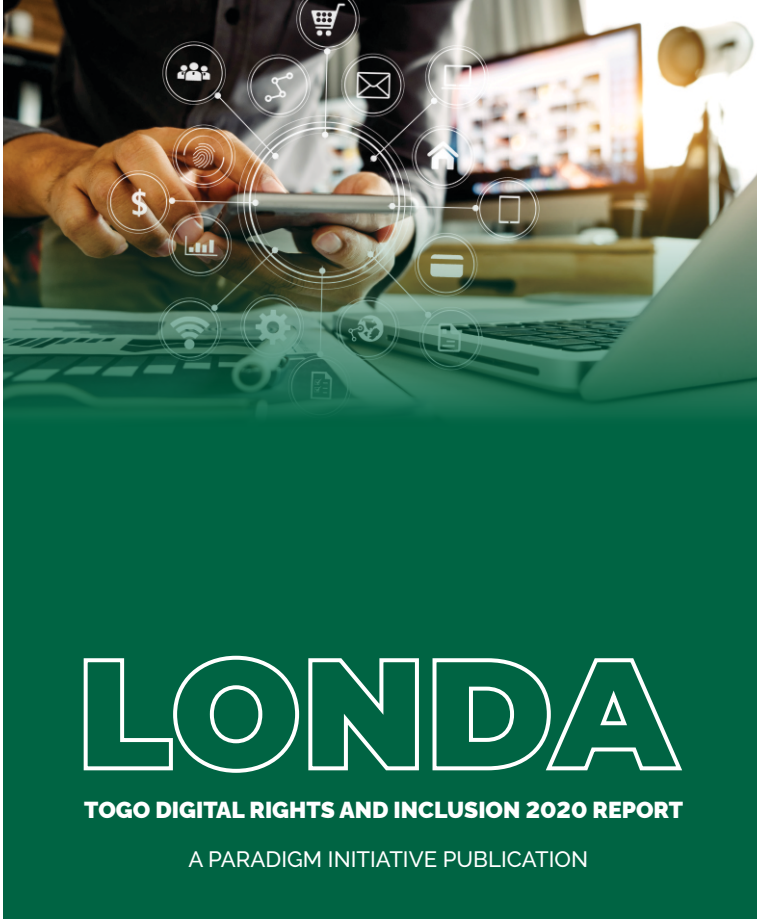
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Civil society organizations continue to work to advance digital rights and inclusion in Africa, ensuring best practices are adopted into policy and legislation. This report analyses the state of digital rights and inclusion in Togo, examining violations and gaps, investigating the use and application of policy and legislation, highlighting milestones and proffering recommendations for the digital landscape in Togo. This edition captures among other issues, the digital divide worsened by the COVID-19 pandemic and unearths infractions on different thematic areas such as privacy, access to information, and freedom of expression with the legislative and policy background well enunciated.

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A coastal country in West Africa, Togo shares its borders with Ghana, Benin and Burkina Faso and is home to approximately 7.8 million people. Poverty and inequality remain quite high, especially in rural areas where 69% of households were living below the poverty line in 2015.<sup>1</sup> Togo's Human Capital Index (HCI) remains at a low 0.41.<sup>2</sup>

## INTRODUCTION

# DIGITAL RIGHTS AND INCLUSION IN TOGO

The ruling party, the Union for the Republic (UNIR), has been at the forefront of politics for several years. It currently holds 59 out of 91 seats in the National Assembly following the 2018 general elections. The presidential elections, held on February 22 2020, re-elected Faure Gnassingbé as Head of the country. Faure Gnassingbé is entering his fourth five-year term since he was first elected in 2005. For the first time in 32 years, Togo held local elections in June 2019 to elect its municipal councilors. UNIR won the majority of seats (878 seats out of 1,490 seats).

According to Hootsuite and We are social,<sup>3</sup> in January 2020 there were 1.71 million internet users in Togo. The number of internet users in Togo increased by 124,000 (+7.8%) between 2019 and 2020. Internet penetration in Togo was 21% in January 2020. There are five Internet service providers<sup>4</sup> (ISPs) in the country, including two mobile phone operators (Togocom and Atlantic Telecom). Due to network coverage gaps, there is a large gap between the quality of connectivity in urban areas and rural areas. According to GSMA, the penetration rate for mobile broadband is 36%.<sup>5</sup>



**1.71 Million**  
Internet users in Togo

1. It should be noted that the poverty has decreased from 61,7% to 53,5% between 2006 et 2017.

2. <https://www.banquemonetarie.org/fr/country/togo/overview>

3. <https://datareportal.com/reports/digital-2020-togo>

4. Il s'agit de Café Informatique, Togocom, Teolis, GVA Togo (Groupe Vivendi Africa) et Atlantic Telecom Togo

5. <https://www.mobileconnectivityindex.com/#year=2019&zoneIscode=TGO&analysisView=TGO>

The cost of internet connectivity, considered to be among the highest in the West African sub-region, is generally the subject of challenges by users and has been the subject of boycotts, organised by consumers, of internet services. For example, for Togocom mobile phone subscribers, the cost of 2 GB with a validity of 30 days is FCFA 5,000 (approximately USD 9.02). It is important to note that on November 16 2020 the Regulatory Authority for Electronic Communications and Posts (ARCEP) put the two mobile telephone operators on notice for their excessively high communication costs which could bode well for the cost of connectivity.<sup>6</sup>

Apart from the high costs associated with internet use, users are dissatisfied with the period of validity allocated to the consumption of mobile data. In the market, competition is relatively low and Internet services are not very varied from one provider to another. The bipolarization of the mobile phone market has an impact on the cost and variety of services, compared to the countries of the Francophone West African sub-region. For example, some fibre optic subscribers complain, not only about the quality of the internet, but also about the quality of the supply and the technical support that is generally only operational during hours of service.

## DIGITAL RIGHTS AND THE HUMAN RIGHTS APPROACH

In Togo, digital rights still remain a new reality and the concept is not necessarily assimilated to that of human rights in general. There is a huge lack of knowledge by citizens of their rights. Moreover, the education system does not promote the acquisition of basic technological skills, which means that the population as a whole seems to ignore its digital rights. Even if in recent years there has been a strong interest on the part of the legislator on digital issues. The displayed interest does not seem to be that of protecting the citizen, but rather to adapt the policies of the State to the global digital framework. It is evident that the important prerogatives of the State lead it to take decisions on data protection which are often not popular.



6. L'ARCEP met en demeure Togocel et Moov pour pratiques de différenciation tarifaire, <https://www.republiquetogolaise.com/telecoms/1611-4849-l-arcep-met-en-demeure-togocel-et-moov-pour-pratiques-de-differenciation-tarifaire>

The news from Togo remains marked by the internet shutdowns that occurred on the evening of Election Day (February 22 2020) that had significant economic consequences.<sup>7</sup> According to a study by the Open Observatory Network Interference (OONI), Togo cut off access to some internet services during the elections.<sup>8</sup> The results of the tests conducted during the election period showed that instant messaging applications such as WhatsApp, Facebook Messenger and Telegram were blocked for the two mobile phone operators: Togocom and Atlantique Telecom (widely used by citizens for their internet access) while the three apps were accessible on the Canalbox network of Vivendi Africa Togo Group, one of the three fixed-mode internet service providers, showing that the blocking varied according to the modes of internet access.

It is very likely that this approach reflects the fact that the intention of the authorities in shutting down the internet was to drastically reduce access for the segment of the population believed to be most sensitive to political protest, young people, without running the risk of completely cutting the country from the internet. In 2020, however, the Togolese state was condemned by the ECOWAS Court of Justice for the widespread cuts that occurred in 2017 in the context of political demonstrations.<sup>9</sup> On the issue of digital rights, initiatives are being taken within civil society. A bill sponsored by an organization, Afrotribune, aims to promote digital rights and freedoms. In 2020, the eighth edition of the Internet Governance Forum was organized and focused on the accessibility and cost of internet connectivity.<sup>10</sup>

Organized every year, this forum opens the debate on government sector policy and is attended by all internet stakeholders. Most recently, news has been marked by allegations of cyber-espionage of political and religious leaders by the State.<sup>11</sup> The government is yet to take a position on the issue.

## INTERNET LEGAL FRAMEWORK

The legal framework of the internet is gradually taking shape in Togo. Over the past two years, there has been a strong interest in digital activities among legislators. In 2018, the Togolese Parliament passed a law on cybersecurity and against cybercrime. A year later, the Personal Data Act came into being. This is the law, dated October 29 2019, on the protection of personal data. These laws regulate the freedoms of citizens online and repress cyber-reprehensible acts such as hate speech, the promotion of child pornography, the dissemination of fake news (infox), attacks on human dignity, etc.

The legal framework for biometric identification data was set by the recent law on the identification of natural persons in Togo (e-ID Togo),<sup>12</sup> voted by MEPs on September 3 2020. This law promises mechanisms to regulate the management of citizens' biometric data; it is therefore the second law that regulates personal data.

***According to a study by the Open Observatory Network Interference, Togo cut off access to some internet services during the elections***



7. <https://jurigeek.law.blog/2020/09/13/pourquoi-coupe-t-on-internet/>

8. OONI uses a free program to detect censor, surveillance and manipulation of the traffic on internet

9. <https://www.agenceecofin.com/gestion-publique/0107-78064-le-togo-condamne-par-la-cour-de-justice-de-la-cedeao-pour-les-coupures-dinternet-de-2017>

10. <https://www.techenafrique.com/2020/10/togo-le-forum-national-sur-la-gouvernance-internet-cest-du-15-au-16-octobre/>

11. How did Togo use the Israeli program Pegasus to spy on religious catholics and opponents, [https://www.lemonde.fr/afrique/article/2020/08/03/au-togo-un-espion-dans-les-smartphones\\_6048023\\_3212.html](https://www.lemonde.fr/afrique/article/2020/08/03/au-togo-un-espion-dans-les-smartphones_6048023_3212.html)

12. The Togo e-ID project is supported by the World Bank through the West Africa Unique Identification for Regional Integration and Inclusion (WURI) program. This program aims to provide government-recognized unique identification credentials to all individuals in participating countries, regardless of their nationality, legal status or place of residence. The program involves Côte d'Ivoire, Guinea, Benin, Burkina Faso, Niger and Togo.



***On the issue of digital rights, initiatives are being taken within civil society. A bill sponsored by an organization, Afrotribune, aims to promote digital rights and freedoms.***

It should be noted that the drafting of laws and policies is not the subject of much communication in order to allow citizens to take a position and to take possession of the contents of the various laws. Togo signed the African Union Convention on Cybersecurity and Protection of Personal Data<sup>13</sup> (Malabo Convention) on April 2 2019 without ratifying it to date.

At the sub-regional level, in the ECOWAS legal ecosystem, there is the Additional Act A/SA.1/01/10 on the protection of personal data, of which Togo is a party. It should be noted that Togolese laws still comply with the legal framework of international commitments.

## **IMPACT OF COVID-19 ON DIGITAL RIGHTS AND INCLUSION**

On the issue of COVID-19, starting March 2020, the actions that had to be taken by the State led to the serious consideration of the Internet as a new option for governance and crisis management. A few key points can be observed, including the government's inauguration of a digital financial assistance program for those hard hit by the pandemic. This program, called Novissi, made it clear that a comprehensive and more inclusive identification program of the population would avoid inequalities in a context where the use of electoral data led to the exclusion of abstentionists.<sup>14</sup>

13. <https://www.internetsociety.tg/internet-et-securite-des-donnees-a-caractere-personnel-quelles-solutions-pour-lafrique/>

14. The government preferred to rely on the electoral database, which was considered more inclusive and complete than the identity card database, even though there were a significant number of abstainers in protest at the way the electoral census was organized.

In addition, the pandemic highlighted the low digital literacy of citizens in rural areas. The elderly and the less educated seem to be left out. In addition, the increased use of the internet during the pandemic for professional activities has given a new light to the question of the cost of telephone communication and Internet access.

Moreover, this led to the public taking interest in the security of data that was used to track travellers.<sup>15</sup> It should be noted that the freedom of expression online that seemed to be significantly improved<sup>16</sup> due to capacity (especially for

journalists) to express themselves on any topic on social media without being worried, unless publishing false information, is experiencing a regression with recent internet cuts<sup>17</sup> and the difficulty for some online media to broadcast freely without risking disruption of their services.

Because of its strong links to violent extremism, fake news is subject to greater surveillance on social media, both at the security force and citizen level. Initiatives (such as Togocheck)<sup>18</sup> are being implemented to materialize citizen watch.

## CONCLUSION AND RECOMMENDATIONS

It should be noted that every year, significant progress is being made on issues surrounding the Internet, but much remains to be done. Internet governance has become one of the reflections of the level of democracy and good governance.

For the promotion of internet rights in Togo, it is important that:

- Efforts are made in terms of accessibility, cost and connectivity, but also quality and coverage of the network;
- Internet service providers should be encouraged to place the interests of internet users at the heart of their concerns by offering quality services and by paying attention at all times to their feedback (complaints or suggestions for improvements);
- Citizens should be encouraged to know their digital rights and the government must stop considering the Internet as a means of sanctioning people's expression. In this context, the adoption of a law on digital rights and freedoms would be appropriate;
- Finally, a more open governance of the Internet, including all stakeholders, still needs to be strengthened.

15. For example, the TogoSafe application is mandatorily downloaded by travelers landing at the Gnassingbé Eyadema International Airport and is monitored to ensure compliance with the mandatory quarantine.

16. It should be noted, however, that the 2020 World Press Freedom Index by Reporter Without Borders ranked Togo 71st out of 181 countries. The country had occupied the 76th place in 2019. It was reported that on the day the presidential election results were declared, the Supreme Court of Justice ordered the blocking of the opposition coalition's websites, <https://rsf.org/fr/ranking/2019#>

17. AD216: La liberté d'expression au Togo serait-elle mise en quarantaine en période de crise?

<http://afrobarometer.org/fr/publications/ad216-la-liberte-d-expression-au-togo-serait-elle-mise-en-quarantaine-en-periode-de>

18. <https://www.togocheck.com/>





## Case Study: Togo Safe application's data grab

Compiled by Seyram Adiakpo

The TogoSafe application was conceived by the Togolese Ministry of Posts and Digital Economy in the context of COVID-19, to track and follow travelers in-country. The app was compulsory for all travellers arriving in Togo. Besides the compulsory downloading of the application, the traveler is required to sign up to the corresponding government website. However, due to several factors, the application presents issues relating to digital rights and freedoms' violations.

On the question of data, the general conditions for utilization remain silent. It is only said that the application is designed to “monitor the user’s movements but not expose their private life”. This brief affirmation is made with no clarification on the way the user’s private life will be protected and the users’ data will be kept from any other use than that mentioned above.

Furthermore, the user has no idea of the exact data collected. The user is only ordered to keep the Bluetooth and GPS services on their devices activated. The user is forced to agree to share their data without knowing which data is being shared, otherwise, they are placed in quarantine within the monitoring structures set up by the State at their own expense.

The government site reads, “People in lockdown must respect the strict rules while keeping the TOGOSafe application activated while awaiting results of the COVID-19 PCR test.” They have to abide by such unexpected control by security agents and health workers at their place of lockdown.

In addition, the application is available on app platforms such as Google Play, App Store and the App Gallery. On the app’s website, it notes that data is not shared with third parties without the third parties being defined. “The state now voluntarily or forcefully offers personal data to these companies,” regrets Anoumou (name changed), a Togolese citizen residing in the United States, whom when passing through Togo was forced to download the app before entering the country.

Four other people contacted as part of the study said they had no choice but to accept. Users are not informed about whether they can access the data collected, oppose it or have it modified or deleted unless they go to the



website of the application, which not everyone has the instinct to do. Users who download the application do not have enough information on the general conditions of use.

In Togo, Law No. 2019-14 of October 29 2019 details the principles relating to the protection of personal data. Under this law, provision is made for the creation of a Personal Data Protection Authority (IPDCP). It also states the existence of the Independent Administrative Authority (AAI) which is responsible for ensuring that the processing of personal data is carried out in accordance with the provisions set out in the law. If the legal framework that protects personal data is absent, it becomes difficult for the traveller to have an open dialogue, resulting in difficulties in having their data modified or erased. They will have to engage the developers of the application, which might result in a lack of transparency.

On the issue of transparency, the management of the TogoSafe app is not open-sourced even though open data would give civil society and academia the opportunity to assess the application. A human rights-based approach has not been taken into account in the management of the TogoSafe application. When it comes to digital rights, the human rights-based approach mainly concerns the legal framework put in place by the State, but also its attitude towards citizens. The human rights-based approach includes the following principles: participation, accountability, non-discrimination and equality, empowerment and legality.

In addition, the application challenges medical confidentiality. The medical data of people who test positive for COVID-19 is shared with the entity that manages the application. This sensitive data is made available to the entity. The purpose of the application must be clearly defined.

The State should make users more aware of the risks of using the application without having to find them on their own. Users should be free to opt out of using an application such as TogoSafe. In addition, the application must be brought into compliance with Law No. 2019-14 on the protection of personal data. All technical choices should be documented and explained by the responsible parties. The technical operation of the application should be completely transparent so that users feel responsible for their choice of whether or not to use the application. Finally, the application protocol and its implementation should be documented, public, and independently audited.

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