



REPUBLIC OF BENIN

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And

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1. (A) Introduction

- 1.1** CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 170 countries throughout the world.
- 1.2** Groupe pour le Progrès et la Paix (GAPP Benin), hereafter GAPP, is a civil society organisation (CSO) dedicated to promoting human rights, democracy and good governance. Established in 2002, GAPP works to support the realisation of the rights to freedom of association, expression, peaceful assembly and advocates for the end of the death penalty and inhumane and degrading treatment in prisons.
- 1.3** In this document, CIVICUS and GAPP examine the Government of the Republic of Benin's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyze Benin's fulfillment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in October 2012. To this end, we assess Benin's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.
- 1.4** During the 2nd UPR cycle, the Government of Benin received 2 recommendations relating to civic space. Both of these were accepted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Benin has partially implemented these recommendations relating to civil society space. While the government has made significant strides in the decriminalisation of defamation, it has failed to address unwarranted restrictions on the freedom of expression and assembly since its last UPR examination. Benin is currently listed in the 'narrowed' category of the CIVICUS Monitor which rates respect for the freedoms of expression, association and peaceful assembly.
- 1.5** CIVICUS and GAPP are deeply concerned by undue restrictions on freedom of expression, including unwarranted restrictions and suspension of independent media outlets by the national media regulator.
- 1.6** CIVICUS and GAPP are further alarmed by the authorities' targeted denial of permission to hold peaceful assemblies including a ban imposed by the government in October 2016 on all on all activities, including protest activities, of student associations in public universities.

- In Section B, CIVICUS and GAPP examine Benin’s implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- In Section C, CIVICUS and GAPP examine Benin’s implementation of UPR recommendations and compliance with international human rights standards related to the protection of human rights defenders, civil society activists and journalists.
- In Section D, CIVICUS and GAPP examine Benin’s implementation of UPR recommendations and compliance with international human rights standards concerning to freedom of expression, independence of the media and access to information.
- In Section E, CIVICUS and GAPP examine Benin’s implementation of UPR recommendations and compliance with international human rights standards related to freedom of assembly.
- In Section F, CIVICUS and GAPP make a number of recommendations to address the concerns listed.

2. (B) Freedom of association

2.1 During Benin’s examination under the 2nd UPR cycle, the government received one recommendation on the right to freedom of association and creating an enabling environment for civil society organizations. The government accepted this recommendation which urged Benin to “guarantee in an effective manner and in line with the Constitution of Benin and the international instruments to which it is a party, the rights of workers including the right to strike, freedom of association and peaceful assembly.” However, as evidenced below, the government has failed to fully realize this recommendation, exemplified by the recent unwarranted ban and de facto suspension of university student associations and unions.

2.2 Article 25 of the 1990 Constitution guarantees the right to freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which the Republic of Benin is a state party, also guarantees freedom of association. The freedom of association is further regulated by the French Law of 1 July 1901 on the contract of associations and its implementing Decree of 16 August 1901. The law and implementing decree, which were retained in Benin’s legal framework following independence in 1960, establishes a declaration regime for associations, meaning CSOs need to declare the establishment of their association. Non-Governmental Organisations (NGOs)¹ are further regulated by

¹ An NGO is defined as “any national or foreign, not-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” in article 1 of Decree No. 2001-234 of 12 July 2011.

Decree No. 2001-234 of 12 July 2001 on the formation and operation of NGOs and their umbrella organisations.

- 2.3** A recent study by GAPP has shown that in practice there is often a substantial delay in the registration of CSOs in Benin, including the delivery of the receipt or certificate (*récepisse*) of the deposit of required documents. The cause of this delay is reportedly primarily due to a lack of necessary financial and human resources within the competent administrations.²
- 2.4** On 5 October 2016, on highly questionable grounds of preserving public order³ the Council of Ministers issued a decree banning all activities of organisations, federations, unions and associations of students on all four of Benin's public universities⁴ for an undetermined period. The ban has forced the de facto suspension of all student associations and unions until the government issues a new decree regulating the activities of student associations and unions and its conditions.⁵ The decision followed violent protests, on the campus of the University of Abomey-Calavi, against newly issued administrative regulations.⁶ Although the Constitutional Court assessed the decree unconstitutional and therefore null and void on 16 March 2017, the government has refused to overturn the ban.⁷
- 2.5** On 27 January 2017, the Minister of Maternal and Primary Education, Salimane Karimou, confronted with a teachers strike, issued communication 0190/MEMP/SP, prohibiting teachers of kindergarten and primary schools to hold general assemblies of unions in the precincts of public schools.⁸

² Groupe d'Action pour le Progrès et la Paix (July 2016). *Evaluation Nationale de l'Environnement Favorable des OSC (EENA)*. Benin. Accessed on 14 March 2017 via : http://www.civicus.org/images/EENA_Benin_Fr.pdf

³ La Nouvelle Tribune (5 October 2016). *Bénin : lourde décision contre les étudiants détournements de fonds, visas...* Accessed on 14 March 2017 via <http://www.lanouvelletribune.info/benin/30571-conseil-ministres-lourde-decision-etudiants-detournements-suppression-de-visa> ; Benin Web TV (5 October 2016). *Bénin: le gouvernement ferme toutes les organisations d'étudiants*. Accessed on 14 March 2017 via

<https://beninwebtv.com/2016/10/benin-le-gouvernement-ferme-toutes-les-organisations-detudiants/>

⁴ It concerns the University of Abomey-Calavi, the University of Parakou, the Polytechnical University of Abomey and the University of Agronomic Sciences of Porto Novo.

⁵ Several civil society organisations, including GAPP Benin, have filed a complaint at the Constitutional Court.

⁶ Media Foundation for West Africa (15 October 2016). *Benin: Protest Activities of Student Unions Banned on all Public Universities*. Accessed on 14 March 2017 via: <http://www.mfwa.org/benin-protest-activities-of-student-unions-banned-on-all-public-universities/>

⁷ Decision DCC-17 065 of the Constitutional Court. aCotonou.com (22 March 2017). *Suite à la décision DCC 17-065 de la Cour constitutionnelle : Les associations d'étudiants prêtes à reprendre leurs activités*. Accessed on 28 March 2017 via <http://news.acotonou.com/h/97750.html>; La Nouvelle Tribune (21 March 2017). *Mouvements estudiantins : La Cour déclare contraire à la constitution, la décision du gouvernement*. Accessed on 28 March 2017 via <http://www.lanouvelletribune.info/benin/politique/32789-interdiction-activites-mouvements-estudiantins-decision-cour-constitutionnelle>

⁸ Waha Wassé (1 February 2017). *Interdiction des assemblées générales syndicales dans les écoles : Les enseignants grévistes défient l'autorité à Porto-Novo*. Accessed on 14 March 2017 via : <http://www.wahaho->

2.6 A draft framework law on the freedom of association, expression and assembly, initiated in 2012, currently sits with the Supreme Court for review. The draft law was developed through a broad consultative process in which a range of civil society actors, and other stakeholders participated. We urge the Government of Benin to accelerate the review of the draft law and adopt a law which protects and promotes the rights of civil society.

3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

3.1 Under Benin's previous UPR examination, the Government of Benin did not receive any recommendations on the protection of human rights defenders (HRDs), journalists and civil society representatives. However, despite the lack of recommendations made on these issues, as examined below, harassment and intimidation of HRDs and civil society activists related to their legitimate work occurred in the examined period.

3.2 Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR further guarantees the freedoms of expression, association and assembly. However, in spite of these protections, in practice there have been cases of intimidation, and retaliation against human rights defenders and journalists.

3.3 On 9 December 2013, Martin Assogba, anti-corruption activist and president of the CSO ALCRER (Association de Lutte contre le Racisme, l'Ethnocentrisme et le Régionalisme - Association of the Fight Against Racism, Ethnocentrism and Regionalism), was the victim of an assassination attempt while driving back to his home in the town of Ouèdo, in Southern Benin.⁹ Eight shots were fired by two unidentified perpetrators, two of which struck Martin Assogba's neck. ALCRER is a major civil society actor in the struggle for the promotion of government transparency and accountability.

3.4 On 12 January 2015, journalist Ozias Sounouvou reported receiving anonymous threats through telephone calls and text messages following a discussion on

wasseho.info/waha-wasse/la-nation/article/interdiction-d-assemblees-generales-syndicales-dans-les-ecoles-les-enseignants

⁹ Radio France International (11 December 2013). *Au Bénin le président d'une ONG contre le racisme échappe à une tentative d'assassinat*. Accessed on 14 March 2017 via <http://www.rfi.fr/afrique/20131211-benin-le-president-une-ong-contre-le-racisme-echappe-une-tentative-assassinat> ; ACotonou.com (10 December 2013). *Insécurité au Bénin : Le président de l'Ong Alcrer, Martin Assogba criblé de balles*. Accessed on 14 March 2013 via <http://news.acotonou.com/h/12847.htm>

national television station, ORTB, during which he urged President Yayi Boni to create an enabling environment for freedom of expression on the public national television, journalist Ozias Sounouvou, reported receiving anonymous threats, calls and messages.¹⁰ After this public call, Mr Sounouvou, and his colleague Prévert Prosper Noutéhou, were both temporarily suspended and forbidden to host debates on the television chain.¹¹

3.5 On 13 August 2015, journalist and director of the daily newspaper *L'Enquêteur*, Boris Tougan, was placed in custody by an anti-crime brigade on charges of attacks against the security of the State after publishing an article in which he stated that President Boni Yayi was provoking Boko Haram in order to stay in power. He was detained without charge for 4 days, and then unconditionally released. Mr. Tougan's arrest and detention was orchestrated despite protections under article 310 of the 2015 Information and Communication Code which protect journalists and other media workers from arbitrary detention.¹²

3.6 On 24 January 2016, Elvis Dagba, a pastor and a prominent religious figure, escaped an abduction attempt by armed men at his home in Cotonou. On 22 January 2016, two days before the attempted abduction, Dagba criticised President Yayi Boni's policies and affirmed his support for opposition presidential candidate, Patrice Talon, on the Africa programme of Golfe TV. Mr Dagba has been subject to repeated threats.¹³

¹⁰ La Nouvelle Tribune (1 May 2015). *Ozias Sounouvou : des reportages de l'ORTB sont montés à la présidence*. Accessed on 13 March 2017, via: <http://www.lanouvelletribune.info/benin/23764-revelations-d-ozias-sounouvou-des-reportages-sont-montes-a-la-presidence>, aCotonou.com (16 January 2015). *Bénin: le journaliste Ozias Sounouvou craint pour sa vie*. Accessed on 14 March 2017 via : <http://news.acotonou.com/h/37695.html>

¹¹ 24h au Bénin (4 February 2015). *Affaire Osias Sounouvou. Les travailleurs de l'ORTBF dans la rue ce jour*. Accessed on 22 March 2017 via <http://www.24haubenin.info/?Les-travailleurs-de-l-ORTB-dans-la>

¹² AfrikiPresse (17 August 2015). *Bénin : le journaliste Boris Tougan libéré après 4 jours de garde à vue*. Accessed on 14 March 2017 via <http://www.afrikipresse.fr/societe/benin-le-journaliste-boris-tougan-libere-apres-4-jours-de-garde-a-vue> ; La Nouvelle Tribune (14 August 2015). *Dernière heure : le journaliste Boris Tougan arrêté*. Accessed on 14 March 2017 via [http://www.lanouvelletribune.info/benin/politique/25038-derniere-heure-le-journaliste-boris-tougan-arrete%20et%20Afriki%20Press%20\(17](http://www.lanouvelletribune.info/benin/politique/25038-derniere-heure-le-journaliste-boris-tougan-arrete%20et%20Afriki%20Press%20(17)

¹³ Le Matinal (26 January 2016). *Après sa déclaration de soutien à Talon le pasteur Elvis Dagba échappe à un enlèvement*. Accessed on 14 March 2017 via <http://quotidien-lematinal.info/apres-sa-declaration-de-soutien-a-talon-le-pasteur-elvis-dagba-echappe-a-un-enlevement/>; Media Foundation for West Africa (30 January 2016). *Bénin: Un Religieux Recherché Pour Avoir Soutenu Un Candidat De L'Opposition*. Accessed on 14 March 2017 via <http://www.mfwa.org/fr/benin-un-religieux-recherche-pour-avoir-soutenu-un-candidat-de-lopposition/>

4. (D) Freedom of expression, independence of the media and access to information

- 4.1** Under the 2nd UPR cycle, the government received one recommendation relating to freedom of expression and access to information. Under this recommendation, which was accepted, the government pledged to “take necessary steps to entrench, in practice as well as in legislation, freedom of expression and freedom of the media”. However, as discussed below, the government only partially implemented this recommendation.
- 4.2** Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Article 23 of the Constitution of the Republic of Benin also guarantees the right to freedom of expression, while article 24 of the Constitution safeguards freedom of the media. Despite the adoption in 2015 of the Information and Communication Code, which de-criminalised most media offences, some offences still remain punishable with prison sentences. In addition, the national media regulatory agency, the Haute Autorité de l’Audiovisuel et de la Communication (HAAC), has frequently used undue discretion to arbitrarily suspend and harass independent media outlets.
- 4.3** Freedom of expression can be limited under article 23 of the constitution “with respect for public order established by law and regulation.” Article 3 of Organic Law 92-021 of 21 August 1992, which establishes the HAAC¹⁴, reiterates these limitations and articulates a number of instances in which the freedoms of press, information and communication can be limited “to safeguard of the public order, of national unity and territorial integrity.”¹⁵ Moreover, while article 24 of the Constitution states that the freedom of the press “shall be protected by the Haute Autorité de l’Audiovisuel et de la Communication (HAAC) under the conditions fixed by organic law”, in practice the HAAC has imposed unwarranted restrictions on the freedom of the press included arbitrary suspensions of media outlets, in particular those critical of the ruling party.
- 4.4** On 20 November 2012, the HAAC suspended two TV programmes, *Actu Matin* and *A Palabre* which are broadcasted on private television channel Canal 3 Benin through decision 12-035/HAAC of 20 November 2012. The decision followed a

¹⁴ As amended by Organic Law 93-018 of 20 September 1993

¹⁵ The other situations mentioned in article 3 are: the respect for the dignity of human beings, for freedom and the property of others, for the pluralist nature of the expression of thoughts and opinions; for public health and for the environment; for the preservation of childhood and adolescence; for the preservation of cultural identity, national defence needs, public service needs, technical constraints associated with means of communication, as well as for the need to protect, promote and develop the national cultural heritage or a national industry, especially the audio-visual production industry.

complaint dated 19 September 2012 by the President of the Republic, Boni Yayi, where he used stated the TV programmes constituted a “disturbance of public order and risks of weakening national cohesion”. The HAAC suspended *Actu Matin* for a period of two weeks, while *A Palabre* was suspended for 3 months on grounds of violating provisions of the ethics code of the press.¹⁶

- 4.5** On 29 December 2014, the then president of the HAAC, Mr. Adam Boni Tessi, sent a letter to the sponsors of the private television channel, Canal 3, two weeks after it hosted a debate following demonstrations organised by political forces and civil society on 10 and 11 December 2014 in the cities of Cotonou and in Porto Novo. The HAAC concluded that Canal 3’s coverage of the demonstrations was unprofessional by allowing its on-air guests to criticise then President Yayi Boni. The HAAC president concluded that Canal 3 has violated article 6 of the ethics code of the press and article 83 of law 97-010 of 20 August 1997 on the liberalisation of the audio-visual space and special regulations on offences of the press and audio-visual communication in the Republic of Benin.¹⁷
- 4.6** On 28 and 29 November 2016, a total of seven media outlets were suspended by the HAAC on grounds of violating Organic Law 92-021 of 21 August 1992. The affected media outlets included six private television channels – E-Tele, Sikka TV, Eden TV, La Chrétienne TV, Unafrika TV and La Béninoise TV – and one private radio station, Soleil FM. According to the HAAC’s statement, four of these media outlets, namely Soleil FM, E-Tele, Sikka TV and Eden TV, were suspended due to a failure to notify the change of their location. The three other outlets reportedly failed to sign regulatory agreements with the HAAC. However, HAAC did not provide prior notice of the suspension as required as per the Organic Law, denying the media outlets the opportunity to redress the alleged transgressions.¹⁸ The suspensions of Soleil TV, Eden TV and E-Télé were later, on 26 January 2017, lifted after negotiations with these stations.¹⁹

¹⁶ La Nouvelle Tribune (29 November 2012). *La Haac, ne peut sanctionner au motif du « Trouble à l’ordre public »*. Accessed on 10 March 2017 via <http://www.lanouvelletribune.info/reflexions/opinion/12822-la-haac-ne-peut-sanctionner-au-motif-du-trouble-a-l-ordre-public>; Media Foundation for West Africa (30 November 2012). *ALERTE Bénin: Le Président Yayi Boni fait suspendre deux programmes de télévision*. Accessed on 10 March 2017 via <http://www.mfwa.org/fr/alerte-benin-le-president-yayi-boni-fait-suspendre-deux-programmes-de-television>

¹⁷ Le Matinal (30 December 2014). *Mise en demeure à Canal3 : Cabale de la Haac contre la presse privée*. Accessed on 14 March 2017 via <http://quotidien-lematinal.info/mise-en-demeure-a-canal3-cabale-de-la-haac-contre-la-presse-privée/>

¹⁸ Media Foundation for West Africa (10 December 2016). *Benin: Regulatory Body Shuts Down Seven Private Broadcasters*. Accessed on 14 March 2017 via: <http://www.mfwa.org/country-highlights/benin-regulatory-body-shuts-down-seven-private-broadcasters/>; La Tribune Afrique (30 November 2016). *Bénin: les organisations professionnelles contestent la fermeture de médias*. Accessed on 14 March 2017 via <http://afrique.latribune.fr/afrique-de-l-ouest/benin/2016-11-30/benin-les-organisations-professionnelles-contestent-la-fermeture-de-4-medias.html>

¹⁹ Media Foundation for West Africa (2 February 2017). *Benin Update: Media Regulator Lifts Sanctions Against Three Media Houses*. Accessed on 14 March 2017 via: <http://www.mfwa.org/country-highlights/benin-update->

- 4.7 On several occasions HAAC has invoked the principle of “preservation of public order and national security” to silence independent or critical reporting by media outlets. For instance, statement 004-14/HAAC/PT/DC/SP-C dated 29 October 2014 issued by the president of the HAAC, invited all audio-visual and written media outlets to refuse the diffusion or publication of statements of members of COS-LEPI (Comité d’Orientation et Supervision de la Liste Electorale Permanent Informatisée²⁰) and all players that are not considered as facilitating a dialogue to resolve the crisis within COS-LEPI in the highest interest of the country and its democracy.²¹ Days later, following broad public outrage and a private dialogue with several professional media associations, the president of the HAAC rescinded the statement.²²
- 4.8 On 3 November 2015, the daily newspaper *Le Matinal*, an outspoken publication, was suspended by the HAAC on the basis of violating article 187 of the Information and Communication Code and the press ethics code. In his decision, the President of the HAAC, as the sole signatory, accused *Le Matinal* of using derogatory language against Member of Parliament Claudine Prudencio and the President of the Republic, Boni Yayi in editions published on 26 and 27 October 2015.²³
- 4.9 Prior to the adoption of the Information and Communication Code in 2015, defamation, including insulting the President, was criminalised under the 1997 Press Law. For example, on 17 May 2014 journalist François Yovo, publisher of newspaper *Liberation*, was imprisoned following a 3 month sentence for defamation, handed down by the Court of First Instance in November 2013. François Yovo was reportedly persecuted for an article published by *Libération* alleging corruption by the director general of the state company Sonapra (Société nationale pour la promotion de l’agriculture).²⁴

[media-regulator-lifts-sanctions-against-three-media-houses/](#); Bénin Web TV (26 January 2017). *Bénin: Radio Soleil, Eden tv et E-Télé autorisée à émettre à nouveau*. Accessed on 27 March 2017 via

<https://beninwebtv.com/2017/01/benin-radio-soleil-eden-tv-et-e-tele-autorisees-a-emettre-a-nouveau/>

²⁰ Committee of the Orientation and the Supervision of the Permanent Electoral List

²¹ 24hauBenin (30 October 2014). *La HAAC porte atteinte à la liberté d’expression*. Available at:

<http://www.24haubenin.info/?Lepi-Les-intimidations-de-la-HAAC>, accessed on 13 March 2017.

²² La Tribune de la Capitale (5 November 2014). *Suite au tollé général contre le communiqué interdisant les publications sur le COS-LEPI : La Haac fait marche arrière et s’excuse*. Accessed on 14 March 2017 via

<http://latribunedelacapitale.com/actualite/946-suite-au-tolle-general-contre-le-communique-interdisant-les-publications-sur-le-cos-lepi-la-haac-fait-marche-arriere-et-s-excuse.html>

²³ Africahotnews.com (6 November 2015). *Benin. Menace sur la liberté de la Presse : La HAAC suspend le quotidien ‘Le Matinal’*. Accessed on 14 March 2017 via

<http://news.africahotnews.com/?idnews=801558&t=Menace-sur-la-liberte-de-la-presse:-la-Haac-suspend-le-quotidien--Le-Matinal> ; Oeil d’Afrique (9 November 2015). *Bénin : Yayi Boni fait suspendre un média privé*. Accessed on 13 March 2017 via

<http://oeildafrique.com/benin-yayi-boni-fait-suspendre-un-media-prive/>

²⁴ Agence Ecofin (1 July 2014). *Bénin: le journaliste François Yovo libéré, Rsf s’inquiète pour la liberté de la presse*. Accessed on 27 March 2017 via <http://www.agenceecofin.com/droits-humains/0107-21195-benin-le-journaliste-francois-yovo-libere-rsf-s-inquiete-pour-la-liberte-de-le-la-presse>

4.10 On 25 April 2014 John Akintola, the publisher of the newspaper *L'Independent*, was handed a three year suspended prison sentence and a fine of 200,000 CFA francs (approximately 328 USD) by a court in Cotonou for insulting the President of Benin in a published article. The newspaper was suspended for further for 3 months, and the author of the article, Prudence Tessi, received a prison sentence of two months. The article alleged that trips take abroad by then president Yayi were illegally financed by the director-general of the Benin Electric Energy Company.²⁵

4.11 Despite the removal of harsh prison sentences for defamation, individuals can still be subjected to excessive fines ranging from 500,000 to 10 million CFA francs (approximately 812 to 16,242 USD) for insults and contempt under Law 2015-07 on the Information and Communication Code²⁶ The Code further punishes the re-publishing or the repeating of statements that are considered defamatory (article 268). Defamation of the President can also lead to a fine of 1 million to 10 million CFA francs (approximately 1,624 to 16,242 USD). The same fine applies for the defamation of the Heads of State, Heads of Government and the Ministers of Foreign Affairs of foreign countries (article 277). Article 278 of code also penalises the act of public contempt of the Head of State, Ministers, ambassadors and other diplomatic envoys with a fine between 500,000 and 2 million CFA francs (approximately 812 to 3,248 USD). Additionally, article 318 of the Code establishes that newspapers or periodicals and radio/television stations or websites that have broadcasted or published a defamatory statement can be suspended for up to 3 months and 15 days respectively. These provisions restrict freedom of speech and expression.

4.12 Access to information is not guaranteed in the Republic of Benin, and the Law on Information and Communication does not allow access to information to media professionals nor does it foresees for the protection of the sources of journalists. Member of Parliament Eric Houndété has introduced a draft law amending the Law on Information and Communication to this end in Benin's Parliament on 17 January 2017, following concerted advocacy by media associations and GAPP.

5. (E) Freedom of peaceful assembly

5.1 During Benin's examination under the 2nd UPR cycle, the government received 1 recommendation on the right to freedom of assembly. Under this recommendation

²⁵ aCotonou.com (26 April 2014). *Bénin: le responsable d'un journal condamné à 3 ans de prison avec sursis pour offense au chef de l'Etat*. Accessed on 14 March 2017 via <http://news.acotonou.com/h/22572.html>

²⁶ This law replaced various laws and regulations regulating the freedom of the press: 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 N° 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.

which was accepted, Government of Benin committed “to guarantee in an effective manner and in line with the Constitution of Benin and the international instruments to which it is a party, the rights of workers including the right to strike, freedom of association and peaceful assembly”. However, as evidenced below, the government has failed to adequately realize this recommendation, as is evidenced by the unwarranted restrictions that were introduced by the ban on the activities, including peaceful protests, on the student associations, federations and unions.

- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 25 of the 1990 Constitution of Benin also guarantees the right to freedom of assembly. However, despite the simple notification regime required to hold peaceful assemblies in Benin, in practice the authorities routinely require explicit authorisation to hold assemblies.
- 5.3** Peaceful assembly in Benin 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 the assembly is to take place at least 24 hours before the meeting takes place. However, despite this positive notification regime, the law, under article 6, contains restrictions on place and time restrictions of assemblies, including the preclusion of protests on public roads or those which take place after 11 PM (or later in localities where public establishments close later).
- 5.4** On several occasions authorities have prevented groups from organising public assemblies on specious grounds of preventing “disturbance of public order”. In August 2013, the Minister of the Interior and Public Safety prohibited a meeting followed by a march organised by the movement *Convention Patriote des Forces de Gauche (CPFG)*²⁷ and *Union Fait la Nation* to oppose the draft amendment of the Constitution proposed by President Boni Yayi. As justification, the Minister declared that that CPFG was not a legal entity and that the demonstration would undermine public order.²⁸ On the day of the planned meeting and march, 24 August 2014, security forces armed with batons and teargas were present at the place of the planned meeting in Cotonou to prevent the meeting and march from taking place.²⁹

²⁷ Patriot Convention of Left Forces

²⁸ La Nouvelle Tribune (24 August 2013), *Bénin : le gouvernement interdit la marche de protestation pacifique de la Cpfq et de l'UN*. Accessed on 14 March 2017 via <http://www.lanouvelletribune.info/benin/15534-violation-des-libertes-au-benin-le-gouvernement-de-yayi-toujours-hostile-a-la-liberte-d-expression#!/ccomment-comment=298452>

²⁹ aCotonou.com (26 August 2013). *Bénin: la Police empêche les manifestations des forces politiques de l'opposition contre le projet de révision de la Constitution*. Accessed on 28 March 2017 via <http://news.acotonou.com/h/6410.html>

- 5.5** On 13 September 2015, a public meeting planned to be held in the city of Parakou was prohibited by the prefect of Parakou, hereby preventing the launch of a support group for Patrice Talon, a candidate in the February 2016 presidential election. The decision to prevent the public gathering, was made despite the fact that the organising committee sent all the required information regarding the organisation of the demonstration to the city mayor on 7 September 2015.³⁰
- 5.6** In February 2016, the Prefect of the Departments Borgou-Alibori issued an order prohibiting the organisation of any demonstration of a political nature before the official launch of the presidential election campaign. The order was issued the day before a support meeting in favour of the candidate Sébastien Ajavon, a political opponent in Parakou, was to be held.³¹
- 5.7** On 30 December 2016, the Prefect of the Littoral department, Modeste Taboula, issued order Nr 526/DEP-LIT/SG/SCAD/SP, temporarily banning all assemblies on public roads in the Littoral department between 2 January and 31 January 2017, excluding 10 January 2017. The ban was issued in response to a government order to liberate public spaces³² in the city of Cotonou, which according to the Prefect of Taboula would prevent the authorities from assigning sufficient security forces to oversee the peaceful assemblies during this period.³³
- 5.8** Articles 23 to 25 of decree No 2005-377 of 23 June 2005 on the Regulation of the Maintenance of Public Order codifies when security forces can use force to disperse assemblies. According to the decree, force can be used when preceded by two warnings by megaphone and without warnings when “serious violence is exercised by demonstrators towards law enforcement or security forces”. However, despite these restrictions on the use of force, the security forces continue to use excessive and unjustifiable force to prevent protests and other forms of public assemblies.
- 5.9** Most recently, on 17 February 2017 police used tear gas to disperse a public meeting and a press conference organised by students from the University of Abomey-Calavi at a local hotel.³⁴ The decision to organise the meeting in a private

³⁰ La Nouvelle Tribune (14 September 2015). *Bénin : un meeting pro-Talon interdit à Parakou pour des motifs « régionalistes »*. Accessed on 28 March 2017 via <http://www.lanouvelletribune.info/benin/politique/25467-benin-un-meeting-de-pro-talon-interdit-a-parakou-pour-des-motifs-regionalistes>

³¹ Benin Times (15 February 2016). *Interdiction de meeting dans le Borgou et l'Alibori : Soulèvement populaire à Parakou*. Accessed on 14 March 2017 via <http://www.benintimes.info/politique/interdiction-de-meeting-dans-le-borgou-et-lalibori-soulevement-populaire-a-parakou/>

³² Businesses of citizens, set up in public spaces, have sometimes prevented the circulation of traffic.

³³ Bénin Web TV (2 January 2017). *Bénin: excepté le 10, toute manifestation de foule est interdite à Cotonou en janvier*. Accessed on 14 March 2017 via <https://beninwebtv.com/2017/01/benin-excepte-le-10-janvier-toute-manifestation-de-foule-est-interdite-a-cotonou-en-janvier/>

³⁴ Media Foundation for West Africa (18 February 2017). *Benin: La Police Disperse une Conférence de Presse Estudiantine à Coup de Gaz Lacrymogène*. Accessed on 14 March 2017 via <http://www.mfwa.org/benin-police-disrupt-student-press-conference-tear-gas-them/> ; Bénin Web TV (21 February 2017). *Dispersion des étudiants*

hotel followed the decision of the government to ban activities of student unions on public universities on 5 October 2016.

5.10 On 26 July 2016, tear gas was used by security forces to disperse a protest of students from the University of Abomey-Calavi in Cotonou, on route to the Ministry of Higher Education and Scientific Research.³⁵ 21 students, presumed by the university administration to have taken part in the demonstration of June 2016, were later banned from registering with the University for a period of 5 years by a decision of the pedagogical council of the faculty of literature, arts and humanities, and endorsed by the Rectorate of the University.³⁶

6. (F) Recommendations to the Government of the Republic of Benin

CIVICUS and GAPP call on the Government of the Republic 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: freedom of association, freedom of expression, freedom of peaceful assembly, 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 light of this, the following specific recommendations are made:

6.1 Regarding freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including through removing practical barriers, which limit the right to association. Additionally we call on the Government of Benin to accelerate the study of the draft Framework Law on the freedom of association, assembly and expression.
- We request the Government of Benin to annul the decree of 5 October 2016 banning all activities of student associations and unions and to respect the freedom of association and assembly of students.

à Zogbadjè : le rectorat dégage toute responsabilité. Accessed on 28 March 2017 via

<https://beninwebtv.com/2017/02/dispersion-etudiants-a-zogbadje-rectorat-degage-toute-responsabilite/>

³⁵ Bénin Monde Infos (26 July 2016). *Bénin/ Marche des étudiants de l'UAC : La police charge, les manifestants menacent*. Accessed on 14 March 2017 via <http://beninmondeinfos.com/index.php/benin/2977-benin-marche-des-etudiants-de-l-uac-la-police-charge-les-manifestants-menacent>

³⁶ La Nouvelle Tribune (29 July 2016). *Bénin : 21 étudiants exclus après les mouvements à l'Université d'Abomey-Calavi*. Accessed on 14 March 2017 via <http://www.lanouvelletribune.info/benin/29725-21-etudiants-exclus-mouvements-uac>

- We urge the government to cease all acts of intimidation and harassment of unions, including bans or prohibitions of union general assemblies.

6.2 Regarding the protection of human rights defenders

- Civil society members, journalists and human rights defenders should be provided a safe and secure environment to carry out their work.
- Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against them and bring perpetrators of such offences to justice.
- All human rights defenders including, journalists and bloggers detained for exercising their right to fundamental rights to freedom of expression, association, assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- The Government should apply systematically legal provisions that promote and protect human rights and establish suitable mechanisms including a law on the protection of human rights defenders in accordance with Council resolution 27.31 of the Human Rights Council.

6.3 Regarding freedom of expression, independence of the media and access to information

- Ensure freedom of expression and media freedom by bringing all national legislation into line with international standards.
- All media outlets unwarrantedly closed should be reinstated.
- The media regulator, HAAC, should adhere to its role of the protector of press freedom, and stop all acts of intimidation and arbitrary suspension of media outlets.
- Reform defamation provisions in the 2015 Information and Communication Code in conformity with article 19 of the International Covenant on Civil and Political Rights (ICCPR).

- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the Government may find sensitive.
- Take adequate steps to lift restrictions on freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Implement legislative measures regarding access to information and establish mechanisms to facilitate public access in line with best practices.
- Amend the 2015 Information and Communication Code with the aim of ensuring access to information by journalists and the protection of sources.
- Adopt a law on access to information in order to fully promote the exercise of the right to freedom of expression and freedom of opinion.

6.4 Regarding freedom of assembly

- Best practices on freedom of peaceful assembly as put forward by the UN Special Rapporteur on the rights to peaceful assembly and of association in his annual report (2012), which calls for simple notification rather than explicit permission to assemble should be implemented without discrimination.
- All demonstrators, journalists and human rights defenders detained for exercising their right to freedom of peaceful assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- Review and if necessary update existing human rights training for police and security forces with the assistance of independent nongovernmental organizations to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Senior government officials should publically condemn the use of excessive and brutal force by security forces in the dispersal of protests. A formal investigation into such instances should be launched, and perpetrators should be brought to justice.

6.5 Regarding access to UN Special Procedures mandate holders

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritize official visits with the: 1) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 2) Special Rapporteur on the situation of human rights defenders; 3) Special Rapporteur on the rights to freedom of peaceful assembly and of association.

6.6 Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with civil society organizations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy.
- Include civil society organizations in the UPR process before finalizing and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society sectors.
- Incorporate the results of this UPR into its 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.

Assessment of implementation of civic space recommendations:

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
Theme: D43 Freedom of opinion and expression			
<p>108.81 Take necessary steps to entrench, in practice as well as in legislation, freedom of expression and freedom of the media (Australia);</p> <p>Source of position: A/HRC/22/9 - Para. 108</p>	Supported	<p>D43 Freedom of opinion and expression</p> <p>A41 Constitutional and legislative framework</p> <p>Affected persons:</p> <ul style="list-style-type: none"> - general - media 	<p><u>Partly implemented:</u></p> <ul style="list-style-type: none"> - Defamation was decriminalised through the adoption of the 2015 Information and Communication Code. Despite the removal of harsh prison sentences for defamation, individuals can still be subjected to excessive fines. Prior to the adoption of the Information and Communication Code, defamation, including insulting the President, was criminalised under the 1997 Press Law, and was often used to stifle critical voices. (paragraphs 4.9 – 4.11) - The national media regulatory agency, the Haute Autorité de l’Audiovisuel et de la Communication (HAAC), has frequently used undue discretion to arbitrarily suspend and harass independent media outlets, in particular those critical of the party in power. (paragraphs 4.3 – 4.8) - Access to information is not guaranteed in the Republic of Benin (paragraph 4.9)
Theme: E31 Right to work			

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>108.82 Guarantee in an effective manner and in line with the Constitution of Benin and the international instruments to which it is a party, the rights of workers including the right to strike, freedom of association and peaceful assembly (Spain);</p> <p>Source of position: A/HRC/22/9 - Para. 108</p>	<p>Supported</p>	<p>E31 Right to work</p> <p>D44 Right to peaceful assembly</p> <p>E33 Trade union rights</p> <p>D43 Freedom of opinion and expression</p> <p>Affected persons:</p> <p>- general</p>	<p><u>Partly implemented</u></p> <p>Regarding freedom of association and assembly:</p> <ul style="list-style-type: none"> - A draft framework law on the freedom of association, expression and assembly, initiated in 2012 and drafted through consultations with a wide range of stakeholders, currently sits with the Supreme Court for review. (see paragraph 2.6) - Despite the above, the Council of Ministers issued a decree on 5 October 2016, banning all activities of student associations, federations and unions on public universities, violating the freedom of association and assembly. Although the Constitutional Court decided the decree to be unconstitutional, the government has refused to overturn the ban.(See paragraph 2.4) - On several occasions authorities have prevented groups from organising public assemblies on specious grounds of preventing “disturbance of public order”. In October 2016, the Council of Ministers issued a decree banning the activities, including peaceful protests, of the student associations, federations and unions. (paragraphs 5.4 – 5.7) - The security forces continue to use excessive and unjustifiable force to prevent protests and other forms of public assemblies (paragraphs 5.9-5.10)