



# Decriminalisation of Laws Limiting Freedom of Expression in Africa: Benin Country Report

With the support of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH  
on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ)



## Preface

Across the world, there exist numerous criminal laws which restrict the enjoyment of the right to freedom of expression, as guaranteed by numerous international and regional human rights treaties as well as national constitutions. These laws which are generally relics of colonial times, have nevertheless continued to be used, and in some cases further strengthened by post-colonial governments. In Africa, offences such as sedition, criminal defamation, criminal libel, publication of false news and insult remain on the statute books of most countries. In recent times, anti-terrorism laws are increasingly being utilised to 'criminalise' free speech.

While many governments justify the continued maintenance of these laws on grounds such as protecting national security and the right to privacy, in reality, this is rarely the motivation for their use. Rather, these laws are routinely utilised to stifle public debate and legitimate criticism on issues of national interest such as corruption, lack of respect for the rule of law and poor service delivery. For some, the mere knowledge of the existence of these laws induces self-censorship. For others who remain undeterred, their eventual arrest, charge, conviction or sentencing and the attendant consequences on their professional and personal lives, becomes their lived reality. Inevitably, the existence and use of these laws creates an unfavourable climate for the promotion and protection of all human rights, limits the accountability of elected officials, hinders the effectiveness of democratic institutions and ultimately stunts democratic governance.

The African Commission on Human and Peoples' Rights (African Commission) recognising the important role of freedom of expression in the realisation of other human rights has continuously reiterated that these criminal laws constitute a violation of the right of freedom of expression. Thus, the Declaration of Principles on Freedom of Expression in Africa, adopted by the African Commission in October 2002, in principle 12 states that individuals should not be 'liable for true statements, opinions or statements regarding public figures, which it was reasonable to make in the circumstances'; requires public figures to 'tolerate a greater degree of criticism; and prohibits the imposition of sanctions which are 'so severe as to inhibit the right to freedom of expression'.

Furthermore, in a communication submitted to the African Commission by Kenneth Good against the Republic of Botswana, the African Commission reiterating principle 12 of the Declaration stated that a high level of tolerance is expected when political views are expressed and 'an even higher threshold is required when it is directed towards the government and government officials'. Again, in November 2010, the African Commission adopted a resolution, ACHPR/Res169 (XLVIII) 2010: Resolution on Repealing Criminal Defamation Laws in Africa. This resolution called on states parties to the African Charter to repeal criminal defamation and insult laws and to 'refrain from imposing general restrictions that are in violation of the right to freedom of expression'.

On my part, I have consistently appealed to Member States of the African Union to decriminalise media offences through my Activity Reports, presented to each Ordinary Session of the African Commission, as well as through numerous letters of appeal sent to heads of states, expressing concern about the application of these laws. It was with this in mind that during the 52<sup>nd</sup> Ordinary Session of the African Commission held in October 2012 in Cote d'Ivoire, I announced the launch of a pan-African campaign for the decriminalisation of laws that restrict freedom of expression, to be implemented under my leadership.

It was thus as part of this this campaign, that a multi-country research into the use and impact effect of laws criminalising freedom of expression in Benin, Burundi, Lesotho, Tanzania, Zambia and Zimbabwe, was commissioned in September 2013, with the principal objective of providing a solid evidence base of the effects of these laws on freedom of expression.

This report on Lesotho, as with all the other 5 country reports, provides empirical evidence of the use and impact of laws criminalising freedom of expression in Lesotho. The findings of this research will most certainly be useful in future engagements by the African Commission and my mandate with the government of the Republic of Lesotho in encouraging the decriminalisation of these laws. It is also my earnest hope that freedom of expression activists in Lesotho and beyond, will find the information provided in this research useful, in championing the cause for the repeal of the relevant criminal laws in Lesotho.

A handwritten signature in black ink, reading "P. Tlakula". The signature is written in a cursive, flowing style.

Pansy Tlakula

Special Rapporteur on Freedom of Expression and Access to Information in Africa

December 2014

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## Acronyms and Abbreviations

AFP	Agence France Press
ALCRER	Association for the fight Against Racism, Ethnocentrism and Regionalism
ASECNA	Agency for Aerial Navigation Safety in Africa
ATRPT	Transitional Posts and Telecommunications Regulation Authority
CFU	Union of Media Professionals of Benin
China	Xinhua
CNPA-Benin	National Press and Audio-visual Council
DHPD	NGO Human Rights, Peace and Development
FONAC	Front of National Anti-Corruption Organisations
GMR	Revolutionary Military Government
HAAC	Higher Authority for Audio-visual Media and Communication
JDP	Jeunes democrats prompts
ODEM	Observatory Ethics and Professional Conduct in the Media
RFI	Radio France International
SONEB	National Water Corporation of Benin
UNAMAB	Benin National Union of Magistrates
UPMB	National Union of Professionals in Benin
WANEP	West Africa Network for Peace building

## Introduction

A former French colony of West Africa, Dahomey (modern-day Benin) gained independence on 1 August 1960. After a period of political turbulence marked by numerous coups d'état between 1963 and 1972, the country settled into political and institutional stability from 1972 to 1990, when the national conference of the vital forces of the country was organised. During the period of totalitarianism, public liberties were curtailed. The national conference heralded a return to democracy, with the separation of powers and a revival of fundamental public freedoms, such as freedom of expression and press freedom. Since then, citizens have more or less enjoyed these freedoms, although they still face sporadic threats of varying severity. Laws inherited from the colonial and revolutionary period restrict or criminalise freedom of expression. To improve this situation while taking account of the advocacy of press supporters, a bill to enact an information and communication code in the Republic of Benin, which includes a chapter on access to public sources of information, is being drafted and should soon be tabled before Parliament. In the meantime, the country is party to many regional, community and international instruments which guarantee or promote freedom of expression. Furthermore, it would do well to foster their effective application. This paper, which highlights the country's situation in terms of the laws which restrict or criminalise freedom of expression, reveals the scope of the challenge, given that both the old laws and the more recently drafted ones, include fairly restrictive provisions governing press freedom and freedom of expression and should be updated in light of the Declaration on Principles of Freedom of Expression in Africa.

## Section One: Background and context

Various national and international instruments govern the guarantee and exercise of freedom of expression in Benin.

### 1.1 International and constitutional legislative framework

#### 1.1.1 International, African Union and sub-regional legal instruments

	<i>Instruments</i>	<i>Signature</i>	<i>Ratification/Adhesion</i>	<i>Deposit</i>	<i>Reservations</i>
1	Universal Declaration of Human Rights	-----	1964	-----	None
2	African Charter on Human and Peoples' Rights	20 January 1986	25 February 1986	11 February 2004	None
3	African Union Treaty establishing the African Court on Human and Peoples' Right	11 February 2004	-----	-----	None
4	African Charter on Democracy, Elections and Governance	16 July 2007	2012	2012	None
5	Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.	11 February 2004	30 September 2005	13 October 2005	None
6	International Covenant on Civil and Political Rights: 16 December 1966	-----	22 March 1992	-----	None
7	Optional Protocol to the International Covenant on Civil and Political Rights: 16 December 1966	3 August 1990	-----	-----	None
8	Convention on the Rights of the Child: 20 November 1989	-----	-----	-----	-----
9	Freedom of Association and Protection of the Right to Organise Convention		12 December 1960		None
10	Constitutive Act of the African Union	12 July 2000	3 July 2001	11 July 2001	None
11	Protocol to the African Charter establishing the African Court on Human and Peoples' Rights	9 June 1998	-----	-----	None
12	African Union Convention on Preventing and Combating Corruption	11 February 2004	20 September 2007	7 November 2007	None
13	African Charter on Values	12 July 2011	-----	-----	None



14	and Principles of Public Service and Administration	-----	12 March 1992	-----	None
15	International Charter on Economic, Social and Cultural Rights	24 September 2013	-----	-----	None
16	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	19 May 1968	-----	-----	None
17	International Covenant on the Rights of Persons with Disabilities	11 February 2004	-----	-----	None
18	Protocol to the African Court of Justice	26 December 2003	12 April 2007	-----	None
19	Charter on Corruption	27 February 1992	17 April 1997	30/05/1997	None
	African Charter on the Rights and Welfare of the Child				

These are the instruments identified so far by research. No reservations are known to have been expressed by Benin, nor have requests for intervention been filed.

### 1.1.2 Constitution

#### *Constitutional development in Benin*

Since 1959, particularly since it gained national and international sovereignty on 1 August 1960, Benin's constitutional and political experience has been quite turbulent. This was reflected in numerous coups d'état between 1963 and 1972 and in the passing of many constitutional laws. Professor Ibrahim David Salami,<sup>1</sup> a doctor of public law and barrister who was interviewed for the purposes of this study, identified the following milestones:

- (1) The Constitution of 28 February 1959
- (2) The Constitution of 26 November 1960
- (3) The Constitution of 11 January 1964
- (4) The Charter of 1 September 1966
- (5) The Constitution of 11 April 1968
- (6) Ordinance No. 69-53 of 26 December 1969 issuing the Director's Charter.

<sup>1</sup> Interview with the author, August 2003.

- (7) Ordinance No. 70-34-CP of 7 May 1970 issuing the Charter of the Presidential Council
- (8) Ordinance No. 74-68 of 18 November 1974 setting forth the organisation of power under the Revolutionary Military Government (GMR)
- (9) The Basic Law of 26 August 1977 amended by Constitutional Law No. 84-003 of 6 March 1984
- (10) Constitutional Law No. 90-022 of 13 August 1990 to organize powers during the transitional period
- (11) Constitutional Law No. 90-32 of 11 December 1990 promulgating the Constitution of the Republic of Benin (incorporating the African Charter of Human and Peoples' Rights).

In Professor Salami's view, the political and constitutional history of Benin can be divided into three periods as follows.

**Constitutional and institutional instability.** Between 1959 and 1974, Dahomey had eight constitutions in fifteen years, averaging one every twenty months or so. During that period, especially between 28 October 1963 (when the first coup d'état occurred) and 26 October 1972 (when the last coup d'état so far occurred), the country saw 11 coups d'état and 10 presidents. This chronic instability largely explains the constitutional instability, as each regime endeavoured to adapt the Constitution to its own vision while also seeking to erase all vestiges of the overthrown regime. Also significant is the reputation for rebelliousness of the former Dahomeans, now Beninese – so much so that no colonial governor held office for more than two years.

**Precarious stability.** Between 1974 and 1990, the revolutionary period deprived citizens of their most basic rights in the purported interests of political stability and national unity. Having come to power following the coup d'état of 26 October 1972, President Mathieu Kérékou first issued Ordinance No. 74-68 of 18 November 1974 to organize power under the GMR, after which he secured the adoption of the Basic Law of 26 August 1977, which was amended by Constitutional Law No. 84-003 of 6 March 1984. His lengthy presence at the helm of the country (26 October 1972 to 4 April 1990 – he also returned to power following a democratic vote in 1996 and held the reins of state for a further ten years) explains the relative stability of the Constitution during that period. The government ruled the country with an iron fist, under the Marxist-Leninist banner, until the National Conference of 19 to 28 February 1990 opened up new vistas for the country. In the meantime, the revolutionary government claimed that this precarious stability would have been shorter had coup attempts not been defused.

**The Constitutional fortress.** The country has had its longest-lasting Constitution since 1990. The case law of the Constitutional Court makes it even more difficult to amend an already extremely rigid Constitution. Immediately after the National Conference, Constitutional Law No. 90-022 of 13 August 1990 organizing power during the transitional period was passed to manage the transition. While maintaining General Mathieu Kérékou at the helm of the State and thereby obviating the risk of armed conflict, the National Conference appointed a Prime Minister and Head of Government to work with him. Obviously, the laws which had governed the Marxist-Leninist regime could no longer hold sway. Pending the adoption of the new Constitution of Benin, this framework law was therefore necessary. It remained in force until the passing of Law No. 90-32 of 11 December 1990 setting forth the Constitution of the Republic of Benin (incorporating the African Charter of Human and Peoples' Rights). This is the current Constitution, 23 years after the National Conference, breaking the record for constitutional longevity in Benin. This is explained by the stringent conditions which the lawmakers attached to its amendment. Article 154(2) of the Constitution provides: "The amendment shall be entertained only after it obtained a majority of three quarters of the members of the National Assembly", and Article 155 adds: "The amendment shall come into effect only after having been approved by referendum, save where the proposed amendment is approved by a four-fifths majority of the members of the National

Assembly” In practice, since 1990 the National Assembly has varied in composition and no political party has been able to secure an absolute majority, even though in 2011, the coalition of the *Forces Cauris pour un Benin Emergent*, formed around President Boni Yayi, performed the feat of adjudging to itself 41 out of the 83 seats of the National Assembly. Thus, the heterogeneous composition of the National Assembly makes a constitutional amendment unlikely in principle. Added to that is a fresh impediment established by the Constitutional Court. In June 2006, 71 out of 83 members of the National Assembly voted to amend the Constitution to extend their terms of office and to twin the legislative and municipal elections of 2008. Setting aside their vote, the Constitutional Court cited the lack of “national consensus, a constitutional principle” as a prerequisite for amendment. Thus, barring a reversal of the Constitutional Court’s finding, any amendment of the Constitution of Benin should be preceded by national consensus. This largely explains the longevity of the 1990 Constitution.

### ***The constitutional amendment process***

Article 154 of the Constitution of 11 December 1990 provides that

The prerogative to move for a constitutional amendment shall be vested concurrently in the President of the Republic, after a decision taken in the Council of Ministers, and in the members of the National Assembly. In order to be entertained, the proposed amendment must be voted by a three-fourths majority of the members of the National Assembly.

Article 155 adds that “The amendment shall come into effect only after having been approved by referendum, save where the proposed amendment is approved by a four-fifths majority of the members of the National Assembly”. However, Article 156 stipulates that “No motion for amendment may be instituted or continued if it undermines territorial integrity. The republican form of government and the secularity of the State may not be the subject of an amendment”. These are the extant constitutional provisions governing a revision of the Constitution. On this subject, it is worth noting that for a year now, the debate as to the appropriateness of a constitutional amendment has exercised the political classes and society of Benin. It should be added that it is the Government, in particular the Head of State, which initiated the constitutional amendment. Having established expert committees ostensibly to review the Constitution, the Head of State sent a bill to the National Assembly by Decree No. 2009-548 of 3 November 2009, which he then withdrew by Decree No. 2012-088 of 26 April 2012 with a view, as he wrote to the National Assembly, to conducting more effective outreach to the various groups of the nation to explain the basis for the amendment. However, without conducting the outreach and the requisite debate with society, especially the political classes, given that the Constitutional Court stated in 2006 that there could be no amendment of the Constitution without the national consensus it considered to be a “constitutional principle”, the Government re-tabled its bill for amendment to the National Assembly by Decree No. 2013-255 of 6 June 2013, without seeking the endorsement of the Constitutional Court as required by the Constitution in respect of all bills. Since then, in place of national dialogue intended to produce consensus, the Government has deployed its ministers and other supporters in the country to conduct outreach. Opponents of this approach cannot make their opinions heard – some are even threatened. In Decision DDC 13-124 of 12 September 2013, the Constitutional Court held that the reasoned opinion of the Supreme Court is not required in this instance, since the Constitution provides at Article 154 that the President of the Republic may initiate changes upon decision by the Council of Ministers. This Government project has been condemned by the opposition, civil society and the national union of magistrates (UNAMAB) as fomenting constitutional imbalance which favours the Executive, and threatens the independence of the Judiciary. Others have viewed it as opportunism. The Government denies these charges, arguing that it is intended to modernise institutions and foster good governance.

## ***Constitutional guarantees***

**Article 26:** The States guarantees all citizens equality before the law without distinction as to origin, race, gender, religion, political opinion or social position.

**Article 8:** Human beings are sacred and inviolable. The State has the absolute obligation to respect and protect human beings. It shall guarantee them full well-being. To this end, it shall afford its citizens equal access to health, education, culture, information, professional training and employment.

Better still, the following provisions of Law No. 2001-37 of 10 June 2002 to organise the judiciary in Benin confirm this view.

**Article 9:** Beninese citizens are equal before the law. They are afforded the same guarantees for their defence before the courts of law.

**Article 10:** The parties and witnesses who do not speak the language in which the proceedings are conducted have the right to use the national language of their choice, with the assistance of a duly sworn interpreter.

***Moreover, freedom of expression and media freedom are guaranteed. The following articles of the Constitution govern these guarantees.***

**Article 23:** Each person has a right to freedom of thought, conscience, religion, opinion and expression while respecting public order as stipulated in laws and regulations. Religious observance and the expression of beliefs shall respect the secularity of the State.

**Article 24:** Freedom of the press is recognized and guaranteed by the State. It is protected by the Higher Authority for Audio-visual Media and Communication.

**Article 21:** The confidentiality of correspondence and communications are guaranteed by law.

### ***What are the constitutional limits to this right?***

The limits to this right derive essentially from the respect for public order. This is enshrined in Article 23 of the Constitution:

Each person has a right to freedom of thought, conscience, religion, opinion and expression while respecting public order as stipulated in laws and regulations. Religious observance and the expression of beliefs shall respect the secularity of the State.

It follows that this right is absolute, save that public order must not be disturbed. In these provisions, the Constitution of Benin is therefore consonant with the international instruments ratified by Benin which advocate freedom of expression. In particular, the African Charter on Democracy, Elections and Governance, Article 19 of the Universal Declaration of Human Rights, Article 9 of the African Charter on Human and Peoples' Rights, or indeed the Declaration of Principles on Freedom of Expression in Africa which states at Point II(2) that "[a]ny restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society". Even if the concept of public order may sometimes appear to be a catch-all, vague and difficult to apprehend, it is essential to maintain public order.

## ***Judicial independence***

**Article 125** of the Constitution stipulates:

only to the authority of the law. Sitting magistrates shall be irremovable. Judicial power shall be independent of legislative power and executive power. It shall be exercised by the Supreme Court and Courts and Tribunals created in accordance with the present Constitution.

**Article 126:** Justice shall be rendered in the name of the Beninese people. In performing their duties, judges shall be subject

Law No. 2001-37 of 10 June 2002 to organise the judiciary in Benin also enshrines this principle.

**Article 2:** The Judiciary is independent of the Legislature and the Executive. Judicial power is exercised by the Supreme Court and the courts and tribunals established in accordance with the Constitution.

**Article 3:** Justice shall be rendered in the name of the people of Benin. Magistrates shall be subject only to the law in the performance of their duties. Magistrates shall suffer no pressure whatsoever in the performance of their duties. Any interference in the determination of matters pending before a court or tribunal is prohibited. Any breach of these provisions shall be punishable by a term of imprisonment of six (6) to twelve (12) months and a penalty of fifty thousand (50, 000) to five hundred thousand (500, 000) francs or by any of these penalties alone.

### ***The constitutionality of laws and their compliance with international law***

**Article 114** reads:

The Constitutional Court shall be the highest jurisdiction of the State in constitutional matters. It shall be the judge of the constitutionality of the law and shall guarantee fundamental human rights and public liberties. It shall be the regulatory body for the functioning of institutions and the activity of public authorities.

**Article 117** reads:

The Constitutional Court shall

- Rule obligatorily on:
- The constitutionality of organic laws and of laws in general in advance of their promulgation;
- The constitutionality of laws and regulatory acts deemed to infringe on fundamental human rights and on public liberties, and in general on the violation of the rights of the individual.

**Article 122:**

Any citizen may move the Constitutional Court to rule on the constitutionality of laws either directly or by the procedure of challenges to unconstitutionality raised in a matter which concerns him before a court of law. The court of law shall stay the proceedings pending a decision by the Constitutional Court, which shall rule within thirty days.

However, there is so far no case law relating specifically to the evaluation or monitoring of freedom of expression to date. Citizens often apply to the Constitutional Court to report human rights abuses such as unwarranted detention and assault.

### 1.1.3 Judicial system

Law No. 2001-37 of 10 June 2002 to organise the judiciary in Benin institutes trial courts (courts of first instance and appellate courts) and the Supreme Court (which has an administrative bench, a judicial bench and a financial bench).

**Article 2:** The Judiciary shall be independent of the legislature and the executive. Judicial power shall be exercised by the Supreme Court and by the courts and tribunals established under the Constitution.

**Article 49:** Trial courts shall apply ordinary law in criminal, civil, commercial, social and administrative matters.

**Article 61:** Each appeals court shall comprise at least the following:

- a modern civil and social bench;
- an administrative bench;
- a customary law bench;
- a criminal bench;
- a financial bench;
- an indictments bench; and
- a commercial bench.

The Supreme Court is governed by a special law, Law No. 2004-07 to establish the organisation, functioning and powers of the Supreme Court.

**Article 1:** Pursuant to Article 131 of the Constitution of 11 December 1990, the Supreme Court shall be the highest court of the State for administrative and judicial matters and for financial matters of the State. It shall also have jurisdiction over disputes pertaining to local elections. Decisions of the Supreme Court shall not be appealable. They shall be binding on the executive, the legislature and all other courts.

**Article 3:** The Supreme Court shall be composed of:

- an administrative bench;
- a judicial bench;
- a financial bench;
- a public prosecutor's office; and
- a central registry.

Trial courts hear the facts and apply the law, whereas the Supreme Court only hears matters of law, ensuring that it has been properly applied by the trial courts. This law establishes the principle of double degree of jurisdiction. This means that a person who takes a matter to court and is not satisfied with its determination in the court of first instance may bring the matter before an appellate court and, if the person is not satisfied with the decision on appeal, he or she may take the matter to the Supreme Court. Only a decision which is considered to be final may be binding upon him or her. In practical terms, once a judgment is rendered in a civil, commercial, social or criminal case by a court of first instance, any person bringing a case who finds that the judgment is prejudicial to him or her may enter an appeal and the case is taken over by the relevant chamber of the court of appeal which, at this juncture, is composed of three magistrates (collegiality is the principle in courts of first instance but because of the scarcity of magistrates, this principle only applies on appeal. It is considered that three magistrates, specifically three advisors, cannot all be wrong at the same time. If, after the judgment on appeal, the

person bringing the case is still not satisfied, he or she may apply to the judicial bench of the Supreme Court, which is the highest court.

The law provides for 28 courts of first instance, but so far only fourteen (14) are available, together with three (3) courts of appeal.

### ***Other courts and tribunals***

It is true that the Constitution provides for other courts and tribunals to deal with human rights issues. This mainly concerns the Constitutional Court. Article 120 of the Constitution stipulates:

The Constitutional Court must rule within fifteen days of being seized of the contents of a bill or of a complaint alleging the violation of human rights and public liberties. However, upon request by the Government, if there is an emergency, this time-limit shall be reduced to eight days. In this event, the submission of the matter to the Constitutional Court shall suspend the time-limit for the promulgation of the law.

Within this framework, the Court has issued many decisions noting the violation of human rights by the authorities, in particular police officers. It has also issued decisions regarding challenges to constitutionality.

Moreover, there is now a Mediator of the Republic, a position established by Law No. 2009-22 of 11 August 2009, to whom citizens may submit their disputes with the administration and the authorities. This institution is not a court; instead, it mediates between the parties with a view to remedying the injustice or the error, or ensuring that the administration is more diligent. The mediator's intervention can prevent the dispute from going to trial.

Finally, the National Assembly recently passed Law No. 2012-36 of 15 February 2013 reinstating the Benin Human Rights Commission, which is responsible for monitoring the human rights situation in Benin and reporting thereon to the public authorities. The Commission had in the past been governed by Law No. 89-004 of 12 May 1989 which established it.

Under Article 1(2) of the aforementioned Law No. 2012-36 of 15 February 2013, "The Commission is an independent national institution responsible for human rights. It shall not be subject to any public authority and shall perform its functions without any interference."

Amongst other powers, Article 4 of the same law vests it with the power to

[E]ntertain individual and collective applications from citizens and institute investigations of alleged human rights violations; organise outreach campaigns on human rights and undertake any action likely to foster a culture of human rights; conduct regular, unannounced and announced visits to detention and holding centres with a view to preventing human rights violations; examine *proprio motu* any situation in which a violation of human rights is observed or brought to its knowledge and take all relevant steps; assist victims to take legal action on all proven human rights violations, in particular on behalf of the victims of such; guide complainants and offer assistance to those who seek it before the competent courts.

Other relevant provisions of the law are as follows:

**Article 31:** Any person who considers that he or she has suffered a rights violation may seize the Commission by an application. The application may be filed by individuals or their representatives, third parties, non-governmental organisations, associations, unions or any other organisation representing victims. The application shall state the identity and address of the filing party together with the identity and address of the person or organization against whom the violation is alleged and a brief statement of the nature of the violation. The Commission may also be seized *proprio motu* of cases of human rights violations of which it has knowledge.

**Article 32:** The Commission shall be seized in writing or orally or by any other means allowing the substantive and procedural aspects of the investigation to be established.

**Article 34:** The Executive Bureau shall meet no later than forty-eight (48) hours after the Commission is seized. In case of serious and manifest violations, the Executive Bureau shall meet forthwith. In any event, if the Executive Bureau decides to pursue a case of human rights violation, a case file shall be prepared and transmitted to the authority empowered to treat it under the Constitution [author's note: the Constitutional Court] of 11 December 1990. In the event of legal remedies being sought, the Commission may apply to participate as a civil party alongside the victim.

### ***Envisaged or implemented reforms?***

Since Law No. 2001-37 was promulgated in 2002, it has not been amended, nor are any particular amendments envisaged. Nonetheless, the amendment of the Constitution initiated by the Head of State and his Government affects this area. Article 126(2) of the current Constitution stipulates that “[i]n performing their duties, magistrates shall be subject only to the authority of the law. Sitting magistrates shall be irremovable”. Furthermore, **Article 5** of Law No. 2001-37 states: “Sitting magistrates shall be irremovable and therefore may not be transferred from their positions, even in cases of promotion, save with their consent”. But the proposed constitutional amendment redrafts these prerogatives at Article 127 thus:

Justice shall be rendered on behalf of the People of Benin. In the performance of their duties, magistrates shall be subject only to the authority of the law. Magistrates shall be independent in conducting their business and rendering their decisions.

Sitting magistrates shall not be removable save in cases of incompetence, professional misconduct or undermining the credibility of the judiciary. This irremovability shall not constitute a personal privilege of the magistrate and is intended to guarantee the independence of the judiciary.

Under the aegis of their union, the Benin National Union of Magistrates (UNAMAB), the magistrates have condemned this government initiative as “an attempt to subjugate the judiciary, a threat to its independence”. Through their President, Mr Michel Adjaka, they have called on the Minister of Justice to work within the Government to secure the withdrawal of this bill so that it can be improved.

In the absence of official explanations, it might well be considered that the motive for this proposed amendment is that the Government has often had difficulty transferring some magistrates given the principle of irremovability. Also, the concerns of the magistrates centre on the “subjective” nature of the reasons advanced, or, in any event, how they might be construed. Of particular concern are “incompetence”, and “undermining the credibility of the judiciary”. They express the fear that, for these “nebulous reasons”, the Government is instead seeking to “settle scores” or make “punitive transfers”.

#### **1.1.4 Law reform process**

Article 105(1) of the Constitution states: “Bills may be tabled by the President of the Republic and members of the National Assembly.” Where bills are initiated by Government, they are known as government bills and when initiated by one or more members of the National Assembly, they are known as private members’ bills.

Under Article 97 of the Constitution,

The law shall be passed by the National Assembly by a simple majority. However, the bills on which the present Constitution shall confer the status of organic laws shall be passed and amended under the following conditions:



- The bill shall be submitted to the Assembly for deliberation and voting only upon expiry of the fifteen-day time-limit after it is deposited in the Bureau of the Assembly;
- The text may be adopted only by an absolute majority of the members of the Assembly;
- Organic laws may be promulgated only after the Constitutional Court has declared that they are constitutional.

As can be seen, organic laws are passed by absolute majority of the members of the National Assembly, whereas ordinary laws are passed by simple majority, that is, a majority of the members of parliament present during the relevant debates.

**Article 105(2)** states:

Government bills shall be deliberated in the Council of Ministers, after a reasoned opinion from the Supreme Court sought in accordance with Article 132 of the present Constitution, and deposited in the Bureau of the National Assembly. Both Government and private members' bills shall be sent to the appropriate committee of the National Assembly for examination prior to being deliberated in plenary session.

Once this stage is passed, "The discussion of bills shall be based on the text presented by the committee. Upon request by the Government, the committee shall inform the National Assembly of the points on which there is disagreement with the Government." [Article 106]

One or more members of the National Assembly may table a private member's bill. This option is speedier in practice because it does not require the same procedure as for Government bills. Government, in tabling bills, must work with the National Drafting Commission, which reviews the text and corrects it; consults institutions, including those which may be affected by the law; and most important, seeks the reasoned opinion of the Supreme Court, before a decree is issued by the Council of Ministers and the bill sent to the National Assembly. This is why, in certain circumstances, in order to deal with urgent situations, the Government channels its legislative initiatives through members of its parliamentary majority as private member's bills.

With the envisaged amendment of the Constitution, citizens' initiatives could become part of Benin's legislative arsenal. **Article 105** of the constitutional bill proposes that "Bills may be tabled by the President of the Republic, members of the National Assembly and citizens, where at least one thousand (1, 000) persons per district support them. An organic law shall stipulate the practical steps through which citizens may exercise this right." The country has twelve departments; this means that 12, 000 persons are required to validate a public initiative. It must however be said that the rules of procedure of the National Assembly already allow for citizens to table bills before the Assembly by petition, but this has never happened.

It is important to note that the procedure is the same for amendments to existing laws, save for the Constitution, whose amendment is subject to a specific procedure. Thus, the Government and the members of the National Assembly can move to modify, amend or abrogate an existing law. A majority of votes in the National Assembly is required.

In any event, to enter into force, the law passed by the National Assembly must be promulgated by the Head of State and published in the Official Gazette. Article 57 of the Constitution states:

Bills may be tabled by the President of the Republic and members of the National Assembly.

The President of the Republic shall promulgate laws within fifteen days of receiving them from the President of the National Assembly.

This time-limit shall be reduced to five days in case of emergency declared by the National Assembly.

During the prescribed time-limits, the President of the Republic may request the National Assembly to deliberate anew on the law or certain of its articles. This second deliberation may not be refused.

If the National Assembly is at the end of its session, this second deliberation shall take place automatically during the subsequent ordinary session.

After this second deliberation, the law shall be passed by an absolute majority of members of the National Assembly. If, after this last vote, the President of the Republic refuses to promulgate the law, the Constitutional Court may, upon a submission by the President of the National Assembly, declare the law enforceable if it is constitutional.

The same procedure shall obtain if, upon expiry of the fifteen-day time-limit for promulgation provided for in paragraph 2, neither promulgation nor a request for a second reading occur.

## 1.2 Media Landscape

The media landscape of Benin is fairly fast-changing, with a variety of publications and radio stations. This variety does not necessarily reflect diversity of opinion, given that the vast majority of publications echo the positions of the government. Television channels, in particular private ones, also enrich the landscape, as do a few blogs and websites.

### 1.2.1 Overview of media landscape

Benin has a highly diversified media landscape, with an abundance of publications and radio stations. The influence of newspapers is relative. The one with the widest circulation is *La Nation*, the public service daily newspaper. It is followed by papers such as *Le Matinal Fraternité*, *La Nouvelle Tribune* and *La Presse du Jour*, which have daily circulations of between 1000 and 3000. Others have circulations ranging from 100 to 1000.

Yet others appear with varying regularity. The table below provides information on the most notable publications.

#### List of Newspapers

Title	Owner	Coverage	Circulation and language	Topics
<b>I- Dailies</b>				
1- <i>LETRANSITAIRE BENINOIS</i>	Private	----	----	General/transit
2- <i>AUBE NOUVELLE</i>	Private	Cotonou/vicinity	1000 French	General/political
3- <i>PALMARES</i>	Private (power)	Cotonou/vicinity	1000 French	General/political
4- <i>L'INFORMATEUR</i>	Private	Cotonou/vicinity	1000 French	General/political
5- <i>L'EVENEMENT PRECIS</i>	Private	Cotonou/vicinity	1000 French	General/political
6- <i>NOUVELLE EXPRESSION</i>	Private	Cotonou/vicinity	1000 French	General/political
7- <i>LE MEILLEUR</i>	Private (power)	Cotonou/vicinity	1000 French	General/political
8- <i>LE TEMPS</i>	Private	-----	-----	
9- <i>LE GONGONNEUR</i>	Private	-----	-----	
10- <i>LE MATINAL</i>	Private	National	2500 French	General/political
11- <i>L'AVENIR</i>	(opposition)	Cotonou	1000 French	General/political
12- <i>INFO SUD</i>	Private	----	-----	
13- <i>NOTRE TEMPS</i>	Private	Cotonou	-----	
14- <i>L'AURORE</i>	Private	Cotonou/vicinity	1000 French	General/political

15- <i>LE CONTEMPORAIN</i>	Private (power)	-----	----	
16- <i>LE CLAIRON</i>	Private	-----	-----	
17- <i>LA NOUVELLE</i>	Private	-----	-----	
18- <i>LA NOUVELLE GENERATION</i>	Private	Cotonou/vicinity	1000 French	General/Political
19- <i>L'INDEPENDANT HEBDO</i>	Private	Cotonou/vicinity	1000 French	General/political
20- <i>AUJOURD'HUI AU BENIN</i>	Private (power)	-----	----	
21- <i>EMERGENCE INFO</i>	Private	----	-----	
22- <i>L'AUTRE VISION</i>	Private	Cotonou/vicinity	1000 French	General/political
23- <i>INFO-PLUS</i>	Private	----	-----	
24- <i>LE PROGRES</i>	Private	Cotonou/vicinity	1500 French	General/political
25- <i>LE GRAND JOURNAL</i>	Private	----	-----	
26- <i>LE TRIOMPHE</i>	Private	----	-----	
27- <i>LE TEMOIN of PEUPLE</i>	Private	----	-----	
28- <i>LA DEPECHE of SOIR</i>	Private	----	-----	
29- <i>LE MUTATEUR</i>	Private	----	-----	
30- <i>LE DEVOIR</i>	Private	----	-----	
31- <i>NASIARA</i>	Private	Cotonou	1000 French	General/political
32- <i>LA PYRAMIDE</i>	Private (power)	----	-----	
33- <i>NOUVELLES MUTATIONS</i>	Private	-----	-----	
34- <i>LE PAYS EMERGENT</i>	Private	Cotonou	1000 French	General/political
35- <i>L'OPTION INFOS</i>	Private (power)	Cotonou/vicinity	1500 French	General/political
36- <i>LE POTENTIEL</i>	Private (power)	Cotonou-Glazoué	1000 French	General/political
37- <i>GBOMANDO INFO</i>	Private	----	----	
38- <i>LE TEMPLIER</i>	Private	----	----	
39- <i>LE CONFRERE DE LA MATINEE</i>	Private	Cotonou/vicinity	1000/ French	General/political
40- <i>L'ECHIQUIER</i>	Private	Cotonou	1000/French	General/political
41- <i>L'ELITE</i>	(opposition)	----	-----	
42- <i>LE QUOTIDIEN</i>	Private	Cotonou	1000/French	General/political
43- <i>DJAKPATA</i>	(opposition)	Cotonou	1000/French	General/political
44- <i>LA CLOCHE</i>	Private	----	----	
45- <i>LA NOUVELLE TRIBUNE</i>	Private	National	1500/ French	General/political
46- <i>LA PRESSE DU JOUR</i>	Private (power)	National	1000 French	General/political
47- <i>L'AUTRE JOURNAL</i>	Private	----	----	
48- <i>24 HEURES AU BENIN</i>	Private	----	----	
49- <i>LA NATION</i>	(opposition)	National	5000/ French	General
50- <i>FRATERNITE</i>	Private	National	2500/ French	General/political
51- <i>LE BLASON</i>	(opposition)	----	----	
52- <i>L'OPINION AUJOURD'HUI</i>	Private	----	----	
53- <i>ACTU EXPRESS</i>	Private	Cotonou	----	
54- <i>L'ACTUALITE</i>	Public/State	Cotonou	1000 /French	General/political
55- <i>LA TRIBUNE DE LA CAPITALE</i>	Private	Porto-Novo/Cot	1000/French	General/political

56- <i>LE MATIN</i>	Private	Cotonou	1000/French	General/political
57- <i>KOOOI-GNAN</i>	Private	----	----	
58- <i>L'OPTION QUOTIDIEN</i>	Private	----	----	
59- <i>NORD SUD QUOTIDIEN</i>	Private (power)	----	----	
60- <i>LE ROUTIER</i>	Private	----	----	
61- <i>LE CARIBOU</i>	Private	----	----	
62- <i>LA DIASPORA DE SABBAT</i>	Private	----	----	
63- <i>L'AUDACE INFO</i>	Private	----	----	
64- <i>VERITE EXPRESS</i>	Private	----	----	
65- <i>L'AUTRE FRATERNITE</i>	Private	----	----	
66- <i>LA NOUVELLE GAZETTE</i>	Private	----	----	
67- <i>SAGESSE INFO</i>	Private	----	----	
68- <i>L'OBSERVATEUR DU BENIN</i>	Private	----	----	
69- <i>LA METROPOLE</i>	Private	----	----	
70- <i>LA PROVIDENCE</i>	Private	----	----	
71- <i>LA SUITE</i>	Private	----	----	
72- <i>DUNYA INFO</i>	Private	Cotonou/Bohicon	1000/French	General/political
73- <i>TRAIT D'UNION</i>	Private	----	----	
74- <i>L'EVENEMENT DU JOUR</i>	Private	Cotonou	1000/French	General/political
75- <i>LE CHALLENGE</i>	Private	----	----	
76- <i>LE MONDE AU QUOTIDIEN</i>	Private	----	----	
77- <i>SIGNAL EXPRESS</i>	Private (power)	----	----	
78- <i>LE DEMOCRATE ACHARNE</i>	Private	----	----	
79- <i>LA SIRENE</i>	Private (power)	National	1000/French	General
80- <i>L'AUTRE QUOTIDIEN</i>	Private	Cotonou/vicinity	1000/French	General/political
81- <i>LE NOKOUE</i>	Private (power)	----	----	
82- <i>LA GAZELLE</i>	Private	----	----	
83- <i>NOUVELLES D'AFRIQUE</i>	Private	Cotonou/vicinity	1000/French	General/political
84- <i>LE TELEGRAMME</i>	Private	----	----	
85- <i>LE TAM-TAM</i>	Private	----	----	
86- <i>L'ENGAGEMENT</i>	Private	----	----	
87- <i>LE COURAGE INFO</i>	Private	----	----	
88- <i>LE POLITIC</i>	(opposition)	----	----	
89- <i>TAM-TAM AFRIK</i>	Private	Cotonou/vicinity	1000/French	Economy
90- <i>LE NOUVELLISTE</i>	Private	----	----	
91- <i>L'ECONOMISTE DU BENIN</i>	Private (power)	Cotonou/vicinity	----	
92- <i>LE TEMPS-INFO-GAMEDO</i>	Private	----	----	
93- <i>LE RENOVATEUR</i>	Private	----	----	
94- <i>LE BRILLANT</i>	Private	----	----	
95- <i>L'IMPARTIAL-ILEMAN</i>	Private	----	----	
96- <i>LE BENINOIS</i>	Private	----	1500/ French	General/political

97- <i>ADJINAKOU</i>	Private	Porto-Novo/ Cot	----	
98- <i>L'ECLAIREUR</i>	Private	----	----	
99- <i>LA MARCHE REPUBLICAINE</i>	Private	----	----	
100- <i>LE GRAND JURY</i>	Private	----	----	
101- <i>DIRECT INFO</i>	Private	----	----	
102- <i>HONOUGBO</i>	Private	----	----	
103- <i>DYNAMISME INFO</i>	Private	----	----	
104- <i>NOTRE VOIE</i>	Private	----	----	
105- <i>IROKO</i>	Private	----	----	
	Private			
<b>II- Biweeklies</b>	Private		----	
1- <i>LE CHOC</i>	Private	----	----	
	Private			
2- <i>VOX POPULI</i>	Private	----	----	
3- <i>TONNERRE INFO</i>	Private	----	----	
4- <i>LA CIRE DU GOLFE</i>	Private	----	----	
5- <i>LE GENIE</i>		----	----	
6- <i>NOUVEL ETALON</i>		----	----	
7- <i>LE CANARD DU NORD</i>	Private	----	----	
8- <i>MULTI SPORTS</i>	Private	----	----	
9- <i>LE MESSENGER DU PEUPLE</i>	Private	-----	----	
10- <i>SCOOPS DU JOUR</i>	Private		----	
11- <i>TADO INFO</i>	Private	----	----	
12- <i>LIBRE</i>	Private	----	----	
	Private			
<b>III- Weeklies</b>	Private			
1- <i>L'INTER EXPRESS</i>	Private	----	----	
2- <i>LE NOUVEAU CITOYEN</i>	Private	----	----	
3- <i>TOKPA ACTU</i>	Private	Cotonou	1000/ French	General/political
4- <i>LE CHOIX</i>	Private	Cotonou	1000/ French	General/political
5- <i>LE NATIONAL</i>		Cotonou	1000/ French	General/political
6- <i>LE JUSTICIER</i>		----	----	
7- <i>DIGNITE FEMININE</i>		----	----	
8- <i>LE MUNICIPAL</i>	Private			
9- <i>LES PHARAONS</i>	Private	National	1000/ French	Decentralisation
10- <i>NOTRE COMMUNE</i>	Private	----	----	
11- <i>LE BULLETIN DU GOLFE</i>	Private (power)	----	----	
12- <i>LE PROJECTEUR INFO</i>	Private	----	----	
13- <i>L'IDEAL</i>	Private	----	----	
14- <i>LES ECHOS DE LA VALLEE</i>	Private	----	----	
15- <i>LA NOUVELLE MARCHE</i>	Private	----	----	

16-	LE CANARD DE LA SEMAINE	Private			
17-	DEFI INFO	Private	----	----	
18-	COUP D'ŒIL	Private	----	----	
19-	BENIN ESPOIR	Private			
20-	LES ECHOS DE LA SOCIETE CIVILE	Private	----	----	
21-	LE ROSEAU	Private	----	----	
22-	LE ROCHER DOUANIER		----	----	
23-	LE NOUVEL ESSOR	Private	----	----	
24-	LA RELEVE	Private			
25-	FIRST HEBDO		----	----	
26-	LA TRIBUNE of MONO/COUFFO	Private	----	----	
27-	LA PIOCHE INFO	Private	----	----	
28-	20 MINUTES	Private	----	----	
29-	FINANCES INFOS	Private	----	----	
30-	LA CROIX DU BENIN		----	----	
31-	PROVIDENTIEL NEWS	Private	----	----	
32-	LE COOPERANT	Private	----	----	
33-	ASKEY	Private			
34-	LE JOURNAL of PEUPLE	Private	3000 and above	National	Religion/ news
35-	LE MESSENGER of PLATEAU	Private	----	----	
36-	AFRICALOVE	Private	----	----	
	<b>IV- Bimonthlies (9)</b>	Private	----	----	
1-	AFRICA-STARs	Private	----	----	
2-	MATCH	Private			
3-	LE CULTUREL	Catholic Church		----	
4-	LE PERROQUET	Private	----		
5-	MAXI MAGAZINE	Private			
6-	LE PJPRO	Private		----	
7-	MAGAZINE "GOLD MATRIX"		----	----	
8-	LA LUMIERE DE L'AFRIQUE		----	----	
9-	EMPLOI	Private	----	----	
	<b>V- Quarterlies</b>	Private	----	----	
	MAYRO	Private	----	----	
	<b>VI- Monthlies (12)</b>	Private	----		
1-	MAGAZINE BENIN MAG	Private			
2-	EDUCATION TRIBUNE	Private	----	----	
3-	MADAME AFRIQUE				
4-	AZARO MAG	Private	----		
5-	IMANY		----	----	

6- <i>J. INFO PLUS</i>		----		
7- <i>LE MESSAGER DE LA GRÂCE</i>	Private	----		
8- <i>PARI</i>		----	----	
9- <i>FLASH INFO</i>		----		
10- <i>MAGAZINE DES METIERS DE LA MER</i>	Private Private	----	----	
11- <i>LE HERAUT</i>	Private	----	----	
12- <i>LE REVELATEUR</i>	Private Private Private Private Private Private Student Union Student Union	French French	At least 1000 At least 1000	General/campus General/ campus

NB: Some papers are issued very irregularly, sometimes seasonally. Information is provided for those that appear more or less regularly.

#### List of radio stations

N o .	Name of station	Nature	Owner	Languages, broadcast range and topics
1	<b>Radio Afrique Espoir (Porto-Novo) FM 99.1 MHz</b>	Commercial	Private (opposition)	French, local languages, Porto-Novo and vicinity/ General
2	<b>Radio Adja-Ouèrè (Adja-Ouèrè) FM 92.6 MHz</b>	Commercial	Private (opposition)	French, local languages, Adja-Ouèrè and vicinity/ General
3	<b>La Voix de la Lama (Allada) FM 103.8 MHz</b>	Community	Private (opposition)	French, local languages, Allada and vicinity/ General
4	<b>Radio Benin –Culture (Porto-Novo) FM 93.4 MHz</b>	Community	Private	French, local languages, Porto-Novo and vicinity/General
5	<b>Radio SèdohounAlodalomè (Agbotagon) FM 97.4 MHz</b>	Community	Private	French and local languages, Ouègbo and vicinity/General
6	<b>Radio Alakétu (Kétou) PACOM FM 95.8 MHz</b>	Community	Private	French, local languages; Kétou and vicinity / General
7	<b>Radio FM Ahémé (Possotomé) PACOM FM 99.6 MHz</b>	Community	Private	French and local languages, Possotomé and vicinity/ General
8	<b>Gerddes FM (Akpro-</b>	Community	Private (civil	French and local languages, Akpro-Missérété and vicinity/

	<b>Misséréte)</b> <b>FM 89.5 MHz</b>		society)	General
9	<b>Radio Ecole FM (Porto- Novo)</b> <b>FM 89.0 MHz</b>	Community	Private (civil society)	French and local languages, Porto-Novo and vicinity/ General
1 0	<b>Kpassè FM (Ouidah)</b> <b>FM 93.8 MHz</b>	Community	Private	French and local languages, Ouidah and vicinity/ General
1 1	<b>Radio Alleluia FM 96.5 MHz</b>	Religious	Celestial Christian Church	French and local languages, Porto-Novo and vicinity, Religion and General
1 2	<b>Plateau FM (Pobè) FM</b> <b>105.3 MHz</b>	Community	Private	French and local languages, Pobè and vicinity/ General
1 3	<b>Radio Alliance FM</b> <b>(Attogon) FM 97.0 MHz</b>	Commercial	Private	French and local languages, Allada and vicinity/ General
1 4	<b>La Voix de la Vallée</b> <b>(Adjohoun) FM 100.6 MHz</b>	Community	Private	French and local languages, Adjohoun and vicinity/ General
1 5	<b>Radio Gbètin FM</b> <b>(Kpomassè) FM 88.1 MHz</b>	Community	Private	French and local languages, Kpomassè and vicinity/ General
1 6	<b>Radio Mono FM (Comé) FM</b> <b>97.7 MHz</b>	Commercial	Private	French and local languages, Comè and vicinity/ General
1 7	<b>Radio Mono La Voix de</b> <b>Lokossa FM 106.7 MHz</b>	Community	Private	French and local languages, Lokossa and vicinity/ General
1 8	<b>Couffo FM 104.7 MHz</b>	Commercial	Private (person close to the government)	French and local languages, Adjahonmè and vicinity/ General
1 9	<b>Radio Rurale Locale de Lalo</b> <b>FM 100.0 MHz</b>	Local rural radio	Public	French and local languages, Lalo and vicinity/ General
2 0	<b>Radio Wèkè à Drégbé–</b> <b>(PORTO –NOVO) FM 107.0</b> <b>MHz</b>	Commercial	Private (person close to the government)	French and local languages, Djèrègbè and vicinity/ General
2 1	<b>La Voix de Tado à Abomey- Calavi FM 106.3 MHz</b>	Community	Private	French and local languages, Abomey-Calavi and vicinity/ General
2 3	<b>Radio Hémicycle 103.4</b> <b>MHz</b>	Public (State)	National Assembly	French and National Languages, Porto-Novo and vicinity/ Political
	<b>Idadu FM Savè FM 107.8</b> <b>MHz</b>	Community	Private (person close to the government)	French and local languages, Savè and vicinity/ General
2	<b>Radio TonignonZogbodomey</b>	Community	Private (person	French and local languages, Zogbodomey and vicinity/



5	<b>FM 102.2 MHz</b>		close to the government)	General
2 6	<b>Radio TonasséCovè FM 107.6 MHz</b>	Community	Private (person close to the government)	French and local languages, Covè and vicinity/ General
2 7	<b>Radio Trait d'Union Bohicon FM 95.3 MHz</b>	Commercial	Private (person close to the government)	French and local languages, Bohicon and vicinity/ General
2 8	<b>Radio Carrefour Bohicon FM 91.7 MHz</b>	Commercial	Private	French and local languages, Bohicon and vicinity/ General
2 9	<b>Radio IlémaDassa FM 104.5 MHz</b>	Community	Private	French and local languages, Dassa and vicinity/ General
3 0	<b>Radio Cité Savalou Culture FM 87.8 MHz</b>	Community	Private	French and local languages, Savalou and vicinity/ General
3 1	<b>Radio Bio Guéra FM SégbanaFM 104.0 MHz</b>	Community	Private	French and local languages, Ségbana and vicinity/ General
3 2	<b>Kandi FM 102.9 MHz</b>	Community	Private	French and local languages, Kandi and vicinity/ General
3 3	<b>Radio rurlae locale Banigansè FM 104.2 MHz</b>	Local rural radio	Public	French and local languages, Banikoara and vicinity/General
3 4	<b>Radio FM Nonsina PACOM FM 90.8 MHz</b>	Community	Private	French and local languages, Bembèrèkè and vicinity/ General
3 5	<b>Sutii Dera FM 88.9 MHz</b>	Community	Private	French and local languages, Nikki and vicinity/ General
3 6	<b>Deeman Radio FM 90.2 MHz</b>	Community	Private	French and local languages, Parakou and vicinity/ General
3 7	<b>Fraternité FM Parakou FM 96.5 MHz</b>	Commercial	Private	French and local languages, Parakou and vicinity/ General
3 8	<b>Arzékè FM Parakou FM 99.0 MHz</b>	Commercial	Private	French and local languages, Parakou and vicinity/ General
3 9	<b>Radio Maranatha Parakou FM MHz</b>	Religious	Evangelical churches	French and local languages, Parakou and vicinity/ Religion
4 0	<b>Urban FM Parakou FM 106.9 MHz</b>	Commercial	Private	French and local languages, Parakou and vicinity/ General
4 1	<b>Radio régionale de Parakou (ORTB) FM 92.5 MHz</b>	Public service organ	Public	French and local languages, Parakou and vicinity/ General
4 2	<b>Septentrionale FM 89.4 MHz</b>	Public service organ	Public	French and local languages, Parakou and vicinity/ General
4	<b>Radio rurlae locale de</b>	Community	Private	French and local languages, Tanguiéta and vicinity/ General

3	<b>Tanguiéta FM 90.0 MHz</b>			
4	<b>Radio Nanto FM Natitingou FM 96.3 MHz</b>	Community	Private	French and local languages, Natitingou and vicinity/General
4	<b>Tuko Sari FM Kouandé FM 105.8 MHz</b>	Community	Private	French and local languages, Kouandé and vicinity/ General
4	<b>Naane FM Péhunco FM 98.5 MHz</b>	Community	Private	French and local languages, Péhunco and vicinity/ General
4	<b>Kpably FM Kérou FM 99.4 MHz</b>	Community	Private	French and local languages, Kérou and vicinity/ General
4	<b>Local rural radio de Ouaké FM 101.0 MHz</b>	Local rural radio	Public	French and local languages, Ouaké and vicinity/ General
4	<b>FM Koufè Bassila PACOM FM 103.0 MHz</b>	Community	Private	French and local languages, Bassila and vicinity /General
5	<b>Solidarité FM Djougou FM 98.1 MHz</b>	Community	Private	French and local languages, Djougou and vicinity/ General
5	<b>Radio Dinaba FM Boukombé FM 99.6 MHz</b>	Community	Private	French and local languages, Boukoubé and vicinity/ General
5	<b>Radio Golfe FM à Cotonou FM 105.7 MHz</b>	Commercial	Private (person close to the government)	French and local languages / Almost nationwide / General
5	<b>Radio Immaculée Conception FM 101.0 MHz</b>	Religious	Catholic Church	French and local languages/ Almost entire south of country/ Religion
5	<b>Radio Tokpa FM 104.3 MHz</b>	Commercial	Private	French and local languages/ Cotonou and vicinity/ General
5	<b>Radio CAPP FM 99.6 MHz</b>	Commercial	Private	French and local languages, Cotonou and vicinity/ General
5	<b>Radio Océan FM 88.6 MHz</b>	Commercial	Private	French and local languages/ Cotonou and vicinity/ General
5	<b>Radio Planète FM 95.7 MHz</b>	Commercial	Private	French and local languages/ Cotonou and vicinity/ General
5	<b>Radio La Voix de l'Islam FM 91.2 MHz</b>	Religious	Islamic Union of Benin	French, Arabic and local languages/ Cotonou and vicinity/ Religion
5	<b>Radio Star FM 94.3 MHz</b>	Commercial	Private	French and local languages, Cotonou/ General
6	<b>Radio Maranatha à Cotonou FM 103.10 MHz</b>	Religious	Evangelical churches	French and local languages, Cotonou and vicinity/ Religion
6	<b>ADO FM 91.7 MHz</b>	Public (State)	Ministry of Youth	French and local languages/ Cotonou and vicinity/ General

6	<b>Radio National ORTB</b>	Public service	Public (State)	French and local languages/ Nationwide/ General
3	<b>FM 98.2 MHz</b>	organ		
6	<b>Atlantic FM 92.2 MHz</b>	Public service	Public (State)	French and local languages/ Cotonou and vicinity/ General
4		organ		

NB: Some of the community radios receive grants from the communities in which they are located.

## List of television channels

No.	Name of the channel	Nature	Owner	Language and broadcast range/ Topics
1	Imalè Africa	Commercial	Private	French and local languages, Porto-Novo and vicinity/ General
2	Canal 3-Benin	Commercial	Private	French and local languages/ Almost nationwide/ General
3	La Chaîne 2 (LC2) Canal 44: 654.25	Commercial	Private	French and local languages, Almost nationwide / General
4	ORTB	Public organ	State	French and local languages/ Nationwide/ General
5	ADO TV	Public	Ministry of Youth	French and local languages/ Cotonou and vicinity/ General
6	Golfe TV	Commercial	Private	French and local languages/ Almost nationwide/ General
7	Benin Business 24	Public organ	State	French and local languages/ Nationwide/Development

N.B.: In 2013, the Higher Authority for Audio-visual Media and Communication authorised three new television channels (all close to the Government), one of which is dedicated to agriculture, and 7 radio stations. They should begin broadcasting in late 2013 or early 2014.

## Press agencies and blogs

*Agence Bénin Presse* is the national press agency and has correspondents in the twelve departments. Large international press agencies such as *Agence France Presse* (AFP), Reuters, Xinhua (China), APA and Panapress have local correspondents. The same applies to international radios like *Radio France International* (RFI), the British Broadcasting Corporation (BBC), Africa N° 1, etc.

The national newspapers often have websites. Moreover, there are a few active bloggers.

### **The most notable are:**

- [actubenin.com](http://actubenin.com)
- [lanouvelletribune.info](http://lanouvelletribune.info)
- [commentvalebenin.over-blog.com](http://commentvalebenin.over-blog.com)
- [lapressdujour.net](http://lapressdujour.net)
- [levenementprecis.com](http://levenementprecis.com)
- [illassa-benoit.over-blog.com](http://illassa-benoit.over-blog.com)
- [24haubenin.info](http://24haubenin.info)
- [beninactu.com](http://beninactu.com)

## 1.2.2 Internet access

To date, Benin does not have a specific law organising electronic communication. It is currently being drafted under the supervision of the Transitional Posts and Telecommunications Regulation Authority (ATRPT).

## National distribution of cybercafés

<i>DISTRICTS</i>	<i>NUMBER</i>	<i>FREQUENCY</i>
ALIBORI	6	1.21%
ATACORA	12	2.42%
ATLANTIQUE	111	22.42%
BORGOU	27	5.45%
COLLINES	15	3.03%
COUFFO	10	2.02%
DONGA	5	1.01%
LITTORAL	176	35.56%
MONO	17	3.43%
OUEME	92	18.59%
PLATEAU	5	1.01%
ZOU	19	3.84%
TOTAL	495	100%

***Table: Distribution of cybercafés according to administrative district<sup>2</sup>***

### ***Broadband availability***

#### **Billing of broadband products and services<sup>3</sup>**

The IP transit offer enables the interconnected operator to access the Internet pass band. In 2012, the country had 10 Internet access providers.

<i>Pass band</i>	<i>Monthly billing in CFAF</i>	<i>Transfer link in CFAF</i>
2 Mbps	2,000,000	800,000
4 Mbps	4,000,000	1,600,000
6Mbps	4,800,000	2,400,000
8 Mbps	6,400,000	3,200,000
10 Mbps	7,000,000	3,500,000
12 Mbps	8,400,000	4,200,000
14 Mbps	9,800,000	4,900,000
16 Mbps	11,200,000	5,600,000
18 Mbps	12,600,000	6,300,000
20 Mbps	13,000,000	7,000,000
22 Mbps	14,300,000	7,700,000
24 Mbps	15,600,000	8,400,000
45 Mbps	22500,000	9,600,000
155 Mbps	45,000,000	19,200,000

### **Information on telephone and Internet access**

<b><i>Estimated population in 2012 (INSAE)</i></b>	<b><i>9,364,619</i></b>
Landline subscribers in 2012 (Benin Télécoms SA)	156,715
Landline teledensity	1.76%
GSM subscribers (ATRPT)	8,407,846

<sup>2</sup> ATRPT survey, April 2013.

<sup>3</sup> 2012 Telecommunications Statistical Directory for Benin, ATRPT.

Mobile teledensity	89.78%
Active subscribers GSM	5,390,720
Mobile teledensity (based on active subscribers)	57.56%
Internet subscribers (landline and mobile)	456,884
Internet teledensity (landline and mobile)	4.9%

### ***Ratio and Television coverage rate***

According to the 2007 Population and Health Survey by the National Institute of Statistics and Economic Analysis, radio is a medium with wide coverage. A radio set is the most common device in Benin's households. Fifty-four per cent of households have at least one radio set (66.6 per cent in urban areas and 46.2 per cent in rural areas).

A relatively small number of households own television sets. Only 23.8 per cent of urban households and 2.1 per cent of rural households own television sets.

### **1.2.3 Media Standards/Codes of ethics**

In 1998, the press organs of Benin and media professionals established the Observatory of Ethics and Professional Conduct in the Media (ODEM). Its working tool, the Code of Ethics of the Beninese Press, was adopted in September 1999. ODEM is the media's self-regulatory institution. It is a peer tribunal, but sometimes it also acts as a mediator because it can mediate between a complainant and the press organ brought before it. However, it must be noted that according to former and current officials of ODEM, press organs and professional associations do not pay their dues to feed the institution's coffers. It is instead the Higher Authority for Audio-visual Media and Communication (HAAC) which, thanks to State assistance to the private press, makes an annual – insufficient – grant to ODEM, compelling the institution to rely on international donors and the other usual technical and financial partners of the press.

Pursuant to Article 4 of its statute, ODEM's objective is to

[E]nsure compliance with the codes of ethics and professional conduct in the media, protect the right of the public to free, complete, honest and accurate information, defend press freedom; ensure that media professionals are safe in performing their functions and guarantee their right to investigate freely all aspects of public life; encourage media professionals and the press organs which display professionalism; research and study media development.

ODEM, as its officials explain, oversees all media given that Article 24 of its Statute states that it "shall comprise three Commissions: the Press Commission, the Radio Commission and the Television and NICT Commission". Article 24 of its Internal Rules and Regulations requires that "[d]ecisions issued by ODEM shall be binding on all media practitioners in Benin and may not be appealed within this self-regulatory body". However, in practice, as ODEM President Guy-Constant Ehoumi complains, ODEM focuses on the press because it lacks the means to monitor radios and television programmes; citizens who might complain lack either the means or fail to seize the opportunity to record programs which breach the code of ethics. Nonetheless, the current executive, the 6<sup>th</sup> so far, has sanctioned many daily newspapers and periodicals, and even one online newspaper, [www.beninactu.com](http://www.beninactu.com).

In general, ODEM is considered to be effective and credible because (in the absence of an actual study) its officials note that despite the existence of law courts, it receives many complaints,

including from public figures (government ministers, mayors, various officials and other citizens), who approach it to report inappropriate conduct by media professionals and press organs.<sup>4</sup> But the officials express concern that some citizens rely on ODEM decisions which find fault to seek remedies before the law courts and have the journalists further sanctioned. In return, the journalists sometimes criticise ODEM, as its officials admit, finding it too eager to sanction the press and urging it to extend its scrutiny to radio and television stations. In any event, the credibility and effectiveness of ODEM also derive from its dispute settlement mechanism as well as its notably speedy disposal of cases which many complainants praise, often finding ODEM's sanctions to be sufficient redress because they consider the censure of peers to be more severe).

When any natural or legal person reports a matter to ODEM (Article 26 of the Statute), within three months of the date of the publication or broadcast of the programme (Article 13 of the Internal Regulations and Rules) and according to the proper form, the person

[S]hall transmit the full complaint to the person being complained of, requesting such person to make reply and provide any document which might be material to the establishment of the complaint within three days of the date of filing. The reply shall then be transmitted in full to the complainant, who shall also be requested to provide a reply within the same time-limit if he or she considers it appropriate. ODEM may, at its discretion, decide to extend the time-limits but may not exceed twice the prescribed time-limit. [Article 16 of the Internal Rules and Regulations].

However, "a failure to reply on the part of the person complained against shall not prevent an examination of the complaint. In such case, ODEM shall inform the person complained against that the decision will be issued without his or her reply" (Article 17 of the Internal Regulations and Rules). Following that, "ODEM may hear the parties by issuing a written summons. A written record of the session shall be prepared and shall be signed by the various parties and the President of the session" (Article 19 of the Internal Regulations and Rules).

Also, "Regardless of origin or object, complaints shall, upon receipt, be assigned by the President of ODEM to the relevant Commissions for examination [...] The Commissions shall meet and produce draft decisions within fifteen days of their receipt of the complaint. This time-limit may be reduced as necessary" (Articles 20 and 21 of the Internal Regulations and Rules).<sup>5</sup>

The examination of complaints culminates in a press release by ODEM, notified to the parties and sent to HAAC, the ministry in charge of communication, professional unions and the body responsible for issuing press cards.

Press releases must include the references and the subject of the complaint, a statement of facts, a summary of investigations and/or hearings and ODEM's findings in the light of the code of professional conduct and ethics of the press in Benin. Professional associations are considering amending ODEM's instruments to vest it with more power.

ODEM's current president hopes that by 2016, the organisation should be the first and only means for citizens to seek remedy for offences or inappropriate conduct by the press. Faced with the indifference of certain media practitioners regarding its decisions, which carry only moral and professional weight, heads of professional media associations are considering reforms to increase the powers of ODEM, with a view, for example, to vesting it with the role of filtering entry into the corporation. For the time being, ODEM, which may also act *proprio motu* in cases of breaches of codes of professional conduct or of ethics, is able to propose the withdrawal of the press card by HAAC as part of its penalties.

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<sup>4</sup> Interview with the President of ODEM, August 2013.

<sup>5</sup> Interview with Armel Feraez, president of the Press Commission, ODEM, August 2013.

HAAC may also exercise its prerogatives as a constitutional regulatory organ and guarantor of press freedom to impose sanctions on the press organs.

## **2. Section Two: Overview of legislation that criminalises expression**

### **2.1 Overview of laws in place**

A few laws were found which include the relevant offences. The observation is that these are laws relating to the media whose content had not materially changed from independence to 1997, when the last law, which governs the audio-visual media, was passed. These laws are as follows.

**2.1.a:** *Law No. 60-12 of 30 June 1960 on press freedom.* It dates back to the time before independence (1 August 1960) and its contents reflect the situation which obtained then, especially the authorities' keenness to control the press and to mete out severe punishment for any breaches by journalists.

It covers the following offences:

- Defamation
- Defamation of institutions
- Publication of false news
- Offence against the Head of State
- Offence against foreign Heads of State
- Insults

**2.1.b:** *Law No. 97-010 of 20 August 1997 liberalising the audio-visual media and special criminal provisions relating to press and audio-visual communication crimes in the Republic of Benin.* Passed in 1997 after the National Conference of February 1990, in the heat of the advent of democracy, its major innovation was that private audio-visual media were henceforth allowed to exist, it being understood that hitherto, only public television and radio existed. It enumerates the same offences as those mentioned above.

Also worth mentioning are other laws and ordinances which, while not specifically geared at these crimes, still adversely affect freedom of expression by stiffening the penalties. These are:

**2.1.c:** *Law No.61-10 of 20 February 1961 amending Law No. 60-12 of 30 June 1960 on press freedom.* Running to a mere two articles, this law stiffens the penalties against press organs provided for in the 1960 law.

**2.1.d:** *Ordinance No. 69-12 P.R./M.J.L. of 23 May 1969 amending and supplementing Article 8 of Law No. 60-12 of 30 June 1960 on press freedom.*

**2.1.e:** *Ordinance No. 69-22 P.R./M.J.L. of 4 July 1969 seeking to punish certain acts likely to disturb public order, the propagation, publication, broadcast and reproduction of false news.*

### **2.2 Detailed description of laws in force and whether and how they have been used**

Two laws govern this area. Law No. 60-12 of 30 June 1960 and Law No. 97-010 of 20 August 1997. While both laws deal with the same offences and sometimes provide the same penalties, the former governs only the press and the latter, which came into force at the time of the liberalisation of the audio-visual media, applies to offences by radio and television stations.



## **2.2.a: Law No.60-12 of 30 June 1960 on press freedom**

### **2.2.a.1: Defamation**

**Article 26(1):** Defamation is any allegation or imputation of an act which breaches the personal honour or reputation of the person to which the act is imputed. The direct publication or reproduction of this allegation or imputation shall be punishable, even where it is accompanied by doubt or where it concerns a person or entity not expressly named but whose identity may be discerned in the terms of the statements, shouting, threats, written or printed material, placards or posters materialising the crime.

**Article 29:** Defamation committed against individuals by one of the means set forth at Article 20<sup>[6]</sup> shall be punishable by a term of imprisonment of 3 months to 1 year and a fine of 5,000 to 2,000,000 CFA francs or by any of these penalties alone.

Defamation committed using the same means and directed at a group of persons not enumerated in Article 28, but who belong by virtue of their origin to a specific race, region or religion, shall be punishable by a term of imprisonment of 1 year to 3 years and by a fine of 10, 000 to 5, 000, 000 CFA francs, where it is intended to incite hatred amongst residents or citizens.

The memory of deceased persons is also protected from any defamation intended to sully the honour of their heirs. In this regard, **Article 31** of the law provides:

Articles 28, 29 and 30<sup>[7]</sup> shall only apply to defamation or insults directed at the memory of deceased persons where the perpetrators of the defamation or insults intended to breach the honour or reputation of surviving heirs, spouses or universal legatees.

Whether or not the perpetrators of the defamation or insults intended to breach the honour or reputation of surviving heirs, spouses or universal legatees, the latter may avail themselves of the right of response provided for in Article 11.

### **Comments**

These provisions on defamation and its penalties seem quite repressive. For example, they punish allegations, even those accompanied by doubts. The penalties envisaged are equally stringent. This

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<sup>6</sup> Article 20: "Persons who, either in speech, shouts or threats proffered in public or at public meetings, either in writing, printed matter sold or distributed, placed on sale or displayed in public or at public meetings, placards, posters, drawings, engravings, paintings, emblems exposed to public view directly incited the perpetrator or perpetrators to commit said act, if the incitement was followed by the act, shall be punishable as accessories to an act characterised as a crime or offence. This provision shall also apply where incitement was followed by only one attempt."

<sup>7</sup> Article 28: "Defamation committed by the same means of one or more members of Government, one or more members of the legislative assembly, a civil servant, a holder or agent of public authority, a citizen charged with a public mandate or service either permanently or temporarily, a member of a trial jury or a witness through his or her testimony, by virtue of the function or status of these persons, shall be punishable by the same sentence. Defamation of such persons in respect of their private lives shall be governed by Article 29 below."

Article 29: "Defamation of individuals through one of the means set forth in Article 20 shall be punishable by a term of imprisonment of three months to one year and a fine of 5, 000 to 2, 000, 000 CFA francs or by any of these penalties alone. Defamation committed using the same means and directed at a group of persons not enumerated in Article 28, but who belong by virtue of their origin to a specific race, region or religion, shall be punishable by a term of imprisonment of 1 to 3 years and by a fine of 10, 000 to 5, 000, 000 CFA francs, where it is intended to incite hatred amongst residents or citizens."

Article 30: "Insults proffered by the same means against physical attributes or the persons designated in Articles 27 and 28 shall be punishable by a term of imprisonment of 3 months to 1 year and by a fine of 5,000 to 2,000,000 CFA francs, or by any of these penalties alone. Insults proffered in the same manner to individuals, where not elicited by provocation, shall be punishable by a term of imprisonment of 1 month to 6 months and by a fine of 15,000 to 500,000 CFA francs or by any of these penalties alone. The maximum term of imprisonment shall be 2 years and the maximum fine shall be 5, 000, 000 CFA francs, if the insult was directed at a group of persons who belong by virtue of their origin to a specific race, region or religion and is intended to incite hatred amongst residents or citizens. If the insult is not public, it shall be punishable only by the penalty provided for in Article 17 of the Criminal Code.

appears to violate Principle I of the Declaration of Principles on Freedom of Expression in Africa, which guarantees freedom of expression thus:

Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

Under this principle, citizens should have the right to communicate information or ideas of all kinds, either orally or in writing. By considerably restricting this right, Law No. 60-12 of 30 June 1960 violates this principle.

### **2.2.a.2: Defamation of institutions**

**Article 27** of the law provides:

Defamation by any of the means enumerated in Article 20<sup>[8]</sup> of the courts, tribunals, armed forces and public security forces, constituent and public bodies shall be punishable by a term of imprisonment of 6 months to 3 years and a fine of 10,000 to 5,000,000 CFA francs.

**Article 28** provides:

Defamation committed by the same means of one or more members of Government, one or more members of the legislative assembly, a civil servant, a holder or agent of public authority, a citizen charged with a public mandate or service either permanently or temporarily, a member of a trial jury or a witness through his or her testimony, by virtue of the function or status of these persons, shall be punishable by the same sentence. Defamation of such persons in respect of their private lives shall be governed by Article 29 below.

However, be it defamation of individuals or defamation of institutions, the law affords the person making the allegations the opportunity to prove them. Under **Article 32**,

The facts of the defamatory allegations may always be proven save where:

- (a) The claim concerns the private life of the person;
- (b) The claim refers to events which occurred more than ten years ago;
- (c) The claim refers to an act which has been the subject of an amnesty or for which the time-limit for prosecution has passed, or which led to a finding of guilt that was later extinguished by rehabilitation or review;
- (d) In cases provided for in Articles 23, 24, 34 and 35<sup>[9]</sup> of this law.

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<sup>8</sup> Article 20, quoted at page 30.

<sup>9</sup> Article 24: "Any offence against the Heads of State of the Community and the Presidents of the Legislative Assemblies of the said States shall be punishable by similar sentences to those provided for in Article 23".

Article 25: "The publication, broadcast or reproduction, by any means whatsoever, of false news, documents manufactured, falsified or mendaciously attributed to third parties which, when carried out in bad faith, disturb public order or are likely to do so shall be punishable by a term of imprisonment of 1 year to 3 years and a fine of 10, 000 to 5, 000, 000 CFA francs. The same acts shall be punishable by a term of imprisonment of 2 to 5 years and a fine of 100, 000 to 30, 000, 000 CFA francs if the publication, broadcast or reproduction done in bad faith is such as to perturb the discipline or morale of the Armed Forces."

Article 34:"An offence committed publicly against foreign Heads of State, foreign Heads of Government and Ministers of Foreign Affairs of a foreign government shall be punishable by a term of imprisonment of 1 to 5 years and a fine of 10, 000 to 5, 000, 000 CFA francs."

If the evidence of the act characterised as defamation is allowed and brought, the defendant shall be discharged.

Where defamatory imputations are already being prosecuted, either at the behest of the public prosecutor's office or following a complaint by the person named, the prosecution and sentencing for defamation shall be suspended during the ensuing investigation. Nonetheless, such suspension shall only apply where evidence of the alleged or imputed defamation is legally prohibited.

The suspension ordered by the court shall be suspensive of the expiry of the time limit for the prosecution of defamation."

Nonetheless, under **Article 33**, "Any repeat of a claim found to be defamatory shall be considered to have been done in bad faith unless otherwise proven by the person repeating the claim".

### **Comments**

It is obvious that with these legal provisions, it would be easy to find fault with a citizen who makes allegations against the institutions mentioned in the law. Moreover, even if the person concerned is authorised to bring evidence to prove the allegations, these provisions foster self-censorship even where credible information exists. It therefore appears that these provisions are violative of Principle II of the Declaration, which stipulates: "Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society", in that they raise the question as to whether there is a legitimate interest in requiring the censorship of information concerning institutions, whereas it would be in the national interest for such information to be made public. However, a positive point is that the defendant is afforded the opportunity to prove his or her allegations. For example, by preventing a defendant from providing evidence of allegations as to events which occurred more than ten years ago, the law is not necessarily useful in that during an election, for instance, the revelation of important events in the life of a candidate may be useful to the community, as the personal history of the candidate may lead to a loss of confidence in his fitness to lead the country.

Similarly, it appears that these provisions are at odds with Principle XII, which provides:

- (1) States should ensure that their laws relating to defamation conform to the following standards:
  - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
  - public figures shall be required to tolerate a greater degree of criticism; and
  - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
- (2) Privacy laws shall not inhibit the dissemination of information of public interest.

Instead, in the provisions governing public life, for example, the law fails to provide for the dissemination of information which becomes necessary in the public interest. This gives room for abuses against the authors of such publications, whose intention is to be of service to the community.

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Article 35: "Any public insult of ambassadors and ministers plenipotentiary acting as envoys, *chargés d'affaires* or other diplomatic agents accredited to the Government of the Republic shall be punishable by a term of imprisonment of 6 months to 3 years and a fine of 10,000 to 5,000,000 CFA francs."

### **2.2.a.3: Insults**

Firstly, **Article 26(2)** of the law states: “Any offensive expression, term of contempt or invective which does not contain any proof of the claim is an insult.”

Secondly this offence is again dealt with in **Article 30** of the law, which states:

An insult committed by the same means against the above-mentioned bodies or public figures enumerated in Articles 27 and 28<sup>10</sup> shall be punishable by a term of imprisonment of 3 months to one year and a fine of 5,000 to 2,000,000 CFA francs or by any of these penalties alone.

Similar insults directed at individuals without provocation shall be punishable by 1 to 6 months of imprisonment and a fine of 15, 000 to 500, 000 CFA francs or by any of these penalties alone.

The maximum term of imprisonment shall be 2 years and the maximum amount of the fine shall be 5,000,000 CFA francs where the insult is committed against a group of persons belonging by virtue of their origin to a specific race, region or religion, with a view to inciting hatred between citizens or residents.

### **Comments**

As drafted, these provisions are inconsistent with Principle XII of the Declaration which provides, *inter alia*, that public figures should tolerate a greater degree of criticism. Here, the slightest criticism can be easily construed as insults by the persons criticised in order to discourage commentators or analysts who view their acts with disfavour. Similarly, the amount of the fine is very high, suggesting that it is intended to stifle all criticism.

Moreover, Principle XIII, which deals with criminal measures, is flouted by these provisions. This Principle provides:

- (1) States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.
- (2) Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

It is worth noting that the penalties provided for are enormous whereas the restriction regarding the armed forces, for example, does not state that there is a need to establish a causal link between an imminent threat and the utterance.

### **2.2.a.4: Offensiveness**

The offensiveness provided for and sanctioned by the 1960 law pertained to State officials at a time when, in June 1960, Dahomey was not yet independent and did not therefore have a President of the Republic. It also covers leaders of States friendly to Dahomey. Thus, in **Article 23**:

Any offence committed by the means set forth in Article 20 against the president of the Community or his representative in the Republic of Dahomey, any offence against the Prime Minister and any offence against the President of the Legislative Assembly of the Republic of Dahomey, shall be punishable by a term of imprisonment of 1 to 5 years and a fine of 10, 000 to 5, 000, 000 CFA francs.

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<sup>10</sup> Article 27: “Defamation committed by one of the means set forth in Article 20 towards the courts, tribunals, infantry, air or navy forces, constituent bodies and public administrations shall be punishable by a term of imprisonment of 6 months to 3 years and a fine of 10,000 to 5,000,000 CFA francs.”  
Article 28, *op. cit.*

**Article 24:** Similar sentences to those provided for in Article 23 shall be applicable for any offence against the Heads of State of the Community and the Presidents of the Legislative Assemblies of the said States.

Similarly, **Article 34** states: “An offence committed publicly against foreign Heads of State, foreign Heads of Government and Ministers of Foreign Affairs of a foreign government shall be punishable by a term of imprisonment of 1 to 5 years and a fine of 10,000 to 5,000,000 CFA francs.”

### **Comments**

In practice, it is defamation which is construed as an offence against Heads of State and Government and foreign leaders. The relevant provisions are inconsistent with Principle XII as concerns the protection of reputations, given that Point 1 of this principle states:

- (1) States should ensure that their laws relating to defamation conform to the following standards:
  - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
  - public figures shall be required to tolerate a greater degree of criticism; and
  - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.

It is evident that these provisions make no distinction between accurate information and the usefulness of the statements to which reference is made. Thus, the law in fact enshrines a prohibition from criticising these public figures. This is further confirmed by the financial penalties stipulated as punishment.

### **2.2a.5: Publication of false news**

The 1960 law makes particular reference to this offence to prevent disturbances of public order. **Article 25** thereof is an illustration. It provides:

The publication, broadcast or reproduction, by any means whatsoever, of false news, documents manufactured, falsified or mendaciously attributed to third parties which, when carried out in bad faith, will disturb public order or is likely to do so, shall be punishable by a term of imprisonment of 1 year to 3 years and a fine of 10, 000 to 5, 000, 000 CFA francs. The same acts shall be punishable by a term of imprisonment of 2 to 5 years and a fine of 100, 000 to 30, 000, 000 CFA francs, where the publication, broadcast or reproduction done in bad faith is such as to perturb the discipline or morale of the Armed Forces.

### **Comments**

It is arguable that the law exclusively targets false news. This offence is one which any responsible journalist or citizen would avoid committing. However, the difficulty in this case lies in the fact that these publications will be punished if the false news is such as to disturb public order. It bears considering who is empowered to make such a judgment and on what basis potential threats to public order are determined in relation to these publications. In practice, and for its time, it is clear that such a judgment would be made by magistrates probably in the sway of the government in power.

In sum, it appears useful to note that under this law, it is generally for the defendant to prove his or her good faith. However, as to consistency with the Declaration of Principles on Freedom of Expression, it is clear that this 1960 law, which predates independence, is now obsolete in light of new considerations as regards the right to information. Media professionals consider that it stifles

freedom, because although it provides that “Any newspaper or periodical may be published without prior authorization or legal deposit, upon making the declaration set out in Article 5” (Article 3); which is consistent with Point 1 of Principle VIII of the Declaration, the declaration required concerns information pertaining to the identities of publishers and editors. Moreover, the law further requires that:

At least two working hours before the publication of each paper or the delivery of the periodical newspaper or other piece of writing, two signed copies thereof, signed by the publisher, shall be provided:

- (1). to the public prosecutor’s office at the court or the bench of the court of first instance or, in towns where there is no judicial bench, to the mayor or the head of the administrative district;
- (2). to the officer of the Ministry of the Interior for a town or city where the ministry is represented.

Each of these deliveries shall be performed within the time-limit prescribed in paragraph (1) above, on pain of a term of imprisonment of one month to six months and a fine of 12,000 to 120,000 CFA francs.

In fact, all these provisions are seeking is to monitor the content of publications and, if necessary, conduct pre-emptive seizures or prohibit their distribution. All of these measures manifestly restrict press freedom and freedom of expression. Moreover, in practice, media professionals tend not to comply with them.

Furthermore, while citizens may exercise their right to information in the language of their choice, Article 12 of this law provides that

The circulation, distribution or sale in the territory of the Republic of Dahomey, of newspapers or written material, whether or not they are periodicals, written in foreign languages, may be prohibited by decision of the Ministry of the Interior. This prohibition may also be issued in respect of newspapers and written material of foreign origin written in French or of the vernacular material printed abroad or in the territory of the Republic of Dahomey [...].

Of course these measures in Article 12 are not applied, but since they are the law, they are applicable at any time. Obviously, they are inconsistent with the Declaration of Principles on Freedom of Expression in Africa, in particular Principle III on diversity.

### ***2.2.b: Law No.97-010 of 20 August 1997 to liberalise the audio-visual environment and special criminal provisions governing press and audio-visual communication offences in the Republic of Benin***

#### ***2.2.b.1: Defamation***

As with the previous law, Law No. 97-010 governs and punishes the same crimes linked to the exercise of press freedom or freedom of expression. Regarding defamation, **Article 83(1)** states:

Any allegation or imputation of an act which diminishes the personal honour or reputation of the person to which the act is imputed. The direct publication or reproduction of this allegation or imputation shall be punishable, even where it is accompanied by doubt or where it concerns a person or entity not expressly named but whose identity may be discerned in the terms of the statements, shouts, threats, written or printed material, placards or posters materialising the crime.

Any offensive expression, term of contempt or invective which does not contain any proof of the claim is an insult.

In terms of punishment, **Article 86** provides:

Defamation committed against individuals by any of the means enumerated in Article 78<sup>11</sup> shall be punishable by a term of imprisonment of three (3) months to one (1) year and a fine of five hundred thousand (500,000) to five million (5,000,000) francs or by any of these penalties alone.

Defamation committed using the same means and directed at a group of persons not enumerated in Article 85,<sup>12</sup> but which belongs to a specific race or religion, or to any philosophical school or community protected under Article 23(2) of the Constitution, where such defamation is intended to incite hatred amongst residents or citizens, shall be punishable by a term of imprisonment of one (1) year to three (3) years and a fine of one million (1,000,000) to ten million (10,000,000) francs.

Moreover, under **Article 86** of the law, “Defamation committed against individuals by any of the means enumerated in Article 78 shall be punishable by a term of imprisonment of three (3) months to one (1) year and a fine of five hundred thousand (500,000) to five million (5,000,000) francs or by any of these penalties alone.”

### **Comments**

These provisions regarding defamation and its punishment seem quite repressive, for example, even when they punish allegations accompanied by doubts. The sanctions provided for are equally stringent. This appears to be violative of Principle I of the Declaration which guarantees freedom of expression:

Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

This Principle means that a citizen should have the right to communicate information or ideas of all kinds, either orally or in writing. In considerably restricting this right, Law No. 60-12 of 30 June 1960 violates this Principle.

### **2.2.b.2: Defamation of institutions**

**Article 85** refers specifically to defamation of institutions (courts, tribunals, public administrative bodies, etc.). It provides:

The following shall be punishable with the same penalty: defamation or insult committed by the same means, owing to their functions or status, against one or more members of Government and of constitutional institutions, a civil servant, a holder or agent of the public authorities, a citizen charged with a public mandate, whether permanently or temporarily, a member of a trial jury or a witness on account of his or her testimony. Defamation of such persons in respect of their private lives shall be governed by Article 89 below.

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<sup>11</sup> Article 78: “The following shall be punishable as accessories in an act characterised as a crime or misdemeanour: persons who, by means of speech, cries or threats proffered in public or at public meetings, either in written material, printed material sold or distributed, placards, posters, drawings, etchings, paintings, emblems exposed to public view or by any modern means of communication (image broadcast, radio production, etc.) shall have directly incited the perpetrator or perpetrators to commit said act, if the incitement elicited an effect. This provision shall also apply where the incitement led to only one attempt.”

<sup>12</sup> Article 85: “The following shall be punishable with the same penalty: defamation or insult committed by the same means, against one or more members of Government and of constitutional institutions, a civil servant, a holder or agent of the public authorities, a citizen charged with a public mandate, whether permanently or temporarily, a member of a trial jury or a witness on account of his or her testimony, owing to their functions or position. Defamation of such persons in respect of their private lives shall be governed by Article 89 below.

In this regard, both with reference to individuals and institutions, **Article 89** allows the defendant to prove his or her allegations. It provides:

The facts of the defamatory allegations may always be proven save where:

- (a) The claim concerns the private life of the person;
- (b) The claim refers to an act which has been the subject of an amnesty or for which the time-limit for prosecution has passed, or which led to a finding of guilt that was later extinguished by rehabilitation or review;
- (c) In the situations provided for in Articles 82, 91 and 92<sup>13</sup> of this law.

If the evidence of the act characterised as defamation is allowed and brought, the defendant shall be discharged.

Where defamatory claims are already being prosecuted, either at the behest of the public prosecutor's office or following a complaint by the complainant, the prosecution and sentencing for defamation shall be suspended during the ensuing investigation. Nonetheless, such suspension shall only apply where evidence of the alleged or ascribed defamation is legally prohibited.

The suspension ordered by the court shall be suspensive of the expiry of the prosecution for defamation.

Still, **Article 90** stipulates: "Any repeat of a claim found to be defamatory shall be considered to have been done in bad faith unless otherwise proven by the person repeating the claim". Defamation of the memory of deceased persons is prohibited, as are insults.

### **Comments**

It emerges that with these legal provisions, it would be easy to incriminate a citizen who makes allegations about the institutions enumerated. Even if the citizen is authorised to bring evidence of the alleged facts, these provisions encourage self-censorship even in the event of credible information being available. It thus appears that these provisions are violative of Principle II of the Declaration, which stipulates that "Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary and in a democratic society." This is because it is worth considering why it would be a legitimate interest to compel censorship of information relating to institutions, whereas it would be in the national interest to make such information known. However, a positive point is that the defendant is afforded the opportunity to prove his or her allegations. For example, by preventing a defendant from providing evidence of allegations as to events which occurred more than ten years ago, the law is not necessarily useful in that during an election, for instance, the revelation of important events in the life of a candidate may be useful to the community, as the personal history of the candidate may lead to a loss of confidence in his fitness to lead the country.

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<sup>13</sup> Article 82: "The publication, broadcast or reproduction, by any means whatsoever, of false news, documents manufactured, falsified or mendaciously attributed to third parties where, when carried out in bad faith, will disturb the peace or is likely to do so shall be punishable by a term of imprisonment of 1 year to 3 years and a fine of 1,000,000 to 10,000,000 million francs. The same acts shall be punishable by a term of imprisonment of 2 to 5 years and a fine of 1,000,000 francs where the publication, broadcast or reproduction, when carried out in bad faith, is such as to perturb the discipline and morale of the armed forces"

Article 91: An offence committed publicly against foreign Heads of State, foreign Heads of Government and Ministers of Foreign Affairs of a foreign government shall be punishable by a term of imprisonment of 1 to 5 years and a fine of 10,000 to 5,000,000 CFA francs."

Article 92: "Any public insults against ambassadors and ministers plenipotentiary acting as envoys, chargés d'affaires or other diplomatic agents accredited to the Government of the Republic shall be punishable by a term of imprisonment of 6 months to 3 years and a fine of 200,000 to 1,000,000 CFA francs."



Similarly, it appears that these provisions are at odds with Principle XII, which provides:

- (1) States should ensure that their laws relating to defamation conform to the following standards:
  - no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
  - public figures shall be required to tolerate a greater degree of criticism; and
  - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.
- (2) Privacy laws shall not inhibit the dissemination of information of public interest.

Instead, in the provisions governing public life, for example, the law fails to provide for the dissemination of information which becomes necessary in the public interest. This gives room for abuses against the authors of such publications, whose intention is to be of service to the community.

### **2.2.b.3: Insults**

**Article 87** of the law provides:

Insults proffered by the same means against physical attributes or the persons designated in Articles 84<sup>[14]</sup> and 85<sup>[15]</sup> hereof shall be punishable by a term of imprisonment of 3 months to 1 year and by a fine of 500,000 to 10,000,000 francs, where the insult was directed at a persons who belong by virtue of their origin to a specific race, region or religion, or to an institution, a religions or a philosophical group protected under article 23(2) of the Constitution,<sup>[16]</sup> and is intended to incite hatred between citizens or residents.

**Article 88**, which also applies to defamation, strengthens the prohibition thus:

Articles 85, 86 and 87 shall only apply to defamation or insults directed at the memory of deceased persons where the perpetrators of the defamation or insults sought to diminish the honour or consideration of surviving heirs, spouses or universal legatees, who may avail themselves of the right of response provided for in Article 68.

### **Comments**

As drafted, these provisions are inconsistent with Principle XII of the Declaration which provides, *inter alia*, that public figures should tolerate a greater degree of criticism. Here, the slightest criticism can be easily construed as insults by the persons criticised in order to discourage commentators or analysts who view their acts with disfavour. Similarly, the amount of the fine is very high, suggesting that it is intended to stifle all criticism.

Moreover, Principle XIII, which deals with criminal measures, is flouted by these provisions. This Principle provides:

- (1) States shall review all criminal restrictions on content to ensure that they serve a legitimate interest in a democratic society.

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<sup>14</sup> Article 84: "Defamation committed by one of the means set forth at Article 78 against the courts, tribunals, armed forces and the public security forces, the constituent bodies and public administrations shall be punishable by a term of imprisonment of 6 months to 3 years and a fine of 1,000,000 to 10,000,000 francs."

<sup>15</sup> Article 85, quoted at page 39.

<sup>16</sup> Article 23(2): "Institutions, religions or philosophical groups have the right to unrestricted development. They shall not be subject to State oversight. They shall settle and manage their business autonomously."

- (2) Freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression.

It is worth noting that the penalties provided for are enormous whereas the restriction regarding the armed forces, for example, does not state that there is a need to establish a causal link between an imminent threat and the expression.

#### **2.2.b.4: Offences against the President of the Republic and foreign leaders**

The main provision here is offence.

Regarding this crime, the law affords as much protection to the President of the Republic as his peers in friendly countries. Thus, **Article 81** provides: “Any offence committed through the means enumerated in Article 78 against the person of President of the Republic shall be punishable by a term of imprisonment of one (1) to five (5) years and a fine of one million (1,000,000) to ten million (10,000,000) francs.”. These provisions are buttressed by **Article 91** with a view to protecting foreign leaders: “Any offence committed publicly against foreign Heads of State, foreign Heads of Government and Ministers of Foreign Affairs of a foreign government shall be punishable by a term of imprisonment of one (1) to five (5) years and a fine of five hundred thousand (500, 000) to five million (5, 000, 000) francs.

#### **Comments**

In practice, it is defamation which is construed as an offence against Heads of State and Government and foreign leaders. The relevant provisions are inconsistent with Principle XII as concerns the protection of reputations, whereas Point 1 of this principle states:

- (1) States should ensure that their laws relating to defamation conform to the following standards:
- no one shall be found liable for true statements, opinions or statements regarding public figures which it was reasonable to make in the circumstances;
  - public figures shall be required to tolerate a greater degree of criticism; and
  - sanctions shall never be so severe as to inhibit the right to freedom of expression, including by others.

It is evident that these provisions make no distinction between accurate information and the usefulness of the statements to which reference is made. Thus, it is in fact a prohibition from criticising these public figures that the law enshrines. This is further confirmed by the financial penalties provided as punishment.

#### **2.2.b.5: Publication of false news**

**Article 82** of the law stipulates:

The publication, broadcast or reproduction, by any means whatsoever, of false news, documents manufactured, falsified or mendaciously attributed to third parties where, when carried out in bad faith, disturbs public order or is likely to do so shall be punishable by a term of imprisonment of one (1) year to three (3) years and a fine of one million (1, 000, 000) to ten million (10, 000, 000) francs. The same acts shall be punishable by a term of imprisonment of 2 to 5 years and a fine of 1,000,000 francs where the publication, broadcast or reproduction, when carried out in bad faith, is such as to perturb the discipline and morale of the armed forces.

## **Comments**

It is worth considering here that the law exclusively targets false news, fabricated, falsified or mendacious materials. This offence is one which any responsible journalist or citizen would avoid committing. However, the difficulty here lies in the fact that these publications will be punished if the false news is such as to disturb public order. It bears considering who is empowered to make such a judgment and on what basis potential threats to public order are determined in relation to these publications. In practice, and for its time, it is clear that such a judgment would be made by magistrates probably in the sway of the government in power.

While it might be noted that the provisions of this law are clear for the most part, it is no less noteworthy that the prosecutor has a duty to prove the facts charged against the person being prosecuted. Thus, under **Article 104** of the law,

If an investigation is opened at the behest of the public prosecutor, he shall set forth and characterise in his submissions the offensiveness, provocation, defamation and insults in respect of which charges have been brought, together with a statement of the legal provisions whose application is being sought.

The defendants may bring evidence of their written allegations. **Article 111** of the law stipulates:

Where the defendant seeks leave to prove the actuality of the defamatory acts in accordance with Article 89 of this law, he must, within seven (7) days of the notification of the summons, effect notification either to the prosecutor or to the complainant at the complainant's stated place of residence, depending on whether he is prosecuted at the request of one or the other:

- (1) the acts set forth and characterised in the summons, of which he seeks to prove the veracity;
- (2) copies of all exhibits;
- (3) the full names and exact addresses of the witnesses through whom he will bring his evidence.

On this point, it is also worth noting that it is generally for the defendant to prove his or her good faith. Nonetheless, regarding compliance or otherwise with the Declaration of Principles on Freedom of Expression, it might be considered that this law should be amended. The segment "such as to perturb the discipline or morale of the armed forces", is unavoidably subjective, as is the concept of "public order" referred to in the organic law on HAAC, often viewed as a subjective catch-all intended to justify the misuse of power by public officials. Similarly, the absence of a law on access to public sources of information and the authorities' failure to publish certain pieces of information with dispatch might be found regrettable. On this point, it is also worth noting that the restriction relating to privacy is too absolute, whereas events relating thereto would warrant revelation for the common good. Specifically, it should be noted that the conception in the Declaration of reputations or the call for flexible criminal measures, such as the creation of an enabling economic environment for media development, are not taken into account by the law. Similarly, the law does not include provisions for the protection of journalists. It provides that "the time-limit between the summons and the appearance before the court seized of the matter shall be thirty (30) days in addition to one (1) day per fifty (50) kilometres of distance", but adds that "failure to comply with this requirement shall not invalidate the summons" (Article 109); the summonsed person having the right not to report on the stated date, this law extends the expiry of the measure to four months instead of the three months provided for in Law No. 60-12.

**2.2.c: Law No. 61-10 of 20 February 1961 amending Law No. 60-12 of 30 June 1960 on press freedom**

**Article 49 of Law No. 60-12**, which this law amends, attracts interest where it provides that “Only in the cases provided for in Articles 8, 20, 21(1) and 21(2), 22, 23, 24, 25 and 28,<sup>17</sup> may the temporary seizure of newspapers or written periodicals, written or printed material, placards or posters, drawings or etchings, paintings or emblems, be ordered by the public prosecutor within forty-eight hours with effect from the seizure. The Ministry of the Interior may also order the suspension of the

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<sup>17</sup> Article 8: “At least two working hours before the publication of each paper to the delivery of the periodical newspaper or other periodical, two signed copies thereof, signed by the editor, shall be provided: 1. To the public prosecutor’s office at the court or the bench of the court of first instance or in towns where there is no judicial bench, to the mayor or the head of the administrative district; 2. To the officer of the Ministry of the Interior for a town or city where the ministry is represented. Each of these deliveries shall be performed within the time-limit prescribed in paragraph 1 above, subject to a term of imprisonment of one month to six months and a fine of 12,000 to 120,000 CFA francs. The time-limit prescribed in paragraph 1 above may be reduced by decision of the Minister of the Interior.”

Article 20: *op. cit.*

Article 21: “Any person who, by any of the means enumerated in the preceding Article, directly incites a person to theft, the crime of murder, assassination, wilful destruction of buildings, dwellings, shops, dikes, roads, vehicles, public or private bridges or roads, and generally, all fixed or moveable property, or incites a person to commit one of the crimes and misdemeanours against the external security of the State, shall be punishable, where such incitement is not followed by a commission of the offence, with a term of 2 to 5 years of imprisonment and a fine of 10,000 to 5,000,000 CFA francs. The following shall be similarly punished: persons who, by one of the means enumerated in Article 21, seek to justify all crimes or seditious chanting directed at the public authorities in public or at public meetings, any seditious crime or song against the powers that be in public places or meetings shall be punishable by a term of imprisonment of 6 months to 2 years and a fine of 12, 000 to 120, 000 CFA francs.”

Article 22: “Any incitement by one of the means enumerated at Article 20, directed at the internal security forces, soldiers of the infantry, navy and air force in order to cause dereliction of their military duty and the obedience which they owe to their superiors for any order to implement laws and military regulations shall be punishable by a term of imprisonment of 2 to 5 years and a fine of 10, 000 to 5, 000, 000 CFA francs.”

Article 23: “Any offence committed by the means enumerated at Article 20 against the president of the Community or his representative in the Republic of Dahomey, any offence against the Prime Minister and any offence against the President of the Legislative Assembly of the Republic of Dahomey, shall be punishable by a term of imprisonment of 1 to 5 years and a fine of 10, 000 to 5, 000, 000 CFA francs.”

Article 24: “Similar penalties shall be imposed for offences to the leaders of the Community and Presidents of the Legislative Assemblies of the said States.”

Article 25: “The publication, broadcast or reproduction, by any means whatsoever, of false news, documents manufactured, falsified or mendaciously attributed to third parties, where carried out in bad faith, disturbs the peace or is likely to do so, shall be punishable by a term of imprisonment of 1 to 3 years and a fine of 10, 000 to 5, 000, 000 CFA francs. The same acts shall be punishable by a term of imprisonment of 2 to 5 years and a fine of 100, 000 to 30, 000, 000 CFA francs, where the publication, broadcast or reproduction done in bad faith is such as to perturb the discipline or morale of the armed forces.”

Article 28; “The same penalty shall apply to defamation committed by the same means, owing to their functions or positions, against one or more members of Government, one or more members of the Legislative Assembly, a civil servant, a holder or agent of public authority, a citizen permanently or temporarily charged with a public mandate or service, a member of a trial jury or a witness on account of his or her testimony. Defamation of such persons in respect of their private lives shall be governed by Article 29 below.”

Article 29: “Defamation committed against individuals by one of the means enumerated in Article 20 shall be punishable by a term of imprisonment of 3 months to 1 year and a fine of 5, 000 to 2, 000, 000 CFA francs or by any of these penalties alone. Defamation committed by the same means against a group of persons not enumerated in Article 28, but belonging by origin to a specific race, region or religion, shall be punishable by a term of imprisonment of 1 to 3 years and a fine of 10, 000 to 5, 000, 000 CFA francs, where the intent is to incite hatred between citizens or residents.”

publication until a final ruling on the merits in a judgment, decision or order of the investigating magistrate.

There should be concern about this prerogative granted to the Ministry of the Interior in a case where the matter is before the courts. This suggests that the intention is to circumvent the courts while giving the impression that they have free rein. Thus the context of the time (1960-1961) should be taken into account in understanding the trepidation of the regime and its desire to contain challenges, including criticism in the press.

Obviously, this is inconsistent with the spirit of the Declaration of Principles on Freedom of Expression in Africa.

***2.2.d: Ordinance No. 69-12 P.R./M.J.L. of 23 May 1969, amending and supplementing Article 8 of Law No. 60-12 of 30 June 1960 on freedom of the press***

This Ordinance amends and supplements Law No. 60-12, in particular Article 8 (3), which now reads: "To each of these filings shall be annexed a signed statement of the publisher, stating the first names, surnames, profession and address of the authors of the published articles. Failure to make such declaration shall be punishable by the penalties provided for in Article 2." The old Article 3 becomes Article 4, which provides that "The time-limit for filing provided for in paragraph (1) may be reduced or extended by decision of the Minister of the Interior.

As might be imagined, in a context of political agitation where the independent press often plays a leading role, the desire for control by the political leadership, particularly the Executive, is strongly evident in this Ordinance. Requiring so much information to be provided by the authors of articles is intended solely to facilitate their arrest if found necessary by the public authorities. It is also intended to strike fear into the hearts of the editors who, as a result of this Ordinance, would censor themselves more than ordinarily, or quite simply avoid some topics in order not to annoy the regime. So, as can be imagined, this text is wholly dissonant with the Declaration of Principles on Freedom of Expression in Africa, particularly Principle VIII.

***2.2.e: Ordinance No. 69-22 P.R./M.J.L. of 4 July 1969 to make punishable certain acts likely to disturb public order, the propagation, publication, broadcast and reproduction of false news. This law is designed to eliminate all seditious intent.***

**Article 1:** The following shall be prohibited: the propagation, publication, broadcast or reproduction, in bad faith, by tracts, posters, documents manufactured or falsified or mendaciously attributed to others, which are such as to disturb public order, adversely affect national cohesion or union, perturb the morale of the nation or be detrimental to the interests of the country.

**Article 2:** Also prohibited, where there are produced for the same purposes, the broadcast or possession with a view to broadcast for propagandistic purposes tracts, bulletins and flyers of foreign origin or inspiration.

As penalties, **Article 3** provides:

Any infringement of Articles 1 and 2 of this Ordinance shall be punishable by a term of imprisonment of 1 month to 1 year and a fine of 100, 000 to 1, 000, 000 CFA francs or by any of these penalties alone. However, these same acts shall be punishable by a term of imprisonment of 1 year to five years and a fine of 500, 000 to 5, 000, 000 CFA francs where they are such as to undermine the discipline or morale of the Armed Forces. In any event, the court may also strip the offender of his or her civic rights for five years at least to ten years at most in accordance with Article 42 of the Criminal Code.

Furthermore, **Article 4** provides: “Any means having served in the commission of the offence will be seized and the judgment shall order their confiscation, elimination or destruction, as the case may be.” Then **Article 5** adds: “Breaches of this ordinance shall be automatically prosecuted by the Public Prosecutor in accordance with the provisions of the Code of Criminal Procedure. The *flagrante delicto* procedure shall be applicable.”

### **Comments**

Noteworthy is the almost martial tone of the ordinance. It even prohibits the possession of foreign documents and, like a leitmotiv, also refers to “the discipline or morale of the Armed Forces”, where these are perturbed, as justification for disproportionate punishment. However, this text should be contextualised to understand its import. Similarly, concerns will be raised by the prescribed diligence for punishment at the behest of the Public Prosecutor. In fact, power is given to the Public Prosecutor’s office automatically to prosecute on the basis of the Code of Criminal Procedure. Worse still, the *flagrante delicto* procedure is prescribed. This is even further proof that the regime of the time was keenly interested in controlling certain products and displays of the freedom of expression; this attitude is antithetical to the Declaration on Principles of Freedom of Expression in Africa, particularly Principle XIII relating to restrictions on grounds of security, since the law does not distinguish between imminent and serious threats and the general wish to avoid publication of information concerning the armed forces.

## **2.3 Use of Law**

Since the restoration of democracy in Benin in 1990), political leaders have shown some degree of understanding vis-a-vis media professionals or ordinary citizens who criticise their actions. However, this has not prevented certain claims being brought before the courts. In such cases, the applicable laws invoked to punish offences related to freedom of expression are Law No. 97-010 of 20 of August 1997 and, to a lesser extent, Law No. 60-12 of 30 June 1960. There is no record of any cases involving sedition, publication of false information, or insult *per se*.

### **2.3.a: Defamation**

The two aforementioned laws are concomitantly invoked by complainants insofar as the provisions of both are applicable. They have been widely used in the past five years, but since precise statistics are impossible to come by, we can refer to Magistrate Malick Cossou’s<sup>18</sup> figures indicating that, for the period from January 2012 to May 2013 alone, the Cotonou court of first instance handed down 82 judgments, while the Abomey-Calavi court handed down four. It can easily be deduced from this that a few hundred decisions must have been delivered throughout the country over the past five years, even though cases involving crimes of opinion in the other towns are much fewer.

According to legal practitioners and journalists who have been prosecuted, the most numerous complainants in defamation cases are politicians, followed by ordinary citizens (private sector, economic operators), and the government, which has brought its fair share of cases even if it does not top the list of complainants. The government targets have included Andoche Amègnissè (2009) and Mr. Lionel Agbo and Canal 3 Benin.

As to the defendants in such cases, media professionals are the predominant targets (more than 98% of cases, according to the magistrates), well ahead of politicians, members of the civil society, and internet users. Women represent barely 1% of respondents, according to criminal court judge Ulrich Gilbert Togbonon of the Cotonou court of first instance.

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<sup>18</sup> Interview with the author, September 2013.

Generally speaking, these cases end with a conviction (more than 80%). Sometimes, the parties reach an agreement (15% out-of-court settlements, or apologies accepted), and in very rare instances the accused are simply discharged at the end of the proceedings (approximately 5%).

Very few appeals are lodged after the trial judgments have been delivered, because the judges are more or less lenient and, as Malick Cossou explains, hand down suspended sentences in most of the cases.

Regarding the grounds relied upon by the judges to convict the defendants, according to Malick Cossou, in the instances where the accused (journalist) actually appears in court, these elements include a poorly constructed defence of truth (evidence that is unreliable, frivolous, or not disclosed in a timely manner), offensive language even when the defence of truth is properly presented; lack of a defence of justification; obvious malicious intent, failure to prove the allegations, absence of good faith in analysing the facts reported, and banned publications.

In the event that the accused is not present, Malick Cossou further explains:

- (1) The journalist is presumed to be guilty
  - For his bad faith (Article 33 of Law No. 60-12 of 30 June 1960: “Any reproduction of a claim which has been found to be defamatory shall be considered to have been done in **bad faith**, unless otherwise proven”).
  - For failure to prove his allegations (Article 32, last sub-paragraph, Law 60-12 of 30 June 1960 “If the evidence of the act characterised as defamation is allowed and brought, the defendant shall be discharged”);
- (2) The guilt of the journalist shall be established based on his or her malicious intent, that is, his or her bad faith;
- (3) The guilt of the journalist shall be established in case of failure to comply with his professional ethics.

Malick Cossou provides the following grounds for acquittals:

- Absence of a constituent element, even where there is no defence of truth
  - Absence of facts of a slanderous nature
  - Absence of malicious intent in the wording used
  - Absence of precise facts
  - The incriminating facts do not target any specific individual
- Failure by the victim to produce the offending article.

### ***Which are the sanctions that are usually handed down?***

- Prison terms:
  - Suspended sentences;
  - Custodial sentences (often 6 months);
- Imposition of fines
- Additional sentences
  - Publication of the judgments in the media
  - Suspension of publications (1 month maximum, and 3 months in rare cases)

### ***Precedents:***

### **Mr. Lionel Agbo and Canal 3 v. the Head of State and his collaborators<sup>19</sup>**

During a press briefing on 18 September 2012, Mr. Lionel Agbo, former special adviser to the President of the Republic and former spokesperson of the Presidency of the Republic, criticised the lacklustre media outing of the Head of State on 1 August 2012. During his televised appearance, the Head of State mentioned that he was fighting against corruption. Moreover, in his press briefing, Mr. Agbo denounced what he referred to as “dishonesty”, claiming that there were corrupt officials lurking inside the Presidency of the Republic. He added that “the Head of State knows that I know that he knows”. These assertions were deemed to be defamatory by President Boni Yayi’s aides and by the President himself. Legal proceedings were initiated, and the case was shaping up to be the trial of the year. On Wednesday 3 October 2012, the defendant appeared before the criminal chamber of the Cotonou court of first instance. After a hearing lasting more than two hours, the case was adjourned to 17 and 24 October.

Following several adjournments and constitutionality challenges denouncing the attitude of the judge and the law he intended to apply, rather than the violation of the freedom of expression, the case, which had held public opinion spellbound and given rise to countless arguments, ended seven months later when the judgment was delivered. While the civil party contended that the facts constituted a crime of defamation, the defence pleaded the contrary, particularly considering that at no time had their client ever mentioned the complainants. At the end of the trial, the charges were dismissed and the defendants discharged.

### **Beninactu.com v. Mr. Benoît Kouassi<sup>20</sup>**

Beninactu.com is an internet news site which, in 2013, was a party in a case against a businessman, Mr. Benoît Kouassi, portrayed by one of its contributors, Marc David Molli, as a drug trafficker on the run from the police. After a three-month long trial before the Cotonou court of first instance, the author of the offending article was sentenced to a term of six months in prison and issued with an arrest warrant. Marc David Molli was compelled to go underground in order to avoid imprisonment pending the conclusion of negotiations initiated by his editor. The ongoing negotiations, coupled with the fact that he felt guilty, dissuaded the editor, Pierre Matchoudo, from appealing the decision handed down.

### **L’Informateur v. Mr. Bankolé<sup>21</sup>**

Mr. Bankolé is a court bailiff who was defamed by the daily newspaper *L’Informateur*, which attacked his private life. The newspaper accused him in 2006 of having a romantic relationship with one of the widows of a deceased person whose estate he was responsible for administering, such that he was favouring his mistress to the detriment of the other widows. Following a three-month long trial in Cotonou, the newspaper’s publisher, Clément Adéchian, and the author of the article, Cécil Adjévi, were sentenced to six months in prison, despite having offered apologies that had been accepted by the bailiff. The case involved some widows who could not agree on the inheritance of their husband and the newspaper had published a story stating that the bailiff had an intimate relationship with one of those widows while acting as an administrator of the estate. In his submissions before the court, he invoked breach of privacy and defamation. The newspaper and its defence team argued that there was no defamation involved considering that the various protagonists, including the woman herself, had admitted the facts, and the relationship was developing in a manner that the other widows were no longer comfortable with. However, in matters of privacy, the law does not entertain the presentation of evidence. It was a painful experience for the publisher who, because he

<sup>19</sup> <http://www.journal-adjinakou-benin.info/?id=4&cat=1&id2=15907&jour=16&mois=01&an=2013>.

<sup>20</sup> Testimony of Pierre Matchoudo and Mr. Gustave Anani Kassa, counsel for Mr. Benoît Kouassi (see attached judgment).

<sup>21</sup> Testimony of Clément Adéchian, Director General of the daily newspaper *L’Informateur*.



was present in court, was immediately apprehended and hauled off to prison following delivery of the judgment. The newspaper lodged an appeal and subsequently reached an out-of-court settlement with the bailiff, who withdrew the charges in exchange for the sum of 5,000,000 CFA francs (50,000 USD).

**Joël Dimitri Vihoundjè<sup>22</sup> v. Cotonou City Council, Nicéphore Soglo and Lambert Koty**

Joël Dimitri Vihoundjè, an internet user and moderator of the forum “Jeunes démocrates prompts (JDP)”, is a prolific internet user. He claims that as the moderator of a forum comprising 10,000 members, he was charged in court because one of the forum members wrote that a former minister, Galiou Soglo, had been arrested in Europe for possession of drugs. Even though he subsequently published a disclaimer, this was not enough, and he says he was given a two-year suspended sentence and fined the sum of 5,000,000 CFA francs (50,000 USD). Later on, he was involved in another case against the Cotonou municipal authorities, the Soglos (Nicéphore, former President of the Republic, and Léhady, his eldest son). Having denounced “injustice” at the City Hall where workers were not being paid, he was sentenced to two years’ imprisonment and a fine of 150,000 CFA francs (300 USD).

Between August and October, a third trial pitted him against the former minister of public works and transport, Mr. Lambert Koty who, in the exercise of his ministerial duties, had been criticised by the internet moderator for having prevented a businessman from illegally setting up his business adjacent to the fence of the ministry. The former minister considered himself the victim of defamation in Mr. Vihoundjè’s write-up, and instituted legal proceedings against him.

**2.3.b: Offensiveness**

**Lionel Agbo and Canal 3 v. the Head of State and members of his staff<sup>23</sup>**

During a press briefing on 18 September 2012, Mr. Lionel Agbo, former special adviser to the President of the Republic, and former spokesperson of the Presidency of the Republic, criticised the lacklustre media outing of the Head of State on 1 August 2012. In the course of the press briefing, he uttered statements – deemed to be defamatory and offensive by the collaborators of President Boni Yayi and by the President himself – by stating, *inter alia*, that the President was aware that there were corrupt officials lurking inside the Presidency of the Republic. Legal action was taken, which had all the makings of the case of the year. On Wednesday 3 October 2012, the defendant appeared before the criminal chamber of the Cotonou court of first instance.

The case pitted Boni Yayi, President of the Republic, against Mr. Lionel Agbo and Berthe Cakpossa (Director of *Canal 3 Benin*). In his action, the Head of State accused the defendant of having made offensive statements against him during a press briefing the previous 18 September. Mr. Lionel Agbo denied the allegations. Following several adjournments and constitutionality challenges denouncing the attitude of the judge and the law he intended to apply rather than the violation of the freedom of expression, the case, which had held public opinion spellbound and given rise to countless arguments, ended seven months later when the verdict was issued. The Director of *Canal 3 Benin*, who had written to the court seeking leave to be tried *in absentia* as provided for by the law, was convicted as an accessory in the offence against the Head of State, and sentenced to three months’ imprisonment. The lawyer was sentenced to six months in prison, and issued with an arrest warrant. He was fortunate not to have attended the hearing, otherwise he would have been whisked off

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<sup>22</sup> Testimony of Mr. Dimitri Vihoundjè and attached judgment.

<sup>23</sup> Testimony of Berthe Cakpossa, the daily newspaper *La Nation*, Oct-Dec 2013.

<http://www.construirelebenin.info/Article-offense-au-chef-de-l-etat-berthe-cakpossa-condamnee-a-trois-mois-fermes-114456805.html>.

directly to prison. He subsequently left the country, and has not yet returned as at the time of this study. However, his lawyers lodged an appeal and, following a general outcry, the Head of State announced that he was granting them a pardon. This decision, procedurally speaking, was devoid of legal effect, as the final judgment had not yet been delivered. The Head of State submitted in the appeal proceedings that he was withdrawing the charges against the accused, who were still waiting for the ruling of the Cotonou court of appeal at the time of this study.

### ***Boni Yayi v. Andoche Amègnissè***<sup>24</sup>

Mr. Andoche Amègnissè is a low-level political operator but who is given to virulent attacks against government authorities. Mr. Boni Yayi was not spared in his verbal and written outbursts. As a result, charges were pressed against Mr. Amègnissè for defaming the Head of State by publishing a photograph of him, prior to his accession to power, showing him asleep during a public international meeting, as well as an article denouncing his style of governance; both of these in a publication entitled “*Anyone but Yayi Boni in 2011*”. At the end of the trial, he was given a two-year suspended sentence.

### **2.3.c: Offence against foreign Heads of State**

#### ***Le Beninois libéré***<sup>25</sup>

*Le Beninois libéré* was a tabloid-type daily newspaper with a satirical bent. In 2011, after the contentious presidential elections in Benin, during a visit to the country by the Ivorian and Togolese Presidents, Alassane Ouattara and Faure Gnassingbé, the newspaper carried a headline stating that all of them had been fraudulently elected. No legal action was taken, but this case is of interest in this study because the Higher Authority for Audio-visual Media and Communication, which serves as the disciplinary board for the media (Article 40<sup>26</sup> of Organic Law No. 92-021 of 21 August 1992 establishing the Higher Authority for Audio-visual Media and Communication), took up the matter. The newspaper had already been sanctioned a few days earlier by the regulatory body, which considered the publication as a serious case of recidivism. Accordingly, the newspaper was banned indefinitely, while its publishers and editors were barred from practising journalism in Benin until further notice. This is the only case that prompted a challenge of a HAAC decision in court, but the Supreme Court, which has been seized of the case for more than one year now, is yet to hand down its ruling.

This particular case is significant because it is the very first time that a HAAC decision has been challenged in court. Prior to that, media professionals had protested against certain decisions of HAAC, but took no further action. As a result, it is expected that the decision of the Supreme Court will delineate the powers of HAAC and specify whether the body has authority to ban a publication indefinitely, or whether such action is the sole prerogative of the judiciary. It is nevertheless noteworthy that, pursuant to the law (Article 40 of the organic law), “HAAC shall act as the Disciplinary Board for media and communication issues”. In the same vein, and pursuant to Article 42 of the same organic law:

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<sup>24</sup> Interview of Mr. Andoche Amègnissè:

<http://mediapartbenin.over-blog.com/entretien-avec-le-vrai-opposant-au-r%C3%A9gime-de-la-refondation-les-pr%C3%A9visions-de-am%C3%A8gniss%C3%A8-sur-yayi-et-sa-r%C3%A9vision>.

<sup>25</sup> [http://www.lanouvelletribune.info/index.php?option=com\\_content&view=Article&id=9732:auditions-publiques-a-la-haac--lle-beninois-liberer-interdit-de-parution&catid=27&Itemid=43](http://www.lanouvelletribune.info/index.php?option=com_content&view=Article&id=9732:auditions-publiques-a-la-haac--lle-beninois-liberer-interdit-de-parution&catid=27&Itemid=43).

<sup>26</sup> Article 40 of Organic Law No. 92-021 of 21 August 1992 on HAAC: “The Higher Authority for Audio-visual Media and Communication shall act as the Disciplinary Board for media and communication issues, without prejudice to the provisions of the General Statute of the Public Service”.

The notification of a HAAC decision on a disciplinary matter shall be served on the person concerned following administrative procedure, and with immediate effect as from the date of such notification. In case of appeal, the Supreme Court shall issue its ruling no more than forty-five (45) days as from the date on which it was seized.

And yet, in the instant case, the appeal has been before the Court for more than one year already.

### **2.3.d: Insult**

There is no known case of anyone having been prosecuted for the crime of insult.

### **2.3.e: Publication of false news**

In this area also, there is no record of any case during the last five years.

## **2.4 Analysis of proportionality of sentences and/or fines**

Pursuant to Law No. 97-010 of 20 August 1997, the crime of insulting the Head of State “shall be punishable by one (1) to five (5) years in prison, and a fine of one million (1,000,000) to ten million (10,000,000) francs” (2,000 to 20,000 USD). The same prison terms are applicable under Law No. 60-12, but with the fine ranging from 10,000 to 5,000,000 francs (20 to 10,000 USD). In cases of defamation, the offence that is most frequently sanctioned under these laws, Law No. 97-010 provides for six (6) months to three (3) years in prison and a fine of one million (1,000,000) to ten million (10,000,000) francs, or the equivalent of 31 to 310 times the minimum salary in Benin, which stands at 31,625 CFA francs (63.25 USD). This appears to be rather exorbitant in light of the cost of living.

For purposes of comparison, while by law, the prosecution of media offences, including those pertaining to expression, is time-barred within three or four months, under Law No. 2011-12 of 12 October 2011 to fight against corruption and related offences in the Republic of Benin, the prosecution of corruption is not time-barred. The other offences become time-barred after 20 years as from the time of detection of the offence. Meanwhile, corruption is punishable by five to ten years or ten to twenty years of imprisonment, with a fine ranging from 1,000,000 to 100,000,000, as the case may be.

### **Summary table on the proportionality of applicable sentences**

<b>Crimes</b>	<b>Applicable fines</b>	<b>Applicable prison terms</b>	<b>Aggregation</b>
Defamation	1 million to 10 million CFA francs (2,000 to 20,000 USD)	6 months to three (3) years	Possible
Publication of false news	1,000,000 à 10,000,000 CFA francs	2 to 5 years	Possible
Offence against the Head of State	1 million to 10 million CFA francs (2,000 to 20,000 USD)	1 to 5 years	Possible
Offence against foreign leaders	500,000 to 5,000,000 CFA francs (1,000 to 10,000 USD)	1 to 5 years	Possible
Insult	500,000 to 10,000,000 CFA francs (1,000 to 20,000 USD)	3 months to 1 year	Possible
Corruption	1,000,000 to 100,000,000 CFA francs (2,000 to 200,000 USD)	5 to 20 years in prison disqualification	Possible
Misappropriation of public funds	1,000,000 to 10,000,000 CFA francs	1 year to 5 years	Possible

Crimes	Applicable fines	Applicable prison terms	Aggregation
	(2,000 to 20,000)		
Laundering of proceeds from crime	Fine equivalent to the value of the items involved	5 to 20 years	Possible

## 2.5 Conclusion

The laws sanctioning offences related to the exercise of the right to freedom of expression are quite repressive, insofar as they penalise such offences. Whereas the courts frequently have to hear cases brought by individuals from all segments of society (political and administrative authorities, ordinary citizens, etc.), they are generally not heavy-handed. Moreover, even when those courts are harsh in their judgments, handing down prison sentences that are often accompanied by arrest warrants, such sentences are not enforced. This explains why to date, according to magistrates, lawyers and journalists, dozens of decisions handed down against media professionals have not been implemented. Besides, if the decisions were to be enforced, several media practitioners would find themselves behind bars. The attitude of the judiciary stems from the approach adopted by former President Mathieu Kérékou who, despite not having decriminalised media offences, came out publicly against journalists being sent to prison. However, ever since the accession to power of Mr. Boni Yayi in 2006, the situation has evolved somewhat. Generally speaking, the decisions are still not being enforced, but just as many politicians have been convicted as media professionals and internet activists. All these factors prove, if it were still necessary, that there is an urgent need to reform the laws on freedom of expression or press freedom in order to align them with the trend towards decriminalisation and the aspirations enshrined in the Declaration of Principles on Freedom of Expression in Africa. In the meantime, it should be pointed out that freedom of expression is criminalised by the laws in force, which is likely to impact negatively on the enjoyment of the right thereto, in the same way as the fear of legal entanglements may cause a major shift towards self-censorship.

## 3. Section Three: Research into Impact of laws on expression

The aforementioned laws are more or less known to the socio-political classes in Benin. They obviously have an impact on the freedom of expression, but an assessment of the extent of such impact varies depending on the particular actors.

### 3.1. Interviews with key political, advocacy and civil society leaders

#### 3.1.1 Political classes

##### 3.1.1.a: Opposition

Generally speaking, this category of the political classes is quite conversant with the applicable laws and their impact. **Mr. Andoche Amègnissè**<sup>27</sup> is a low-level political operator, but his criticisms of the regime have already landed him in prison. In a bid to support his struggle, he founded a newsletter, in anticipation of the presidential election of 2011, for the purpose of opposing the candidacy of the outgoing President, Mr. Boni Yayi. He was prosecuted for “unauthorised publication and sentenced to six months’ imprisonment”, in his own words. Yet the real reason, according to him, “was because my opinions were a nuisance to the regime. In fact, it was the legal unit of the treasury department which applied to participate as a civil party against me, whereas they had had nothing to do with such a case. In the end, I was sentenced to six months in prison, which I duly served”. He adds that he was never detained on remand, but resisted pressure exerted on him to flee the country. Similarly,

<sup>27</sup> Interviewed in August 2013.

he turned down proposals to be released on grounds of ill-health. On his stay in prison, he has this to say: "The prison conditions were extremely harsh. I narrowly escaped being poisoned through my water bottle, and I did not eat any food served in the prison. Initially, I was closely monitored by prisoners assigned to carry out that task, but I soon won them over and they became loyal allies of mine. My movements were not restricted, and I entertained many visitors. That did not affect my work in any way. On the contrary, my companions and I felt a deep sense of frustration, which morphed into feelings of revolt, as the proceedings had been initiated by the regime, which felt threatened by my criticisms and revelations, given the extent to which the nature of the criticisms and the evidence provided resonated with public opinion. Only 300 copies of the newsletter were printed, but there were 300,000 photocopies circulating around the country... from the prison". Even though his commitment was not blunted, Mr. Andoche Amègnissè nevertheless admits that his personal life suffered as a result of that experience. As he recalls: "My daughter failed her examinations, and my wife converted to a different religion. They were both extremely vulnerable psychologically during that period. Later on, I also found myself in the doldrums professionally, and no longer able to earn any income in Benin". He further reveals that, in relation to the case at bar, he "deliberately refused to appeal against the conviction. I was prosecuted for publishing without authorisation because we did not have the certificate of registration for the newsletter. I submitted in court that, as a politician, I had merely published an opinion, and was therefore not required to obtain an authorisation. I argued that it was incumbent on the State to identify those responsible for the publication. The trial dragged on for four months, and I was also sentenced to a fine of 500,000 CFA francs which I have never paid even though, under normal circumstances, that amount would have been equivalent to my earnings for one month. In the final analysis, I believe that the conviction enhanced my public reputation, depicting me as someone who is totally fearless when it comes to defending his opinions. As such, my opinions have not changed. It is in fact for this reason that one year after my release from prison, despite having finally obtained the registration certificate, I was charged with insulting the head of State by publishing a photograph of him, napping during a public international meeting prior to his accession to power, and also for publishing an article critical of his governance. The ensuing trial ended with my being sentenced to a two year suspended term". On the basis of this experience, Mr. Andoche Amègnissè lamented the restrictive nature of the media laws which "limit freedoms, particularly the freedom of expression, and constitute obstacles that seriously undermine democracy". In his view, "the governments that choose to restrict the freedom of expression will always find the ways and means to impose their dictates". That being the case, Mr. Andoche Amègnissè is of the opinion that "journalists and media outlets make up the most vulnerable groups since they do not benefit from the same level of support as the politicians when involved in trials. They are not financially viable, and are frequently left to their own devices to face the overwhelming force of the regime that they have criticised."

**Eric Houndété**<sup>28</sup> is an opposition Member of Parliament and chairman of his parliamentary group. He has never personally been subjected to these laws within the context of a trial, but he has this to say: "When I attempted to express myself, along with my companions, by organising a demonstration to denounce the governance of the regime in power, we were prevented from doing so under the public order pretext, and yet at the same time, supporters of the government are free to march in support of government action without complying with any procedures. Similarly, in my capacity as a Member of Parliament, I do not have access to state-owned media as provided for by the law. In the same vein, I am sometimes compelled to tone down my rhetoric because even journalists urge us to do so otherwise our statements would not be published or broadcast." Without referring to any specific case, the Member of Parliament believes that: "Every day" he has to make an effort to water down his statements, which leads him to conclude that "these laws have an impact on the manner in which information is packaged", given that the journalists and their press organs

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<sup>28</sup> Interviewed in August 2013.

constitute the most vulnerable groups, followed by trade unions, the civil society, and politicians outside of the legislature (parliamentarians have immunity). The case of *Lionel Agbo and Canal 3 Benin v. the Head of State and his collaborators*, or even the sanctions imposed by HAAC on certain press organs, bear witness to this. Ultimately, Mr. Eric Houndété states that he is “aware that the laws criminalise freedom of expression, and hopes that campaigns will be organised to rectify the situation.” With this in mind, he “hails the efforts of certain continental organisations to institute a model law”, as well as the work being done within the country to produce a draft information and communication code. He nevertheless warns that “[t]he problem is not so much the substance of the laws, but rather the manner in which they are implemented”.

### **3.1.1.b: The Government**

**One member of parliament of the presidential camp**<sup>29</sup> and president of a political party is very familiar with the legal instruments that criminalise freedom of expression. He was personally prosecuted for denouncing the management of a mayor who was a close associate of his, and subsequently convicted at trial, but lodged an appeal. He nevertheless believes that journalists are the most vulnerable to those laws. He is adamant that the trial did not prompt him to moderate his stance or to refrain from further media outings. In support of that assertion, he points out that “[e]ven within the current ruling majority, I am a critical supporter, and from time to time, I publicly denounce the excesses and shortcomings of the regime”.

**Komi Koutché**<sup>30</sup> has been the Minister in charge of Communication and New Information and Communication Technologies since the cabinet reshuffle of 11 August 2013. A former Director General of the National Micro-Finance Fund, he claims that he is not aware of any laws that restrict or criminalise freedom of expression. In his opinion, “Benin, just like any responsible state governed by the rule of law, has enacted, alongside the Constitution of 11 December 1990, a series of legal instruments to govern and regulate its citizens’ exercise of their right to freedom of expression”. He specifically refers to Law No. 97-010 of 20 August 1997 to liberalise the audio-visual landscape, and the criminal provisions specific to offences in the domain of print media and audio-visual communication in the Republic of Benin. According to him:

Freedom of expression in a Republic can be equated to press freedom which, in principle, has always existed in Benin. Even during the revolutionary era, press freedom was recognised and enshrined in the laws in force. Law No. 60-12 of 30 June 1960, amended by an ordinance of 4 July 1969 – a law that has never been repealed in spite of its colonial nature – in its Article 3, stipulates that “[a]ny newspaper or periodical may be published without prior authorisation or guarantee deposit, subject to the declaration provided for in Article 5 of this law”. Article 5 simply requires that a written declaration be submitted to the Public Prosecutor and the Ministry of the Interior, stating the title of the publication, the name and legal domicile of its publisher, and the name of the printing press.

As such, Mr. Komi Koutché does not believe that those laws have any impact whatsoever on the freedom of expression.

Incidentally, even though he has never been directly affected by the current laws, he reveals that while performing his previous duties, he was the victim of excesses on the part of two newspapers, against which he pressed charges for criminal defamation, resulting in their conviction. He explains that the newspapers in question had insinuated that his management was poor, without any evidence whatsoever, and without having attempted to engage him in any way, in accordance with the legal requirement to investigate both sides of a story. Despite all that, the minister does not believe that journalists constitute a vulnerable target as “no group can be specifically targeted by a

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<sup>29</sup> Interviewed in August 2013, on condition of anonymity.

<sup>30</sup> Interviewed in October 2013.

republican law". In answer to the question as to whether those laws nevertheless have any impact on the manner in which information is presented, the Minister of Communication answers as follows: "Whereas, in spite of the existence of these laws, transgressions have been reported, you would agree with me that the laws are indispensable for the regulation of our attitudes".

Nevertheless, does Komi Koutché, a political activist, feel compelled to tone down his rhetoric in order not to fall foul of the law?

As a member of the political class, and in light of the values promoted by the government to which I belong, I have never had to dilute my position in any significant way for fear of infringing the laws. Ethical considerations, morality and profound respect for the laws of the Republic, which are our shared values within the Government are such that, without making any special effort, we are able to express our opinions with no real risk of contravening the laws governing freedom of expression.

### **Civil Society**

**Joël Attayi-Guèdègbé**<sup>31</sup> is a stalwart of the civil society who militates mainly at *Nouvelle Ethique* and FONAC, but also in a good many other structures. He believes that media laws criminalise and restrict freedom of expression, because they stipulate that journalists are liable even for defamatory statements made by their guests or other contributors to their broadcasts, and also because they place the onus of the proof of their good faith on the defendants, something that cannot always be established. In fact, he acknowledges having sometimes moderated his statements, since he has frequently had to make use of the media for his activities. He cites the following example: "In the course of investigations into corruption allegations being carried out by FONAC, these laws caused us to defer our revelations or to halt the investigations mid-way". It therefore goes without saying that the laws have a considerable impact on the way that some information is presented.

As to **Jean-Baptiste Elias**,<sup>32</sup> President of the Front of National Anti-Corruption Organisations (FONAC) and former president of the Anti-Corruption Observatory, his assessment of the situation is equally edifying. He gained notoriety as a result of his no-holds-barred denunciations of corruption cases; and states from the outset that the media laws criminalise freedom of expression, on account of the evidence standards and applicable time-limits.

Many citizens possess information and are willing to denounce the facts but are unable to produce the relevant evidence within the time-limits prescribed by the law. They therefore refrain from doing so, whereas they are certain of their information, and their denunciations would likely have had positive effects on society.

That is why he himself makes sure that he is in possession of all the relevant evidence before he makes any allegations, given that there has been no shortage of trials, which he always won, as he points out, adding:

I was directly affected by these laws after I denounced acts of corruption and misappropriation of public funds by officials at various levels. The acts were denounced through the media along with the details that we had in our possession. They initiated proceedings for criminal defamation. One example concerned a minister who we exposed in 2004-2005 for improper allocation of public contracts. Those who were supposed to win the call to tender were known. The various commissions did their job. The technical and financial partners gave their concurring opinions. But the Minister confiscated the dossier and pressurised the winners to give him some money. He then awarded the contract to a different person whose bid had not even been approved.

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<sup>31</sup> Interviewed in August 2013.

<sup>32</sup> Interviewed in September 2013.

In another case, we denounced the Director General of the National Water Corporation of Benin (SONEB) for his extremely poor management of the company, exemplified by splitting up public contracts in violation of the code of public contracts. The Director General had not even sought the opinion of the National Directorate of Public Contracts and, by proceeding in the manner in which he did, he was guilty of overbilling. This happened in 2009-2010. In the two cases, charges were pressed against us for criminal defamation, but we availed ourselves of the defence of truth, and ended up winning, despite the battery of lawyers they had retained.

The first trial lasted for up to a year because the Minister, whose case had been dismissed at trial, lodged an appeal against the decision which he also lost. The other case was tried in three months, and the Director General, after losing the case, decided not to appeal because his own lawyers persuaded him not to do so.

Jean-Baptiste Elias recalls that, in his criminal defamation suit, the minister in question alleged that FONAC had disseminated the information in the media whereas it concerned a minister. Similarly, the Director General, just like the minister, alleged that he had suffered damage to his reputation amounting to defamation. The defendant reveals that he countered those accusations with unimpeachable evidence, laid out in great detail in the courtroom. There is no doubt that the experience did nothing to undermine his determination to the point of tempering his activism. On the contrary, he says: "I am determined to continue the struggle for good governance".

## 3.2 Interviews with law enforcement agencies

Our conversations with members of the security services point to a general lack of familiarity with the law, even though the senior officers claim to be doing what is required of them.

### 3.2.a: The security services

Apparently ignorant of the law, a *Sergeant in the Benin army*,<sup>33</sup> who wished to remain anonymous, states that "there are no laws that restrict or criminalise expression". He adds that "freedom of expression cannot be an absolute right considering that anything in excess is always counter-productive. More specifically, abuse of the freedom of expression may undermine democracy". But when asked whether he is aware of any case law pertaining to the punishment of abuses, the sergeant answers in the negative, but recalls the case of two gendarmes who denounced a scheme of which they were the victims and were sanctioned by the authorities. However, he explains,

[I]n the theatre of operations, agents are subject to restrictions. They are under the responsibility of a commander who has been assigned a mission, and so they know the attitude to adopt in the event of any problems. For example, during sit-ins, demonstrations or rallies, if members of the public resort to violence, both they and the agents have to be protected.

*The Deputy Director General of the National Police, Inspector General Nazaire Hounnonkpè*,<sup>34</sup> agreed to be interviewed. He acknowledged that the media laws, particularly Law No. 60-12, as supplemented by Ordinance No. 69-22 PR/MJL of 04 July 1969, make punishable certain acts likely to disturb public order: the dissemination, publication, broadcast and reproduction of false information restrict and criminalise freedom of expression. In his view, the said Ordinance has the greatest impact on freedom of expression

[B]ecause it authorises the Public Prosecutor's office, pursuant to its provisions relating to written materials likely to disturb public order, to determine whether or not there is a need to invoke the ordinance and to initiate proceedings *proprio motu*. It is not even necessary for there to be victims. For

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<sup>33</sup> Interviewed in August 2013, on condition of anonymity.

<sup>34</sup> Interviewed in October 2013.



example, if someone writes that insecurity is gaining ground in the country, this may suffice to trigger a prosecution. It is therefore a harsh instrument

By the way, even though he has never been personally affected by that law, Nazaire Hounnonkpè has already had occasion to implement it. He recalls that

[O]n one occasion, a journalist reported that there had been a hold-up a few metres away from some policemen who failed to react, which was not true, but he had not cross-checked his information. I had him detained, but we did not proceed with the case because certain people came to intercede on his behalf, notably the professional associations. All that is required is for public order and the institutions of the Republic to be threatened. As far as we are concerned, it is a fantastic law which makes it possible to circumvent the complex procedures applicable in defamation cases, although I admit that it is a rather harsh law.

Nonetheless, while acknowledging the stringency of the law, the Deputy Director General of the National Police justifies it in these words:

Admittedly, these laws restrict and criminalise the freedom of expression, but they are necessary in light of the level of maturity of media professionals in particular, and of ordinary citizens in general, considering that they confuse democracy with anarchy. And this can lead to disturbances or mob justice. In my opinion therefore, there is a need to educate all segments of the population before envisaging the possibility of decriminalising offences in this domain.

In the meantime, is there any case law pertaining to sanctions for the violation of the right to freedom of expression? Nazaire Hounnonkpè is not aware of any, and explains:

There is instead some case law of the Constitutional Court sanctioning violations of human rights such as physical abuse, inhuman treatment, and arbitrary detention. But when journalists are the victims of abuse, their immediate reaction is most often not to take legal action. They prefer to denounce such acts through the print or audio-visual media.

He says that he is aware of the existence of international treaties for the purpose of safeguarding this right which have been ratified by Benin, but he does not have them in his possession.

Lastly, Nazaire Hounnonkpè insists on clarifying that

[T]he police force is not responsible for deciding whether or not to prosecute. It is a tool in the hands of the authorities which control the administrative police. The force merely receives instructions which they implement if such instructions are in conformity with the laws.

When it is pointed out to him that the banning of protest marches, or the harassment of those who dress in red on Wednesdays in protest against the proposed revision of the Constitution, appear to be violations of the right to the freedom of expression, the Deputy Director General of the National Police retorts that, in the case of the people dressing in red, for example, "it is at the initiative of a movement known as *Alternative Citoyenne*, which is not registered anywhere. And so if they are allowed to carry on with their activities, others may follow suit."

### **3.2.b: The Judiciary**

#### **3.2.b.1: Lawyers**

Amongst legal practitioners, there appears to be a much better understanding of the texts, and yet...

According to Ms. **Aline Odjè**,<sup>35</sup> a member of the Benin Bar,

Amongst the laws that restrict and criminalise freedom of expression are: the Criminal Code, Law No. 2012-15 of 18 March 2013 setting out the code of criminal procedure in Benin, and Law No. 97-010 of 20 August 1997 on media and audio-visual communication in the Republic of Benin. But it is Law No. 97-010 of 20 August 1997 on media and audio-visual communication in the Republic of Benin and the Criminal Code that have the greatest impact on the freedom of expression.

And why is this so? The lawyer has this explanation to give:

Because of the abuses that characterise their implementation. Indeed, Law No. 97-010 of 20 August 1997 on media and audio-visual communication in the Republic of Benin, contrary to its avowed objective, has been used by politicians as a tool to regiment the public freedoms of citizens who dared to denounce their regime. The provision relating to “disturbing public order” in the Criminal Code is used as a tool by political authorities to repress the citizens.

She goes on to elaborate:

Whether it is obvious or not, not all citizens are always willing to be subjected to the frequently fatal punishments of the governments. That is why the broadcasting ban that was imposed on the *Canal 3 Benin* television station for a few days inspired its founder, **the opposition Member of Parliament Issa Salifou**, to join the presidential camp in 2012.

The ranks of opposition politicians, who were in the majority in the run-up to the presidential election of 2011, were considerably depleted after the election as a result of the myriad threats against them.

Furthermore, she points out:

On page 86 of *Benin, Democracy and Participation in the Political Process : an evaluation of 20 years of the new democratic dispensation*, published in 2010 by the Open Society Institute Network, it is revealed that, in spite of some commendable efforts in recent years to curb the phenomenon, amateurism, the vulnerability of certain journalists to financial incentives, and certain political considerations still lead to the conviction of journalists, even if the prison terms are not only limited to the periods following the convictions, but are sometimes not even enforced. The debate on the “decriminalisation of media offences” has been progressively regaining currency, with some commentators preferring to refer instead to the “suppression of custodial sentences for media offences”, which would not preclude fines. However, the political authorities (President of the Republic and members of the National Assembly), who have often pledged to examine the issue, seem to be waiting for enhanced responsibility on the part of journalists before really committing to review the text and render it more progressive, as has already been done in neighbouring countries.

Besides, according to the lawyer:

The public order imperative has become a tool to legitimise the banning of protest marches against the executive branch of government and police crackdowns on citizens. For example, the Prefect of the Zou-Collines department justified the crackdown on student teachers using the pretext of safeguarding public order, whereas the students in question had merely organised the march to denounce the unfulfilled promises made to them by the President of the Republic.... Thus the laws make it possible for the authorities to stifle any protests by the citizens against their excesses and caprices.

The sanctions handed down by the media regulatory organ, the Higher Authority for Audio-visual Media and Communication (HAAC), and the convictions for abuses of freedom of expression, pursuant to the aforementioned laws, definitely have an impact on the manner in which news and information are presented. The processing of information based on reports filed affords the press organs an opportunity to edit out any segments that may appear to be defamatory.

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<sup>35</sup> Interviewed in August 2013.

For these reasons, she is of the opinion that the media and civil society leaders are the most vulnerable target groups when it comes to those laws.

For his part, her colleague, **Mr. Gustave Anani Cassa**<sup>36</sup>, who happens to be a former Keeper of the Seals, Minister of Justice, Legislation and Human Rights, while accepting that the media, opposition politicians and the impoverished citizens are the most vulnerable groups, nonetheless believes that there are no laws in Benin that criminalise freedom of expression. He maintains that

[S]ince the Constitution confers all powers on us, and more specifically the legal instruments, if everyone respects the law, it cannot be stated that freedom of speech is restricted or criminalised considering that, aside from a few provisions that provide for harsh sentences, there is no actual criminalisation. But if it must be advanced that expression is restricted, it is because we do not trust ourselves, and those in possession of evidence pertaining to certain information are wary of disclosing it.

In other words, the lawyer explains,

No law is inherently bad. At certain times, some of our laws are either obsolete or improperly implemented. And when people initiate legal proceedings, they are quite often not understood. It is when those people bring cases before the court that others have the impression that freedom of expression is restricted. And yet, it is possible to stifle the media even by remaining silent, for example. However, the former minister goes on to clarify:

when trade unions act in the manner in which they do, should we leave the door open to absolute freedom? When things happen in that way, there is no alternative but to restrict expression.

He nevertheless concedes that, in their current configuration, the laws in force have an impact on the way in which news is presented. To illustrate this, he cites an example: “In the PVI case, many people refrained from writing for fear of being taken to court. Thus the laws promote a degree of self-censorship”. But the lawyer qualifies this statement by adding that, in any case, “when a case is taken to court, the purpose is not always to punish the authors of the offending articles, but mainly to safeguard the victim’s reputation”. To support this view, Mr. Gustave Anani Cassa recounts the last media offence case that he litigated:

It was written in an article that my client was a dealer, that the police was after him, and that he was on the run, whereas he was indeed present in the country, and had just returned from a trip a few days earlier. Further insinuations were also made, and we know that drug trafficking is prohibited and there are international organisations dedicated to fighting against it. In such a situation, publishing such allegations is a serious matter. And when we press charges for an attack on the honour or reputation of a client, the journalists either plead the defence of truth, invoke good faith, or the necessity to protect their sources.

**Mr. Antoine-Marie Claret Bede**,<sup>37</sup> trial lawyer, is one of the leading defenders of media professionals in criminal defamation cases and other media offences. He is categorical that “Laws Nos. 60-12 and 97-010 restrict and criminalise freedom of expression”. He stresses that “the former, owing to its pre-independence roots, is extremely repressive and particularly targets the print media, while the latter targets both the print and audio-visual media. In addition, both those laws provide for practically identical sentences.” He points out that he has never been personally affected by the laws, but is aware of “several cases in which they were invoked” since he frequently holds brief for the defendants. The general practice in such cases, says he,

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<sup>36</sup> Interviewed in August 2013.

<sup>37</sup> Interviewed in September 2013.

[I]s that the prosecution submits that the alleged facts are groundless, and even if they have a basis, they invoke the lack of evidence because the journalists quite often do not have the supporting evidence for the published information, even when the testimonial evidence adduced is admissible. It is therefore the case that either they do not have the relevant evidence, or such evidence is produced after the prescribed time-limits, thereby placing them in an untenable situation. In such instances, those of us in the defence teams begin by seeking to have the case dismissed on the grounds that no individuals are mentioned, without which the case is null and void; or we apply for the proceedings themselves to be nullified. As a matter of fact, in three out of every five cases, we prevail at that preliminary stage. Where evidence is available, it makes our task much easier. However, if there is a total lack of evidence, we plead good faith in order to benefit from a reduced sentence.

There is no doubt that

[T]hese laws influence the manner in which information is presented because those journalists who have been prosecuted in the past tend to become more cautious, which leads to fear and self-censorship. This state of affairs has prompted certain publishers to switch to the position of director general so as to avoid legal entanglements.

Mr. Bédié, like some of the others who were interviewed, expressed another regret: the fact that legally binding verdicts are almost never issued in criminal defamation cases, even the ones that he wins, considering that, according to his explanation, “winning is one thing, and issuing a decision is another. And since there are frequently no decisions to be enforced at the end of the trials, we often have to make do with the summary judgments.”

### **3.2.b.2: Judges**

**Ulrich Gilbert Togbonon**<sup>38</sup>, a criminal court judge in Chamber II of the Cotonou court of first instance, which hears cases pertaining to the use and abuse of the freedom of expression every Wednesday, admits that “Laws Nos. 60-12 and 97-010 restrict and criminalise freedom of expression insofar as cases of abuses of those laws are punishable by custodial sentences.” But he goes on to elaborate: “Once charges are pressed against a journalist, if he complies with the procedure, the penalty is less severe if he pleads good faith”. It is therefore apparent that judges do not blindly apply the law. In fact, he stresses, “I apply the same standards to ordinary citizens, and I make a point of distinguishing between political criticisms and defamation based on the cases brought before me.” That notwithstanding, Ulrich Gilbert Togbonon notes that, as a consequence of the law, some of those who have appeared before his court have had to tone down their rhetoric, or are more circumspect regarding what they write or say. He reveals that “women make up barely 1% of respondents, while most appeals do not prosper. About a dozen cases on average are heard per sitting, each of which lasts for less than 45 days, as prescribed by the law, except for certain rare cases.” The judge further points out that the defendants who are convicted generally receive a prison term of six months. In his view, the laws are fairly straightforward as the proceedings are simply a matter of establishing whether or not an offence has been committed.

That opinion is shared by a deputy public prosecutor in the Cotonou court of first instance.<sup>39</sup> He believes that

[I]n any case, media practitioners do not evince the maturity and professionalism necessary to envisage decriminalisation. The fact of the matter is that certain articles are too frivolous and malicious, and when the journalists appear in court, they generally do not have the evidence to support their allegations and either resort to offering profuse apologies, or ignore the court by not attending the hearings.

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<sup>38</sup> Interviewed in August 2013.

<sup>39</sup> Interviewed in August 2013, on condition of anonymity.

On such occasions, the deputy prosecutor states:

[W]hen the accused fails to show up in court, I systematically demand the maximum sentence against him or her while emphasising their bad faith. But when they attend the hearings, my examination is designed to go beyond assessing the evidence in their possession, to determining their motives and evaluating their degree of professionalism. Even when they are unable to produce any evidence, but behave properly and explain themselves, I would often seek the minimum penalty, and the court almost always hands down a suspended sentence.

In contrast to the stakeholders discussed above, the media professionals harbour grievances against these laws.

### 3.3 Interviews with media practitioners

In the view of media professionals in general, Laws Nos. 60-12 of 30 June 1960 and 97-010 of 20 August 1997 restrict and criminalise freedom of expression.

**Clémentine Lokonon<sup>40</sup> is a journalist at the National Television.** According to her, Laws Nos. 60-12 and 97-010, much like the organic law on HAAC, restrict and criminalise freedom of expression. In addition, both laws have an impact on freedom of expression in the sense that Law No. 60-12, for example, even limits the posting of bills, which requires an authorisation that, incidentally, has to be issued by a government official. Similarly, freedom of expression is restricted on grounds of public order or national security. She has never been subjected to these laws, but she knows some of the media professionals who have been targeted. She says that there are ongoing campaigns to review the laws. In her capacity as head of the women's wing of the Union of Media Professionals of Benin (CFU), she is involved in the process. For the time being, Clémentine Lokonon feels that these laws influence the way that information is reported because one has to "wear kid gloves" and "practice self-censorship". As a result, for example, journalists refrain from contacting certain people to elicit more detailed information, or from seeking the input of all the interested parties.

Although her being a woman constitutes neither a handicap nor a reason for her to worry about prosecution, she laments the fact that it impedes her access to certain locations (convents, places of worship, etc.), or requires her to dress in a particular way, or to confirm that she is not menstruating, which is a form of stigmatisation. Also, Clémentine Lokonon acknowledges that, were she to be involved in a trial, it would have an impact on her family, material and psychological situation. For example, says she, "it may become impossible to care for the children, which would undermine their development; besides which my elderly parents may find it difficult to see me go on trial, or even to prison".

Her opinion is shared by **Hyacinthe-Ange Koudhorot,<sup>41</sup>** one of the rare women journalists plying her trade at the state-owned daily newspaper *La Nation*, who believes that her being a woman should not be an impediment, although on account of her social and family responsibilities, the effects of a trial may be harder on both her and those close to her. She is also a member of the CFU, participates in the activities of trade associations, including in campaigns to reform the laws. She considers that, in their current configuration, those laws restrict and criminalise freedom of expression. She is aware of cases of articles written by colleagues that were discarded by the editors who feared government reprisals, or preferred to engage in self-censorship. She also reveals that she narrowly escaped being dragged to court early on in her career.

This occurred in the aftermath of an assignment in the field. The clients who commissioned the report claimed that her paper was poorly drafted and contained falsehoods, and yet the excerpt they were

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<sup>40</sup> Interviewed in September 2013.

<sup>41</sup> Interviewed in September 2013.

objecting to was part of the working document that they had made available to us. The bosses became fearful and accused me of having done a shoddy job. In response, I located my notes and the framework document which I brought back to them. Following this, the confounded clients returned and negotiated for an erratum to be published, but we demanded that an addendum had to be published instead.

**Berthe Angèle Mensah Cakpossa**<sup>42</sup> is the director of the private television station *Canal 3 Benin*. According to her, these laws restrict press freedom “because of the applicable custodial sentences and exorbitant fines, notwithstanding the fact that court decisions are very rarely enforced”. She further reveals: “I have been directly affected by these laws in my capacity as the director of a press organ, which renders me civilly and criminally liable.” On her personal experience, she provides the following account:

Following the broadcast of any audio-visual item (advertisement, report, programme or debate), our television channel may, as the case may be, be faced with:

- requests for a right of reply from the individuals affected, which we agree to, as long as the relevant conditions set out by the law have been fulfilled;
- organisation of working sessions with advisers from the regulatory body, possibly leading to a call to order, a warning, or even a suspension by the regulatory authority;
- oral or written complaints, or institution of proceedings before a court of law.

The most recent examples related to direct summonses and summonses to the accused in cases brought by the President of the Republic himself, and some of his staff, alleging crimes of insult and defamation.

The complaints were lodged after our station broadcast a report on a press conference given on 18 September 2012 by Mr. Lionel Agbo, a lawyer, former member of the Head of State’s staff, and former spokesperson of the Presidency of the Republic. In the same week, an open debate was aired during which journalists discussed the dismissal by the President of the Republic of one of his collaborators in the “Tori dry port” affair. I was taken to court for broadcasting Mr. Lionel Agbo’s press briefing, and sentenced to prison.

As to the duration of the trial, Berthe Cakpossa explains:

The initial summons was issued on 26 September 2012, and the verdict (three months’ imprisonment but without a detention order) after the trial phase was handed down in January 2013. We lodged an appeal, and in the course of the appellate hearing, specifically on 9 August 2013, the complainant withdrew his charges against Mr. Lionel Agbo, a decision that also benefitted us. The deliberation phase of the case is scheduled for the month of September. Of note is the fact that in the meantime, a presidential pardon was granted, but without any legal effect at the current stage of the proceedings.

She adds that, as a result of the charges, and for the sake of her personal safety, she voluntarily restricted her own movements. In contrast, the impact that the case had on her work was of her own volition. In point of fact, her indictment, according to her, led to “a lack of motivation amongst staff members, the fear of losing their jobs for certain individuals, a temporary reluctance to engage in a debate of ideas for fear of reprisals, and the refusal by certain political leaders to appear as guests on our programmes”.

She adds that her private life was not spared by the effects of the indictment:

My health suffered as a result. My family and my children lived in constant fear of separation from me in the event of my imprisonment. On one occasion, my children returned from school in tears after having been designated by their friends as “the children of the woman who insulted the Head of State”. Some members of my family living abroad who learnt of the case through the media and believed that I was in prison travelled to Cotonou to offer their moral support to me.

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<sup>42</sup> Interviewed in August 2013.

As regards the arguments advanced by the parties, she points out that the plaintiffs basically invoked the crime of defamation, while the defence submitted that

[W]e had, on a good-faith basis, merely wished to inform the general public about the issues raised by a former staff member, and former spokesperson of the Presidency of the Republic. Incidentally, the costs associated with the trial, including a fine of 500,000 CFA francs (5,000 USD), were borne by the media group itself.

Moreover, as the director of the station, Berthe Cakpoussa says that she has been subjected to pressure, as well as self-censorship, owing to a fear of the laws. In that regard, she adds:

As the case discussed above was unfolding, partners with whom we had advertising or other contracts, notably state-owned entities, made a point of writing to us requesting that we “defer for a certain period” the broadcast of their various messages and other announcements over our airwaves.

In the same vein

[W]e are constantly forced to erect safeguards, and to stay on our guard in a bid to achieve balance in the presentation of information. When such a balance is not achieved, requests for the right of reply are instantly submitted, while the threat of a working session for the purpose of calling us to order by the regulatory organ constantly hangs over our heads, as does the risk of a criminal or civil suit.

For all those reasons, according to her,

[T]here have been times when we shied away from contacting certain sources, or refrained from reporting the information provided by them. For example, right in the middle of a controversy surrounding cotton production figures, we chose, as a self-censorship measure, not to broadcast a report on a press briefing by the Delegation of the European Union on the matter. There are myriad cases of self-censorship, and we have occasionally withheld some information because of those laws.

All the same, “We continue to cover all events without bias, except that it is difficult to have access to information sources in light of the reticence of the authorised resource persons to provide information. And when they do agree to provide the information to us, they prefer to do so anonymously”.

Less forthcoming, but nonetheless equally informative, ***a former director of a state-owned media organ***<sup>43</sup> agreed to discuss her views, but only on condition of anonymity. On the basis of her experience, she now believes that “women are definitely more vulnerable”. She recounts that she was frequently compelled to desist from publishing certain articles:

I was the boss of a journalist whose reports were deemed to be rather critical of the regime. I therefore had to scrutinise his texts closely before publication. On several occasions, I had to reject his comments and analyses after I found them to be too impassioned. In all frankness, what I was doing was not so much because of a fear of the laws, but rather more because of possible political reprisals, as I was aware that he was a professional. But as a state-owned press organ, we were subjected to a great deal of pressure. The fact of the matter is that the powers that be can always meddle in the functioning of the press organ. As a non-autonomous entity, we are not immune to political interference. As proof of this, the journalist in question, upon instructions from above, was finally removed from the editorial board and side-lined for more than one year for reporting the discontent of a group of parliamentarians in the presidential camp who were promising to stir up a political storm; and for having, in 2008, commented on the candidacy of Mr Abdoulaye Bio Tchané (who was apparently viewed as a threat by the regime) for the presidential election of 2011. As it turned out, the storm did in fact materialise, and the candidacy was put forward. In the wake of that development, the other journalists were overcome by fear and no one else dared to criticise government action. They were afraid of suffering the same fate.

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<sup>43</sup> Interviewed in August 2013.

Nonetheless, she admits to being afraid of getting into trouble with the law even though, in her words, “the justice system is lenient towards us”.

### ***The opinion of media entrepreneurs and managers***

**Pierre Matchoudo**,<sup>44</sup> after a long period of service at the daily newspaper *Le Matin*, is currently the Director General of the on-line newspaper *Benin Actu*. He is of the view that

[T]he press laws and the Criminal Code have a restrictive impact on freedom of expression. Much more so in the case of Law No. 60-12 because it is anachronistic, having been enacted at the time of accession to independence when a strong executive was needed to curb the enthusiasm of intellectuals and journalists. People had a rather feudal conception of power even though they were in a democratic system. Such a law is no longer applicable in the internet era. The proof of its obsolescence is that it is violated on a daily basis, for example, by not complying with the legal deposit requirement.

Pierre Matchoudo has been directly affected by these laws. He recalls that in 1999, he was given a six months' suspended sentence for his denunciation of poor financial management at ASECNA Benin (Agency for Aerial Navigation Safety in Africa) where an official had imprudently advanced money to some employees. “I was the editor-in-chief, and the publisher was not present at trial. Subsequently, after having taken over as the publisher, four cases were brought against me, but I was already away on a trip by then.” At the time of this interview, Pierre Matchoudo and his site, *beninactu.org*, had just come to the end of a trial against a businessman characterised by his colleague, Marc David Molli, as a drug trafficker on the run from the police. He points out that Marc David Molli was sentenced to six months in prison, accompanied by a detention order, and was forced to go underground. And what about the impact of these laws on the way in which the news is reported?

I would say that it is instead the Code of Ethics that has an impact. The reality is that there are matters of public interest that we can cover, for example, but the law cannot protect us. Considering that it is difficult to source evidence, we are therefore obliged to act only after serious reflection, or engage in self-censorship. A case in point is the drug trafficking story that we tried to cover without pushing too hard. Also, we sometimes avoid contacting certain sources because of the pressure they may bring to bear in order to dissuade us from digging too deep into a story, or because of possible indecent proposals (corruption, etc.). This has already caused us to drop certain stories linked to drug and timber trafficking, for example. Police sources are not always willing to cooperate with us which, in the same way as the pressure exerted, causes us to drop the stories in question. And talking of pressure, it can come from either the proprietors or advertisers, who themselves may be intimidated by the government.

As an example, he recalls the situation at *Le Matin* where the proprietor, a businessman, without interfering directing with the editorial line of the newspaper, often succeeded in influencing content in a subtle manner, by calling for caution because “he did not want problems or court cases”.

In conclusion, Pierre Matchoudo makes it clear that “Benin Actu does not currently carry any advertising because we do not wish to compromise our standards. Furthermore, we are also financially vulnerable, and a fine, even the smallest one, could result in our demise.”

**Clément Adéchian**,<sup>45</sup> for his part, has already had to pay fines without going out of business, but he admits to exercising great caution as a result. While he was the editor-in-chief of his newspaper, *L'Informateur*, he was sentenced to six months in prison, along with one of his journalists who had defamed a bailiff in an article touching on his private life.

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<sup>44</sup> Interviewed in August 2013.

<sup>45</sup> Interviewed in August 2013.



We had met with the victim, who accepted our apologies, but went ahead and pressed charges against us. The case was about some widows who were unable to agree on the inheritance of their husband, and we reported that the bailiff was dating one of them whereas he was a party in the case. In our view, this amounted to a conflict of interests. In court, he accused us of invasion of his privacy, and defamation. We in turn argued that there was no defamation as such since the protagonists, including the woman herself, acknowledged the facts, and the affair had started developing in a manner with which the other widows were no longer comfortable. Unfortunately, in cases pertaining to privacy, we were not even authorised to tender evidence in support of our article.

It was a painful experience for the editor-in-chief, who explains further:

I was never detained on remand. Approximately three months elapsed between my indictment and the conviction. I was present in court when the verdict was handed down by the bench, and I was immediately taken to prison. We appealed against the decision, and an out-of-court settlement was finally reached whereby the claimant withdrew his complaint in exchange for the sum of 5,000,000 CFA francs (50,000 USD), besides which we paid a fine of 500,000 CFA francs (5,000 USD). We paid all the money from our own funds, and with the assistance of friends. In the meantime, I stayed behind bars for 71 days. The prison conditions were harsh. I was in a building holding 40 people, each with his own bed, but my journalist was in a different building holding 80 inmates. My private life suffered as a result because my business was no longer operational, and the turnover was dwindling. My wife was pregnant but I could not assist her during that period. She gave birth to our child a mere eight days after my release. However, the trial did not change anything in the way I was regarded by people around me. It also did not blemish my record as, not only was it not a common law offence, but the settlement agreed upon led to the nullification of the conviction.

Asked how the experience changed his attitude, Clément Adéchian states: “Since 2006, the newspaper has systematically avoided publishing any sundry news items. I have also left the editorial board of the newspaper, and become its Director General”, mainly because he feels that “journalists are vulnerable”.

**Malick Séibou Gomina**<sup>46</sup> is the Director of the *Fraternité* media group. As far as he is concerned,

[A]ll media laws restrict and criminalise freedom of expression, and in particular, Law No. 60-12. This is because the laws place emphasis on criminal sanctions for media offences whereas the current trend is increasingly towards the suppression of custodial sentences. In the case of Law 60-12 in particular, the context in which it was drafted justifies its repressive nature. The law was enacted in the wake of independence when governments were unstable and apprehensive of the media criticising their blunders.

He says that he was subjected to trials and convictions in his previous positions, and elaborates:

While I was publisher of the daily newspaper *Fraternité*, one of my collaborators wrote an article in which he denounced a sanction unfairly imposed on an accountant accused of mismanagement in the Ministry of Health. We were given a six months' suspended sentence. In another instance, a journalist mistakenly illustrated an article using the photograph of someone who had absolutely nothing to do with the offending story. We were convicted, and the complainant allowed the fines to accumulate over a period of two years before demanding the sum of 7 million CFA francs (14,000 USD) from us. Following negotiations, we ended up paying him 1,000,000 CFA francs (2,000 USD) in settlement of all the claims.

Such experiences helped to shape the attitudes of media entrepreneurs who were sometimes obliged not to publish certain stories. For example, he says,

[F]or a certain period of time, we refrained from reporting on the stories about the alleged attempt to poison the Head of State. We were being cautious in the aftermath of the ICC Services affair (so-called

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<sup>46</sup> Interviewed in August 2013.

because it was the best known structure to have organised a Madoff-style Ponzi scheme that defrauded members of the public of several billion CFA francs) when the Public Prosecutor published a list of people who had apparently been overpaid, and who, as a result, were invited to repay the amounts owed. We are currently involved in a trial for having published that list. As a matter of fact, some people found their names on that list, whereas they had not been involved.

Similarly, Malick Séibou Gomina reveals that he sometimes has to issue editorial guidelines in order to safeguard the interests of the media group. For example, says he: “We are particularly careful with reports concerning GSM operators with whom we have contracts, or the brewery company, for example.” The reason for this is to avoid court cases because, despite what the public thinks of the financial viability of the group, he points out that

[T]he impact of a fine depends on the time of its imposition, such that when business is slow, even a fine of 5,000,000 CFA francs (10,000 USD) can cause serious problems for us and, in any case, any fine in excess of 10,000,000 CFA francs (20,000 USD) would be a crippling blow for us.

The same caution is observed by the other press organs in partnership contracts with business people. A programme director<sup>47</sup> in one of the most popular private radio stations has this to say:

This category of clients is responsible for a large proportion of our turnover. If they are not happy with an item of programming, they simply threaten to cancel the contracts. Since we are aware of their importance to our financial standing, we have no choice but to toe the line. Accordingly, I try to make sure that, in addition to the presenters, even the guests do not criticise them during our programmes.

**Vincent Foly**<sup>48</sup> is the publisher of the daily newspaper *La Nouvelle Tribune*. Regarding Laws Nos. 60-12 and 97-010, he considers that is the latter that has the greater impact on freedom of expression by virtue of the fact that

[I]ts provisions, while innovative, require media professionals to produce evidence within very short time-limits. As such, they restrict freedom of expression especially since there is no law on access to information sources. A case in point: we were a party in a case against Minister Luc Gnacadja after denouncing him in a feature article on the award of a public contract. The state entity that provided the information to us was slow in making available the relevant documents to support our case at trial. Following our insistence, they ended up providing the documents only three days before the time-limit. In short, we do not always have the evidence to prove our case even when our allegations are true. In fact, we have occasionally had to discard certain reports in the absence of the required proof and for fear of legal proceedings.

Vincent Foly is no stranger to trials.

In 2000, I was the publisher of *Le Matin*. One of my journalists wrote an article based on a press release issued by the Council of Ministers, which was neither an offence nor an item of evidence. One year later, while I had moved on to the position of publisher of *Le Point au Quotidien*, I was in my office when some gendarmes arrived looking for me. I had been sentenced to one year in prison without my knowledge. I spent ten days behind bars before being released at the behest of President Mathieu Kérékou. It was then that I learnt to appreciate the real meaning of freedom, and I now believe that restricting such freedom is a most difficult thing. I was detained in a cell with 20 other people, and I had to negotiate to be allocated a little space apart to sleep, and to be able to take a shower. In such a situation, an ill-considered comment may annoy a guard enough for him to confine you to a place with even worse conditions.

That said, did this stint in prison cause him to change tack? And did the approximately one-year long trial have an impact on his professional and personal life?

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<sup>47</sup> Interviewed in September 2013, on condition of anonymity.

<sup>48</sup> Interviewed in August 2013.

I am much more careful in my work, engaging in self-censorship, and making sure I no longer take unnecessary risks. At a personal level, my wife suffered a great deal as a result. She could no longer spend time with me and, in addition to her work, she had to ensure that I had food to eat.

What about the arguments generally advanced during trial proceedings, since he has been involved in several cases?

The complainants usually invoke criminal defamation and damage to their reputation. For our part, we plead good faith and the public's right to information, or we use the defence of truth. In any case, during the 12 years that the *Nouvelle Tribune* has been in existence, we have been involved in four trials, only one of which we lost. Whenever we found ourselves in a difficult position, we had to negotiate. As for the legal costs, we paid them ourselves since the lawyers do not charge us high fees. But when it comes to fines, it would be difficult for us to pay 5,000,000 CFA francs (10,000 USD). By the way, in the event that we are sentenced to a fine of 10 or 20,000,000 CFA francs (20 to 40,000 USD), we may be forced to close down.

For **Jean-Marie Sédolo**,<sup>49</sup> publisher of the daily newspaper *La Presse du Jour*, Laws Nos. 97-010 of 20 August 1997, 60-12 of 30 June 1960 and Organic Law No. 92-021 of 21 August 1992 relating to HAAC all restrict or criminalise freedom of expression. The reason for this, he explains, is that

[T]hose laws fully empower anyone who feels defamed to accuse us before the regulatory body or the courts even when they are aware that they are wrong. It is obvious that these laws weigh heavily on media professionals who, under certain circumstances, wonder whether it is worthwhile taking the risk, even when the information in their possession is known to be true.

To illustrate his claim, he offers to elaborate:

A case in point is our newspaper's report on Boni Yayi's African tour while he was President of the African Union. The report mentioned that during the tour, he tried to persuade his colleagues to grant him an extension of a few months to his soon-to-expire term of office. To this day, the newspaper is convinced of the authenticity of that information. And yet the newspaper was threatened with court action. The Public Prosecutor even informed the editor-in-chief that he had received a complaint on the matter. In the end, the newspaper was not prosecuted, but the government exerted pressure on the editor-in-chief over a period of several weeks for the purpose of intimidating him.

Nonetheless, Jean-Marie Sédolo, who believes that journalists are vulnerable targets, was never personally inconvenienced by those laws. He is of the opinion that the laws equally have a positive effect on the way he practices his profession by virtue of the fact that they "compel us to adhere more strictly to the code of ethics of our profession". In this way,

[E]very time we are unable to strike a balance in the processing of information involving various protagonists, we desist from publishing the story. Sometimes, however, this practice is not observed. This happened recently in relation to a dispute between a comptroller in the Ministry of Culture and the coordinator of a cultural festival known as Festico. The coordinator assaulted the comptroller in the course of the event, probably in relation to public expenditure procedures. The comptroller recounted his version of the facts, but we were unable to hear the account of the coordinator who, having realised the seriousness of his acts, switched off his mobile phones. We published the version of the comptroller whereas we were under no obligation to do so. It would have been appropriate to wait and hear the other party before proceeding.

Although Jean-Marie Sédolo does not recall any particular cases of censorship, he states that

[T]here are frequent instances where information is not published because all the conditions set out in the code of ethics have not been fulfilled. Publishing such information would expose the newspaper to

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<sup>49</sup> Interviewed in October 2013.

possible legal action. For example, we were recently approached with an offer to publish information about alleged money-laundering by the Public Prosecutor, Justin Gbènamèto. Unable to confirm or prove the information, we declined the offer.

Jean-Marie Sèdolo confirms that this fear of prosecution is present and significant, explaining that

[T]he newspaper runs the risk of closing down or defaulting financially such as in the payment of salaries in the event that it is sentenced to a fine of a few million CFA francs. This also leads to the adoption of elaborate editorial guidelines, or the restriction of reporters to specific ways of processing information.

At a personal level, he affirms that he is not affected by threats of prosecution, and strives to comply with the requirements set out in the code of ethics. While acknowledging the restrictive nature of the laws, he hails the efforts of the associations of media professionals of Benin, who regularly organise sessions to scrutinise the laws and enable media practitioners to gain a better grasp of them in order to more effectively perform their duties. One such session took place in early October 2013, with a training seminar on “guidelines for media directors in the areas of self-regulation, regulatory bodies, and the courts.

**Jérôme Carlos**<sup>50</sup> is a stalwart of the media landscape in Benin. Almost 70 years old, he is the founder of the private radio station **CAPP FM** based in Cotonou and in which he hosts a daily show. In his view, the media laws and the organic law on HAAC restrict and criminalise freedom of the press. All of those laws have an impact on freedom of expression although, he insists, there are too many abuses in the Beninese media, and media practitioners need to educate themselves in order not to expose themselves to harassment by the government.

Jérôme Carlos, who is the manager of the radio station and therefore responsible for its content, has already had to face trial. His story is that

[T]he radio station broadcast a commercial involving a comparative advertisement denigrating the products of a major local agro-food company. The victim, a major business person brought a case against the station. When I appeared in court and the lawyers saw me, they spontaneously rallied to my defence. And when the complainant himself realised that I was the defendant, he hastily arranged to have us discharged although I had been convicted and my bank accounts had been frozen by court order. His problem was with his competitor, and the dispute continued between them. The trial lasted for almost one year, but I was never remanded in custody.

By the way, Jérôme Carlos adds,

[W]e were sanctioned in 2009 by HAAC, which decided to take us off air for 30 days because we had not vetted the contents of a female client’s sermons which had been broadcast over our station. Twenty-five minutes of the hour-long programme had already been broadcast when I was alerted to the gravity of her utterances. I then ordered the programme taken off the air, but the harm had already been done. Since we were at fault, we conceded that we were to blame but argued that the sanction handed down by HAAC was disproportionate. In the end, the suspension was reduced to three weeks by the regulatory body itself following our application for review.

For the above reasons, media entrepreneurs have to exercise caution. In light of this, Jérôme Carlos admits that “we take editorial decisions on a daily basis to limit the scope of action of our media outlets, in the same way as we occasionally limit our collaborators”

Jérôme Carlos, who believes that media practitioners and politicians are vulnerable targets, hails the efforts of professional associations aimed at securing the reform of those laws. While waiting for that to happen, he considers that if he receives a maximum fine of 50,000,000 CFA francs (500,000

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<sup>50</sup> Interviewed in October 2013.

USD), or the equivalent of his turnover, then the radio station will have to close down. It is for that reason that he supports the campaign for the decriminalisation of media offences.

***Yélian Quenum<sup>51</sup> is the founder of the daily newspaper Kini-Kini, and she is the only woman currently holding such a position in Benin.*** She is convinced that the constitution itself restricts freedom of expression by enabling the organic law on HAAC to grant sweeping powers to the regulatory authority. In her opinion, the organic law is not designed effectively to guarantee press freedom, and it is that law which has the greatest impact on freedom. She confirms that she has never been personally victimised by the laws, but reveals that certain public figures who felt aggrieved by articles published in her newspaper made her aware of this by threatening to refer the matter to the self-regulatory and regulatory bodies, and even to the courts. She responded by inviting them to exercise their right of reply. She cites the case of a close associate of the regime in power who, as a guest on a highly rated show on a private television station, uttered statements that the newspaper used to produce an opinion piece. The individual in question took offence at the article, claiming that the narrative attributed to him did not adequately reflect his opinion.

Yélian Quenum, being a woman, says that she is not particularly apprehensive of trials because “one does not join the profession to enjoy a stroll in the park”. She is nevertheless aware that legal troubles would affect her personal life (waste of time, energy, and financial resources), but promises that she would remain steadfast.

Even though she has never had anything to do with a trial, she reports having received telephone threats, for example, from a human resources manager of a municipality, who had been denounced by the trade unions and had been the subject of an article in her newspaper.

All the same, in the event of a trial, a fine of 5,000,000 CFA francs (50,000 USD), which represents 25% of her turnover, would seriously undermine the existence of the newspaper. She admits that it is for that reason that editorial decisions have to be made taking into account the nuisance value of the stakeholders involved. In a nutshell, self-censorship is sometimes a necessity.

Yélian Quenum is not active in any campaign to review the law, but she hails the work of the professional associations which are striving to strengthen the capacities of the media entrepreneurs and practitioners.

### **3.4. Interviews with other stakeholders**

***Clément Capo-Chichi,<sup>52</sup> Executive Director of Amnesty International Benin,*** thinks that the press laws, as well as the Criminal Code, restrict and criminalise freedom of expression. He further feels that the press laws have a greater impact on freedom of expression because those are the laws that are generally applied. Never having been personally affected by the laws, he is nonetheless familiar with the cases of Berthe Cakpossa and of *Canal 3*, who were taken to task and prosecuted. He recognises that the laws have a paralysing effect on freedom of expression. As such, he feels that the current situation in which the country finds itself is quite different from what obtained under the previous regime, during which the political and judicial authorities were rather tolerant. In fact, he deplores the fact that “there is too much self-censorship today, notably in the audio-visual media because the proprietors are businessmen for the most part. For example, there is no expression of contradictory opinions, and this is detrimental to the right of the public to information.” In his opinion, “these attitudes are incompatible with Article 19 of the Universal Declaration of Human Rights”.

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<sup>51</sup> Interviewed in October 2013.

<sup>52</sup> Interviewed in August 2013.

Clément Capo-Chichi points out that he is not aware of any previous studies, but reveals that Amnesty International Benin, which received alerts from citizens (Lionel Agbo, and Célestine Zanou who was threatened after criticising the government over a local radio station), is currently working on an analysis of the situation of freedom of expression violations in Benin.

**Landry Ganyè<sup>53</sup> of the NGO Human Rights, Peace and Development (DHPD)** knows that there are laws that limit freedom of expression. But of greater concern to him are the political restrictions to that freedom, namely, the political manoeuvres to stifle expression by, for example, preventing journalists from performing their duties freely, and even sanctioning those who endeavour to do so. The “Report on the rule of law and democracy: Beninese media in the era of change”, published in September 2008 by the NGO, details cases of violations, as well as of administrative and economic pressures on the media. In this regard, he denounces the “signing of communication contracts between the government and press organs aimed at enhancing the image of the Head of State, and neutralising or stifling any semblance of criticism”; “intimidation and acts of violence”, “withholding of information”, but also professional attacks on freedom of expression”, which “relate to cases of violations of the code of ethics and professional conduct in the domain of information processing”.

A case in point is the study carried out by the Friedrich Ebert Foundation entitled “**African Media Barometer: The first home-grown analysis of the media landscape in Africa, Benin 2011**”. The study, whose purpose is to determine whether “freedom of expression, including freedom of the media, is guaranteed in the Constitution and supported by other pieces of legislation”, allocates a score of 3.6 out of 5 to the country. As to whether “the right to freedom of expression is practised and citizens, including journalists, are asserting their rights without fear”, the study allocates a score of 2.4 out of 5. Regarding whether “there are no laws or parts of laws restricting freedom of expression such as excessive official secrets or libel acts, or laws that unreasonably interfere with the responsibilities of media”, the score obtained by the country is 2.5 out of 5. In this particular area, the study stresses that “when a journalist is prosecuted for defamation, it is difficult for him/her to escape sanctions from the judge, even if there is infallible proof on the allegations. He/she is accused of intruding in state and administrative documents”. But in relation to whether “government makes every effort to honour regional and international instruments on freedom of expression and the media”, the allocated score of 2.7 out of 5 is quite instructive. And when it comes to determining whether “public information is easily accessible, and guaranteed by law to all citizens”, the situation in Benin is allocated a score of 1.4 out of 5.

**Joël Dimitri Vihoundjè,<sup>54</sup> a web user and moderator of the forum “Jeunes démocrates prompts (JDP)**, did not know that there are laws criminalising expression, in particular the law of 20 August 1997, until he fell victim to them. As the moderator of a forum which, by his estimate, comprised up to 100,000 members, he was indicted because one of the members wrote that a former minister, Galiou Soglo, had been arrested in Europe for possession of drugs. Although he subsequently published a disclaimer, it was not sufficient and he says he was given a two-year suspended sentence and fined 5,000,000 CFA francs. Sometime later, another trial pitted him against the authorities of the Cotonou city council, the Soglos (Nicéphore, the former President of the Republic, and his eldest son, Léhady). He denounced “injustice” at the City hall where employees were not being paid, which earned him a prison sentence of three months and a fine of 150,000 CFA francs. Currently, he is a party in another ongoing case against the former minister of public works and transport, Mr. Lambert Koty. He states:

It was as a result of these cases that I became aware of the existence of this law and its harsh nature. As far as I am concerned, even though everyone should assume responsibility for what they say, we should

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<sup>53</sup> Interviewed in August 2013.

<sup>54</sup> Interviewed in August 2013.

be able to express what we want without any constraints. But the complainants, for their part, feel that I am tarnishing their reputation and that I am doing the bidding of someone who wanted to block their re-election to the helm of the City Council, in the specific case of the Soglos.

In any case, Dimitri Vihoundjè insists that such hassles did not alter his position in any way. “On the contrary, I find them revolting, particularly because during the second trial, the one against the City Council, one of my witnesses was even instigated to recant.” However, the trials have left their mark. The internet activist explains:

Certain web surfers have completely disappeared from the forum in order to avoid problems. This has had a negative effect on the activities of the forum. The laws also influence the manner in which the news is presented. For example, the newspapers that I approached to publicise the difficulties I was facing refused to help me. The only one which accepted to assist me received a call from the complainant as soon as the first article was published, who gave them a lecture and warned that he had never lost a case. As a result, that newspaper also closed its doors to me.

It is for all these reasons that Dimitri Vihoundjè is of the opinion that “journalists and internet users are the most vulnerable to these laws.”

One could add to that the experience of *Martin Assogba*<sup>55</sup>, President of the NGO “ALCRER” (Association for the Fight against Racism, Ethnocentrism and Regionalism), and who is one of the highest-profile civil society leaders. According to him, “the laws are not well publicised. The State does not ensure that they are adequately popularised, which means that the general public is not properly informed and should therefore not be subjected to those laws.” The fact remains that they are effectively applied, and both “the fear and ignorance of the laws make it necessary for us to be careful. Information is sometimes withheld.” That is the reason why, he confides

Over the past five years, ALCRER has used the media to carry out advocacy amongst socio-political groups for the purpose of appealing for the decriminalisation of media offences. Currently, together with OSIWA, we are rolling out a campaign on the African Charter on Democracy, Elections and Governance. The Charter, amongst other things, promotes the rights to information and freedom of expression in order to ensure that the citizens fully and truly enjoy those rights.

Meanwhile, in response to whether he has ever had to water down his position, given the current nature of the texts, he has this to say:

Yes, we are careful about what we say because I have already once been accused by a lawyer for denouncing the sale of state-owned land, an administrative reserve, for a paltry sum. I did in fact have the relevant evidence, and also availed myself of the services of six lawyers who had offered to work on a pro-bono basis, in addition to two others that I had retained and paid for with the assistance of USAID, but the charges were finally withdrawn. The trial had incidentally been ongoing for three months before the withdrawal of the complaint. Ever since then, I have made an effort to be careful. Thus when it came to the case relating to the construction site of the new premises of the National Assembly [a scandal that cost the State the sum of 14 billion CFA francs], I received a memorandum from the company concerned. Having read through it, I believe that some of the information is missing, and so I prefer to be careful while waiting for more complete information. If I took any action at this stage, and legal issues arise afterwards, it is likely that I would not be able to mount an adequate defence for myself. The plain truth is that, owing to the fear and ignorance of those laws, I tend to be careful and at times, I even withhold some information during my media appearances. But there is an even more serious problem, which is that those laws are not accessible, and the government does not ensure that they are properly disseminated. This amounts to a violation of those laws by the authorities themselves.

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<sup>55</sup> Interviewed in August 2013.

As such, Mr. Martin Assogba, who frequently uses the media to spread his message far and wide, is of the view that

Journalists, and in particular those without any professional training, are the most vulnerable to the media laws, which have a negative impact on the way information is packaged. For example, he adds, there are press organs which attend his press conferences, cover them, but do not broadcast them because they fear that our denunciations might cause legal problems for them, even when we provide clear evidence of our allegations. Others censor us out of a sense of over-zealousness, or because of fear of the political authorities.

As evidence of this claim, he produces a letter, Ref.066/ALCRER-OSIWA/13, of 12 August 2013 which he sent to the Manager of the National Television station, with copies to HAAC and the professional media associations, complaining of censorship. In the letter, he writes:

[...] we noted with great surprise the unilateral censorship by the national television station of certain statements made by the President of the NGO, ALCRER, Martin Assogba, relating to the debate on the ongoing amendment of the Constitution in our country and the postponement of local elections. Accordingly, we vigorously condemn this practice whose unavowed intentions are contrary to the principles of the rule of law and democracy, and seriously prejudicial to the freedom of expression and opinion as enshrined in the constitution of our country. Should there be any technical reasons for such censorship, we would be most grateful if you would kindly let us know what they are. In case there are none, I am requesting that you broadcast the original of the programme recorded on Friday 26 July 2013. I would also like to point out that the NGO ALCRER is the sole proprietor of the production rights of the said programme, having paid for its production.

### **3.5. Description of campaigns to reform laws**

Although a great many stakeholders recommend campaigns for the purpose of reforming these laws, it is worth noting that there are actually no ongoing campaigns as such. Aside from the advocacy being carried out by the NGO ALCRER, in cooperation with OSIWA, on the African Charter on Democracy, Elections and Governance and geared towards promoting the right to information and freedom of expression, the campaigns on the media and freedom of expression laws need to be well thought out and properly structured. For the time being, says Clément Capo-Chichi of Amnesty International Benin, “these are merely statements of intent”. In reality, only one initiative has been undertaken towards the institution of an information and communication code. In that regard, this is what Vincent Foly has to say: “All stakeholders have to be closely involved. Personally, I attended a single session, and I was never invited again”. In concrete terms, a workshop was organised to validate the preliminary draft law, which was successfully passed by the Drafting Commission, and has been before the Supreme Court now for close to a year awaiting the approval that would enable the Government to table it before the National Assembly. Thereafter, the National Assembly could also require some time before the legislation comes into force. The former President of the National Union of Professionals of Benin (UPMB), Brice Houssou, has always maintained that “the other member of the Commission categorically opposed the decriminalisation of media offences on the grounds that media practitioners have failed to prove that they are sufficiently responsible”. In response to this, Pierre Matchoudo argues: “The political class is not willing to vote for the decriminalisation of media offences”. That said, one of the major innovations of the bill is that it has finally included provisions relating to access to public sources of information. And, apparently, not all the stakeholders were consulted. The Deputy Director of the National Police, Nazaire Hounnonkpè, chimes in: “The police were not consulted during the drafting of the text. Instead, the force is stigmatised as a threat to freedom of expression, and an enemy of that freedom.”

In any case, professional media associations, the National Press and Audio-visual Council (CNPA-Benin), UPMB, the Media Ethics Observatory, and the *Maison des Médias*, alongside HAAC and the



Government, represented by the Ministry of Communication, constitute the main stakeholders in the reform process. Every now and then, when they express an opinion on the matter, media professionals and their associations argue that countries such as Togo and Niger have already implemented decriminalisation, and Benin cannot continue to lag behind in this area. It is for this reason that, on 3 September 2013, during the familiarisation meeting with the new Minister of Communication, Mr. Komi Koutché, the professional associations, and the President of CNPA-Benin, Malick Gomina, underscored the following: “Advocacy has to be carried out within the Supreme Court so as to ensure that the Information and Communication Code becomes a reality, as the press organs cannot be expected to be professional whereas in the modern era in which they operate, they continue to be governed by pre-independence laws.” In response, Minister Komi Koutché explained that one of his first initiatives, as Minister of Communication, was personally to lead a delegation comprising media association officials to the Supreme Court in order to plead for an expeditious issuance of a reasoned opinion of the Supreme Court that would make a final draft available to the government, which would then finally be able to table it before the National Assembly. As Minister of Communication, Koutché has pledged to intervene personally, in fulfilment of his promises to the media associations, to ensure that the Information and Communication Code becomes a reality.

This would be a welcome development for Clément Adéchian, founder of the daily newspaper *L'Informateur*, who thinks that “it is necessary to proceed expeditiously since the campaigns aimed at reforming the laws, initiated by the professional associations and media partners, are dragging on endlessly. The politicians are demanding a higher sense of responsibility on the part of media practitioners in exchange for increased freedom.”

Socio-political individuals and groups are equally making their opinions known concerning the campaigns for the reform of the law.

In the opinion of a member of parliament of the presidential camp and former minister:

In order for democracy to be complete, there is need to reform those laws to guarantee absolute freedom of expression and obviate the need for media practitioners to engage in unnecessary self-censorship. Generally speaking, public authorities take advantage of the repressive nature of those laws to perpetrate disreputable acts, in the knowledge that it would be difficult, or even impossible for the citizens to expose them. This means that if we want to ensure accountability as required in a democracy, this can only be effective when, and especially if there are relevant instruments to enforce such accountability, or to authorise other parties to expose any indiscretions.

Joël Attayi-Guedegbe, a member of the civil society, indicates that

As part of the development of the Strategic Plan to fight against corruption from the year 2000 onwards, we advocated for the institution of an information code decriminalising media offences. In like manner, I supported various campaigns by media associations in favour of decriminalisation. Furthermore, in the near future, we will, in collaboration with the West Africa Network for Peacebuilding (WANEP), launch a campaign for the right to information.

For Mr. Gustave Anani Cassa, “those who endeavour to carry out campaigns for the reform of the laws are quite justified in doing so, but the real problem relates to individuals.” In that regard, he says that he was aware of the campaigns to reform the laws, particularly during his tenure as minister, and witnessed the passage of the draft Information and Communication Code.”

His learned friend, Mr. Claret Bédié, opines that “media professionals are the most vulnerable to these laws, which are frequently deployed against them because it is their responsibility to publish information on a daily basis”. This justifies the appeals in favour of improving those laws. In Mr. Claret Bédié’s recollection, “aside from a few sporadic appeals by media practitioners, it is the draft information and communication code that occupies pride of place in the campaign”. He recalls that,

during his time as a member of the National Drafting Commission, “the preliminary draft was examined by the Commission. That original document included a provision to decriminalise media offences, but it was opposed by practically all the members of the Commission. It was our conviction that the sector had to become more professional before decriminalisation could be envisaged”.

An Assistant Public Prosecutor at the Cotonou court of first instance professes to be aware that

[T]he professional associations would like media offences to be decriminalised. Such a solution would not necessarily guarantee absolute freedom for them to say what they want because, alongside the decriminalisation, the legislators may impose more substantial fines, which would stifle the press organs and force them out of business. The simpler solution would be for the media practitioners to act with a higher level of professionalism and responsibility. In the meantime, we will have to make do with the existing law since, as the saying goes, even a harsh law is still the law, and we have no choice but to implement it.

Lastly, Ulrich Gilbert Togbonon, who has extensive experience of working with media associations to train their members in matters of legislation, states that he was apprised of a campaign aimed at reforming the law, notably by way of the draft information and communication code. For him, this raises certain questions: “Would decriminalisation resolve the existing problems? Might other forms of reprisals not be used against journalists, such as physical attacks and even crimes?”

All the information set out above calls for recommendations.

## **Section Four: Conclusions and recommendations**

### **Recommendations**

#### **Denounce the repressive laws in order to have them reviewed or repealed**

Media practitioners could launch a robust media campaign to denounce the repressive nature of the media laws, and demand that they be reviewed. Their professional associations should initiate a concerted effort to explore that approach, based on progressively rigorous action. For example, they could begin with front-page warning messages in newspapers, scrolling tickers on television screens, and brief messages over radio stations, highlighting the penalties applicable for press offences.

The next stage would involve programmes (debates) devoted to the issue, and bringing together professionals and opinion leaders favourable to decriminalisation. These would be jointly arranged programmes spread over a pre-determined period (for example, one month). Another more serious and striking option could be the implementation of “*journées presse morte*” [media-free days] for the purpose of drawing the attention of political leaders and decision-makers to the hazards of the trade. An entire media-free day per week could also be implemented over a clearly specified period of time.

With so many actions, the political decision-makers, even if they had been hostile to the appeals of the media professionals, would quickly endeavour to engage with them since such actions would weigh on their conscience, and portray them in a very negative light in the eyes of the international community.

#### **Take advantage of the scheduled constitutional revision**

It is true that, for the time being, journalists generally confine themselves to reporting the opinions of those in favour of and against the amendment of the Constitution. And yet it would probably be expedient for them to seize the opportunity to make known their own expectations, and lobby the political leaders, especially the Head of State and Members of Parliament. They should also lobby the Supreme Court whenever the bill comes before it, so as to raise the awareness of the Court regarding

the virtues of decriminalisation of media and freedom of expression-related offences. In the event that they undertake to launch such a campaign, it would definitely be useful for their various associations (CNPA, UPMB, and ODEM) to close ranks and secure the support of HAAC. Likewise, they should enlist the assistance of credible opinion leaders known to be committed to the struggle in their own way, for example, Martin Assogba, President of ALCRER.

Furthermore, efforts could be made to involve famous journalists or political activists in the campaign, specifically those who themselves were previously victims of judicial or police harassment as a result of opinions expressed at one time or another.

Finally, even though comparisons can sometimes be misleading, it would still be a good idea for media practitioners to point to those countries neighbouring Benin which have already decriminalised media or speech-related offences with the aim of appealing to the egos of the leaders and persuading them to take the bold step to decriminalise.

### **Lobbying and outreach to the judiciary**

This study has clearly demonstrated the diverse opinions of the judicial stakeholders. It clearly shows some people to be of the opinion that, in spite of the harshness of the laws in force, their primary purpose is not to sentence journalists to prison terms, while certain others are convinced that the laws serve to instil discipline and responsibility amongst media practitioners. In this regard, professional media associations would be well advised to engage with the judicial authorities (the national union of magistrates, UNAMAB, the Department of Public Prosecutions), to discuss the ineffectiveness or demerits of custodial sentences for media offences *moreso* because most of those who have been sentenced to prison affirm that this has not caused them to moderate their stance. Additionally, the judicial authorities themselves have pointed out the existence of multiple cases of recidivism.

By the way, given the realisation that the judicial stakeholders are usually sympathetic when persons accused of media offences appear in court hearings, the professional associations, after consulting with the judicial authorities, should encourage media practitioners always to endeavour to honour any summonses to appear in court. In that respect, one positive course of action would be for them to prepare an inventory of all cases against media practitioners and despatch reasonably strong delegations to the hearings such that their massive presence could have some sort of influence on the judges. In the same vein, the journalists themselves should systematically ensure that all judgments convicting journalists to prison terms are widely publicised and denounced. They should endeavour to do so in collaboration with legal practitioners and human rights activists. It would also be in their interest to stress the inappropriate and obsolete nature of the laws in force, in this era of international instruments that promote freedom of expression and the decriminalisation of media and speech-related offences. Within the context of this initiative, the situation of women should be particularly brought to the fore, even though the number of them prosecuted for press and speech-related offences is rather insignificant. This could probably also stir the sympathy of the judicial authorities.

### **Building the capacity of press organs and practitioners**

Incidentally, a mapping of the media landscape of Benin reveals a proliferation of publications with frequently doubtful credibility and limited circulation. Such fragmentation is, without the slightest doubt, one of the causes of the professional excesses and fragility of the sector. In this regard, much as it would be interesting for the professional organisations to organise training sessions for media practitioners, with emphasis on media-related legislation and even more specifically, the managers of press organs, it would be even more advisable to work towards the creation of large media

groups, and even real media corporations. Indeed, it has emerged from the interviews conducted that even fines of barely 5 to 10 million CFA francs (10,000 to 20,000 US dollars) would be enough to force some of the most credible and financially viable press organs out of business. It follows therefore that the less credible and financially weak media organs would necessarily be more vulnerable. With this in mind, efforts could be made towards the consolidation or merger of publications in order to pool their strengths and minimise their weaknesses within the framework of much stronger entities.

### **Preserving the credibility of ODEM**

Media organs and practitioners should strive to recognise the peer regulatory mechanism established by themselves, so as to enhance respect for their code of ethics. That would likely be perceived by the general public as a mark of their responsibility and, incidentally, bring about the withdrawal of the law courts in favour of ODEM. To achieve this objective, ODEM should show greater diligence in rendering its decisions, as well as ensuring greater visibility by publicising them widely. Considering that, in the final analysis, the sanctions imposed are only of a moral or professional nature for the time being, without any proven financial ramifications beyond the possible withholding of government subsidies to the private media distributed through HAAC – which, by the way, are not even substantial – the press organs and practitioners would be well advised gracefully to accept any such sanctions.

### **Activism of the Special Rapporteur**

Pursuant to her mandate, the African Union's Special Rapporteur for Freedom of Expression and Access to Information could play a significant role in the campaign for the amendment of the laws and the campaign for decriminalisation. In the event that the debate on the amendment of the Constitution is finally conducted in the National Assembly, the Special Rapporteur could travel there and speak to the Benin authorities on the virtues of decriminalisation. Also, she could visit Benin during the examination of the bill on the Information and Communication Code by the National Assembly, and conduct working sessions with the members of parliament, HAAC and professional media associations. In addition, she could organise a press conference or publish a spirited op-ed in the Beninese media. And, if given the opportunity, it would be clearly beneficial for her to make a solemn declaration before a plenary session of the National Assembly.

Further still, she could secure an audience with the President of the Republic to put to him the virtues of decriminalisation and encourage him to support the process.

### **Conclusion**

Benin has ratified certain international instruments that promote the right to freedom of expression. However, the enjoyment of this right, which is also guaranteed by the Constitution, is not absolute. National laws restrict and even criminalise freedom of expression whenever it is allegedly abused by citizens. Nonetheless, the trend towards democratisation implies the possibility henceforth for citizens to be able to express themselves without fear. In light of this, there is clearly some outreach work to be done in the direction of political decision-makers. These decision-makers are quite adept at using the media to fulfil their political communication or propaganda needs, and yet are in no hurry to propose bold reforms to decriminalise press offences. As proof of this, while the debate on whether it is appropriate or not to amend the Constitution rages on, no political figure has so far expressed any opinion on the likely fate of the media in the proposed draft. Evidently, in case the Constitution is ultimately amended, that process would constitute the ideal and least complex opportunity to include a provision eliminating criminal sanctions for media offences in Benin into the section on the rights and duties of citizens. The existing laws would immediately be amended to

reflect the change, or become obsolete as a result of being unconstitutional. Aside from the Constitution, lobbying activities should be pursued in the area of the draft Information and Communication Code, such that if it passes through the Supreme Court without a provision on decriminalisation being included, the Members of Parliament responsible for voting it should be aware of the need to incorporate the change. In this instance, the fact that the current government enjoys a homogenous majority could be an asset in the sense that if their leader, the President of the Republic, points them in the right direction, that would likely facilitate matters. Nonetheless, there is no absolute guarantee of this. In actual fact, for example, the Head of State made a promise to women that a law on equality would be enacted. A member of his majority parliamentary group did indeed table a private member's bill to that effect, but it was adjourned *sine die*. This is a clear indication that there will be no easy path to success. Lobbying, rigorous actions and campaigns should be carried out in an incisive manner, such as to compel political decision-makers to assume their responsibilities, should they fail to show due diligence.