



**Media Foundation for
West Africa**

**THE LAW AND THE MEDIA
IN TOGO**

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Supported by



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Media Foundation for West Africa

The Media Foundation for West Africa is a regional independent, non-profit, non-governmental organisation based in Accra, Ghana. It was established in 1997 to defend and promote the rights and freedoms of the media, and generally, to help expand the boundaries of freedom of speech and expression in West Africa.

Our Objectives

The goals of the *MFWA* are to:

1. Raise public awareness of and to redress violations of media rights and free expression through monitoring abuses and attacks;
2. Promote the development and expansion of media rights and free expression through legislative and policy reform;
3. Seek justice through litigation for journalists, media and citizens persecuted by the states and other actors for exercising their right to free expression;
4. Advance media professional standards to enhance their capacity in supporting democratic governance and culture;
5. Promote knowledge and awareness among citizens of their rights to free expression; and to enhance the media environment through research and publication of data, information and analysis on developments, trends and issues regarding policy, legislation and anything else affecting media and free expression;
6. Support the development or operation of institutions and or projects that promote media development and sustainability.

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INTRODUCTION

Defined as any means for the dissemination of information such as radio, television, print media, books, computer, videogram, telecommunication satellite, etc., the media are both a means of expression and an intermediary to pass on information to a group. In this regard, they are an essential means of expression in a democratic society and play an important role in shaping opinions.

It is for this reason that media practitioners, i.e. journalists, are subject to a code of ethics which compels them to respect the accuracy of information, the privacy of the citizenry and the fundamental values of the State. To this end, they should carefully check their sources before putting out any information.

Thus, we are inclined to give some thought to the practice of journalism in developing states like ours. Do media practitioners respect pre-established rules to regulate their profession? Worse still, do they adhere to the code of ethics they crafted for themselves?

The following presentation will provide us with answers to these relevant concerns. However, notwithstanding some shortcomings, the media are a serious interlocutor, which situation explains why it has been likened to a fourth estate and its freedoms have been recognized the initial democratic instruments. The same goes for successive constitutions of Togo since the country attained international sovereignty on 27 April, 1960 and various laws and codes have been adopted for that purpose.

In addition to these provisions under domestic law, one may also make reference to the international commitments and treaties to which Togo is a party and which have been incorporated into the 4th Republican Constitution of 1992.

In the main, these instruments are as follows:

- Universal Declaration of Human Rights adopted on 10 December, 1948 as part of the United Nations Organization (UN).
- International Covenant on Civil and Political Rights adopted on 16 December, 1966, also as part of the United Nations

- Organisation to complement the above mentioned declaration.
- African Charter on Human and Peoples' Rights adopted in 1981 as part of the Organisation of African Unity, now the African Union.

This is how the Universal Declaration of Human Rights stipulates in Article 19 that . . . **“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”**

All the other above-mentioned instruments make a similar provision and set out **“the guarantee of the freedom of expression”**, that is the right to seek, receive and communicate all manner of information and ideas, be they in oral, written, print, artistic or any other form of communication, including communication across borders. This right remains a fundamental, inalienable and indispensable feature of democracy.

In our country's current democratic dispensation, the first gain was the freedom of thought which came in the form of the freedom of expression and communication, which is a requirement for development. Consequently, with the multiplicity of the means of information, it is through the media that a sense of belonging to the nation and the recognition of others can be created.

It is therefore a fact that in Togo, instruments on the protection of the freedom of expression are not lacking.

Besides, Togo's press and media code emanating from **Law N° 98-004/ PR of 11 February, 1998** is considered in the sub-region as one the best, if not the best, liberal instruments.

However, one may wonder whether this freedom guaranteed by the instruments is really effective in media practice in Togo because it is one thing guaranteeing freedom through good instruments and quite another ensuring its effective application.

The answer to this important question behoves us to do a careful analysis of the political evolution of the freedom of expression and communication in Togo. This will ensure a better appreciation and understanding the current context of this freedom.

Next, it should be understood that the adoption of laws for the protection of freedoms requires the establishment of institutions to regulate the exercise of this freedom. It will, therefore, be necessary to deal with the media regulatory organs.

What should then be determined are the rights established by the instruments with regard to journalists. Based on the same context, we shall determine the legal constraints hindering press freedom in Togo.

We shall finally set forth the major judicial decisions which have had repercussions on press freedom and the freedom of expression in Togo. All these points will constitute the main thrusts of our presentation.

Brief Overview of the Development of the Historical and Political Evolution

In spite of the accusations levelled against its incidence, the colonization of Africa ensured that the colonies became a cultural melting pot where information was shared.

Indeed, the Togolese elite had acquired substantial knowledge of French law at the time. It is, however, impossible to study this law without being influenced by the Declaration on the Rights of Man and of the Citizen of 1789.

This document, which is considered as a gem for revolutionaries, contains important provisions on the freedom of thought which is the basis of the freedom of expression. The benefits of this freedom had influence on colonial Togo. Thus, surprising as it may appear, this freedom already existed in Togo well before the attainment of independence.

In effect, the initial private press outfits appeared during the colonial era with a key objective: free Togo from the yoke of colonialism. However, the predecessors of the journalists of today came up against difficulties which considerably hindered their desire to inform and to sensitize.

First, there is the issue of the illiteracy of readers. Indeed, a few Togolese had the privilege at the time to learn the language of MOLIERE to enable them to read and understand what had been written in the newspapers or leaflets.

Next, press organs were, and still are, a restricted venture with a

restricted readership, which situation meant that the level of profitability was also low.

Finally, the anti-colonialist ideas propagated by the media outfits were distasteful to the colonial administration which had every motivation to disrupt and paralyze their activities.

In spite of this, the freedom of expression has been defended by Togolese because they were quick to understand that it was one of the main pillars on which their future independence was to be built.

With the attainment of independence in the 60s came the monopoly of the state media. The private media disappeared completely perhaps because the independence objective they assigned themselves disappeared with the state's attainment of international sovereignty.

The existence of the state media created room for the belief that true freedom of thought existed. However, such was not the case because the state media had become organs for propaganda and the dissemination of wrong information. This situation enabled the rulers to keep the people ignorant of the bad practices they had been continuously indulging in for many years which a free press would surely have exposed.

One rightly wonders whether Togo's situation would not have been better if it had earlier had the benefit of a press operating in complete independence and freedom. No doubt, we would never be able to tell. However, with their level of development, the countries in which the freedom of expression has been a reality show the advantages of this value. Thus, from independence right up to the dawn of the 90s, there existed in Togo only four (04) media outfits which dominated the media landscape of the entire country.

First is the *Togo Presse* magazine which today remains the most read Togolese daily, in spite of serious competition from the private newspapers. This is due to the fact that over time, this daily has gained some credibility with the people of Togo and, above all, the fact that it reaches the remotest corners of the country because of a distribution network situated in all of the country's prefectures.

Next is *Radio Lomé*, known today as Radio-Mère, which, in spite of a few obstacles, also broadcasts to the entire nation. In the 70s, the work of this radio station was complemented by another station called

Radio Kara, which, at the time, took credit for being the station to have taken radio transmission to the north of the country.

Established at the time to bring the people of the North closer to the rest of the population, it only operated in the northern regions. Today, however, Radio Kara has nationwide coverage. Finally, television was introduced in Togo in 1969.

It should be observed that the advent of the private media dates back to the 1990s. However, contrary to what people may think, they preceded the events of 5 October, 1990.

In fact it was during the speech delivered by the late President Gnassingbé Eyadema in 1989 on the occasion of the 30th anniversary of the historic call of Kpalime that the latter committed himself to the emergence of a plural and free press in Togo.

To give concrete expression to his desire to work towards this end, the late President, on an official visit to the United States of America, had on his delegation, the managing editor of *Atopani Express* which can be considered as the first private newspaper after independence.

However, it should be noted that well before *Atopani Express*, the National Commission on Human Rights was publishing a periodical called *ECHOS DE LA CNDH*.

One can still not talk about a genuine press because its role was to provide information on the state of human rights in Togo. Well before its establishment, the freedom of expression existed somewhat. However, it was in a latent state because the few journalists who demanded it were often discouraged by the culture of fear that held sway at the time.

The events of 5 October, 1990 acted as a catalyst. Indeed, after that day, the country witnessed an explosion of the media, with private newspapers mushrooming everywhere. The examples are many. Mention can be made of: Messenger, Mono, Etincelle, Parole, Tribune des Démocrates and many more.

This was also the period which saw the advent of cartoon newspapers, with the legendary *Kpakpa Desanchante* which gleefully cartooned Togo's leaders to the great delight of the people who thought that represented the dawn of a new democratic era in Togo.

One naturally wonders what the role of the private electronic media

was in this fight. To this effect, it should be noted that it had to take the indefinite national strike from 1992 to 1993 for the private electronic media to appear in Togo.

This is justified more so because such media require major and more expensive technology than what is required by the private newspapers. Moreover, more skilful personnel are required for the running of these organs than are required for newspapers.

Unfortunately, Togo did not have a lot of such personnel, and the few who were available preferred to put their skills at the disposal of the more peaceful state organs rather than put their career at risk in an emerging outfit with all the attendant vicissitudes.

One can actually conclude that with their liberalization towards the end of the 1980s, Togo's private press soon became a "combat press". By giving priority to opinion over information, they took upon themselves the main task of getting the citizenry to participate in the fight for political pluralism, changes in economic and political governance as well as the respect for human rights.

For a long time, this editorial policy deprived the private sector organs of institutional information and social communication. Today's practitioners of the private press have inherited this policy. To date, it has been observed that about one hundred publications (daily, weekly, biweekly and monthly publications) generally appear regularly.

Some thirty private radio stations have taken up the airspace in the capital, Lomé, while the rest of the country has about eighty stations of various types (community, religious, commercial, etc.).

With regard to the television stations which are also concentrated in Lomé (7 out of the 9 stations), they, like the private radio stations, have a more balanced and varied content which even makes room for social communication and civic education.

Background of the State of Media Freedoms

The interdependence between the freedom of the media and democracy is common knowledge. This is because one of the pillars on which a true democracy is built in a state is the freedom of thought which is exercised

by the citizenry and comes in the form of the freedom of expression.

This freedom, which is the basis of democracy, also ensures the consolidation of the same insofar as it ensures an exchange of ideas and the creation of a cultural melting pot. This can only lead to change in the democratic environment of the state.

The freedom of communication which is the corollary of the freedom of thought and expression mentioned above is all the more serious because its exercise is one of the basic guarantees of the respect of other rights and freedoms.

Indeed, the popularization by the media of acts and omissions which could seriously affect democratically protected rights and freedoms obliges the authorities and institutions responsible for ensuring that the same are respected to take appropriate measures to check violations or to oblige persons who, through their omissions, have caused regrettable situations to redress them. Therefore, the freedom of communication prevents the repetition of regrettable acts which have been given rise to by the violation of certain freedoms.

Thus, in Rwanda, peace and national cohesion have become a reality only because there was a worldwide outright condemnation of acts of genocide which are a sordid violation of the right to life.

In Togo, this fundamental freedom is established by various instruments; and the rules on the media are contained in both the Constitution and the international conventions ratified by Togo as well as the codes, particularly the Press and Communications Code.

They are also contained in codes which had previously not been adopted to govern the activities of the media but which contain relevant provisions.

In the part entitled "invasion of privacy", the criminal code, for example, contains criminal provisions on the freedom of expression.

However, it should be remembered that in the desire to make the freedom of expression a palpable reality, the lawmakers, per Law N° 90-23 of 23 November, 1990, amended Article 177 of the criminal code in order to gradually make it more tolerant of persons who contravene the obligations inherent to the respect of privacy. This law mainly targets media practitioners against whom the risk of violations is higher.

There also is the perpetual amendment of other laws and the introduction of new ones. Thus, it can be observed that for some years now, a law has always been passed whenever electoral activities are being conducted in Togo in order to enable journalists to be more efficient in their work and also to limit the excesses which could create legal problems for them.

This is how during the 2007 parliamentary elections, a document entitled “**Code of Ethics of the Journalism Profession for the 2007 Parliamentary Elections**” was prepared and signed by the organs and associations representing the media. The same measure was taken during the presidential elections in 2010.

It should be observed that, unlike the previous law of 2007, the 2010 code was improved in view of the experiences and omissions of the former.

However, the number of institutions representing journalists has been reviewed downwards because, according to the administrative authorities, only truly representative associations had to be allowed to participate and not sham bodies which only existed during periods in which participation allowances were paid.

However, one concern arises naturally. Indeed, one wonders whether this argument would not be used to exclude media outfits which would condemn the “**annoying manœuvres**” of the regime.

Aside elections, one cannot ignore the significant progress made in the area of legislation. In fact, an organic law, **Law N° 2004-021 of 15 December, 2004** on the **High Authority for Broadcasting and Communication** (HAAC), has been passed.

In view of its setbacks and inadequacies, this law has been complemented by **Law N° 2009-029 of 22 December, 2009**. However, does the multiplicity of laws ensure adherence to them? The multiplicity of newspaper houses as well as radio and television stations is a perfect illustration of efforts made to optimize the exercise of this freedom. In Togo, today, a plethora of media outfits exists throughout the country.

However, it has been observed that two-thirds of these organs are concentrated in Lomé. Besides, certain regions of the country only have access to a local channel, thanks to the efforts of the government aimed

at providing a radio station in each chief town of each prefecture, with the media's main concern being to enable the citizenry to, where possible, access the information they publish in the various local languages.

The recent surveys undertaken by the High Authority on the Electronic Media and Communications, list about one hundred media outfits, among which are a dozen private television stations.

Since the 90s, therefore, Togo has witnessed tremendous progress in this matter. However, statistics are a bit deceptive because to qualify to be called a media outfit, one has to go through a number of required legal formalities to justify one's existence. Such is not the case for several organs which only have a *de facto* existence.

Strangely, the Media Regulatory Authority, which was established to allocate frequencies, has assumed the role of a censor by closing down or banning outfits which it deems to have been improperly established.

This practice is regrettable because it has, in the face of the cynicism of the part of the HAAC, led to the suspension of certain radio stations like *X Solaire* and *Métropolis* for several months.

Besides, it should be observed that in addition to these media outfits, an important element of the realization and consolidation of the exercise of the freedom of expression has seen the light of day and is being developed at a breathtaking pace. This has to do with the Internet which is a means of expression being used on a daily basis by Togolese.

Today, with the exception of a few towns, all parts of the country possess this communication tool. Very fortunately, and contrary to the practice in China, untoward information on the authorities going through this medium are still not being censored.

The situation of journalists in the private media in particular is not as reassuring. Journalists are being arraigned before the courts today because they have published stories which are often true but they are unable to establish their veracity.

The last case is the one between a powerful company involved in the export and sale of rice and Mr. Karlos Ketowou, managing editor of *l'Indépendant Express*, following his publications on the possible bad quality of 9000 tonnes of rice exported from the United States and meant for consumption by the people of Togo.

We can say today that laws exist and that the effort to ensure their true enforcement is underway.

There is still a long road to travel, but attempts at undermining press freedom are more discreet. People bothered by this freedom either act through intermediaries or issue threats. Journalists have been receiving death threats from time to time. This is what most media practitioners, who have been receiving anonymous death threats, are currently going through. Unfortunately, nothing comes out of their calls on the authorities because the latter think that, contrary to the claims of the journalists, investigations conducted by them show no evidence of the existence of threats.

Journalists have a law they can not circumvent under any circumstance in the exercise of their profession.

Law and the Media and Freedom of the Media

The law on the media is all legislative and regulatory provisions which govern the practice of the journalistic profession.

Thus, the media in Togo are subject to the provisions contained in the Press and Communications Code as well as the Code of Ethics, which is a code journalists have undertaken to strictly respect in the discharge of their duties.

The law on the media first includes ethical provisions (for example, in the discharge of their duties, journalists must not accept money given them with the intention of corrupting them).

Next, the application of other provisions of the same code could impose civil penalties like fines and damages.

Finally, other articles of the Press Code provide for criminal penalties. This is the case of communication-related crimes and offences.

Togo's lawmakers even make provision for prison penalties against anyone who, either in writing or any other means of communication, calls on the people to infringe the laws of the land or incites the same to hatred (**Article 86** of the Press and Communications Code).

The decriminalization of the Togo's Press Code does not prevent the judicial authorities, when a case dealing with the violation of the

freedom of the press is brought before it, from fixing damages to be paid by the accused to the plaintiff.

Today, the law on the media is much more lenient than it was in the recent past.

Gradually, the freedom of the media is beginning to get established in our country.

What Do We then Mean by the Freedom of the Media?

The freedom of the media is the opportunity given to media practitioners to express themselves without fear or reservation. We can deduce that the corollary of the freedom of the media is the freedom of expression.

The freedom of expression is the power given to all citizens to express their thoughts orally or through a written piece of publication.

The freedom of expression is different from the freedom of communication. It is the freedom to receive ideas, thoughts and opinions and to disseminate them later.

At the prescriptive level, it should be emphasized that these two freedoms are established by **Article 26 Of the Constitution of the 4th Republic, particularly the Constitution of Togo of 14 October, 1992** which stipulates that *“the freedom of the press shall be recognized and guaranteed by the State. It shall also be protected by the law. All persons shall have the right to express or disseminate, in speech, writing or any other means, opinions and information at their disposal within the limitations determined by the law”*.

This means that the freedom of expression belongs to all citizens, be they small or big, rich or poor; and it is the State itself which ensures the respect of this freedom through the laws it gets passed and the judicial authorities who have been empowered to apply sanctions in the event of violations.

Furthermore, it must be emphasized that the various international treaties and conventions to which Togo is a party also guarantee the freedom of expression.

Article **19** of the International Covenant on Civil and Political Rights states that: *“Everyone shall have the right to hold opinions without interference”*.

All persons have a right to the freedom of expression; this right entails the freedom to seek, conceive and disseminate all manner of information and ideas, regardless of borders, and in an oral, written, printed, artistic or any other form of his choice.

As is provided for in Article 3 of Organic Law N° 2004-02 on the High Authority for the Electronic and Media and Communications, the freedom of expression must be exercised in accordance with the following:

- Human dignity;
- Protection of children and adolescents;
- Safeguarding the peace, public order and national unity;
- National defence requirements;
- Ethics in the area of information and communication;
- Pluralist nature of expression and the schools of thought and opinion;
- Public service requirements;
- Safeguarding health, the environment and the media;
- Need for the development of a national industry for electronic production, and
- Free enterprise.

In its very first article, the Press and Communications Code stipulates that: ***“newspapers and electronic communication shall be free”***.

Article 3 of the same code goes further to state that “the State shall guarantee the right to information for all persons residing within the national territory”.

If we abide by the ideals founding the freedom of the press and those still preying on the minds of many of our fellow Togolese, we can suggest, just like our French colleague, Jean Luc Martin-Lagardette, this more philosophical definition of press information. According to him, “In theory, in a democratic society, journalistic information, is:

- The description or explanation of a topical issue (an issue which is universally significant or collectively drawn from the present or being of significance to the present);

- Sought for on behalf of the general public, selected and processed by an honest and free conscience seeking the truth and mindful of the public interest,
- Disseminated by a media which guarantees the independence of the journalist *vis-à-vis* any authority (be it political, ideological or economic)".

This is to say that the freedom of the media is a restricted freedom. The ethical requirements redefine the exercise of the profession.

In Togo, the press and communications code devotes 11 articles (61–71) to ethics, while an ethical code enacted by the information practitioners grouped together under the *Togolese Media Observatory (OTM)* devotes 24 articles to ethical standards.

This is a whole legal arsenal which lays emphasis on the benchmarks of the profession and the responsibility of journalists. The press in Togo is regulated.

One can observe in the practice of the profession, a shift in the meaning of two words which are thought to be close: information and communication. Both are even commonly incorporated into the term “*media*”.

According to the definition of Article 34 of the press and communications code, communication “*electronic communication is considered as the circulation of any information or message for the general public within the country through a procedure of communication by means of signs, written matter or sounds*”.

Communication also covers “*any circulation within the country of images, any publication or circulation of information by satellite, cable, data transmission network, telephone or by any other new technology or any other new information or communication technology for the general public*”.

Expression has an individual dimension; it concerns the person expressing something.

On the contrary, communication presents a collective dimension because it presupposes at least two persons: one expressing and another receiving. “What is said” comes under the freedom of expression. However,

the means of transmitting and circulating it come under the “freedom of communication”.

Newspaper and television are the active beneficiaries of the freedom of communication. They are the media through which the ideas, opinions and thoughts of an individual or group of individuals are disseminated.

The freedom of the press and the freedom of electronic communication make the freedom of communication a reality. Those receiving information disseminated through the media are passive beneficiaries of the freedom of communication.

On the contrary, those actively exercising the freedom of communication are the journalists, otherwise referred to as the men of the media. There is a thin line between the conception of communication and that of expression and the interface between them is even obvious because communication always presupposes expression.

What is the Role of the Media Regulatory Organs?

Media Regulatory Organs in Togo

As we have had to state in previous chapters, the influence of the media in the shaping of public opinion requires a supervision and regulation of the performance of their functions in order to safeguard the diversity of the schools of thought and ideas.

This is why, mindful of the maintenance of order and social peace, the authorities in Togo are taking action on the operations of the media through control organs which should be properly referred to as “regulatory organs”.

The main state institution responsible for the regulation of the media in Togo is the **High Authority for Broadcasting and Communication (HAAC)**.

Therefore, the HAAC’s main mission is to guarantee the equality of access to information by Togolese journalists and ensure the pluralism of information.

It is an independent administrative institution tasked to ensure the respect of the constitutional principles relating to electronic communication.

It is also a control organ. In this regard, it takes regulatory measures and can even punish operators if they fail to fulfil their professional obligations.

Thus, HAAC's mission is to guarantee and ensure the freedom and protection of the press and other means of mass communication. This will be in adherence to the principles stipulated under Article 3 of the organic law.

Conditions for the issuance of authorization for the running and installation of media outlets have been specified under Article 40 and are subject to given rules and regulations.

Application for the installation of facilities must be sent to the HAAC for the purposes of the formulation of rules and regulations which particularly determine the following:

- duration and characters of the programme;
- geographical areas and categories of service;
- capacity of the broadcasting equipment;
- time allotted to advertisements, sponsored programmes as well as modalities for their inclusion into the programmes;
- financial compensation to be paid to the authorities;
- portion of turnover to be allocated to the development of the national cultural heritage and the promotion of a local electronic production industry;
- broadcasting of educational and cultural programmes as well as child protection programmes, and
- broadcasting of programmes on the protection of the environment.

These same rules and regulations also determine the penalties to be imposed in the event where conventional obligations are not fulfilled.

It should also be stressed that all applications for authorization must, among others, be accompanied by duly filled data sheets and forms with information on the purpose, general characteristics of the service, list of the directors, among others.

As the Togolese press regulatory organ, the HAAC is also empowered

to receive complaints from journalists who have been victims of intimidation or any form of aggression.

On the evidence of the facts, the HAAC is struggling to become a regulatory body and is, just like all state institutions, suffering from a credibility crisis.

Apart from the HAAC, some organs are trying to play a role in the supervision of the media in Togo.

By way of example, we can mention the Togolese Media Observatory, which is an organ established by the media practitioners themselves to instill self-discipline within the profession. Therefore, contrary to the HAAC, which is a regulatory organ, the OTM is a self-regulatory mechanism.

The OTM was established on 5 November, 1999 when Togolese journalists registered their commitment to a responsible press.

In a way, therefore, the OTM is a “society of journalists” or even a “peer court”.

However, it should be acknowledged that, in the discharge of the arduous task before it, the OTM comes up against serious difficulties.

These difficulties are mainly financial in nature. This can be explained by the fact that the OTM only functions through the contributions collected from journalists.

The subsidies or assistance the State provides this organ are grossly inadequate or even non-existent.

Under such conditions, it is obvious that the OTM cannot properly execute the mandate assigned to it.

In addition to these predominant organs we have just mentioned, are associations like the *Union of Journalists in Togo (UJIT)*, *National Council of Press Magnates (CONAPP)*, *Union of Public Media Information Agents, Technicians and Journalists (SAINT JOP)*, *Togolese Observatory for the Image of Women in the Media (OTIFEM)*, *Association of Cinematographic Critics of Togo (AJCC — TOGO)*, *Network of Economic Journalists of Togo (RJE — TOGO)*, *Free Communications Union (SYNLICO)*, *Journalists for Human Rights (JDHO)* and, finally, the *Association of Environmental Journalists*.

This is to say that in Togo, journalists come under well structured and organised associations and unions.

The National Council of Press Magnates (CONAPP) we have mentioned previously is both a union of journalists and a regulatory organ insofar as it sometimes calls journalists who stray from their code of ethics to order.

For some time now, we have been strangely observing to our utter astonishment that the Media Regulatory Authority has arrogated to itself the luxury of suspending certain radio stations.

This development is very surprising because the role of the Media Regulatory Authority is to allocate frequencies to media outfits when they receive authorization from the HAAC, and not to order the closure of a radio station for one reason or another.

The fact that press freedom exists in Togo is seen in the various publications of the newspapers, particularly the private press which sometimes indulges in excesses.

To avoid, if not limit, these excesses, the authorities in Togo have introduced legal constraints which certain journalists cannot bring themselves to accept.

Legal Constraints Hindering the Freedom of the Press

In Togo, the media play a very fundamental role. This is the case, though, in most of the countries claiming to be democratic.

The role of the media is so important that they have even been considered as the fourth estate of the realm. If we content ourselves with the theory of the separation of powers, we can easily acknowledge that the media is independent vis-à-vis the other powers.

In addition to the three forms of powers which exist in Togo, namely the Executive, the Legislature and the Judiciary, we can add the media which have continued to demonstrate that they are a check on government policy. This is to say that the media are there to criticize the actions of the government whenever they have the opportunity to do so.

The Togolese government has introduced certain mechanisms to avoid excesses on the part of ill-intentioned journalists who only seek to

incite hatred among the citizenry and, therefore, disturb the social peace.

These mechanisms can be analysed as constituting limitations to the exercise of the journalistic profession, restrictions or even constraints. These legal constraints are in two forms: legal constraints and judicial constraints. We shall call legal constraints, all the restrictive measures contained in the various codes. Judicial constraints are the repressive measures taken by judges whenever there are violations of preestablished standards.

Today, the independence of the media *via-à-vis* the other powers has been acknowledged. Unfortunately, this has not been the case in the Togolese situation. Rather, the authorities are attempting to have a grip on media outfits. However, it would be jumping the gun to speak about legal constraints hindering the freedom of the press.

The expression “legal constraints” is a bit derogatory. Insofar as Togo’s Press and Communications Code is considered as one of the most liberal in the sub-region, it will be more meaningful to tackle the issue in terms of restrictions to the freedom of the press.

Indeed, there are numerous laws guaranteeing the freedom of expression and thought. The Universal Declaration of Human Rights, the Constitution as well as the various regulatory laws and provisions can be mentioned among these.

However, as the law always goes hand in hand with responsibilities, the rights of journalists are subjected to restrictions or responsibilities.

Journalists are sometimes preoccupied with an unhealthy desire to either settle scores or satisfy personal interests, rather than provide the general public with real information.

Journalists must ensure that the information they put out does not violate the conscience of the citizenry or prey on their own professional conscience.

The article or reports must be accurate not only with regard to spelling but also the facts they want to publish.

The journalist or communications technician must respect the Constitution as well as all the laws in force. They should strive to master the Press and Communications Code and the ethical code for journalists in Togo.

Journalists must assume responsibility for their articles. They should only publish information, the source, veracity and accuracy of which have been established. The least doubt should restrain or make them express reservations.

Journalists must respect the individual's right to privacy and dignity. Unfortunately, this is not the case in our country where journalists have arrogated to themselves the mission of putting out wrong information, thereby trespassing on the privacy and family intimacy of honest citizens.

Journalists must refrain from publishing libellous and defamatory information; similarly, they must avoid making baseless accusations.

In addition, journalists must keep professional secrecy, whatever threats are issued against them; they must not divulge the source of the information they obtain. Similarly, they must refrain from publishing any information which is likely to incite tribal, racial and religious hatred. Thus, we can observe that journalists face many of these legal constraints in the discharge of their noble duties as journalists. However, journalists enjoy various rights which offer them protection and enable them to loyally serve the citizenry through their publications.

Rights of Journalists

We cannot mention the rights of journalists without first defining what we understand by a "journalist".

Under the Press and Communications Code, a journalist is : *"... any person whose main, regular and remunerated vocation is : the quest for, gathering, collection, selection, use, publication and presentation of information in one or several daily or periodic publications, in one or several press outfits or in an information department"*.

In summary, the journalist is someone who collects information and then disseminates or publishes it. Thus, in democratic countries, the rights of journalists are considered as the most fundamental rights and are, therefore, meticulously observed.

In Togo, many laws provide for the rights of journalists. Articles 64 and following of the Press and Communications Code are devoted to the rights of journalists. Thus, Article 64 stipulates that: *"journalists or*

communications technicians shall not be forced to accept to disseminate information contrary to reality or to express an opinion against their personal conviction". This means that journalists are free to disseminate or reject any piece of information.

Journalists must not be subjected to discrimination on account of their race, ethnicity, sex or even their religious affiliation. They enjoy the same rights as any other citizen: the right to life, right to free movement as well as the freedom of thought, freedom of religion and freedom of association, among others.

The relevant provisions of Article 67 of the Press and Communications Code stipulate that: "*journalists or communications technicians shall not be obliged to disclose their sources*".

This means that one cannot, for any reason whatsoever oblige or compel journalists to divulge the sources of the information they publish.

Besides, it should be stressed that journalists cannot be compelled to express an opinion or disseminate information which is contrary to the reality. Similarly, journalists have the right to reject to publish something, and this rejection shall be legal. The refusal of journalists to perform an advertising task in violation of the rules of the profession shall not in any case constitute professional misconduct which could lead to disciplinary action.

Journalists also have the right to access sources of information, except information bordering on state security, national defence and privacy.

Law N° 2004-15 of 27 August, 2004 also recalled the rights of journalists in Togo. The democratic relevance of such provisions is definitely not in doubt. However, one may wonder about their implementation, i.e. their actual application.

During the democratic transition leading to the pluralism of the media, numerous acts of violence were perpetrated against journalists: newspaper offices and printing houses were ransacked, while journalists were molested, arrested and imprisoned.

Today, the media space has continued to be liberated. The violation of the press laws has been decriminalized with Law N° 2004-15 of 27 August, 2004. Journalists are gradually freeing themselves from the yoke

of the political authorities by becoming more assertive in demanding their rights.

It should, however, be said that a lot more needs to be done, and get to the “media haven”, which journalists desire so much, real political will is requires on the part of the authorities.

Legal Decisions With Consequences on Press Freedom in Togo

Tackling this section in terms of important legal decisions could suggest that a huge number of decisions have been taken by the courts and that our work will ultimately boil down to making a summary of the same by listing and explaining the most important ones.

Such is not the case in Togo. Indeed, for many years, journalists subject to trial did not believe they had to go to court to have behaviour they thought was inimical to their profession checked.

This can be explained by several reasons:

- The first is that in Africa, the citizens are more inclined to solve their problems through conciliation rather than instituting court proceedings.
- Furthermore, the phenomenon is aggravated by the ignorance of media practitioners often randomly picked for training and selected through criteria completely lacking in objectivity. They had always believed that the organ responsible for settling their disputes was the High Authority for the Electronic Media and Communications.
- The final reason is certain circumstances have made Togolese to lose the confidence they should have in their courts.
- Indeed, in the very first few years after independence, the initial judges, who had been hastily recruited to make up for the absence of white civil servants who had returned home upon the attainment of independence, instituted a justice system based on unreasoned decisions heavily marked with the influence of politicians and the grip of the administration.

All these factors were factored into the initiatives of the HAAC to

sometimes summon journalists to issue them with warnings of possible suspension. They were made to believe that this organ was a specialized court responsible for their issues.

Thus, for many years, the HAAC censured the press organs by taking measures which ranged from issuing warnings for hardly reprehensible acts to ordering the closure of the same.

From 2009 onwards, the judicial powers of the HAAC were prohibited for good.

Indeed, *Law N° 2009-029* restated the provisions of the Law of 27 August, 2004 on the section devoted to the rights of journalists and also specified that the function of the HAAC was administrative and not judicial.

Since then, persons subject to trial as well as the authorities have stopped going to the HAAC to seek punishment for violations, omissions and offences committed by journalists.

Note should be taken of the absence of complaints by journalists against attitudes likely to hinder their duties.

In fact, in the discharge of their duties, journalists always have to seek information and conduct investigations in order to ensure the relevance of rumours and suspicions which have come to their knowledge. Unfortunately, certain persons, for unknown reasons, prevent journalists to have access to sources of information by sometimes even resorting to violence or issuing threats. This is prohibited and severely punished by the instruments and laws in force. Thus, for all these post-independence years, we had to wait until the year 2009 for the Lomé magistrate's court to pass a verdict.

It is the case between a newspaper and the chargé de mission at the Presidency, Mey Gnassingbé, in an infamous international case of drug trafficking through Togo to an unknown destination in Europe.

The verdict, which was handed down without the right of appeal, awarded a fine, huge damages and a suspension of publication to that effect. This decision did not constitute a custodial sentence but the huge amount of the damages awarded to the victim as well as the severity of the complementary penalties would only mean that the sanctioned organ has signed its own death warrant.

The most famous decision is the case involving the Golfe Info

newspaper and the Ministry of Justice, with the plaintiff being the President of the Republic, and Emmanuel Adebayor,

Upon the request of the National Council of Press Magnates, the President of the Republic withdrew the case but Mr. Adebayor did not do so.

This matter has to do with a libel case in which a journalist of the said newspaper is said to have been found guilty of the offence. It is alleged that the victims of the libellous material, the President and the footballer, are said to have a serious disagreement because of a former Miss Togo who had been crowned to represent the country. After judgment had gone against the media outfit, it decided to appeal against the decision. The case will be heard after reexamination in the course of next month.

Another case, a recent one which attracted a lot of media attention, is the one between Karlos Ketewou, the managing editor of the “Indépendant Express”, a local private newspaper, and the Elysée Cotrane company for the damage some of newspaper’s issues are said to have caused persons who, according to rumours, are close to the authorities.

This case had to do with the huge importation of 9,000 tonnes of rice which, according to journalists, is of doubtful quality because it has been contaminated by a toxin in the preservative used when the rice was on the high seas.

Moreover, we should condemn the existence of other cases pending before the courts which have, unfortunately not been given as much medias coverage as the three previous ones.

An analysis of all these situations shows that officially, there is no case of legal constraint but rather decisions handed down in matters in which complaints have been properly lodged.

However, it can be observed that in all the above-mentioned decisions, the presence of the authorities is always felt. And when there presence is not felt, it is only because, generally, they are being fronted for by other anonymous citizens or persons who have dealings with them.

It should also be stated that if journalists commit excesses or omissions which often land them in court, it is due to the lack of professionalism, particularly in the case where, as we have stated above,

most of them do not have the required training. Often, it is often by observing others that they end up mastering the subtleties of the profession.

Finally, all media outfits are enterprises which must provide themselves with their livelihood. Unfortunately, in the situation of Togo, assistance to the press is paltry.

The 2009 budget projected an amount of 350 million by way of state assistance to the press. Rather strangely, this amount was reduced to 70 million for the year 2010.

Is this substantial reduction not due to the fact that in the year 2009, the press showed excessive zeal in the publication of all the negative actions which had to do with the public and political authorities? With this reduction and the poor living conditions of journalists, it is not surprising to note that the latter are often subject to corruption.

Notwithstanding all these setbacks, journalists should show a little more seriousness by attending programmes often organised for them.

In the face of these factors which occur frequently in developing countries, unfortunately, the courts should be more flexible in the verdicts they hand down because even though incarceration of journalists for acts committed in the discharge of their professional duties has been abolished, court judgments, particularly the imposition of heavy fines and the suspension of publications, can only have the long term effect of ensuring the disappearance of the punished agencies.