

Article 13. Participation of society

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups, outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

- (a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;
- (b) Ensuring that the public has effective access to information;
- (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;
- (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be limited only in so far as is necessary and shall only be such as are provided for

CIVIL SOCIETY REPORT

on the Implementation of

Chapter II (Prevention) & Chapter V (Asset Recovery) of the

UNITED NATIONS CONVENTION AGAINST CORRUPTION

IN BENIN

by Social Watch Benin

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Social Watch Benin, the national focal point of Social Watch International, is a network of NGOs and associations that promotes citizen monitoring of public action in many areas (citizen participation, accountability, integrity, gender) both at the national level and local level in Benin's communes. The mission of Social Watch Benin is to promote citizen monitoring of public action, to positively influence the decisions of governments and the mobilisation of technical and financial partners in order to bring about political changes favourable to socio-economic and political development. The objectives of the Social Watch Benin network include promoting good governance and exercising civil action to defend the collective interests of the populations who are victims of corruption, the misappropriation of public funds, economic crimes and human rights violations.

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Acronyms and abbreviations

While the abbreviations are provided in both French and English in the following table, they are used in their original French version throughout the report for institutions and laws and in their English version for names of international institutions or initiatives.

Abbreviation	French	English
ALCRER	Association de Lutte Contre le Racisme, l'Ethnocentrisme et le Régionalisme	Association for the Fight against Racism, Ethnocentrism and Regionalism
AML/CFT	Anti-Money Laundering and	Countering the Financing of Terrorism
ANLC	Autorité Nationale de Lutte contre la Corruption	National Anti-Corruption Authority
APIEx	Agence de Promotion des Investissements et des Exportations	Investment and Export Promotion Agency
ARMP	Autorité de Régulation des Marchés Publics	Public Procurement Regulatory Authority
BEF	Brigade Économique et Financière	Economic and Financial Brigade
CCIB	Chambre de Commerce et d'Industrie du Bénin	Chamber of Commerce and Industry of Benin
CENA	Commission Électorale Nationale Autonome	Autonomous National Electoral Commission
CENTIF	Cellule de Traitement des Informations Financières	Financial Information Processing Unit
CIPB	Conseil des Investisseurs Privés au Bénin	Council of Private Investors in Benin
CM	Conseil des Ministres	Council of Ministers
CMP	Code des Marchés Publics	Public Procurement Act
CNP-Benin	Conseil National du Patronat du Bénin	National Council of Employers of Benin
CNSS	Caisse Nationale de Sécurité Sociale	National Social Security Fund
CNVAD	Commission Nationale de Vérification de l'Authenticité des Diplômes	National Commission for the Verification of the Authenticity of Diplomas
CREDIJ	Centre de Recherche et d'Études en Droit et Institution Judiciaires en Afrique	Centre for Research and Studies in Judicial Law and Institutions in Africa
CRF	Cellules de Renseignement Financier	Financial Intelligence Units
CRIET	Cour de Répression des Infractions Économiques et du Terrorisme	Court for the Repression of Economic Crimes and Terrorism
CSM	Conseil Supérieur de la Magistrature	Superior Council of the Magistracy
CSO	Civil Society Organisation	

DGB	Direction Générale du Budget	Directorate-General for the Budget
DIAS/DNCMP	Directeur de l'Information, de l'Assistance et des Statistiques de la Direction Nationale de Contrôle des Marchés Publics	Director of Information, Assistance and Statistics of the National Directorate for Public Procurement Control
DPP	Direction de la Programmation et de la Prospective	Programming and Forecasting Directorate
ECOWAS	Economic Community of West African States	
EFPJ	École de Formation des Professions Judiciaires	Training School for the Judicial Professions
ENAM	École Nationale d'Administration et de Magistrature	National School of Administration and Magistracy
ERSUMA	École Régionale Supérieure de la Magistrature	Regional School for the Judiciary
EU	Union Européenne	European Union
FONAC	Front des Organisations Nationales Anti-Corruption	Coalition of National Anti-Corruption Organisations
GIABA	Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent en Afrique de l'Ouest	Intergovernmental Action Group against Money Laundering in West Africa
HAAC	Haute Autorité de l'Audiovisuelle et de la Communication	High Authority for Audio-visuals and Communication
HCPC	Haut-Commissaire à la Prévention de la Corruption	High Commission for the Prevention of Corruption
IBP	International Budget Partnership	
IGJS	Inspection Générale des Services Judiciaires	General Inspection of Judicial Services
IMPT	Indice des Marchés Publics Transparents	Transparent Procurement Index
IPT	Tribunal de Première Instance	Court of First Instance
LOLF	Loi Organique relative aux Lois de Finances	Organic Law on Finance Laws
NGO	Non-Governmental Organisation	
OHADA	Organisation pour l'Harmonisation en Afrique du Droit des Affaires	Organisation for the Harmonisation of Business Law in Africa
ONASA	Office National d'Appui à la Sécurité Alimentaire	National Food Security Support Office
PAAAJRC	Projet d'Appui à l'Amélioration de l'Accès à la Justice et de la Reddition des Comptes	Project to Support Improved Access to Justice and Accountability

PACEB	Programme d'Appui à la Compétitivité Économique du Bénin	Benin Economic Competitiveness Support Programme
PAG	Programme d'Action du Gouvernement	Government Action Programme
PAJ	Projet d'Appui à la Justice	Justice Support Project
PALIRED	Programme d'Appui à la Lutte contre l'Impunité et au Renforcement de l'Etat de Droit au Bénin	Support Program for the Fight against Impunity and the Strengthening of the Rule of Law in Benin
PPM	Projet d'Appui à l'Amélioration de l'Accès à la Justice et de la Reddition des Comptes	Procurement Plan
PPP	Partenariat Public-Privé	Public-Private Partnership
RSF	Reporters Sans Frontières	Reporters Without Borders
SIGMaP	Système de Gestion Intégré des Marchés Publics	Integrated Procurement Management System
SNI	Système National d'Intégrité	National Integrity System
SWB	Social Watch Benin	
TI	Transparency International	
UEMOA	Union Économique et Monétaire Ouest Africaine	West African Economic and Monetary Union
UN	United Nations	
UNODC	United Nations Office on Drugs and Crime	
UNAMAB	Union Nationale des Magistrats du Bénin	National Union of Magistrates of Benin
UNCAC	United Nations Convention against Corruption	
UNTOC	United Nations Convention against Transnational Organized Crime	
UPMB	Union des Professionnels des Médias du Bénin	Union of Media Professionals of Benin
VAT	Taxe sur la Valeur Ajoutée	Value Added Tax

I. Introduction

The United Nations Convention against Corruption (UNCAC) of 31 October 2003, which entered into force on 14 December 2005, was signed by Benin on 10 December 2003 and ratified by the President of the Republic on 12 August 2004. The instruments of ratification of this convention were submitted to the UN Secretary General on 14 October 2004.

The objective of this report is to assess the implementation into law and practice of selected articles of Chapters II (Preventive Measures) and V (Asset Recovery) of the United Nations Convention against Corruption (UNCAC) in Benin. The report is intended as a contribution to the ongoing review process of the implementation of the UNCAC on these two chapters. Benin was selected by a drawing of lots by the UNCAC Implementation Review Group in 2018 for review during the third year of the second cycle (2016-2024). Benin has completed the self-assessment stage of the review of Benin's implementation of Articles 5-14 and 51-59 of the UN Convention against Corruption. Responses to the questions and comments of the Swiss and Gambian peer reviewers were only received in the second half of 2019. The country visit has not yet taken place, although the year 2020 is coming to an end. This means that Benin's review process is significantly behind schedule.

The final draft of this report will be communicated to the Government of Benin, through the High Commission for Corruption Prevention.

Scope of application. The UNCAC articles that are given particular attention in this report are the following:

- under Chapter II of the Convention: preventive anti-corruption policies and practices (Article 5), preventive anti-corruption body or bodies (Article 6), public sector (Article 7.1), codes of conduct for public officials and private sector (Articles 7, 8 and 12), participation of society (Article 8.4 and 13.2), political financing (Article 7.3), public procurement and management of public finances (Article 9), measures relating to the judiciary and prosecution services (Article 11), private sector (Article 12), public reporting and participation of society (Articles 10 and 13.1);

- under Chapter V of the Convention: prevention and detection of transfers and proceeds of crime (Art. 52 and 58, 14 and others).

Structure. The report begins with a summary including synthesised findings, conclusions and recommendations on the review process, the availability of information, and implementation and enforcement of selected UNCAC articles. The following section covers the findings of the review process in Benin and access to information issues in greater detail. Next, the implementation of the Convention is examined and examples of good practices and deficiencies are provided. Recent developments are then discussed, and finally, recommendations for priority actions to improve implementation of the UNCAC in Benin are given.

Methodology. Social Watch Benin (SWB) sought to obtain information for the reports from government departments and to engage in dialogue with government officials. As

part of this dialogue, a draft report was made available to them. Every effort was made to verify the accuracy of the information contained in this report. All information was considered correct up to mid-December 2020.

The report is based on guidelines and a report template developed by the UNCAC Coalition and Transparency International for use by civil society organisations (CSOs). These tools reflect a simplified version of the United Nations Office on Drugs and Crime (UNODC) checklist and require relatively short assessments compared to the detailed official self-assessment checklist. The report template includes a series of questions on the review process and, in the section on implementation, asks for examples of good practices and areas for improvement in the articles of Chapters II and V of UNCAC, on preventive measures and asset recovery respectively.

In preparing this report, the authors took into account the recent review of Benin by Transparency International with the consortium Social Watch Benin and the Association de Lutte Contre le Racisme, l'Ethnocentrisme et le Régionalisme (ALCRER) concerning the assessment of Benin's national integrity system, as well as the evaluation of the Transparent Public Procurement Index (IMPT) by Social Watch Benin with the Institute for Development of Freedom of Information, and the report of Benin's self-assessment.

II. Executive summary

The main legislative texts¹ governing anti-corruption efforts in Benin are those related to the fight against corruption and other related offences, money laundering, the penal code, and structures for the prevention, criminalisation and repression of corruption.

The process of the second review cycle of the UNCAC has made it possible, in the context of this shadow report, to highlight Benin's efforts, evidence of good practices and shortcomings in the areas of preventive measures to fight corruption and asset recovery since the convention was adopted into Law No. 2011 of 12 October 2011, on the fight against corruption and other related offences in the Republic of Benin.

Since 2016, Benin has undergone many legislative and institutional reforms aimed at the improvement of ethical standards in public life and above all the fight against corruption, which has hindered the country's development for decades. Between 2016 and 2020, Benin rose by 5 points in Transparency International's Corruption Perceptions Index (CPI), going from 36/100 (2016), to 39/100 (2017), to 40/100 (2018) and 41/100 (2019 and 2020).

An important change is Law No. 2020-09 of 20 April 2020 on the creation, organisation and functioning of the Office of the High Commissioner for the Prevention of Corruption in the Republic of Benin. This repeals the provision of Law No. 2011-20 on the declaration of assets, leaving it up to the Council of Ministers to issue a decree defining the list of public authorities and agents subject to the obligation of declaring assets, in addition to those subject to this obligation by the provisions of the Constitution.

Benin has also constitutionalised the Court of Auditors in November 2019. But the members are neither known, nor have they been appointed after one year.

The ongoing revision of the Code of Values and Ethics of the Public Service, as recommended by the National Integrity System (NIS) evaluation report, is currently underway. With the drafting of different texts and to enable State agents to serve the public administration well by providing quality services to its users/customers, it is imperative to revise the current code of values and ethics of Benin's civil service, which was endorsed by the National Consultative Commission of the Administrative Reform on 20 February 2007. This review will not only reaffirm the cardinal principles and values already advocated, but also, and in particular, integrate new elements introduced by the new texts.

¹ The laws are the following:

- N°2011-20 of 12 October 2011 on the fight against corruption and other related offences in the Republic of Benin;
- N°2018-17 of 25 July 2018 on the Fight against Money Laundering and Terrorist Financing;
- No. 2018-16 of 28 December 2018 on the Penal Code in the Republic of Benin;
- No. 2020-9 of 23 April 2020 on the creation, mission, organization and functioning of the High Commission for the Prevention of Corruption;
- No. 2020-07 of 17 February 2020 amending and supplementing law No. 2001-37 of 27 August 2002 on the organisation of the judiciary in the Republic of Benin as amended by law No. 2018-13 of 02 July 2018 on the creation of the CRIET.

In the following section, the topics below have been commented on and analysed in relation to Chapter II of UNCAC:

- Corruption prevention policies and practices;
- Corruption prevention bodies;
- Public sector employment;
- Codes of conduct, conflicts of interest and the declaration of assets and interests;
- Reporting mechanisms and whistle-blower protection;
- Political financing;
- Public procurement;
- Public financial management;
- Public information and the participation of society;
- Measures concerning judges and prosecution services;
- Private sector transparency

In relation to Chapter V of the UNCAC, Benin has given due regard to measures to prevent and combat money laundering, by establishing a framework for asset freezing and recovery, as well as mutual legal assistance and international cooperation.

Nevertheless, in practice, several provisions are not respected in practice in Benin, namely, access to public information and the provisions of the Transparency Act relating to public procurement. Others are implemented formally but lack monitoring, such as is the case with the declaration of assets.

Availability of information

Most of the information needed for this report was available and accessible.

Implementation in Law and in Practice

TABLE 1: Implementation and enforcement summary

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 5 – Preventive anti-corruption policies and practices	Largely implemented	Moderate
Art. 6 – Preventive anti-corruption body or bodies	Partially implemented	Moderate
Art. 7.1 – Public sector employment	Partially implemented	Moderate
Art. 7.3 - Political financing	Partially implemented	Moderate
Art. 7, 8 and 12 - Codes of conduct, conflicts of interest and asset declarations	Largely implemented	Poor
Art. 8.4 and 13.2 – Reporting mechanism and whistleblower protection	Partially implemented	Poor
Art. 9.1 - Public procurement	Largely implemented	Moderate
Art. 9.2 - Management of public finances	Largely implemented	Moderate

UNCAC articles	Status of implementation in law	Status of implementation and enforcement in practice
Art. 10 and 13.1 - Access to information and the participation of society	Largely implemented	Poor
Art. 11 – Judiciary and prosecution services	Partially implemented	Moderate
Art. 12 - Private sector transparency	Partially implemented	Moderate
Art. 52 and 58, 14 – Anti-money laundering	Largely implemented	Moderate

TABLE 2: Performance of selected key institutions

Name of institution	Performance in relation to responsibilities covered by the report	Brief comment on performance (e.g., inadequate resources, lack of independence, strong expertise)
National Anti-Corruption Authority (ANLC)	Moderate	The independence of the ANLC, under the Presidency of the Republic, is limited in capacity to perform.
Public Procurement Regulatory Authority (ARMP)	Moderate	Independence and lack of resources to audit public procurement.
The High Authority for Audio-visuals and Communication (HAAC)	Poor	Unwillingness to manage citizens' appeals in the case of violations of access to public information.
The Financial Information Processing Unit (CENTIF)	Moderate	The independence of CENTIF, which is under the authority of the Minister of Economy and Finance, is limited.
Directorate of Legal Affairs of the Ministry of Foreign Affairs of Benin	Good	Available technical skills.
Directorate-General for the Budget (DGB)	Good	Available technical skills.

Recommendations for priority actions

To the President of the Republic and his Government:

- Encourage the swift appointment of the President of the Court of Audit and the members of the institution, in order to strengthen control over the management of public finances.
- Ensure that the decree to be issued by the Council of Ministers, redefining the list of public authorities and agents subject to the obligation of declaring their assets, complies with the provisions of international commitments ratified by

Benin, which do not exempt members of parliament and mayors from such an obligation.

- Authorise the publication of the full report of the review of Benin's implementation of the Convention by the UNODC, when complete.
- For the effective monitoring of declarations of interest, create an independent structure or entrust this task to the High Commission, make the declarations available online, and in a standardised format which can be filled in by those subject to them in digital form, making them easier to analyse.²
- Instruct the Investment and Export Promotion Agency (APIEx) to publish and make a register of companies and businesses available online, as well as a central register of beneficial owners of companies and businesses.

² See for example this model from the High Authority for Transparency in Public Life in France: <https://www.hatvp.fr/consulter-les-declarations/>.

III. Assessment of Review Process for Benin

A. Report on the Review Process

TABLE 3: Transparency of the government and CSO participation in the UNCAC review process

Has the government made a public announcement on the review process?	No	No information on the process has been made public by the National Anti-Corruption authority (ANLC), which represents the Government in this process.
Did the government disclose information about the country focal point?	No	The government did not domestically publish information about the focal point, it was only derived from the experts list on the UNODC website.
Was the review schedule published somewhere/publicly known?	No	No timetable has been made public.
Was civil society consulted in the preparation of the self-assessment checklist?	No	We were told that the Coalition of National Anti-Corruption Organisations (FONAC) was consulted. The President of the ANLC is also President of FONAC.
Was the self-assessment checklist published online or provided to civil society?	No	The self-assessment was not published by the ANLC online, nor shared among civil society and the media.
Did the government agree to a country visit?	Yes	For the moment we have no official information, but it is certain that Benin cannot refuse the country visit.
Has a country visit taken place?	No	It has not yet taken place, as the ANLC has been dissolved, and we are awaiting the setting up of the High Commission for the Prevention of Corruption (HCPC), which is the institution that will replace it.
Was civil society invited to present its contributions to the official reviewers?	No	No such invitation has been made by the dissolved ANLC. It is hoped that the HCPC will do so.
Has civil society been involved in discussions on technical assistance?	Unknown	Civil society does not know if there have been any discussions on this issue.
Was the private sector invited to provide input to the official reviewers?	No	Same situation as civil society. No invitation.
Do civil society organisations have access to enforcement statistics and information on corruption cases?	Yes	The Statistical Service of the Ministry of Justice has produced data for the year 2019 for corruption-related cases. But these statistics are not yet published. We have had access to the figures but not to other data.

Has the government committed to publishing the full country report?	Not yet	The full report of the previous round has not been published. There is a risk that the full report of this second cycle will not be published either.
Has the government publicly announced the results of the review and its plans to implement the recommendations?	Not yet	Nothing was done for the first cycle. We hope that there will be strong recommendations for the current cycle.

B. Access to information

Access to public information is a human right recognised by the Beninese Constitution under article 8 and the African Charter on Human and Peoples' Rights (article 9).

These provisions have been reinforced by *Law no.2015-07 of 20 March 2015 on the information and communication act*,³ which provides that:

- Article 7: “Everyone has the right to information... The State is obliged, through its various structures and institutions, to guarantee everyone access to sources of information, particularly public information.”
- Article 70: “Every citizen has the right of access to documents or information held by a public body or its officials in the performance of their duties.”

The day-to-day management team of the disbanded National Anti-Corruption Authority (NACA), which we met during the writing of this report, provided us with Benin's self-assessment report. The Planning and Foresight Department of the Ministry of Justice and Legislation provided us with statistics on corruption cases which are pending or have been cleared in Benin's courts.

TABLE 4: Distribution of corruption cases⁴ by structure and offence in 2019

Jurisdiction	INFRACTIONS							Total
	Money laundering	Active bribery	Passive bribery	Misappropriation of funds	Extortion	Fraud in examination	Misuse of title	
TPI ⁵ ABOMEY-CALAVI	0	2	1	4	17	3	15	42
TPI ALLADA	0	0	0	1	1	0	0	2
TPI COTONOU	1	3	0	1	0	1	3	9
CFI OUIDAH	0	3	0	0	3	0	3	9
TPI POBE	0	0	0	0	2	0	0	2
IPT PORTO-NOVO	0	2	0	1	2	0	12	17
CFI ABOMEY	0	1	0	2	6	3	4	16
APLAHOUÉ IPT	0	0	0	1	1	0	0	2
TPI LOKOSSA	0	0	0	1	1	0	6	8

³ BENIN: *Loi n° 2015-07 du 20 mars 2015 portant code de l'information et de la Communication en République du Bénin* at <https://sgg.gouv.bj/doc/loi-2015-07/>, accessed on 02.10.2020.

⁴ File relates to all legal actions, judicial cases of corruption on the court docket.

⁵ Court of First Instance.

CFI SAVALOU	0	0	0	0	1	0	0	1
TPI DJOUGOU	0	2	1	0	0	0	1	3
TPI KANDI	0	0	0	0	0	0	1	2
TPI NATITTINGOU	0	0	0	0	6	0	2	8
CFI PARAKOU	0	0	0	2	5	1	4	12
CRIET	8	2	0	4	12	0	2	28
TOTAL	9	15	2	17	57	8	53	161

Source: DPP Ministry of Justice and Legislation

The Public Procurement Regulatory Authority (ARMP) also participated in interviews. In addition, the General Inspectorate of Finance, which oversees all administrative control bodies, published its 2019 report and monitoring reports on the National Integrity System (SNI), which were useful in understanding prevention in the public administration.⁶ The Directorate General of the Budget (www.budgetbenin.bj) and the CENTIF (www.centif.bj) provided us with information through their websites due to difficulties in organizing physical interviews, given the Covid-19 context.

⁶ Facinou, Zisson, (July 2020). "Synthesis of the annual activity reports of the Control Organs of the Administrative Order (COA) for the year 2019" at <https://igf.finances.bj/2020/07/21/sythese-des-rapports-annuels-dactivites-des-organes-de-contrôle-de-lordre-administratif-cocoa-au-titre-de-lannée-2019/>, accessed on 02.10.2020.

IV. Assessment of Implementation of Chapter II and Chapter V Provisions

This chapter will look at the implementation and enforcement of select articles of the Convention through laws, regulations and practices.

A. IN RELATION TO CHAPTER II

With specific reference to Chapter II of the UNCAC, the following articles were analysed:

1. Preventive anti-corruption policies and practices (Art. 5)

Benin has taken several measures to comply with this provision of the Convention. These measures include:

- Ratification of the United Nations Convention against Corruption (UNCAC) on 14 October 2004;
- Ratification of the United Nations Convention against Transnational Organized Crime (UNTOC) on 30 August 2004;
- The adoption of Law No. 2011-20 of 12 October 2011 on the fight against corruption and other related offences in the Republic of Benin;⁷
- The existence of a national strategy and a national anti-corruption plan;⁸
- The obligation for all senior civil servants and state officials to declare their assets when they take up and leave office to the Audit Chamber of the Supreme Court (cf. law no. 2011-20 of 12 October 2011 on the fight against corruption and other related offences in the Republic of Benin under article 3. However, this article was repealed by Law No. 2020-9 of 23 April 2020 and since April 2020, Benin has been waiting for the decree to be issued by the President of the Republic regarding the list of those officials subject to the law);
- The inception of a National Integrity System in all public structures (Ministries and Institutions);
- An assessment of this system led to recommendations, including the

⁷ BENIN: Law No. 2011-20 of 12 October 2011 on the fight against corruption and other related offences in the Republic of Benin at <https://sgg.gouv.bj/doc/loi-2011-20/>, accessed on 02.10.2020.

⁸ The evaluation report of the National Integrity System (NIS) and the accompanying general action plan were officially presented to the Beninese government at a ceremony in Cotonou on 29 September 2016, and subsequently adopted by the same government meeting in the Council of Ministers on 30 November 2016. This work was carried out by the CSO consortium, Social Watch Benin and ALCRER with the support of Transparency International: <https://anlc.bj/wp-content/uploads/downloads/2017/09/SNI-PLAN-DACTION-SNI-vCC.pdf>, (accessed 02.10.2020). The link to download the full report from the Transparency International website: http://media.transparency.org/2016_BeninNIS_FR.pdf, (accessed 02.10.2020). The Executive Summary is available at: https://www.transparency.org/whatwedo/publication/evaluation_du_systeme_national_dintegrite_du_benin_resume_executif or https://www.finances.bj/fileadmin/user_upload/resume_du_rapport_evaluation_du_systeme_national_dintegrite_du_benin.pdf, (accessed 02.10.2020). According to the 2019 follow-up report on the 33 NIS Action Plans prepared by the Support Program for the Fight against Impunity and the Strengthening of the Rule of Law in Benin (PALIRED), of the 98 recommendations that have seen some implementation, 22.45% were executed and 40.38% are in progress. No action has been taken on 58 recommendations (37.18%).

establishment of focal points and support units in the ministries and institutions concerned;

In addition, civil society organisations such as Social Watch Benin, FONAC and ALCRER are involved in citizen monitoring of public action. Social Watch Benin has legal standing in corruption cases. Faced with political and judicial inertia, including on matters financial justice, Beninese civil society organisations, in particular Social Watch Benin and the NGO ALCRER, are committed to pushing for more legal action against corruption from civil society: this involves filing a complaint with a civil party.

a) Good practices

- ❖ The obligation of monitoring bodies to send their reports to the Presidency of the Republic, the General Inspectorate of Finance and the Audit Chamber of the Supreme Court;
- ❖ The creation of a special court on economic crimes (CRIET);
- ❖ Penalties imposed on:
 - 102 public officials in public administration in possession of false diplomas "for which the forgery is established after their hearing" by the National Commission for the Verification of the Authenticity of Diplomas (CNVAD). From November 2016 to July 2017, the names of officials were made public by the Council of Ministers of 3 August and 25 November 2016, and 26 July 2017.⁹ The government announced the launching of procedures for their removal from the ranks of state personnel, as well as legal proceedings against them.
 - The executives involved in the organisation of fraudulent competitive examinations for entry into the civil service (including two former ministers and ten senior civil servants), based on the report of the Commission for the Verification of the Regularity of Direct Competitions for the Recruitment of State Employees, commissioned in 2015 for the benefit of the central administration of finance, the financial regies and other state bodies. Most of the accused were discharged from their duties and sanctioned (through demotion, change in pay scale, etc.) without prejudice, according to the text of the communiqué of the Council of Ministers of 7 July 2016¹⁰ on legal proceedings against them.
 - Civil servants suspected of extortion: dismissal of some 50 police officers from the Hilacondji police station (9 June 2017);¹¹ dismissal of several health workers in charge of vaccinations at the Hilacondji border (August

⁹ The minutes of the Councils of Ministers can be downloaded from the Government website at <https://sqq.gouv.bj/cm/2016-08-03/>, <https://sqq.gouv.bj/cm/2016-11-25/> and <https://sqq.gouv.bj/cm/2017-07-26/>, accessed on 25.11.2020).

¹⁰ Minutes of the Council of Ministers of 07 July 2017 at <https://sqq.gouv.bj/cm/2016-07-07/>, accessed on 25.11.2020.

¹¹ Quotidien Nouvelle Tribune in "Benin-Togo border: Hilacondji police station team transferred for corruption" at <https://lanouvelletribune.info/2017/06/limogeage-equipe-commissariat-dhilacondji>, accessed on 25.11.2020.

2017)¹²; and dismissal of the director of interpretation and translation at the Ministry of Foreign Affairs and Cooperation (Council of Ministers, 28 June 2017).

- Ten officers and high-ranking members of the gendarmerie and the police who were involved in a case of embezzlement of 60 million CFA francs (approximately €91,469) from additional resources allocated to the security forces (Council of Ministers, 15 November 2017).
 - 6 public servants have been put in pre-trial detention for falsifying salary processing software at a loss of 49 million CFA francs (approximately €74,700).¹³
 - 2 customs officers arrested in Porto-Novo for collecting incidental expenses from used vehicle fleet sales in Sèkandji.
 - Dismantling of a network of agents of the national lottery of Benin for embezzling more than 200 million CFA francs (approximately €304,898).
- ❖ The government's referral of certain corruption cases to the courts:
- The case of the Central Purchasing Office for Agricultural Inputs for embezzlement of 2 billion (approximately €3,048,980) out of a subsidy of 3.6 billion CFA francs (€5,488,165). The council of ministers of 28 June 2017 implicated former ministers and senior officials and announced administrative penalties. In a media release on 4 December 2017¹⁴, the public prosecutor at the Cotonou court of first instance, Ulrich Gilbert Togbonon, stated that articles 45, 46, 47, 64 paragraph 1 and 68 of law 2011-20 of 12 October 2011 on the fight against corruption and other related offences, had been violated.
 - The case of the National Microfinance Fund, which caused losses of up to 40.6 billion CFA francs (approximately €61,894,301) according to the audit carried out for the years 2013 to 2016. The government has announced legal proceedings and administrative measures against those involved, including a former minister and senior officials (Council of Ministers, 2 August 2017).
 - The case of the National Social Security Fund (CNSS) for the collection of retro commissions in the range of 71 million CFA francs (approximately

¹² Quotidien Nouvelle Tribune in 'Benin: Des agents de santé en poste à la frontière d'Hilacondji révoqués pour rançonnement' at <https://lanouvelletribune.info/2017/08/agents-sante-frontiere-hillacondji-revoques>, accessed on 25.11.2020.

¹³ All of the cases reported here are listed by Social Watch Benin on pages 15-19 of its 2017 *Shadow Report on the Sustainable Development Goals* at <https://socialwatch.bj/wp-content/uploads/2019/03/2017-Rapport-alternatif-2017-ODD16.5.pdf>, accessed on 25.11.2020.

¹⁴ Daily 24H in Benin in 'Prosecutor announces special proceedings against certain people' at https://www.24haubenin.info/?Le-Procureur-annonce-des-procedures-particulieres-contre-certaines-personnes&fb_comment_id=1923981490962691_1923992820961558, accessed on 25.11.2020.

€108,239). According to the Cotonou prosecutor's office, articles 40 paragraph 1 and 53 of law 2011-20 have been violated.

- The ONASA case for financial misappropriation of 2.3 billion CFA francs (approximately €3,506,327): the accused are prosecuted for corruption, money laundering and abuse of office (Articles 40, 41, 42, 53 and 104 of Law 2011-20).

These actions show the commitment to fighting corruption and to putting a stop to the reign of impunity. This is an interesting development in a context where public opinion is becoming increasingly sceptical about the political will to curb corruption.

Civil society was also very actively involved in the development of the National Integrity System Assessment and the Integrity Promotion and Anti-Corruption Action Plans, which constitute the current strategic framework in the fight against corruption, as approved by the Government.

b) Deficiencies

The legal framework for the declaration of assets has existed since 1990. Indeed, the Constitution of 11 December 1990 stipulates under Article 52: *“during their term of office, the President of the Republic and members of the Government...are required, upon taking office and at the end of their term of office, to make a written declaration of all their property and assets addressed to the Audit Chamber of the Supreme Court.”*¹⁵ For more than two decades, the obligation to declare one's assets has only concerned the head and members of the executive. Likewise, the latter, in the event of refusal or delay in following this constitutional procedure, did not incur any penalties provided for by law.¹⁶

The passing of Law 2011-20 of 12 October 2011, on the fight against corruption and other related offences in the Republic of Benin, completes the constitutional provisions. This law, retaining the declaration and control of assets as a measure to prevent corruption, extended the list of persons subject to it and consequently the institutions responsible for monitoring, and established a minimum declaration procedure as well as a repressive mechanism.

Decree 2012-338 of 2 October 2012 determined the list of persons subject to this obligation. According to a study by the National Authority for the Fight against Corruption, the number of covered public officials is impressive and can “easily

¹⁵ BENIN: Law No. 2019-40 of 07 November 2019 revising law number 90-32 of 11 December 1990 establishing the Constitution of the Republic of Benin at <https://sqq.gouv.bj/doc/loi-2019-40/>, accessed on 25.11.2020. The new article 52 of the Constitution revised in November 2019 states that, *“They are required, upon taking office and at the end of it, to make a written declaration of all their property and assets addressed to the President of the Court of Auditors.”*

¹⁶ Unless legal subterfuges are used, not only on asset declarations or the production of false statements, the declarant needs to repair the damage caused to public confidence through, for example, the payment of damages, but also on perjury against the head of the Executive.

approach a thousand.”¹⁷ However, a new decree is expected to redefine the list of those subject to the obligation, in application of Article 9 of Law No. 2020-09 of 20 April 2020, on the creation, organisation and functioning of the Office of the High Commissioner for the Prevention of Corruption in the Republic of Benin, which repeals the declaration of assets provided for by Law No. 2011-20.

It is clear that the institutions responsible for monitoring declarations do not have the resources to manage this large number of people. The procedure for making a declaration, whether under the Constitution or the law of Benin, is written before the Supreme Court for senior state officials and senior civil servants and before the Courts of Appeal for others. The information to be reported includes all assets and liabilities.¹⁸ It is important to note that assets held abroad must also be declared. Liabilities include debts and outstanding amounts.

It should be noted that the law is silent on the form and content of the declaration; it is the financial authority that has designed a declaration form. The declaration is made within 15 days of entering and leaving office. It shall be followed by the titles proving the ownership of the declarants and, according to Article 6 of Decree 2012-338, shall be made even in the case of joint ownership, by indicating the joint owners. Article 9 of Decree 2012-338 obliges the structures concerned to send to the competent financial court “*any decree or order of appointment as well as the list of elected officials with an indication of their respective jurisdiction.*”

Beninese legislation sanctions irregularities in the declaration process as follows:

- refusal to report is punished with a fine, the amount of which is equal to 6 months of remuneration, received or to be received in the function held (Article 4 of the 2011 law),
- concealment is punishable by “confiscation of the property or valuables owned or held as a result, increased by a fine equal to the value of the goods in question or the amount of the assets concerned. The actual owner of these goods or assets is jointly and severally liable for the payment of the financial penalties imposed, unless it is established that he or she could not have been associated with the incriminating facts” (Article 56 of Law 2011-20),
- false declarations are punishable by imprisonment of 3 to 5 years and a fine corresponding to the value of the undeclared assets (Article 54 of Law 2011-20).

There have been cases of those subject to the law who have not complied with the legal provisions for declaring their assets, without being sanctioned. This is evidenced

¹⁷ ANLC, *Système de suivi du patrimoine des personnes astreintes à la déclaration de biens*, Note d'orientation, Cotonou 2014, p. 20.

¹⁸ Assets include:

- real estate (built and unbuilt properties),
- financial assets (securities, life insurance, bank or savings accounts, passbooks, cash, current company accounts),
- professional assets (business and office),
- other: furniture, art collections and objects, jewellery, precious stones, gold, vehicles, boats, aircraft, racehorses, co-ownership shares in a ship and others.

by a Social Watch Benin report published in 2018¹⁹ and several other ANLC publications. It is also difficult to control conflicts of interest at the uppermost state levels, which the political opposition accuses the current government of.²⁰

2. Preventive anti-corruption body or bodies (Art. 6 and 13.2)

The main bodies responsible for the prevention and detection of corruption and related offences in Benin are:

1. The High Commission for the Prevention of Corruption (HCPC)²¹ which has replaced the National Authority for the Fight against Corruption (ANLC): its mission is to monitor the implementation of anti-corruption measures within State institutions and administration, to initiate, and to implement actions to prevent corruption in both the public and the private sector. In carrying out its mission of prevention and denunciation, it collects, analyses and makes information available to the judicial authorities responsible for prosecution, including information brought to its attention for the purpose of detecting and preventing corruption, fraud and similar practices (Article 2 of Law No. 2020-09).

The HCPC (formerly ANLC) is institutionally attached to the Presidency of the Republic and only has independence with respect to financial management. The actual independence of this institution in Benin is therefore to be put into perspective. However, the ANLC used to publish its reports on its website (www.anlc.bj).

2. The National Financial Intelligence Processing Unit (CENTIF)²²: this is the financial intelligence unit in charge of collecting, analysing and processing information and transmitting it to the judicial authorities in the context of the fight against money laundering and terrorist financing. It receives reports of suspicious transactions or other useful information necessary for the accomplishment of its mission from financial and non-financial institutions and supervisory authorities, other institutions, public administration departments, the private sector, and judicial police officers. It processes reports, if applicable, as in the case of suspicious transaction reports (Article 60).

CENTIF is an administrative authority under the supervision of the Minister of Finance. According to the decree on the remit and organisation of CENTIF in

¹⁹ Social Watch Benin: *Alternative Report on the Sustainable Development Goals 2017*, pages 20-21 at https://socialwatch.bj/wp-content/uploads/2019/03/2017_Rapport-alternatif-2017-ODD16.5.pdf or <https://beninwebtv.com/2020/02/benin-declaration-de-patrimoine-tout-nest-pas-parfait-mais-cest-mieux-que-sous-lancien-regime>, and <https://web.archive.org/web/20200925022248/https://anlc.bj/rapports>, accessed 25.11.2020.

²⁰ Read this summary at <https://www.beninplus.com/politique/benin-corruption-massive-conflits-dinterets-et-enrichissement>, accessed on 25.11.2020.

²¹ Created by Law n° 2020-9 of 23 April 2020 which repealed the provisions of law n° 2011-20 of 12 October 2012 on the fight against corruption and other related offences in the Republic of Benin with regard to paragraph 2 of article 3.

²² Created by Law 2018-17 of 25 July 2018 on the fight against money laundering and terrorist financing in the Republic of Benin.

article 2, “it has financial autonomy and autonomous decision-making power on matters within its competence.”²³ It regularly publishes its quarterly activity reports on its website (www.centif.bj).

3. The Economic and Financial Brigade (BEF): This is the specialised unit of the Republican Police for economic and financial investigations, including corruption and related or similar offences. It is responsible for the arrest of suspects. It has national jurisdiction.

The importance of the participation of non-governmental and civil society organisations through activities that promote government transparency and ensure respect for citizens' rights is well-established. Thus, organisations such as Social Watch Benin, ALCRER and FONAC are the main civil society actors engaged in the fight against corruption.

a) Good practices

Good collaboration between these bodies and civil society is a positive partnership in the context of joint efforts to contain corruption.

Article 2 of Law No. 2012-15 on the Act of Criminal Procedure in the Republic of Benin allows for these associations, whose explicit statutory purpose is to defend the collective interests of certain categories of victims, to bring a civil action for compensation for damage caused by a crime, offence or contravention in relation to acts that directly or indirectly harm their collective interest. On this basis, ALCRER and Social Watch Benin have openly decided to file a civil action complaint for corruption cases. To this end, the two organisations have undertaken statutory reforms, integrating into their fundamental texts jurisprudential elements likely to make their case admissible. Since 2018, around ten corruption cases have been brought before the courts by these organisations.

b) Deficiencies

The anti-corruption bodies, while respecting their respective missions and roles in the fight against corruption, do not collaborate closely and actively enough. This is detrimental to the effectiveness of the fight against corruption.

Furthermore, being placed either under the presidency of the republic or under other administrative authorities, these state bodies for the prevention and detection of corruption are often considered as lacking the necessary independence, especially vis-à-vis the government. Like other corruption prevention structures, they lack human and financial resources and urgently require training on the subject of money laundering and related offences, among others.

3. Public sector (Art. 7.1)

²³ Downloadable at: <http://centif.bj/wp-content/uploads/2019/02/D%C3%A9cret-2018-AOF-CENTIF0001.pdf>, accessed on 02.10.2020.

The Ministry of Labour and Civil Service, as a pilot structure of the public administration, took up the recommendations of the evaluation report on the national integrity system very early on, through various reform actions contributing to the fight against corruption, including in particular the digitalisation of processes and tools for managing the State's human resources. In addition to speeding up the delivery of services to users, this significantly reduces direct contact between agents and users through the availability and accessibility of information online.

The government, in the interest of supervising state agents, has adopted the texts of application of law no. 2015-18 of 1 September 2017 on the general status of the civil service. Thus, new disciplinary bodies have been created and the repertoire of sanctions provided, in relation to the revision of the texts regarding the Disciplinary Councils in the public administration (adoption by the Council of Ministers of 16 October 2019 of the texts of application of law no. 2015-18 of 1 September 2017 on the general status of the civil service). These texts relate to disciplinary and joint bodies.²⁴

The issuance of Decree No. 2017-477 of 11 August 2016, on the creation of the national file of admission and appointment of executives to jobs in the public expenditure chain, has enabled Benin to equip itself with a valuable tool for managing the appointment process to jobs in the public expenditure chain. This tool aims to improve the management of public resources and restore the principles of good governance in the management of public affairs. It is a computerised list of names that is drawn up on the basis of aptitude tests, followed by investigations into the character of applicants.

There is also the reform of the inspection bodies of the administrative order in Benin through the issuance of Decree No. 2018-396 of 29 August 2018.

a) Good practices

The recruitment process for public officials has improved in terms of integrity and transparency. Before the arrival of the new regime in April 2016, there were public administration bodies (customs, tax service, magistrates, clerks, police, etc.) where the parents or families of applicants had to pay millions in order to ensure success in recruitment competitions. There were also fictitious or deceased civil servants who received salaries. Some agents and officials in administration used inauthentic diplomas. All these instances of fraud and bribery have been taken into account in the ongoing reforms of the civil service and by commissions of enquiry or audit: *“All the competitions organised until now have been transparent competitions. We have even had some trials. There are candidates who felt that they had worked and questioned the fact that they were not admitted. They referred the matter to the ANLC, which came to see us. There have been nearly fifteen appeals that have been dismissed in favour*

²⁴ There are three decrees which relate to:

- The remit, organisation and operation of disciplinary bodies;
- The remit, composition and functioning of the joint administrative committees;
- The powers, organisation and operation of the Joint Consultative Committee of the Civil Service.

of the administration. In terms of competitions, everything is done on site until the announcement and publication of results. The results do not first go to the ministry or the presidency where they remain for several months before being announced, as was the practice in the past. I can assure you that with our system of managing competitions today, there is a maximum of two weeks between the organisation of competitions and the announcing of results, unlike in the past when it took about five or six months before the results were declared.”²⁵

Other good practices include:

- ❖ The modernisation of procedures, computerisation, digital archiving and digitalisation in the public administration - continued efforts to digitalise career records and pay slips, retirement pensions, tax declarations and social security contributions.
- ❖ The Ministry of Finance has undertaken a clean-up of the Sunkwe database: the software used to process and manage the salaries of public servants, which has led to the discovery of six fraudulent public servants at a loss of 49 million CFA francs (approximately €74,700).
- ❖ A clear commitment against gifts in the public administration: at the end of December 2016, the President of the Republic announced his intention not to receive any end-of-year gifts, and warned the members of his government to do the same. In turn, the ministers sent a note to the agents of their ministerial departments to adopt the same practice.²⁶ On 18 December 2017, the director general of the national police²⁷ issued a “call to order on the gifts made to the national police officers during the end-of-year celebrations,” a practice that he deemed “contrary to police ethics and the government's vision” that unit heads must avoid “subject to penalties.” However, there is no text that provides for clear sanctions.

b) Deficiencies

The appointment of executives to senior positions in the administration by call for applications is lacking in transparent implementation. This measure should round off integrity measures in the recruitment of public officials.

4. Political financing (Art. 7.3)

The evaluation of the national integrity system revealed that the party system remains a structural weakness of Benin’s democracy. Indeed, while the number of parties is very high, few political parties have the political and financial capacity to take part in a

²⁵ Account given by Mrs. Adidjatou MATHYS, Minister of Labour and Public Service: <https://www.gouv.bj/actualite/625/rupture-4---secteur-travail-fonction-publique-%E2%80%93-defis-relevés-dans-cadre-modernisation-administration-publique-beninoise>, accessed 25.11.2020.

²⁶ Read this article “Patrice Talon refuses end-of-year gifts” at: <http://news.africahotnews.com/?idnews=809629#:~:text=B%C3%A9nin,cadeaux%20de%20fin%20d'ann%C3%A9e&text=Le%20chef%20de%20l'Etat,responsables%20de%20son%20d%C3%A9partement%20minist%C3%A9riel>

²⁷ Benin Web TV in ‘Benin: New sanctions target National Police officials’ at <https://beninwebtv.com/2017/12/benin-de-nouvelles-sanctions-visent-responsables-de-police-nationale/>, accessed 25.11.2020.

balanced democratic process. President Patrice Talon, then a presidential candidate, said in 2016: *"I have helped preserve democracy by financing political parties. Economic operators are capable of using their support for politicians for ulterior, sometimes perverse causes."*²⁸ Thus, the private financing of political parties is becoming the rule to the detriment of public financing. Benin has complied with the measure by adopting texts including:

- **The passing of law no. 2019-045 on public financing of political parties in Benin.**²⁹ Composed of 17 articles, the law sets the conditions and modalities to be met by political parties to benefit from state funding. Article 4 of the law states that public financing of political parties is intended exclusively to cover part of the expenses incurred in compliance with the provisions of the law on the Charter of political parties.³⁰ This financing contributes, among other things, to the functioning of the parties, the promotion of their political programme, their participation in electoral consultations, the training of their activists and the civic and political education of their members and of citizens in general.

- **The adoption of Decree No. 2020-362 of 22 July 2020 on the financing of political parties in Benin**, which establishes the financing of legally constituted political parties that meet the conditions for benefiting from the sum of three billion CFA francs (approximately €4,573,470) for the year 2020.

In accordance with the above decree, which is an implementation of law no. 2019-045 on the public financing of political parties in Benin:

- The amount of public funding for political parties in 2020 is three billion (3,000,000,000) CFA francs (approximately €4,573,470);
- The decisive criterion for the distribution of this funding among the eligible political parties is the number of elected representatives in the communal and municipal elections of 17 May 2020;
- The Autonomous National Electoral Commission is responsible for the distribution of funding.

a) Good practices

The political will of the President of the Republic to reform the party system, who expressed concern in his inaugural speech on 6 April 2016 about the role of money in political competition and the vote of the electorate.³¹

²⁸ Read Delphine Bousquet's report *"Benin: who is the new president Patrice Talon?"* at <http://www.rfi.fr/afrique/20160405-benin-est-nouveau-president-patrice-talon>, accessed on 02.10.2020.

²⁹ BENIN: *Law No. 2019-45 of 25 November 2019 on the status of the opposition in the Republic of Benin* at <https://sgg.gouv.bj/doc/loi-2019-45>, accessed on 25.11.2020.

³⁰ See Articles 37 - 39 of the Charter of Political Parties at <https://sgg.gouv.bj/doc/loi-2018-23> and <https://sgg.gouv.bj/doc/loi-2019-41>, accessed on 25.11.2020.

³¹ President Patrice TALON's inaugural speech at <https://missionbenin.ch/wp-content/uploads/2016/05/Discours-President-de-la-Republique-du-Benin-SEM-Patrice-TALON.pdf>, accessed on 16.12.2020.

The concrete and thorough implementation of the measure on public funding of political parties. In application of the above provisions, the distribution of funds allocated to the public financing of political parties for the year 2020 was made on 29 September, during a session initiated by the Autonomous National Electoral Commission (CENA) for political parties.³² It will be up to the Court of Auditors to ensure monitoring takes place.

b) Deficiencies

With the 2019 legislative election process excluding opposition parties and the 2020 communal elections in which only one opposition party won seats, it is feared that opposition parties may continue to depend on private funding.

Although the Audit Chamber of the Supreme Court always makes the campaign accounts public and sends the report to the public prosecutor at the Cotonou court of first instance, those who have not complied with the requirements to file campaign accounts within the time limit and respecting the ceiling on campaign expenses, have never had to worry about being held accountable.³³ No prosecution of these dishonest persons has yet been noted. Even though the former Prime Minister, a candidate in the 2016 presidential election, was convicted on appeal in February 2020 for exceeding campaign expenses, the accused and his lawyers denied the charges, “insisting that the Court of Auditors had not found any shortcomings after studying his campaign accounts.”³⁴

According to Article 97 of the Electoral Law, campaign expenses must not exceed:

- 1,500,000 CFA francs (approximately €2,287) per candidate for the communal elections,
- 30,000,000 CFA francs (approximately €45,735) per candidate for the legislative elections,
- 2,500,000,000 CFA francs (approximately €3,811,225) for the presidential elections.

According to articles 98 and 99 of the Electoral Law, candidates for the various elections must draw up a provisional campaign account which must be filed with the Court of Audit forty days before the elections. They have sixty days after the announcement of the final results to file their campaign account with the Court of Audit, together with supporting documents.

³² Read this article on the distribution of political party funding from the public service newspaper: <https://lanationbenin.info/financement-public-des-partisles-formations-politiques-fixees-par-la-cena>, accessed on 25.11.2020.

³³ Read Mr. Serge Prince Agbodjan's explanation of non-compliance with the legal provisions on campaign accounts: <https://lanationbenin.info/serge-prince-agbodjan-a-propos-des-comptes-de-campagne-les-sanctions-sont-claires-a-l-article-141-du-code-electoral>, accessed on 25.11.2020.

³⁴ Read the article published in *Jeune Afrique* on the subject of the conviction of the former Prime Minister of Benin at <https://www.jeuneafrique.com/898030/societe/lancien-premier-ministre-beninois-lionel-zinsou-condamne-en-appel-a-quatre-ans-dineligibilite/>, accessed on 25.11.2020.

It is important to mention that the declarations of campaign accounts are made through forms that are well specified by the decree 2007-088 of 28 February 2007, establishing the form and content of campaign accounts for presidential, legislative, communal or municipal elections.³⁵

5. Codes of conduct for public officials (Art. 7.2, 7.4, 8.1, 8.2, 8.5, 8.6, 12.2)

Benin has a set of legislative texts that define conditions for ineligibility of candidates being elected into public office, as well as the variety of incompatibilities. Indeed, under the provisions of the constitution (the new article 44) and the electoral law (article 132), candidacy for the presidential election is subject to certain conditions such as the enjoyment of civil and political rights, good character and probity, among others. Similarly, parliamentary candidates must not have been convicted of any offence involving the loss of their civic and political rights, nor of any offence involving electoral corruption, crimes and economic challenges (Article 152 of the electoral law). The mandate of a member of parliament is incompatible with the exercise of any other elective mandate as well as with the functions of a member of the government (article 159 of the electoral law), of legal or technical adviser, of head of a company, of president of a board of directors, of general manager, of functions exercised in companies having exclusively a financial purpose and making public calls for public savings or credit as well as in public companies or in contract with the State (articles 160 and 161 of the electoral law).

Some public officials, for as long as they are in office, are excluded from elected office because of the role they play in the democratic process: these include members of the defence and security forces, unless they resign beforehand (Article 133 of the electoral law) and prefects in the jurisdictions over which they exercise their powers (Article 151 of the electoral law).

There is no legal or regulatory requirement for candidates to demonstrate the absence of a potential conflict of interest with the mandate sought, or to disclose certain information on relevant interests in the context of their candidacy. Admittedly, the declaration of candidacy must include a tax clearance for the last three years preceding the date of filing of the candidacy, but if this act can lead to the uncovering of data on the existence of a potential conflict of interest, its purpose is, according to Article 41 of the electoral law, only to certify that “the candidate is up to date with the payment of his taxes.”

As regards the declaration of assets, candidates for elected office are not obliged to file a declaration of assets prior to an election. Thus, a presidential candidate (Article 52 of the Constitution) is only obliged to declare his or her assets once he or she has been elected: he or she makes a declaration at the beginning of his or her mandate and another at the end of it. Until April 2020, this declaration, according to Article 3 of the anti-corruption law (Law No. 2011-20 of 12 October 2011), concerned elected

³⁵ Available on the government website at: <https://sgg.gouv.bj/doc/decret-2007-088/download>, accessed on 25.11.2020.

parliamentarians as well as councillors elected at the communal/municipal and local levels.

However, through to Law No. 2020-09 of 23 April 2020 on the creation of the High Commission for the Prevention of Corruption in the Republic of Benin, the paragraph of this article relating to individuals of note elected to a public mandate was repealed, leaving the list of authorities and public agents subject to the obligation to declare their assets (apart from the President of the Republic and ministers) to be decided by a new decree. In short, today, the President of the Republic is the only elected official covered by the obligation to declare assets. It is true that senior state officials and senior civil servants continue to be formally involved, but it is feared that this list will be modified by the forthcoming decree.

In addition to the declaration of assets, public officials in office are required to make a declaration of interests to their administration. They are given 30 days to make the declaration from the date of occurrence of the acts or facts concerned.³⁶ According to the law, the declaration of interests covers “all external activities, all employment, all investments, all assets and all substantial gifts or benefits, all situations likely to lead to a conflict of interest”³⁷ with the entrusted function or duties. It also covers any interests in a company or operations for which the official is, at the time of the act, responsible for supervision, administration, liquidation or payment, subject to 1 to 5 years imprisonment and a fine ranging from 5 to 50 million CFA francs (approximately €7,622 to €76,225). Asset declarations do not cover family or household members of public officials, except in cases of joint ownership.

In order to prevent conflict of interest within the public administration, a retired or resigning official is prohibited from “engaging in professional activities directly related to the functions he or she assumed when in office until after a period of five years...” (Article 13 of the anti-corruption law) under penalty of a fine of up to 10 million CFA francs (approximately €15,245).

The obligations to declare assets and interests are accompanied by penalties: a fine equal to six months' remuneration received or to be received in the position held for failure to declare assets, and a fine ranging from 500,000 to 5 million CFA francs (approximately €762 to €7,622) for failure to declare interests.³⁸ A false declaration of assets is punishable by imprisonment for 3 to 5 years, and a fine corresponding to the value of the undeclared assets.

a) Good practices

Between 1990 and 2014, the institutions in charge of receiving and monitoring asset declarations never reported on the compliance of those subject to this obligation. In particular, no report was made public on the summary of those who declared their assets or not. Since 2014, the former National Anti-Corruption Authority (ANLC), as

³⁶ Article 11 of the Anti-Corruption Act.

³⁷ Ibid.

³⁸ Even if the legislator remained ambiguous in considering that the agent at fault is the one who “will have knowingly omitted to declare...” (Article 138 of the anti-corruption law).

the authority responsible for receiving copies of the declarations, has habitually published a periodic report presenting the list of those subject to the obligation who have or have not fulfilled their obligation. These reports have revealed, over the years, the gross violation of the obligation to declare by those who are subject to it: for example, according to the ANLC's report in 2016, 8 out of 83 members of parliament made their declaration, 9 months after taking office. The ANLC has organised several advocacy activities and even questioned those subject to the obligation to declare, in order to further increase the number of declarations made, as shown by the figures for the 2019 legislature: one month after their appointment, 74 of the members of parliament elected in April 2019 declared their assets, often within the required deadline.

In the public administration, measures have been announced to oblige civil servants to comply with the declaration requirement: in 2019, a circular was sent to civil servants subject to the law, calling on them to make their declaration or consequently face deductions. The Ministry of Finance also announced that civil servants subject to the requirement would no longer receive their withdrawal benefits if they did not declare. No evidence was provided on the effectiveness of these measures.

b) Deficiencies

Despite the deadlines set by the law, it is rare for those subject to the law to declare their assets on time. For example, from the accession of President Patrice Talon to power, although the Council of Ministers of 13 April 2016 instructed ministers to declare their assets as soon as possible, none of them, not even the head of state himself declared his assets within the fifteen-day period required by law: President Patrice Talon made his declaration in November 2016, and the last minister took more than a year to do so. Late declarations are not, strictly speaking, punishable either by law or in practice: no public official has been punished for making a late declaration. In practice, the fifteen-day deadline for declaring assets on entering and leaving office is considered too short, and the former National Anti-Corruption Authority, replaced on 23 April by the High Commission for the Prevention of Corruption, considered raising it to three months.

A chamber of the Supreme Court (Chambre des Comptes) is responsible for receiving and checking the declarations of assets of the President of the Republic, members of the government, senior state officials and senior civil servants. But for a long time, this chamber did not have the human resources to ensure that filings were complete and correct, or to check for undue increases in assets. According to the organisational audit report of the Chamber of Accounts carried out in 2000, about sixty additional advisers are needed for the institution to be able to carry out its mission effectively. In reality, however, the Chamber has never had more than nine reporting councillors, the only ones authorised to formally examine the files.³⁹ The establishment of this chamber as a Court of Audit under the constitutional revision of November 2019 should help

³⁹ Justitia No. 26 of July 2017, p. 2. Source: <https://www.cipb.bj/wp-content/uploads/2017/11/Journal-JUSTITIA-N%C2%B026.pdf>, accessed on 25.11.2020.

solve the problem of availability of human resources, but almost a year after this reform, the court is slow to become operational, as are its regional branches which are called upon to deal with the declarations of assets of other subjects (mayors, local elected officials and ordinary civil servants). Even if these bodies were set up, the control of assets would remain paralysed because the chamber has been waiting in vain since 1990 for a legislative text on the procedures or concrete modalities for the implementation of the verification and monitoring of declared assets.

Like the declarations of assets, the evaluation of interest declarations is also ineffective: no independent structure has been designated. The law merely states that each public official must make his or her declaration of interest to his or her administration, which must proceed, “without delay”, “to monitoring and verification, where necessary, to the annulment of acts and decisions taken by the said official.” But in fact, no one ensures this particular responsibility within the administration. The same applies to the management of gifts within the public administration. Indeed, according to Article 15 of the Code of Values and Ethics of the Public Service, a public official must refuse gifts, but if he/she has not been able to resist, he/she must inform the secretary general of his/her administration. The text does not specify the management of further processes or the procedure to be followed if it was the Secretary General himself or herself, or a higher authority. In practice, the administration does not have the means to establish whether or not its officials accept gifts. No cases of acceptance of gifts by public or political officials have been reported by the media.

It is worth mentioning the lack of awareness on the Code of Values and Ethics of the Civil Service⁴⁰ by several civil servants. However, this law was adopted by decree on 31 December 2008 and is binding on all civil servants. The duly completed form of commitment to the Code of Values and Ethics of the Public Service is one of the compulsory documents to be provided by all public servants. Similarly, the poor functioning of the Disciplinary Boards in the public administration has been noted.

Other deficiencies include (i) the fact that the asset and interest disclosures of public officials are not publicly available, neither online nor upon request; (ii) the absence of certain references in the asset declaration form, such as specifying assets held abroad or the origin of funds used to acquire the listed assets. With regard to conflicts of interest, the appointment of people close to the President of the Republic on boards of directors of recently created companies or agencies raises many questions about risks.⁴¹

⁴⁰ BENIN: Code of Values and Ethics of the Public Service at <https://sgg.gouv.bj/doc/decret-2008-813>, accessed on 02.10.2020.

⁴¹ See the article in Salamins Magazine in *"Benin / Grand Nokoué: Les barons du pouvoir créent le monopole dans la gestion des voiries et déchets des collectivités locales"* at <https://salamins.com/benin-grand-cotonou-les-barons-du-pouvoir-creent-le-monopole-de-la-gestion-des-voiries-et-dechets-des-collectivites-locales/>, accessed on 25.11.2020.

6. Whistleblowing mechanisms and protection of whistleblowers (Art. 8.4 and 13.2 - 32 and 33)

a) Good practices

The law on the fight against corruption and other related offences in the Republic of Benin (2011) provides whistleblowers, witnesses, experts, victims and their relatives with limited 'special protection' against possible acts of retaliation or intimidation for disclosing information on corruption. The terms of this special protection are set out in a 2013 decree,⁴² which specifies that no whistleblower, expert or victim of a corruption-related crime may be harassed, reprimanded or punished for disclosing or exposing corruption. The decree calls for the reinstatement and/or compensation of employees sanctioned or dismissed for collaborating with national authorities in the fight against corruption. In case of threats or endangerment of a whistleblower, the minister in charge of security or the minister in charge of national defence must ensure the safety of the person by the police or security forces. The decree applies to both public and private sector whistleblowers.

Beyond the provisions of laws and regulations, there have been no known cases of whistleblower protection that could have demonstrated the impact of whistleblower protection measures in Benin. Finally, it is noted that two hotlines (via telephone and WhatsApp) were launched in October 2016, to receive complaints from people who have fallen victim to extortion by the police and gendarmerie.

b) Deficiencies

Whistleblowers have the right to list the police station as their home and, if their life is in danger, a judge can authorise the anonymous collection of a whistleblower's statement. However, anonymity is "impossible" in cases where "knowledge of the identity of the person is essential to the rights of the defence," and the law specifies that "defamatory or false testimony" can be prosecuted under other legislation. In addition, charges cannot be based on anonymous statements.

Illegally revealing the identity of a whistleblower is punishable by up to ten years in prison. However, whistleblowing legislation in Benin is limited. There is no clear procedure or mechanism for disclosure, protections are limited to disclosures made to national authorities and the protections offered are inadequate. Whistleblowers at the workplace are not supported by meaningful protection against retaliation, and employers are not obliged to act on or accept complaints.

Whistleblowers are concerned about the Digital Law, or protecting their jobs and occasionally, their lives. It is important that the legislator provides Benin with comprehensive legislation on whistleblower protection.

⁴² See the content of the decree on the government website: <https://sgg.gouv.bj/doc/decret-2013-122>, accessed on 25.11.2020.

7. Public procurement and management of public finances (Art. 9.1)

The legal framework for public procurement in the Republic of Benin consists of two important laws:

- Law No. 2017-04 of 19 October 2017 on the public procurement act in the Republic of Benin;
- Law n° 2011-20 of 12 October 2011 on the fight against corruption and other related offences in the Republic of Benin.

Public procurement texts and practices are based on five major, universally recognised principles, embodied in Article 5, paragraph 1 of Law No. 2017-04 (19 October 2017) on the public procurement act in the Republic of Benin. Indeed, under the terms of this paragraph, “The principles of economy and efficiency of the procurement process, freedom of access to public order, equal treatment of candidates and transparency of procedures and mutual recognition are imposed on contracting authorities in the context of procedures for awarding public contracts and public service delegations, regardless of the amount.” The Beninese legislator has supplemented these five principles imposed by the West African Economic and Monetary Union (WAEMU) directive with a sixth principle, which is the prohibition of any bypassing of public procurement processes (Article 6 of the law on the public procurement act).

The institutional framework is composed of three bodies: the procurement and internal control bodies, the central review body for the public procurement process, and the regulatory body.

a) Good practices

With the implementation of the Integrated Public Procurement Management System (SIGMaP) in 2015 (www.marches-publics.bj), no public contract initially announced in the Procurement Plan may be subject to an abusive exemption to avoid competitive procedures by a contracting authority, and is awarded without competitive procedures. The National Directorate for Public Procurement Control fully plays its role of a priori and posteriori monitoring. As soon as it approves and publishes the annual provisional plans for the awarding of public contracts (Art. 24),⁴³ it tracks each contract and ensures the approval of competitive bidding documents before the launch of the call for competition, and the corresponding publication. The Directorate is the only body to grant the necessary authorisations and exemptions at the request of the contracting authorities, when provided for by the regulations in force (Proposals of the DIAS⁴⁴/DNCMP).

b) Deficiencies

Digitalisation is not yet effective to the point of allowing online tender submissions, or submissions from digital terminals.

⁴³ The procurement method for each contract is already defined in the Procurement Plan (PPM). Approval of the plan implies acceptance of the methods, procedures and techniques contained in each approved plan (Art 24 Public Procurement Code).

⁴⁴ Director of Information, Assistance and Statistics.

According to the Social Watch Benin Alternative Report 2017,⁴⁵ almost all of the public contracts of the Government Action Programme (PAG) were awarded in 2016 and 2017 by the Government in defiance of Articles 48 to 51 of Law No. 2009-02 (of 07 August 2009) on the act of public procurement relating to the conditions for awarding public contracts by mutual agreement and public service delegations in the Republic of Benin,⁴⁶ as well as Article 20 of Law No. 2016-24 (of 24 October 2016) on the legal framework for Public-Private Partnerships in the Republic of Benin. The latter also specifies the conditions for direct contracting in the legal framework of the Public-Private Partnership in the Republic of Benin,⁴⁷ which sets out the conditions of the public-private partnership (PPP) contract.⁴⁸ All the direct agreement contracts were justified by either 'urgency', or for reasons of 'the company [being] of world-renowned competence', or 'very few companies have the competence of the company or structure chosen.' With the revision of the old Public Procurement Law, the Government has proposed in the new Law no. 2017-04 (of 19 October 2017), on the Public Procurement Act in the Republic of Benin, certain provisions which henceforth render null and void what were perceived as violations. These include, for example:

- Exceptional private contracts are to be authorised by the Council of Ministers;
- Improvements in contracts awarded following spontaneous offers (although this type of contract is already covered in the law governing Public-Private Partnerships);
- Improvements to contracts that are economically or technically complementary to a basic contract concluded following a call for tenders;
- The extension of the cases of exemption from the Public Procurement Law (CMP) to take into account recurring practical difficulties;
- The abolition of the authorisation of direct agreement contracts by the Public Procurement Regulatory Authority, beyond the 10% threshold set by the contracting authority.

It is clear that not only is the direct agreement procedure greatly facilitated, but also and ultimately, that certain provisions introduced in the new law are applied well before their adoption in Parliament (i.e., authorisation of direct agreement contracts in the Council of Ministers). This has created a serious problem of governance around procurement. The failure to publish contracts as required by Benin's Transparency Act⁴⁹ adds to existing weaknesses in accountability and public access to information on government procurement.

⁴⁵ Pages 32-34 of the report available on the Social Watch Benin website at: https://socialwatch.bj/wp-content/uploads/2019/03/2017_Rapport-alternatif-2017-ODD16.5.pdf.

⁴⁶ The Code in force at the time of the events, which will be replaced by a Code in October 2017. The latter is replaced by a new law; Law n°2020-24 of 29 September 2020 on the Public Procurement Code in the Republic of Benin.

⁴⁷ BENIN: *Law No. 2016-24 of 24 October 2016 on the legal framework for public-private partnerships* at: <https://sgg.gouv.bj/doc/loi-2016-24>, accessed on 25.11.2020.

⁴⁸ See a list of cases on pages 33-34 of the report available on the Social Watch Benin website at: https://socialwatch.bj/wp-content/uploads/2019/03/2017_Rapport-alternatif-2017-ODD16.5.pdf

⁴⁹ BENIN: *Decree No. 2015-035 of 29 January 2015 on the Code of Transparency in the Management of Public Finances in the Republic of Benin* at <https://sgg.gouv.bj/doc/decret-2015-035>, accessed on 25.11.2020.

According to the Transparency Law:

- Article 2: “Taxpayers and users of public services shall be clearly, regularly and fully informed of all matters relating to the governance and management of public funds. They shall be put in a position to exercise their right of scrutiny over the finances of all public administrations in public debate.”
- Article 9: “Contracts between the public administration and enterprises, public or private, in particular enterprises exploiting natural resources and enterprises operating public service concessions, shall be clear and made public. These principles apply both to the procedure for awarding the contract and to its content.”

It is therefore important that, in its desire to make PPPs a lever for the implementation of the 45 flagship projects of its action programme (PAG), the government pays due regard to the principles of transparency, which implies the publication of contracts and the provision of information to citizens.

Public procurement audit reports are not published in full by ARMP. A summary is made public. The 2015, 2016, and 2017 public procurement audit reports have not been published, although according to the completion report of the World Bank-funded Benin Economic Competitiveness Support Program (PACEB), they are partially completed, with publication in progress.

“Corruption is first and foremost public procurement,”⁵⁰ said the Minister of State for Planning and Development on 3 October 2019, during the certification ceremony to award accreditation to 250 public procurement specialists in Benin. That is to say, public procurement is a breeding ground for corruption and needs to be watched closely. In fact, there is a risk map for the integrity of the public procurement process, as summarised below:

- Risk 1: Falsification of the needs assessment;
- Risk 2: Falsification of technical specifications;
- Risk 3: Guidance on the choice of procedure;
- Risk 4: Manipulating the list of bidders and selection of suppliers;
- Risk 5: Manipulating the selection criteria for a bidder;
- Risk 6: Manipulation in the launch of the selection procedure;
- Risk 8: Manipulation in the administrative management of the selection procedure
- Risk 9: Manipulation in the evaluation of tenders;
- Risk 10: Unfavourable contractual terms;
- Risk 11: Poor contract execution;
- Risk 12: Increased number of amendments and service orders;
- Risk 13: Mishandling of disputes;

⁵⁰ Article on the link between corruption and public procurement: <https://lavraieinfo.com/politique/benin-combinaison-corruption-et-marches-publics-abdoulaye-bio-tchane-attire-lattention>, accessed on 25.11.2020.

- Risk 14: Payments without justification/authentic supporting documents.

Hence the ongoing reforms in the public procurement sector and the amendments to the Public Procurement Act.

8. Public financial management (Art. 9.2, 9.3)

As part of the public finance reform brought about by the West African Economic and Monetary Union (WAEMU) directives on the new harmonised framework for public finances in the countries covered by the WAEMU and their national application in each country, Benin adopted Organic Law No. 2013-14 (of 27 September 2013), which established the transition from an input-based budget to results-based management, thereby instituting programme logic in budget management. Following this was Decree No. 2015-035 (of 29 January 2015) on the Act of Transparency in the Management of Public Finances in the Republic of Benin. On the technical level, since 2015 documents in relation to the Finance Laws have been prepared, in compliance with certain provisions of the LOLF (Organic Law) and the above-mentioned decree.

Benin has almost completed the transposition of the WAEMU Harmonised Framework for Public Finance into domestic law.⁵¹ “With regard to the legal, accounting and statistical framework of public finances, all eight directives have been transposed. Directives No. 07/2009/CM/WAEMU on general regulations on public accounting and No. 06/2009/CM/WAEMU on finance laws within WAEMU have been transposed and applied fully (100%). As for the other six directives, although they have all been transposed, they have only been partially implemented, ranging from 5% to 85%” in terms of application.⁵²

a) Good practices

The latest rating of the International Budget Partnership (IBP) on global budget transparency rates Benin at the top of French-speaking African countries with a rating of 49/100 in 2019 and 6th in Africa. This achievement was also confirmed in terms of citizen participation, where Benin comes in 2nd place after the Democratic Republic of Congo with a rating of 24/100, against a world average of 14/100, and 45/100 for budget transparency. From 39/100 in 2017, Benin has risen to 49/100 in 2019, thus making a jump of ten points, without forgetting that in 2012 Benin had 1/100 points on this index.⁵³

⁵¹ The eight directives are:

- 1- Directive n° 01/2009/CM/UEMOA on the code of transparency in public finance management;
- 2- Directive n° 06/2009/CM/UEMOA on finance laws;
- 3- Directive n° 07/2009/CM/UEMOA on general public accounting regulations;
- 4- Directive No. 08/2009/CM/WAEMU on the State budget nomenclature;
- 5- Directive n° 09/2009/CM/UEMOA on the State Accounting Plan (PCE);
- 6- Directive No. 10/2009/CM/UEMOA on the State Financial Transactions Table (TOFE);
- 7- Directive n° 01/2011/CM/UEMOA of 24 June 2011 on the financial regime of local authorities;
- 8- Directive n° 03/2012/CM/UEMOA of 29 June 2012 on material accounting.

⁵² Memorandum of the technical review of the WAEMU Commission in Benin at the end of 2018.

⁵³ Benin's 2019 score to be seen at: <https://www.internationalbudget.org/open-budget-survey/country-results/2019/benin>, accessed on 25.11.2020.

Other good practices include:

- ❖ The digitalisation of tax procedures and electronic invoicing of Value Added Tax (VAT);
- ❖ The timely publication of the eight budget documents of the Open Budget Index;⁵⁴
- ❖ Decree No. 2019-430 (of 02 October 2019), establishing a standard structure for ministries, which led all ministries to set up a ‘Ministerial Internal Audit Committee’ and a ‘Ministerial Risk Management Committee.’

b) Deficiencies

One notable deficiency has been the failure to establish a Supreme Audit Institution, the Court of Auditors.

9. Public reporting (Art. 10) & participation of society (Art. 13.1)

Public access to information is a human right recognised by the Beninese Constitution under article 8 and the African Charter on Human and Peoples’ Rights in application (article 9).

In application of the Directive on the Transparency Act of public finances in WAEMU countries, Benin adopted Decree No. 2015-035 (of 29 January 2015) on the Transparency Act in the management of public finances in the Republic of Benin, which stipulates:

- Article 2: “Taxpayers and users of public services shall be clearly, regularly and fully informed of all matters relating to the governance and management of public funds. They shall be put in a position to exercise their right of scrutiny over the finances of all public administrations in the public debate.”
- Article 9: “Contracts between the public administration and enterprises, public or private, in particular enterprises exploiting natural resources and enterprises operating public service concessions, shall be clear and made public. These principles apply to both the procedure for awarding the contract and its content.”
- Article 44: “The timely publication of information on public finances is a legal obligation of the public administration.”

These provisions were reinforced by Law No. 2015-07 (of 20 March 2015) on the information and communication act, which stipulates:

- Article 7: “Everyone has the right to information [...] The State shall, through its various structures and institutions, guarantee everyone access to sources of information, particularly public information.”
- Article 70: “Every citizen has the right of access to documents or information held by a public body or its officials in the performance of their duties.”

⁵⁴ See the ‘Budget Transparency’ section on the website of the Directorate General of the Budget: <https://budgetbenin.bj>, accessed on 25.11.2020.

According to the global Right to Information Index, Benin is among the bottom 10 countries in the world⁵⁵ where the legal framework for the right to information is not robust. Benin is 117th out of 123 countries ranked.⁵⁶

One of the indicators of pluralism, of media independence, the operating environment, legal framework, transparency and the quality of infrastructure supporting information production is the Reporters Without Borders (RSF) ranking. In other words, it also assesses press freedom and fair access to the press. In this respect, Benin has taken a step backwards insofar as the Reporters Without Borders (RSF) index ranks⁵⁷ it 113 out of 180 countries in 2020, with an overall score of 35.11⁵⁸ compared with 78 out of 180 in 2017, with a score of 30.32. This ranking as a result of the overall score obtained in 2020 is an expression of the difficult media environment in which several media outlets have operated during the year.

The failure to decriminalise all press offences as promised by the head of state during his election campaign, the closure of several privately-owned media by the High Authority for Communication and Audio-visuals (despite a court ruling in May 2017 calling for the reopening of one of them), and the poor media coverage of opposition activities by state television are palpable signs of this. However, Beninese journalists enjoy a certain freedom of expression and, even if some are prosecuted and convicted, the sentences handed down are rarely carried out. In the case of a journalist without a press card, there is a risk of being deprived of liberty under the Digital Act.⁵⁹ As Reporters Without Borders states, “the Digital Act is the new weapon to neutralise the press.”⁶⁰

In 2020, the Union of Media Professionals of Benin (UPMB) has launched a campaign to review law no. 2017-20 on the Digital Act, for better protection of journalists in Benin. The initiative is motivated by the fact that more and more journalists are being arrested and imprisoned on the basis of the Digital Act, while the law on the information and communication act stipulates under article 310 that police custody and preventive detention in press matters are prohibited, except in cases of incitement to crime and offences against the public good.

Access to information in the administration could be added to this indicator, which is an important factor for the production of quality reports on government actions by civil society organisations. Even if remarkable and regionally recognised efforts are made in the area of budget transparency, it is important to note that Benin's performance would be better if the creation of an Open Data Platform of Beninese public data, and access to information on public procurement, were effective.

⁵⁵ See <https://www.rti-rating.org/>, accessed on 25.11.2020.

⁵⁶ See <https://www.rti-rating.org/country-data/>, accessed on 25.11.2020.

⁵⁷ See <https://rsf.org/fr/benin>, accessed on 25.11.2020.

⁵⁸ If the score increases, it means regression.

⁵⁹ BENIN: *Law No. 2017-20 of 20 April 2018 on the digital code* at <https://sgg.gouv.bj/doc/loi-2017-20>, accessed on 25.11.2020.

⁶⁰ Reporters Without Borders: Benin page at <https://rsf.org/fr/benin>, accessed on 25.11.2020.

a) Good practices

Apart from a few public administration websites, good practices in accessing information are lacking.

As for citizen participation, it is important to note the participation of civil society in the various ministry reviews. In the budgetary process, civil society is heard in the framework of the preparation of the budget to express the needs and aspirations of the population. Similarly, civil society participates in the public hearings of the parliamentary budget voting process. Decree No. 2019-430 (of 2 October 2019) establishing the standard structure of ministries reinforces measures for civil society participation.

There is also the possibility for any citizen to denounce corruption through the establishment of a toll-free number for this purpose concerning the ANLC and the Republican Police.

b) Deficiencies

Deficiencies include the lack of public consultation on some new laws passed by the National Assembly since 2019, especially the revision of the Constitution in November 2019.

Furthermore, the administration is reluctant to comply with the legal provisions on informing taxpayers about public contracts.

On the basis of the legal framework, and in order to contribute effectively through quality citizen participation, Social Watch Benin & ALCRER have followed the steps provided for by the law to formulate requests for access to some documents recognised as public. Thus, these two organisations sent requests for access to public order contracts on Monday 5 November 2018, without follow-up. The Ministers in charge of Economy and Finance, Infrastructure and Transport, Living Environment and Sustainable Development were contacted.⁶¹ The three senior officials of the administrations concerned did not believe that they had to respect the conditions and deadlines set out in Articles 74, 78, 79, 80, 81, 71 and 82 of the Information and Communication Act to provide access to this public information.

The two civil society organisations noted the silence from these authorities after the maximum period of eight days,⁶² during which they were required to follow up on their requests, and used channels of recourse. Indeed, according to the provisions⁶³ of Law

⁶¹ These requested documents were:

- Management contract for the Autonomous Port of Cotonou, signed between the Minister of Infrastructure and Transport and Port of Antwerp International (PAI);
- Contracts signed between the Minister of Economy and Finance and Benin Control SA, in the framework of the Import Verification Programme (PVI), and Les Bagnoles Motors (LBM) in the framework of leasing;
- Contracts relating to the development and asphaltting of streets in several towns in Benin, signed between the Ministry of the Living Environment and Sustainable Development and the five companies awarded the contracts: Sinohydro, HNRB, NSR-CI, ADEOTI, OFMAS-SBT.

⁶² See Art. 80 and 81 of Law no.2015-07.

⁶³ See Art. 97 of Law no.2015-07.

No. 2015-07 (of 20 March 2015) on the information and communication act, the silence of these officials “shall constitute an implicit decision to reject” the request for access to public information, and is in violation of Articles 7, 70, 71, 72, 80 and 82 of the said law. Within the regulatory deadline, the two organisations sent to the body provided for by Law No. 2015-07 for the management of appeals - the High Authority for Audio-visuals and Communication (HAAC)⁶⁴ - an appeal, challenging the implicit decision to refuse access to sources of public information by the aforementioned Ministers.

The HAAC had one month to rule on the appeal, as stipulated in Article 105 of Law No. 2015-07. But to the great dismay of the two organisations, HAAC remained silent. Thus, the HAAC, which should facilitate the effective enjoyment of the right of access to information, is incapable of giving citizens the right to access public information. This does not bode well for transparency in the management of public affairs by the Government, the institutions of the Republic and local communities.

10. Measures relating to the judiciary and prosecution services (Art. 11)

The constitution has proclaimed the independence of the judiciary exercised by the Supreme Court, courts and tribunals (Article 125). In the exercise of their functions, judges are subject only to the authority of the law. They shall be independent and shall not be subject to any influence, incitement, pressure, threat or undue intervention, whether direct or indirect, on the part of any person or for any reason whatsoever. “Any interference in the judgement of cases pending before a court” is strictly forbidden under penalty of “imprisonment of six to twelve months and a fine of 50,000 to 500,000 CFA francs (between €76 and €762).”

Their security of tenure is protected by the Constitution (Article 126) as a privilege - not personal but professional - to guarantee the independence of the office. Thus, a judge cannot be assigned to a new position without his or her consent, even if it is a promotion. For any assignment proposed to him and the place where he is to exercise it, he must be consulted and give his prior consent.

This is not the case for magistrates in charge of prosecution: according to the law on the status of the judiciary, prosecutors and deputy prosecutors are placed under the authority of the minister in charge of justice, and can be transferred from one post to another if they so request or ex officio, in the interest of the service after the assent of the Superior Council of the Judiciary. Since 2013 and in accordance with the provisions of the Law on Criminal Procedure, the minister in charge of justice may instruct them to initiate or have initiated prosecutions, but is not authorised to give instructions not to prosecute.

Despite their independence, judges are placed under the hierarchical authority and supervision of the president of their court and under the control of the president of the court of appeal in their jurisdiction. These authorities, without prejudice to the independence of judges, may make observations and recommendations which they

⁶⁴ See articles 97 to 107 of Law no.2015-07

consider useful for the proper and prompt administration of justice.⁶⁵ Whether they are judges or prosecutors, magistrates are not held responsible for “acts they perform in the exercise of their functions or words they say in court,”⁶⁶ except in certain cases such as police custody or abusive pre-trial detention.

The President of the Republic is designated by the Constitution as the “guarantor of the independence of the judiciary.” In this context, he has great power of appointment and disciplinary sanction over magistrates. Article 3 of the law on the status of the judiciary gives him the power to appoint all magistrates by decree on the proposal of the Minister of Justice, and after the approval of the Supreme Council of the Judiciary (CSM). Provided for by the Constitution and organised by law, the latter is the highest body responsible for monitoring compliance with the ethical and professional rules of magistrates, the development of their careers, and the discipline of the body. It acts as a disciplinary board for judges. In fact, it rules on the proposals submitted to it by the magistrates' promotion commission headed by the minister in charge. As a last resort, it is the President of the Republic who decides on promotions in rank by decree,⁶⁷ thus keeping a firm grip on the management of magistrates' careers.

All magistrates are subject to important ethical obligations. All magistrates, whether they are prosecutors or judges, take an oath before taking up their duties. The text of the oath emphasises the principles of impartiality, respect for the law, professional discretion, neutrality, dignity and loyalty, among others. As civil servants, magistrates are subject to the ethical rules governing the civil service “insofar as they are not contrary”⁶⁸ to their own status. In accordance with Law No. 2011-20 (of 12 October 2011) on the fight against corruption and other related offences, after resigning or retiring, they are for 5 years prohibited from exercising an activity directly related to the functions they performed. The same law and its implementing decree oblige presidents of courts and tribunals, councillors and judges, public prosecutors as well as clerks to declare their assets.⁶⁹

To prevent any conflict of interest, the law renders the status of magistrate incompatible with the exercise of any other public office and any other lucrative, professional, salaried,⁷⁰ or political activity, subject to disciplinary sanction:⁷¹ “the functions of magistrate are incompatible with the exercise of any political activity” unless he or she submits to a procedure, “informing his or her superior without delay,” in order to be “ex officio withdrawn from the courts,” subject to disciplinary sanction.⁷²

Members of the judiciary must avoid, subject to the acts being declared null and void, “acquiring or transferring, either by themselves or through an intermediary, rights in dispute that fall within the jurisdiction of the courts in which they perform their duties,

⁶⁵ Article 5 of the Law on the Status of the Judiciary.

⁶⁶ Article 8 of the Law on the Status of the Judiciary.

⁶⁷ Article 55 of the Law on the Status of the Judiciary.

⁶⁸ Article 1 of the law on the status of the judiciary.

⁶⁹ Article 3 of Law 2011-20 and Article 5 of Decree 2012-338 of 2 October 2012.

⁷⁰ Article 11 of the Law on the Status of the Judiciary.

⁷¹ Article 12 of the Law on the Status of the Judiciary.

⁷² Article 12 of the Law on the Status of the Judiciary.

or property, rights and claims whose sale they must pursue or authorise, or receiving them as collateral.”⁷³ One may not carry out any act within the scope of his duties when it concerns his own interests, those of his spouse, his parents or relatives or when it concerns the interests of a person for whom he is the legal representative or agent.⁷⁴

The Law on Criminal Procedure grants any person (accused, defendant or charged) the right to challenge any investigating judge, president or judge of the court of first instance, one or more councillors of the court of appeal, the Assize Court (cour d'assises) or the Supreme Court, on the grounds listed in Article 624 of the Law and relating to risks of conflicts of interest.

In order to preserve the impartiality of the proceedings, it is forbidden for two magistrates who are spouses or relatives to sit together for the settlement of the same case.⁷⁵ Nor may they represent or defend parties, including “before courts other than those in which they exercise their functions.”⁷⁶

The Minister of Justice has a General Inspectorate of Judicial Services (IGSJ) which ensures the application of rules and procedures, collects and collates evidence on bad governance in the courts. Public access to trials is guaranteed by the Constitution⁷⁷ and the law. According to Article 311 of the Law of Criminal Procedure, “proceedings shall be public, unless publicity is dangerous to public order or morals. In this case, the president may order that the proceedings be held in camera.”

Benin has an Information and Communication Act (2015) which provides for right of access to administrative documents. Article 89 of this act permits that “the decision rendered by a judicial body is public” but the secrecy of the judicial investigation, like the secrecy of defence, may justify the restriction of right of access to public sources of information.⁷⁸ Thus, “a public body may not communicate information contained in a judicial file when the court of trial prohibits its communication [...]”. Similarly, no “public body is authorised to confirm or give access to information obtained from a person who, by law, is responsible for preventing, detecting or punishing crime or offences against the law where its disclosure is likely to [...] hinder the conduct of an investigation or legal proceedings [...]”.

a) Good practices

It is true that the law on the status of the judiciary provides that “any breach by a magistrate of the decorum of his or her position, honour or dignity constitutes a disciplinary offence,” which is assessed by the Supreme Council of the Judiciary (CSM). However, there is no concrete link between the sanctions listed in the law and the various situations of misconduct in which the magistrate would be compromised.

⁷³ Article 16 of the Law on the Status of the Judiciary.

⁷⁴ Article 17 of the Law on the Status of the Judiciary.

⁷⁵ Article 14 of the Law on the Status of the Judiciary.

⁷⁶ Article 13 of the Law on the Status of the Judiciary.

⁷⁷ Article 17 of the Constitution.

⁷⁸ Article 83 of the Information and Communication Code.

In 2018, the government launched an initiative to provide the judiciary with an ethics guide to establish standards through a statement of principles, their implementation and the sanctions that arise from their violation. According to the government, it is not a disciplinary act, but a guide that provides magistrates with “an overview of the duties and behavioural requirements that the exercise of the function of judging calls for” and provides the magistrates' disciplinary body with “a framework for the sanctioning of deviant behaviour.” Its publication is likely to strengthen public confidence in the judicial system. The draft document has been validated and is still awaiting regulatory approval for application.

Several trainings for judges and prosecutors to promote integrity and combat corruption risks are organised by the Supreme Court or by programmes⁷⁹ that support the Ministry of Justice and Legislation, besides the fact that these aspects are part of training schools' curricula.⁸⁰

b) Deficiencies

Although the texts guarantee the independence of the judiciary, there are structural causes for its ineffectiveness. “The independence of magistrates is abundantly proclaimed, constantly violated by the establishment of the Superior Council of the Magistracy and insufficiently protected by the Beninese legislator.”⁸¹ In particular, the existence of the Supreme Council of the Judiciary (CSM) is considered by most actors as symbolic of an attack on the independence of the judiciary.⁸² On this issue, the current President of the Republic had committed himself before his election to remove himself and the Minister of Justice from the composition of the CSM. He has not honoured this commitment in his reform of the CSM: he remains a member of the CSM, as does his Minister of Justice, and “the reform has instead strengthened the government's presence in the Council, increasing it from three to eight members.”⁸³ This situation was judged by the National Union of Magistrates of Benin (UNAMAB) as an “odious invasion, the purpose of which is to establish the hegemony of politics over the judiciary for the purpose of reprisals and settling of scores” (press release of 10 January 2018). However, the reform of the CSM has led to some progress: the council's budget is no longer attached to that of the presidency but to that of the

⁷⁹ Support Program for the Fight against Impunity and the Strengthening of the Rule of Law in Benin (PALIRED) implemented by Transparency International and Social Watch Benin, the Justice Support Project (PAJ) implemented by the Ministry of Justice and Legislation, both financed by the European Union; and the Support Project for Improving Access to Justice and Accountability (PAAAJRC) financed by the United Nations Development Programme.

⁸⁰ Benin has the National School of Administration and Magistracy (ENAM), the School of Training for the Judicial Professions (EFPJ) and the Regional School of Magistracy (ERSUMA), which is an institution of the Organisation for the Harmonisation of Business Law in Africa (OHADA).

⁸¹ René Degni-Segui, *Les Droits de l'Homme en Afrique Noire Francophone: théories et réalités*, Imprimob, Abidjan, 1997, p. 196.

⁸² Joseph Djogbénou, Benin, *The Justice Sector and the Rule of Law*, AfriMAP & OSIWA Study, Dakar, 2010, p. 7.

⁸³ Transparency International, *Monitoring report on the implementation of sectoral action plans related to the national integrity system*, PALIRED & TI, December 2019, p. 6.

supreme court, which now houses its headquarters, although it is not excluded from meetings at the presidency of the Republic.

In 2014, according to the Observatory of Justice in Benin,⁸⁴ 33% of actors in the sector consider that the “dependence of the prosecution on the executive” is a reason for the bias of the judge. This is the second most important reason after corruption (78%).⁸⁵ As for those subject to trial, seven out of ten believe that “the state authorities and political figures influence the judiciary in its decision-making.”⁸⁶ The Observatory noted in 2015 that the justice sector was marked by a “worrying decline in values,” the persistence of “practices contrary to professional and ethical standards” and the development of ‘corruption (...) in the judicial services and jurisdictions.’⁸⁷

According to the Corruption Barometer (Africa region), published by Transparency International in 2019, 46% of citizens believe that judges and magistrates are mostly or totally corrupt. This figure was 48% in 2015. Although the phenomenon of corruption within the judiciary is often exposed, including by the authorities at the top of the State, few cases are investigated and made public. According to the evaluation report of Benin's national integrity system (2016), “the number of magistrates implicated and sanctioned by the Superior Council of the Magistracy is a good indicator of the level of integrity within the judiciary,” but the annual reports of this council are not accessible to the public in order to demonstrate the number of cases handled, at least in disciplinary matters.

In addition, there is no evidence that declarations of assets and interests of judges and law enforcement actors are actually filed, that they are correct and complete, that income over the years is unduly increased, or that the data from such declarations is used to prevent conflicts of interest.

11. Private sector (Art. 12.1, 12.2(c) and (f), 12.4)

The constitution and the legislative or regulatory provisions in force provide an environment for private companies to establish and develop themselves.

As the first country in the Organisation for the Harmonisation of Business Law in Africa (OHADA) to allow small traders, farmers, craftsmen, etc. to formalise their businesses free of charge and to obtain the status of ‘entrepreneur,’ Benin has also committed to simplifying the process of creating a business by substantially reducing financial costs, delays and procedures. Business creation is a fairly simplified and less costly process. There are three main structures representing businesses in Benin:

⁸⁴ This is an initiative of several civil society organisations (Africa Obota Centre, NGO Human Rights, Peace and Development (DHPD), Centre for Research and Study of Law and Judicial Institutions in Africa (CREDIJ) which, thanks to the support of OSIWA, has been publishing a report providing data and information on the state of justice and the perception of litigants since 2013.

⁸⁵ Observatoire de la justice au Bénin (OJB), Rapport sur l'état de la justice au Bénin et la perception des justiciables (Les innovations des codes et la réalité de leur application), November 2014, p. 96.

⁸⁶ Ibid.

⁸⁷ Observatoire de la justice au Bénin (OJB), Rapport sur l'état de la justice au Bénin et la perception des justiciables (La détention en République du Bénin), November 2015, p.75.

- The National Employers Council of Benin (CNP-Benin) - the employers' union that represents businesses - is a major player in the Beninese economy;
- The Chamber of Commerce and Industry of Benin (CCIB) is a public institution under the supervision of the Ministry of Commerce and its jurisdiction covers the entire nation;
- The Council of Private Investors in Benin (CIPB) - an association founded by a group of entrepreneurs - now brings together some forty large companies, which have decided to combine their experience, skills and economic clout to make a concerted impact on the environment in which they operate.

a) Good practices

It is important to note that the Council of Private Investors in Benin (CIPB) organised a workshop in October 2015 to popularise Law No. 2011-20 (of 12 October 2011) on the fight against corruption and other related offences in the Republic of Benin. This workshop was organised in collaboration with the Centre for Research and Studies in Law and Judicial Institutions in Africa (CREDIJ) and the National Authority for the Fight against Corruption (ANLC), and brought together participants from the public administration, the private sector and civil society. On this occasion, private sector experts expressed their concern that Law No. 2011-20 is too severe and contains fines and prison sentences ranging from 1 to 20 years. They contended that these fines and penalties may deter investors. It can be considered as positive that the private sector made proposals to revise the law, by removing the OHADA offences from its content.⁸⁸

b) Deficiencies

Companies in Benin can operate independently in view of the liberal choice made for the Beninese economy at the Conference of the Vital Forces of the Nation, and by the legislative or regulatory provisions in force. However, it must be noted that there are clear cases where the administration abuses its power to put pressure on private companies.

The legal and regulatory framework for accounting in Benin is in force in the 16 member countries of the OHADA. The accounting standards applicable to companies are relatively demanding. However, compliance with accounting standards at company level is not always effective.

The few codes of conduct found in the private sector are not really respected. Corruption cases involving companies are quite frequent. It has even become a common practice at the corporate level, although business leaders are calling on the public administration to fight corruption with great media attention. There are no initiatives involving business and civil society to combat corruption.

In practice, there are still cases of non-compliance with legal provisions facilitating business development, and many companies do not comply with the legislation in

⁸⁸ Cf. Report of the workshop on the popularisation of law N°2011-20 of 12 October 2011 on the fight against corruption and other related offences in the Republic of Benin (organised by the CIPB).

force. Accounting practices at company level do not guarantee transparency in their operations. They often use certain audit firms that do not meet international standards.

The corporate sector is characterised by few codes of conduct. They do not have a compliance officer, but internal auditors. The integrity of business leaders and staff is very low. They are among the biggest corrupters of the administration and the justice system.

Beninese companies are quick to denounce the administration for acts of corruption, but they are less concerned about raising standards of integrity within their own ranks, or denouncing business leaders who make corruption of the administration, politicians and judges, their favourite sport.

The register of companies and businesses is not made public and is not available online. Apart from the legal announcements published by the Investment and Export Promotion Agency (APIEx) on the virtual platform 'monentreprise.bj'⁸⁹, which provides information about the creation of companies, no other data on companies and their managers or beneficiaries is accessible. Furthermore, it is not possible to know the beneficial owners of companies and businesses, let alone access them online.

⁸⁹ www.monentreprise.bj, accessed on 25.11.2020

B. IN RELATION TO CHAPTER V

With specific reference to Chapter V of the UNCAC, the following points were analysed:

1. Prevention and detection of transfers of proceeds of crime (Art. 52.1, 52.2, 52.3, 52.4, 52.5, 52.6, 58 and 14)

The legal framework is marked by the adoption of Law No. 2006-14 (of 31 October 2006) on combating money laundering.⁹⁰ This system was reinforced by Law 2018-17 (of 25 July 2018) on the fight against money laundering and terrorist financing in the Republic of Benin.⁹¹ At the institutional level, one may comment on:

- the creation of the Court for the Repression of Economic Crimes and Terrorism;⁹²
- the existence of the Economic and Financial Brigade (BEF) within the Republican Police;
- the establishment of the National Financial Information Processing Unit (CENTIF).⁹³

Since the national assessment of the risks of money laundering and terrorist financing (AML/CFT), the dissemination of the report's conclusions and recommendations, as well as the training and awareness-raising activities organised for banks, large decentralised financial systems, insurance companies, and management and intermediation companies, all of these financial institutions were able to establish and/or strengthen their AML/CFT compliance mechanisms. Today, these institutions are satisfactorily implementing preventive measures and regularly reporting suspicious transactions in accordance with their AML/CFT legal obligations. Moreover, the 2018 activity report of the Intergovernmental Action Group against Money Laundering in West Africa (GIABA) has ranked Benin as the 2nd country in terms of reporting suspicions out of the 17 countries it comprises.

Several prerogatives have been conferred on CENTIF, such as:

- the right to oppose the execution of a suspicious transaction for 48 hours (Article 68 of Law 2018-17);
- extended communication rights, allowing it to access all sources of information necessary to conduct its investigations (Article. 70 of Law 2018-17);
- the unenforceability of professional secrecy to its requests (Article 96 of Law 2018-17);

⁹⁰ BENIN: Law No. 2006-14 of 31 October 2006 on combating money laundering at <https://sgg.gouv.bj/doc/loi-2006-14/>, accessed on 02.10.2020.

⁹¹ BENIN: Law No. 2018-17 of 25 July 2018 on the fight against money laundering and the financing of terrorism at <https://apdp.bj/wp-content/uploads/2019/09/NOUVELLE-LOI-LBC-FT-2018-17-DU-25-JUILLET-2018.pdf> or <http://centif.bj/wp-content/uploads/2019/02/LOI-UNIFORME-CENTIF-BENIN.pdf>, accessed on 02.10.2020.

⁹² By law n 2018-13 of 2 July 2018 on the organisation of the judiciary in the Republic of Benin and the creation of the CRIET.

⁹³ See its new Decree No. 2018-347 of 25 July 2018 on the powers, organisation and operations of CENTIF.

- the obligation for financial institutions and Designated Non-Financial Professional Enterprises, i.e., lawyers, notaries, chartered accountants, real estate agencies, the gaming and casino sector, travel agencies, hotels and many others, to report suspicious transactions to CENTIF (Article 79 of Law 2018-17);
- information provided to CENTIF by the supervisory authorities, judicial police officers, national bodies and professional orders at its request or on their initiative (Articles 60 paragraph 2 and 75 paragraph 2 of Law 2018-17);
- CENTIF's use of the investigative resources available to the ministries in charge of finance, justice and security and other bodies to investigate offences involving reporting obligations (article 60, paragraph 5 of Law 2018-17);
- CENTIF's correspondents in the central services of the public administration (article 63 of Law 2018-17) and its reporters to all taxable persons (article 64 of Law 2018-17), who are CENTIF's focal points.

a) Good practices

- Approval in the Council of Ministers in its meeting of 14 November 2018 of the report of the national assessment of money laundering and terrorist financing risks and development of an Action Plan for the implementation of the recommendations contained in the report;
- Strong commitments made by the Beninese authorities to eradicate all offences or underlying crimes that generate illicit financial flows. Several reforms have been undertaken by the government to strengthen the legal, institutional and operational framework for the prevention and repression of all economic or financial offences and, consequently, to effectively combat money laundering and terrorist financing. As an example, the adoption of a new law on the fight against money laundering and terrorist financing can be cited, Law No. 2018-17 promulgated by the Head of State on 25 July 2018, which is more than 90% compliant with the FATF recommendations;
- Publication of CENTIF quarterly reports since 2017;⁹⁴
- Several capacity-building workshops for criminal investigation and prosecution authorities on money laundering, financial investigation techniques and anti-money laundering enforcement;
- CENTIF-Benin cooperates with the Intergovernmental Action Group against Money Laundering in West Africa (GIABA) and the Central Bank of West African States (BCEAO). It is a member of the Egmont Group, RECEN-UEMOA, the Network of Financial Intelligence Units (FIU) of the Lake Chad Basin countries, and the FIU Forum of GIABA member states;
- CENTIF cooperates with the FATF (Financial Action Task Force) and Interpol;
- There are also cooperation agreements between CENTIF and the FIUs of the following countries: France, Belgium, Morocco, Luxembourg, Congo, Monaco, Mauritius and Equatorial Guinea.

⁹⁴ The CENTIF reports are available on its website: <http://centif.bj/documents>, accessed on 25.11.2020.

b) Deficiencies

Stakeholders suffer from a lack of knowledge on AML/CFT and consequently from a lack of awareness of their obligations - for notaries, lawyers, accountants, bailiffs, casinos and gaming companies and hotels in particular, much expertise needs to be built.

Companies have not set up internal AML/CFT systems, and do not have the necessary resources (AML/CFT manager, qualified staff trained periodically on new types of transactions, equipment, software, etc.) to effectively process suspicious transactions in accordance with the laws in force.

Publicly available data on money laundering dates back to the “Benin National Money Laundering and Terrorist Financing Risk Assessment Report”⁹⁵ of May 2018. According to this report:

- Consultations with the CENTIF, the courts and tribunals in charge of the repression of money laundering reveal that no criminal sanctions have been applied to date;
- Although there were convictions for underlying offences, the proceedings did not result in convictions for money laundering and seizure or confiscation of the defendants' illicit assets;
- None of the STR cases transmitted by CENTIF to the judiciary have been successfully prosecuted. No assets, property or income have been seized or confiscated by the Beninese judiciary for money laundering.

2. Measures for direct recovery of property (Art. 53 and 56), international cooperation in confiscation, special cooperation, bilateral and multilateral agreements (Art. 51, 54, 55, 56 and 59) and return and disposal of assets (Art. 57)

In relation to the rest of the articles in Chapter V, Law No. 2011-20 (of 12 October 2011) on the fight against corruption and other related offences in the Republic of Benin (Articles 27, 142 to 154), Law No. 2018-17 (of 25 July 2018) on the fight against money laundering and terrorist financing (in its Articles 99, 100 et seq.) and Law 2018-14 (of 2 July 2018) amending and supplementing Law 2012-15 (of 18 March 2013) on the Law on Criminal Procedure in the Republic of Benin (Articles 90 et seq.) provide a more or less exhaustive legal framework for seizing, freezing and confiscating the proceeds and instruments of crime.

The services of the Ministries of Justice and Foreign Affairs declare their readiness to facilitate the processing of requests for mutual legal assistance in relation to economic and financial crimes. In relation to these provisions, it is noted that the legal framework is in place, however the subject is not of particular interest to Benin and very little information is provided. Nevertheless, this may be due to insufficient technical and

⁹⁵ Read from page 33 onwards, this report can be downloaded at http://centif.bj/wp-content/uploads/2020/02/Rapport_ENR-Projet-V02-benin.pdf

material capacity to effectively manage the recovery of Benin's potential assets abroad and within the country.

V. Recent developments

During the Council of Ministers meeting of 1 April 2020, the Government dissolved the National Authority for the Fight against Corruption (ANLC) whose members had reached the end of their mandate. One of the reasons given by the Government for redefining the role of the ANLC is that “the results of the institution since its inception on 15 May 2013 remain mixed, in view of the significant resources allocated to it by the State for its operations.”⁹⁶

The ANLC is now replaced by the High Commission for Corruption Prevention (HCPC). Until December 2020, the High Commission has not yet been appointed. According to Law No. 2020-09 (of 20 April 2020) on the creation, organisation and functioning of the High Commission for the Prevention of Corruption in the Republic of Benin: “The mission of the High Commission is to monitor the implementation of anti-corruption measures within state institutions and administrations, and to initiate and implement anti-corruption actions in both the public and private sectors.”

The High Commission for the Prevention of Corruption is headed by a High Commissioner appointed by the President of the Republic, by decree of the Council of Ministers, on the proposal of the Minister of Justice. The High Commissioner is chosen, after a background check, from among magistrates, senior police officers, finance and tax administrators and accountants of high professional standing, with fifteen years of experience. He/she has a non-renewable five-year term of office.

In our view, the current reform is in line with Article 36 of the UNCAC on Specialised Authorities, which requires States Parties to establish one or more bodies or persons specialised in the fight against corruption through law enforcement. We note that the future High Commission's Office will have as its mission the prevention and reporting of corruption (Chapter II of the UNCAC). Finally, we note that the government opts to dissociate the prerogatives of the High Commission's Office from those of the bodies in charge of Chapter III of the UNCAC on ‘Criminalization, detection and repression.’ There are three bodies that already manage this aspect, namely: The Court for the Repression of Economic Offences and Terrorism (CRIET), the National Financial Information Processing Unit (CENTIF) and the Economic and Financial Brigade (BEF). Law No. 2011-20 (of 12 October 2011) on the fight against corruption and other related offences in the Republic of Benin remains the only law in force.

Another important change is that Law No. 2020-09 (of 20 April 2020) on the creation, organisation and functioning of the Office of the High Commission for the Prevention of Corruption in the Republic of Benin repeals two provisions of Law No. 2011-20, that relate to the President and the Declaration of Assets. However, it specifies that a decree issued by the Council of Ministers will define the list of authorities and public agents subject to the obligation to declare assets, in addition to those subject to this obligation by the provisions of the Constitution.

⁹⁶ See Minutes of the Council of Ministers of 1 April 2020 at <https://sgg.gouv.bj/cm/2020-04-01/>, accessed on 25.11.2020.

Benin has finally constitutionalized the Court of Auditors in November 2019. But the members have not been made known or appointed after almost one year.

The ongoing revision of the Code of Values and Ethics of the Public Service recommended by the evaluation report of the National Integrity System (NIS) is currently underway. With the drafting of different texts and to enable state agents to serve the public administration well by providing quality services to users/customers, it becomes imperative to revise the current code of values and ethics of the civil service in Benin, which was endorsed by the National Consultative Commission of the Administrative Reform on 20 February 2007. This review will not only reaffirm the cardinal principles and values already advocated, but also and in particular, integrate new elements introduced by the new texts.

VI. Recommendations

To the President of the Republic:

- Promote the swift appointment of the President of the Court of Audit and the members of the institution, in order to strengthen the control over the management of public finances.
- Ensure that the decree to be issued by the Council of Ministers, redefining the list of public authorities and agents subject to the obligation of declaring their assets, complies with the provisions of international commitments ratified by Benin, which do not exempt members of parliament and mayors from such an obligation.

To the government:

- Authorise the publication of the full report of the review of the implementation of the Convention by the UNODC, when complete.
- Respect the provisions of the Transparency Act in the management of Public Finances, by systematically “publishing contracts between the public administration and all categories of companies,” in compliance with Law 2017-04 (of 19 October 2017) on the Public Procurement Act,⁹⁷ and Decree No. 2015-035 (of 29 January 2015) on the Transparency Act in the Management of Public Finances in the Republic of Benin.
- Publish freely accessible contracts online on a central platform, as well as procurement data in an open data format, preferably in line with the Open Contracting Data Standard.
- For the effective monitoring of declarations of interest, create an independent structure, or entrust this task to the High Commission, which should make the declarations available online in a standardised format that can be filled in by those subject to them in digital form, making them easier to analyse.⁹⁸
- Accelerate the full digitalisation of participation in public procurement, and the publication of procurement data in the Open Contracting Data Standard (OCDS), which is a global best practice.
- Instruct the Investment and Export Promotion Agency (APIEx) to publish and make a register of companies and business available online, as well as a central register of beneficial owners of companies and businesses.
- Promote corporate social responsibility and their commitments to fighting corruption.

⁹⁷ It should be noted that on 30 July 2020, the National Assembly adopted a new law on the Public Procurement Code in Benin. The publicised version of this law was only made available on the government website on 03.12.2020 (<https://sgg.gouv.bj/doc/loi-2020-26>). According to the government, which introduced the draft revision of the 2017 Code, the revision of the Code aims to strengthen the modernisation of public administration by optimising, in particular, the public procurement processes, with a significant impact on improving the business climate. The revision will make it possible to integrate the provisions of the law on the promotion of micro, small and medium-sized enterprises into the Code, with the aim of facilitating their access to public contracts.

⁹⁸ See for example this model from the High Authority for Transparency in Public Life in France: <https://www.hatvp.fr/consulter-les-declarations>.

To Parliament:

- Given the strategic position of the Court of Audit in the process of monitoring the declaration of assets, this institution should be endowed with the sufficient means to exercise its mandate, and to deal effectively with its task of ensuring the receipt of and, above all, evaluation of the declarations and, by extension, to dissuade offenders.
- Provide Benin with a specific law on access to public information and administrative documents, in line with good international standards, including the creation of an independent body such as an Information Commissioner's Office, to oversee the implementation of the law.
- Promote the adoption of a code of good business ethics in the conduct of business activities.
- Provide Benin with a comprehensive whistleblower protection law.

To the High Authority for Audio-visuals and Communication:

- Comply with the legal provisions making it competent to handle citizens' appeals.

To the future Court of Auditors:

- Make the information contained in asset declarations publicly available online, and put in place a system of effective and dissuasive sanctions in case of non-compliance with asset declaration obligations (such as delays and submission of empty, incomplete or false declarations).
- Establish a mechanism for verifying asset declarations and ensuring their monitoring well beyond the end of term in office.

To the Public Procurement Regulatory Authority:

- Strengthen the audit of public procurement and the full publication of audit reports.

To the future High Commission for the Prevention of Corruption

- Strengthen the role of civil society organisations in the prevention and reporting of corruption.

VII. Annex

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