When Modernization and Legal Culture Clash:
Justice Sector Funding and Traditional
Authoritative Bodies in Benin

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I. Introduction to Beninese Legal Duality

In the Republic of Benin, a main tenant of the creation of positive law in the state legal system is legal dualism. While the French legal tradition was highly influential in the development of legal structures in Benin, the codification of Beninese law combined modern written law and customary law, adopting common customary practices into the state sponsored judicial apparatus. Beninese modern law is a combination of French colonial decrees, first introduced to West Africa in 1830 in Senegal, and national legislation after independence. The modern law encompasses public law as well as private law. The customary law, existing in dualistic harmony with modern law, is comprised of the codification of local customs. Based on a pre-independence collection of customs called “(Legal) Customs of Dahomey,” the primary function of customary law in the Beninese legal system is to regulate land use and real property, especially at the local level; additionally, some matters of family law have traditionally been governed according to local practice and continue to fall under local jurisdictions.

Since the adoption of the Constitution of 1990, the established parameters between customary law and modern law in this dualistic system have been changing. In 1999, the

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3 See generally Id.
4 Id. at 3.1.1.
5 Id.
6 Id.
Constitutional Court upheld the constitutionality of the privatization of civil matters to local bodies, while maintaining that the centralized state’s jurisdiction over criminal law enforcement was essential to upholding the basic individual rights granted in the 1990 Constitution. However, in law No. 2002-07, enacted in August 2004, the government of Benin adopted the “Code of Persons and the Family,” which usurps, in matters pertaining to family law, any prevailing customary rules. As a result of the Code, family law is now largely regulated by legislative enactment and customary law is mostly used for land regulation.

Despite the importance of traditional customary law in Beninese positive law, and the delegation of certain civil powers to local traditional authoritative bodies, movements to reform and stabilize rule of law institutions in Benin suspiciously lack acknowledgment of or reference to those traditional authorities that remain independent of the centralized state. This disregard of the independent traditional authorities may be due to the influence of external actors, who are playing the principle role in Benin’s justice sector reform. Contributions from the international community constitute more than half of the total national budget of Benin. Furthermore, it is estimated that from 2003 until 2012, external state and non-state actors will have contributed an estimated $52,796,863 towards improving Benin’s justice sector.

This article examines the methodologies and processes used by the various external state actors contributing to Benin’s justice sector. The goal of analyzing the various distribution methods and programs, in addition to providing insight into Benin justice sector funding in general, is to determine the continuing and future role of traditional authoritative bodies in Beninese law. While

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8 Id. at 2.
9 Id.
11 Id.
there are divergent theories as to the necessity and effectiveness of facilitating traditional authoritative bodies to improve rule of law in developing states, the dualism inherent in Benin’s legal culture and the delegation of civil powers to traditional bodies requires that these traditional authorities be addressed, if not included, in promoting stability, uniformity of law, and economic development in Benin.

II. The Beninese Government’s Justice Sector Goals

In order to facilitate development by encouraging investment, a firm and stable judiciary is necessary to enforce agreements and guarantee contractual obligations. While external actors may be influencing the route of Benin’s justice sector reform, the Beninese government has not failed to voice its internal goals. In 2002, the Beninese government initiated a reform program for the justice sector that has thus far addressed three main issues facing the courts: restructuring, expanding access, and improving efficiency. The initial changes were largely structural, with the government adopting a two-layered jurisdiction system, thus creating a tiered system of trial and appeals for administrative issues. This change necessitated the expansion of the number of appeals courts and tribunals to meet the jurisdictional requirements.

Beyond restructuring, the government of Benin has taken steps to broaden the scope of the distribution of justice by improving accessibility to the courts. In an effort to reduce the financial costs of accessing judicial services, an issue that perpetuates a weak judiciary, the National Assembly adopted a new “Code of civil, commercial, social and administrative procedures” in 2008. The new code allows petitioners of the courts to obtain a judicial judgment in civil matters merely by filing a written demand, if the value of the debt to be enforced does not exceed 500,000 F CFA.

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12 Id. at 23.
13 Id. at 8.
($1,000).\textsuperscript{14} By eliminating the need to argue the matter before a magistrate, the new practice is a first step towards widening access to the courts, thereby further entrenching the legitimacy of the judiciary in a larger segment of Beninese society.

Finally, Parliament is in the process of addressing problems currently weakening the efficiency of the judiciary, such as the length of time for resolving claims and the nearness of courts to potential plaintiffs.\textsuperscript{15} Both temporal and actual proximity are major factors that discourage and sometimes prevent individuals from making a claim with the judiciary; a proposed “Code of penal procedure” is being formulated to address the proximity issues.\textsuperscript{16} While the details of this proposal are unknown at the current time, it is certain that legislators will attempt to bridge the gaps in access to the courts by increasing the number of magistrates, and will formulate procedures to accelerate trials and decisions.\textsuperscript{17}

While the goal of this paper is to analyze external sources of justice sector funding in Benin, it is important to note that the Beninese government is itself seeking to improve the legitimacy and scope of its judiciary by expanding and strengthening the state-run, centralized judicial mechanism. While customary law is a large part of the substantive realities of Beninese law, the government is focusing on the dependability of the courts rather than on its existing bonds with traditional authoritative bodies. This approach may be more attractive to external investors in Benin, but it does little to address the way individuals view the country’s power structures, or to reconcile tensions between traditional authorities and an expanding judicial institution.

III. \textit{External Actor Funding Justice Sector Reform}

\textsuperscript{14} \textit{Id.}  
\textsuperscript{15} \textit{Id.}  
\textsuperscript{16} \textit{Id.}  
\textsuperscript{17} \textit{Id.}
Although internal actions are being taken by the government of Benin to address justice sector reform, the financial contributions of external actors are highly influential in guiding the development of the Beninese judicial system. In 2004 and 2005, fifty-six percent of Benin’s national budget was comprised of aid from the World Bank, and fifty-five percent of the 2006 national budget. As stated above, a breakdown of justice sector funding to Benin shows that external actors will have contributed $52,796,863 towards improving rule of law from 2003 to 2012.

The United States is by far the largest contributor to Benin justice sector reform. Acting through the Millennium Challenge Corporation (or Millennium Challenge Account), the United States has granted $31,560,000 to be used for justice sector funding in Benin from 2006 to 2011. The next highest contributor to reform is the European Union, through the Integrated Program for the Reinforcement of Judicial Systems and Judiciaries (or PIRSJJ), an institution supported by the U.N., IMF, and E.U. The E.U. has designated that over a twelve-year span, between 2003 and 2012, it will grant 12,150,000 euro ($15,973,600) to Benin for justice sector reform. However, unlike the unilateral contributions made directly to Benin by the United States, the European Union and other non-state international actors are acting in accordance with the IMF and World Bank, who, in addition to justice sector reform, are involved in many areas of Benin’s development, and the programs may sometimes overlap. The remaining external contributors have given lower amounts of funding with more specific strings attached to its application. Between 2006 and 2009, Belgium contributed about $4,712,863 to improve the justice sector, also through the PIRSJJ, by designating funds to the specific departments of Atacora, Donga, Mono, and Couffo. In 2005, Denmark granted about $400,400 to the Ministry of Justice, Legislation, and Human Rights, the organ of the

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18 Djogbenou, supra note 9.
19 Id.
20 Id.
21 Id.
22 Id.
Beninese government largely responsible for the implementation of justice sector reforms.\textsuperscript{23} Finally, the United Nations Program for Development granted $150,000 to reform Benin’s justice sector from 2004 to 2008 through the PIRSJJ; however, the dispersal of aid is being restructured as of 2011.\textsuperscript{24}

The large contributions made by the listed external state and non-state actors correspond with the gradual reforms made to the justice sector by the Beninese government in the 2000s. It is unclear whether the goals of the Beninese government are being facilitated or supplanted by the methodologies and mechanisms of the external actors, but it is clear that the priorities established by these actors will have a huge impact on the stability and direction of the Beninese judiciary. It is therefore important to look at the objectives outlined and the processes utilized by the chief external contributors, namely the United States and the European Union through the PIRSJJ, to determine the direction that Beninese justice sector reform will take in the future.

IV. The Goals and Methodologies Employed by the Millennium Challenge Corporation and the PIRSJJ

1. The Millennium Challenge Corporation (MCC)

A cursory analysis of the techniques being used to fund reform in Benin’s justice sector demonstrates that the external actors are attempting to promote and stabilize the justice system by enhancing the credibility, predictability, and accessibility of the state-run judicial apparatus, rather than attempting to forge bonds with traditional authoritative bodies, to expand and legitimize the judiciary. This approach stems from the overarching development goal of improving Benin’s business sector by strengthening judicial enforcement of contracts. The United States-based MCC has four main objectives in funding Benin justice sector reform: accessibility of justice to the citizen

\textsuperscript{23} Id.
\textsuperscript{24} Id.
through an improved functioning of the judicial system, promoting recourse to arbitration, facilitating business registration, and restoring citizens’ and businessmen’s confidence in the judiciary.\textsuperscript{25} Correspondingly, the general goals to be achieved from the objectives are telling as to what direction the MCC would like to see the Benin justice sector move towards. The MCC’s anticipated results can be divided into two categories: general strengthening of the judiciary, and improvements to the relationship between business and the judiciary.\textsuperscript{26}

In order to generally improve the judicial structure of the courts, the MCC seeks to reduce the time to process claims, increase the number of inspections in the courts, and improve training for magistrates and judicial staff.\textsuperscript{27} The efficiency and predictability of the justice sector is to be achieved by constructing and equipping a new court of appeal and eight new courts of first instance (trial courts), expanding recruitment and support for new magistrates by enacting and implementing three-year training plans through the Ministry of Justice (MOJ), improving the oversight of the judiciary through capacity building in human resources at the Inspection Générale des Services de la Justice, creating an intranet network within the courts and networking the courts with the MOJ, and requiring explicit rationalization of the methods used for handling cases in the courts.\textsuperscript{28} According to the MCC, expanding the state court apparatus to uncovered areas and improving the efficiency and functionality of the courts will help to institutionalize the judiciary and will greatly improve its stability. These goals are consistent with past actions of the Beninese government to restructure the judiciary to maximize efficiency.

\begin{footnotes}
\item[26] Id.
\item[28] Id.
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It is also a general goal of the MCC to improve the legitimacy of the courts, or the rapprochement of the judiciary and the citizenry.\textsuperscript{29} The MCC intends to do this by increasing knowledge about the legal system, however, many of these measures are meant to attract the business community rather than the general citizenry. The business oriented programs\textsuperscript{30}—such as education on OHADA; organizing open days for businessmen in urban centers to learn about the judicial system from justice professionals; supporting the launching and activities of the Arbitration, Mediation and Conciliation Center located within the Benin Chamber of Commerce and Industry (CCIB); and improving the performances of the business registration center located within CCIB—do very little to legitimize the judicial system for citizens in many rural areas, which are devoid of state courts and rely on traditional authoritative bodies and customary laws to maintain societal order. The construction of a Legal and Judicial Information Center, which is to contain a documentation fund accessible online by subscription, will only reach Beninese citizens either located close to the capital or with the means to access the subscription database, and again, does little to address the populace under the influence of traditional authorities.\textsuperscript{31} While an effort to create a support fund for the access of the poor and the unprivileged to judicial services\textsuperscript{32} is a step towards engaging the citizenry in the justice system, it will not benefit those in rural areas with no knowledge of the system or access to the courts.

While the objectives remain state-centric, the potential to embrace the existing power structures around traditional authorities in Benin could add legitimacy in the perception of the wider citizenry, especially in the areas of widening the scope of the courts and arbitration. However, the MCC does not reference any activities to address or incorporate traditional authoritative bodies either in its objectives, goals, or methodology.

\textsuperscript{29} Id.
\textsuperscript{30} Id.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
2. The Integrated Program for the Strengthening of the Legal and Judicial Systems (PIRSJJ)

The PIRSJJ approach differs from the MCC approach mainly because the organizations involved in the PIRSJJ frame the expansion of the Beninese court system and the stabilization of the justice sector under the mantle of decentralization and deconcentration of power\textsuperscript{33}, rather than emphasizing the improvement of the judicial sector for business oriented purposes. By expanding the number of courts and the number of trained professionals maintaining the justice sector, the PIRSJJ backers hope to curb corruption, improve reliability and credibility, and promote and protect the rights of the individual citizen.\textsuperscript{34} In congruence with the objectives of the MCC, the PIRSJJ also seeks to computerize the entire, expand lower courts and courts of appeals, strengthen education and accountability for justice professionals, and bring national legislative into harmony with international legal instruments.\textsuperscript{35}

The computerization project is at the forefront of PIRSJJ activity in Benin, and the program has funded the creation of a Department of Justice intranet system and internal messaging system, the introduction of computerized management for criminal proceedings, a similar computer management program for civil cases, and the updating of computer hardware.\textsuperscript{36} The updating of technology is intended to make the courts more efficient and effective, and it is evident that the PIRSJJ sees the reform of the Beninese legal system to be intrinsically tied to modernization.

In addition to systematic changes, the PIRSJJ goes into more detail than the MCC in outlining its general objectives on how to improve the credibility of the justice system with the citizenry. For example, to inform the populace about justice sector reforms, PIRSJJ purports to strengthen the capacity of justice sector NGOs in Benin, establish platforms for discussion and

\textsuperscript{34} Id.
\textsuperscript{35} Id.
consultation between the government and civil society, and broaden the education of the citizenry regarding individual rights.\textsuperscript{37} Activities and education efforts that engage the Beninese citizenry and reinforce the advantages of a stable judicial process, coupled with the establishment of a fund for indigent citizens to access the justice system,\textsuperscript{38} will greatly improve the perceptions of the Beninese justice sector and will fuel discourse over incorporating Beninese conceptions of justice into a modern system. However, information regarding PIRSJJ education and outreach efforts, especially in rural areas, is not readily available. It is inconceivable how these dialogues can occur effectively without the active participation and integration of traditional authoritative bodies who maintain the highest level of perceived power throughout most of Benin. The literature expressing PIRSJJ’s mission does not reference any methods for engaging these crucial segments of civil society.

V. Debating the Need to Address Traditional Authoritative Bodies in Development

While externally funded programs are addressing some of the key problems facing Benin’s justice sector, the disengagement of traditional bodies represents a deficiency in reform activities. For the citizenry, improving access to the state-run judicial mechanisms is essential to development. The MCC and PIRSJJ both address the essential delegitimizing trends encumbering the justice sector: extravagant formalism and delay in bringing claims to court, difficulties of proximity to courts, complications in executing judgments, and high costs of access.\textsuperscript{39} However, according to Thomas Bierschenk and Jean-Pierre Olivier de Sardan, as of 2003, the courts and judiciary were “totally absent from the countryside.”\textsuperscript{40} In addition to the difficulties of expanding formal legal

\textsuperscript{37} International Monetary Fund, supra n. 32.
\textsuperscript{38} Id.
\textsuperscript{39} See Djogbenou, supra note 9 at 8.
\textsuperscript{40} Thomas Bierschenk and Jean-Pierre Olivier de Sardan, Powers in the Village: Rural Benin between Democratisation and Decentralisation, 73 Africa 2 (2003).
structures to rural areas, extrajudiciary mechanisms in Benin, which have the potential to narrow the access-gap created by the formal judicial process, are still widely lacking.⁴¹

In 2007, the United Nations Economic Commission for Africa said that to the extent that African traditional political values and customary laws are essential to the continent’s transformation, the role of the authorities who are engaged in the practice and maintenance of those values is indispensable.⁴² Reconciling various theories regarding stability in African countries that employ dualistic systems of law, Professor Kidane Mengisteab concluded that such institutions—as enduring collections of formal laws and informal rules, customs, codes of conduct, and organized practices—are critical to preserving the way of life of the peoples they serve.⁴³ He states, “when formal and informal institutions complement each other they promote stability and consistency in collective life by creating definite, continuous, and organized patterns of basic activities of human society;”⁴⁴ however, Mengisteab also acknowledges the inverse, “when incompatible with each other, social instability is likely to increase, due to increasing uncertainty and disorientation, which necessitate increased incentives or coercion to make people follow prescribed rules.”⁴⁵

Therefore, whether or not one ascribes to the significance of incorporating traditional authoritative bodies into the creation of a modern justice system, it is clear that it would be a tremendous oversight not to explore the possibilities of utilizing existing structures to benefit the stability of the system as a whole. The lack of literature concerning the involvement of traditional bodies in maintaining societal order in Benin, and the failure of the principal funding contributors to address such bodies, seriously undermines the development of a stable justice sector in Benin. In

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⁴¹ Djogbenou, supra note 9 at 8.
⁴⁴ Id.
⁴⁵ Id.
effect, the realities of the dualistic legal system must be met head on in order to guarantee the protection of individual rights, and efforts focused on merely securing business investments must be placed in the context of Benin's diverse legal traditions.