LEGAL SYSTEMS OF THE WORLD

A Political, Social, and Cultural Encyclopedia

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Cotonou (the economic capital, seat of government, and largest port), with more than 750,000 inhabitants;

Porto-Novo (the official capital and a historic city, located on the Porto-Novo Lagoon), with more than 200,000 inhabitants;

Parakou, with more than 120,000 inhabitants.

The majority of Benin's population are young; more than half are less than twenty years of age.

A land of ancient tradition and culture, Benin is considered the birthplace of Voodoo. Both traditional and revealed religions (particularly Christianity and Islam) are embraced by the Benin people. Because of the phenomenon of religious syncretism, Catholics, Protestants, and Muslims readily take part in Voodoo rites.

Some twenty socioethnic groups each have a territorial base, creating more or less homogenous entities. From a linguistic and cultural point of view, the most significant groups are the Adja, Fon, Yoruba, Batou, Dendi, and Bétamandibé.

This cultural and ethnic diversity extends to the Beninese judicial system, which is characterized by a dualism stemming from the coexistence of customary norms and modern principles inherited from French colonization. It is thus a hybrid system of customary law and French law, the latter based on Romano-Germanic law. Although Muslims make up nearly a quarter of the population, there is no autonomous Islamic system of law. However, certain customs are influenced to a certain extent by Islamic law.

Despite its hybrid nature, the entire Beninese judicial system is perceived to be, and functions, like the Romano-Germanic system of law.

**HISTORY**

As previously noted, Benin has a dual system of law, consisting of so-called modern law and customary or traditional law (these terms will be used interchangeably).

Customary law is oral, ethnic, and religious law. It is itself pluralist, the product of a multiethnic society. In existence from precolonial times, its main focus today is family and property law.

The history of modern law in Benin begins with the introduction of the civil code in the colony of Dahomey and its acceptance by the newly independent state. In ef-
fect, the colonial policy of assimilation led to the introduction of the civil code, first in the colony of Senegal in 1883 and then in the other French possessions in Africa. Colonial France did not preoccupy itself with the existence of indigenous legal systems.

The application of the civil code, initially intended to be the only law in force, was extended to the colonies, including present-day Benin, by “orders of introduction” that applied “the civil, commercial, and criminal laws of Senegal” to the other colonies. In the case of Benin, the civil code was introduced for the first time by Article 23 of the order of December 18, 1896, and subsequently confirmed by Article 17 of the order of August 6, 1901.

LEGAL CONCEPTS

Moreover, with the restoration of democracy in 1990, Benin adopted a constitution on December 11, 1990, that forcefully affirmed the ideal of a state governed by the rule of law in which fundamental human rights and public liberties are guaranteed and protected. Accordingly, private property, the role of the judiciary, basic human rights, and the presumption of innocence are constitutionally recognized and guaranteed by law.

Private Property
Private property receives constitutional protection. The right to own property, one of the pillars of liberal society, is inviolable, and every individual has the right to own property (Article 22 of the constitution). Naturally, the government may expropriate property in the public interest. Expropriation deemed to be in the public interest must adhere to a strictly regulated administrative and judicial procedure, violation of which invalidates the expropriation. (See, for example, A. Codjo Dado v. Etat Béninois, Administrative Chamber of the Supreme Court, April 15, 1999, published in the Supreme Court Reporter, 1999, p. 234; and Allagbe Sossou v. Maire de Sè, Administrative Chamber of the Supreme Court, May 20, 1999, ibid., p. 379.)

The Role of the Judiciary
The role of the judiciary is governed by the principle of the separation of the political and judiciary powers. The principle of independence of the judiciary is ordained by Article 25 of the constitution, and the Constitutional Court upheld the principle on May 7, 1997. (See DCC 97-02/4 of May 7, 1997, Bulletin de Droit et d’Information de la Cour Suprême (Supreme Court Bulletin) No. OO2, 1997, p. 57.)

Equality of Citizens before the Law
The principle of equal treatment before public authorities is recognized in Article 26 of the constitution. Numerous judicial decisions have sanctioned the government for violating this principle.

Individual Liberties
Individual liberties are guaranteed and protected by the judiciary, particularly the Constitutional Court, to which any citizen may have recourse by means of a simple request.

The Presumption of Innocence and Right to Defense
It may seem unremarkable to affirm principles so inherent as the presumption of innocence and the right to defense. Yet these basic principles were so abused only decades ago that their revival by the constitution of December 11, 1990, merits mention. Protection of these rights is ensured by laws and by the judiciary.

In sum, the Beninese judicial system draws on the liberal tradition, the product of its colonial past, and its experience as a sovereign state.

RESOLUTION OF DISPUTES (CURRENT LEGAL STRUCTURE)
As in all societies, conflicts of all types arise in a variety of domains (property, work, obligations, family, and so forth). The means of resolving these conflicts are equally varied. Alongside the judicial forums are alternative methods of dispute resolution, such as conciliation, mediation, and arbitration. Conflicts are still settled by traditional chieftains under “the council tree” (l’arbre à palabre), but the extent of this practice is difficult to assess in light of its informal structure.

Recourse (or right of recourse) to state tribunals and courts is the officially accepted means to redress citizens’ grievances. The government renders justice through courts and tribunals whose organization is defined by the constitution and special statutes. There are three types of jurisdictions: courts and tribunals of ordinary jurisdiction, the High Court of Justice, and the Constitutional Court.

COURTS AND TRIBUNALS OF ORDINARY JURISDICTION
This section will review the fundamental principles governing their organization, as well as the various courts and tribunals of ordinary jurisdiction themselves. This
Legal Structure of Benin Courts

High Courts
- High Court Of Justice
- Constitutional Court
- Supreme Court

Supreme Court
- Common Court of Justice and Arbitration
- Attorney General
  - Judicial Chamber
  - Administrative Chamber
  - Court of Audit

Court of Appeals
- Public Prosecutor
  - Indictments
  - Ordinary Appeals Chamber
  - Assize Court
    - Civil and Commercial Chamber
    - Provisional Chamber — Civil and Commercial
    - Minor Offenses
    - Traditional Chamber
    - Corporate/ Business Matters

Courts of First Instance
- District Attorney
  - Minor Offenses
  - Investigations
  - Social Chamber
  - Civil and Commercial Chamber
  - Traditional Chamber
  - Provisional Chamber — Civil and Commercial

Conciliation Boards