

CONSTITUTION OF THE FOURTH REPUBLIC OF TOGO

Adopted on 27 September 1992, promulgated on 14 October 1992

PREAMBLE

We, the Togolese people, putting ourselves under the protection of God, and:

- Aware that since its accession to international sovereignty on 27 April 1960, our country has known a troubled political evolution, marked especially by the founding of a monolithic, totalitarian regime that ultimately led to a meeting of the leading forces in a National Sovereign Conference from 8 July to 28 August 1991;
- Aware of the solidarity that binds us to the international community and to the African peoples in particular;
- Committed to build a state of law in which the fundamental human rights, public freedoms and the dignity of the human being must be guaranteed and protected; and
- Convinced that we shall not be able to build such a state except on political pluralism, principles of democracy and of the protection of human rights as defined by the Charter of the United Nations of 1945, the Universal Declaration of Human Rights of 1948 and the International Covenants of 1966, and the African Charter on Human and Peoples' Rights adopted by the Organization of African Unity in 1981;
- Proclaim solemnly our firm aspiration to combat any political regime founded on arbitrary rule, dictatorship or injustice;
- Affirm our determination to co-operate in peace, friendship and solidarity with all peoples of the world who are inspired by democratic ideals, based on principles of equality and mutual respect for each other's sovereignty;
- Become resolutely engaged in defending the cause of African unity and in working towards realisation of sub-regional and regional integration;
- Solemnly approve and adopt this Constitution as fundamental law of the state, of which this Preamble shall be an integral part.

TITLE I: THE STATE AND SOVEREIGNTY

Article 1

The Togolese Republic shall be a state based on law, secular, democratic and social. The Republic shall be one and indivisible.

Article 2

The Togolese Republic shall assure equality before the law for all citizens without distinction as to origin, race, sex, social status, or religion. The Republic shall respect all political and philosophical opinions as well as all religious beliefs. The Togolese Republic shall be based on the principle of government of the people, by the people and for the people.

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Article 4

Sovereignty shall belong to the people, exercised by their representatives and by referendum. Sovereignty shall not be exercised by any single group of people, body of the state, or individual.

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Article 5

Suffrage shall be universal, equal and secret. Under conditions specified by law, voters shall comprise all Togolese nationals of both sexes who are eighteen years of age and who are entitled to enjoy full civil and political rights.

Article 6

Political parties and alliances of political parties shall contribute to the formation and expression of the political will of the people. Political parties and alliances of political parties may be freely

created and may conduct activities within the framework of laws and regulations.

Article 7

Political parties and alliances of political parties shall be required to respect the Constitution. None shall have the power to identify themselves with any region, ethnic group, or religion.

Article 8

Political parties and alliances of political parties shall have the duty to contribute to the political and civic education of the citizenry, to the strengthening of democracy, and to the development of national unity.

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TITLE II: RIGHTS, LIBERTIES, AND DUTIES OF CITIZENS

SUB-TITLE 1: Rights and Freedoms

Article 10

Each human being shall be intrinsically considered to have certain unalienable and inviolable rights. The safeguarding of these rights shall be the ultimate goal of the entire human community. The state shall be required to respect, to guarantee and to protect these rights. All people of sound mind shall be entitled to enjoy the rights guaranteed by this Constitution in as much as they are compatible with their natures.

Article 11

Every human being shall enjoy equal dignity and equal rights. Both sexes shall be considered equal before the law. No person shall be protected or prejudiced because of family, ethnic or regional origin, economic or social status, or political, religious, philosophic or other convictions.

Article 12

Each human being shall have the right to develop toward his physical, intellectual, moral and cultural potential.

Article 13

The state shall be required to guarantee the physical and mental integrity, life and safety of each person living on any national territory. No one shall be deprived arbitrarily of life or liberty.

Article 14

The exercise of rights and freedoms guaranteed by this Constitution shall be subjugated to nothing other than those restrictions expressly established by law as necessary to protect the national security, public order, public health, ethical climate or fundamental rights and liberties of others.

Article 15

No person shall be arbitrarily detained or confined. Anyone who shall be detained without legal basis or detained beyond the maximum period allowed and shall have the right to seek judicial intervention by the authority designated by law for that end, either at his own request or at the request of interested parties. The appropriate judicial authority shall immediately render an opinion regarding the legality and/or regularity of the confinement.

Article 16

Every person who is imprisoned or confined shall nonetheless be treated in a manner that preserves his dignity and physical and mental well-being, and which shall help with his readmittance to society. No person shall have the right to prevent an imprisoned or confined person from medical examination by the physician of his choice. Each prisoner shall have the right to assistance by counsel at the preliminary inquiry.

Article 17

Every person who is detained shall have the right to be informed immediately of the charges against him.

Article 18

Every accused or imprisoned person shall be presumed innocent until proved guilty, following a process that promises all guarantees necessary for his defence. The power of judiciary authorities, who shall be considered guardians of individual freedom, shall assure respect for this principle, according to conditions determined by law.

Article 19

Every person shall have the right, in all affairs, to have his cause heard and decided equitably by an independent and impartial jurisdiction within a reasonable time. No one shall be found guilty for deeds which were not considered infractions at the time they were committed. Beyond situations encompassed in the law, no person shall be harassed or prosecuted for deeds objected to by others. Damages resulting from an error of justice or from irregular functioning in the administration of justice shall receive an indemnity from the state, according to law.

Article 20

No person shall be subjected to military or police action except as allowable by law.

Article 21

Each human being shall be considered sacred and inviolable. No person shall be subjected to torture or any form of cruel, inhuman or degrading treatment. No person shall be able to avoid punishment incurred by way of these violations by invoking the order of a superior or a public authority. Each individual and each agent of the state guilty of such acts, whether upon his own initiative or under orders, shall be punished according to the law. Each individual and each agent of the state shall be absolved from the duty to obey orders that constitute a grave and manifest attack against respect for human rights and public liberties.

Article 22

Every Togolese citizen shall have the right to move freely and to settle on national territory according to his choice, within conditions defined by law or local custom. No Togolese citizen shall be deprived the right of entering and leaving Togo. All foreigners who have legally gained access to Togolese territory and who abide by laws in force at the time shall have freedom of movement, freedom to choose a place of residence and the right to leave Togo freely.

Article 23

No foreigner shall be expelled or extradited from Togolese territory except as a result of a decision conforming to law. He shall have the right to defend himself before a qualified judicial authority.

Article 24

No Togolese citizen shall be extradited from the national territory.

Article 25

Every person shall have the right to freedom of thought, conscience, religion, worship, opinion and expression. These rights and liberties shall be exercised with respect to the liberties of others and to the maintenance of public order and standards established by laws and regulations. The organisation and practice of religious beliefs shall be freely exercised in accordance with the law. The same shall apply to philosophic beliefs. Freedom of worship and of the expression of one's beliefs shall be exercised in a manner respecting the secular nature of the state. One shall have the right to create organisations around religious views and to conduct organisational activities within the framework of the law.

Article 26

Freedom of the press shall be recognised and guaranteed by the state and protected by law. Every person shall have the freedom to express and to disseminate his opinions and information by spoken, written and other means, within limits defined by law. It shall not be possible to submit the press to preliminary authority, to bail, to ensure or to other impediments. Only a judicial decision can prevent the circulation of a publication.

Article 27

The right to own property shall be guaranteed by law. This right may be abridged only because of a legally expressed public need and after just and immediate indemnity. No one shall be deprived of his property except through a decision by a judicial authority.

Article 28

One's home is inviolable. The home shall not be the object of a search or police visit except under conditions specified by law. Each citizen shall have the right to respect for his privacy, honour, dignity and reputation.

Article 29

The state shall guarantee secrecy of correspondence and telecommunications. Each citizen shall have the right to secrecy of his correspondence, communications and telecommunications.

Article 30

In accordance with provisions specified by law, the state shall recognise and guarantee freedom of association, assembly and peaceful demonstration conducted without instruments of violence. The state shall recognise private, religious, and secular education.

Article 31

The state shall have the obligation to assure protection of marriage and the family. Parents shall have the duty to train and to educate their children. The state shall support them in this task. Infants shall have the same family and social protection, whether born in or out of wedlock.

Article 32

Children born of either a Togolese mother or father shall be granted Togolese nationality. Other means of attaining citizenship shall be regulated by law.

Article 33

The state shall take all appropriate measures to protect the handicapped and the aged from social injustice.

Article 34

The state shall recognise and shall work to promote the citizen's right to health.

Article 35

The state shall recognise the right of all children to education and shall create conditions favourable to this end. Education is mandatory for children of both sexes until the age of 15 years. The state shall act progressively to assure that public education be free of charge.

Article 36

The state shall protect minors against all forms of exploitation and manipulation.

Article 37

The state shall recognise each citizen's right to work and shall strive to create conditions promoting the enjoyment of this right. The state shall assure to each citizen equal right to employment and shall guarantee to each worker a just and equitable remuneration. No one shall be discriminated against in the workplace because of his sex, origin, beliefs or opinions.

Article 38

The right of citizens and territorial communities to equitable redistribution of national wealth by the state shall be recognised.

Article 39

The right of workers to strike shall be recognised. This right shall be exercised within the framework of regulatory laws. Workers shall have the right to create labour unions and to join the unions of their choice. Every worker shall have the right to defend his rights and interests, whether individually, collectively, or through union action, according to conditions specified by law.

Article 40

The state shall have the duty to safeguard and to promote the nation's cultural inheritance.

Article 41

Every person shall have the right to a clean environment. The state shall oversee the protection

of the environment.

SUB-TITLE 2: Duties

Article 42

Each citizen shall have the sacred duty to respect the Constitution as well as the laws and regulations of the Republic.

Article 43

It shall be the sacred duty of each citizen to defend his country and its territorial integrity.

Article 44

Each citizen shall have the duty to participate in national service, under conditions specified by law.

Article 45

Each citizen shall have the duty to combat any person or group of people who try to change by force the democratic order established by this Constitution.

Article 46

Public property shall be inviolable. Every person and every public servant shall be obliged to respect public property scrupulously and to protect it. Any act of sabotage, vandalism, embezzlement of public funds, corruption, and squandering of public wealth shall be punishable by law.

Article 47

Each citizen shall have the duty to contribute to public expenses according to provisions established by law.

Article 48

Each citizen shall have the duty to take care that there is respect for the rights and freedoms of those around him and that the public order is safeguarded. Each citizen shall work to promote tolerance and mutual exchange in their relationships with others. Each citizen has the duty to assist in preserving the social order, peace, and national cohesion. Any action or other manifestation of racist, regionalist, or xenophobic prejudice shall be punishable by law.

Article 49

Under the authority of the government, the mission of military and police forces shall be to protect the free exercise of rights and liberties and to guarantee the safety of citizens and their property.

Article 50

Rights and duties enunciated in the Universal Declaration of Human Rights and in international instruments relating to human rights are ratified by Togo and shall become an integral part of this Constitution.

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TITLE V: THE RELATIONSHIP BETWEEN THE GOVERNMENT AND THE NATIONAL ASSEMBLY

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Article 94

A state of emergency or a state of siege shall go into effect by a decree made by the President of the Republic in the Council of Ministers. The National Assembly shall meet immediately, without need of sanction, if it is not already in session. A state of siege or state of emergency can be prolonged beyond two weeks only if it is so authorised by the National Assembly. The National Assembly cannot be dissolved during a state of siege or a state of emergency. Conditions under which a state of siege or state of emergency shall go into effect shall be specified by an organic law.

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TITLE VI: THE CONSTITUTIONAL COURT

Article 99

The Constitutional Court shall be the highest jurisdiction of the state regarding constitutional matters. The Constitutional Court shall judge the constitutionality of laws and shall guarantee fundamental human rights and civil liberties. It is the regulatory organ for functioning of institutions and the activities of public authorities.

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Article 104

The Constitutional Court shall be the jurisdiction charged with making sure there is respect for provisions of the Constitution. The Constitutional Court shall determine the constitutionality of laws. Before their promulgation, law can be deferred for the court's review by the President of the Republic, the Prime Minister, the President of the National Assembly, or a vote of one-fifth of the members of the National Assembly. ... Throughout the course of a judicial hearing, any person of sound mind and body shall *in limina litis*, be able to raise the question of a law's constitutionality before any court or tribunal. In that case, the jurisdiction shall suspend making laws and shall call upon the Constitutional Court for its opinion. ... Any text declared unconstitutional cannot be promulgated. If it has already gone into effect, it shall be withdrawn through a written judicial order.

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Article 106

Decisions of the Constitutional Court shall not be susceptible to any other authority. These decisions shall apply to all public bodies and to all civil, military and juridical authorities.

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TITLE VIII: JUDICIAL POWER

SUB-TITLE 1: General Provisions

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Article 113

Judicial authority shall be independent from legislative or executive authority. Judges shall only be permitted to exercise their duties through the authority of the law. Judicial power shall be the guarantor of individual liberties and the fundamental rights of citizens.

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TITLE XI: TREATIES AND INTERNATIONAL AGREEMENTS

Article 137

The President of the Republic shall negotiate and ratify treaties and international agreements.

Article 138

[T]reaties relative to international organisations, as well as those ... which modify legislative provisions [and] those which relate to the status of individuals and human rights ... cannot be ratified except by a law. Such treaties shall not take effect until they have been ratified and published.

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TITLE XIII: ON REVISING THE CONSTITUTION

Article 144

The initiative to revise the Constitution shall belong jointly to the President of the Republic, upon a motion of the Prime Minister, and a minimum of one-fifth of the Deputy membership of the National Assembly. Bills or motions to revise the Constitution shall be considered adopted when passed by a majority of four-fifths of the Deputies composing the National Assembly. If this majority is not attained, a bill or motion for revision that has attained at least a two-thirds vote of the Deputies composing the National Assembly shall be submitted to referendum. No proceedings for revision can be undertaken or followed during an interim period, during a parliamentary recess or until it has been brought to the attention of the entire territory. Neither the republican form of government nor the undenominational nature of the state can be subject to Constitutional revision.

TITLE XIV: SPECIAL PROVISIONS

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Article 146

The source of all legitimate power springs from this Constitution.

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Article 150

In case of a *coup d'état* or other forcible *coup*, all members of the government and of the National Assembly shall have the right and duty to take any and all means to re-establish constitutional legitimacy. As a recourse, they may call upon any existing agreements of military or defence co-operation. Under these circumstances, the duty of all Togolese to disobey and to organise themselves to check any illegitimate power shall be their most sacred right and their most imperative duty.

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SPECIAL TITLE: THE NATIONAL COMMISSION ON HUMAN RIGHTS

Article 156

A National Commission on Human Rights shall be created. This Commission shall be independent and shall not be subject to any other authority than the Constitution and the law.

Article 157

No member of the government or of Parliament, or any other person shall interfere with the exercise of its duties and all other organs of the state shall accordingly provide any assistance needed by the Commission to preserve its independence, dignity and efficiency.

Article 158

The composition, organisation and functioning of the National Commission on Human Rights shall be established by an organic law.

TITLE XVI: CONCLUDING PROVISIONS

Article 159

This Constitution shall be executed as the fundamental law of the Togolese Republic.