



**Groupe d'Action pour le Progrès et la Paix**

**Enabling Environment National Assessment of  
Civil Society Organisations in Benin**

**Benin**

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## **i. Executive Summary**

Fundamental freedoms such as the freedom of association, freedom of expression, freedom of assembly, of demonstration and the right to information are guaranteed and protected by the Constitution of Benin and through national legislation. The Government of Benin also signed and ratified most of the regional and international legal instruments guaranteeing human rights and public freedoms. The legal framework of these freedoms is moderate but leaves a degree of subjective discretion to the administration. In practice, CSOs are especially hampered in their freedom due to their poor financial capacity.

The right to freedom of association is largely exercised by the people of Benin. The legal requirements for the establishment of CSOs are minimal. Neither capital nor a minimum number of funders are required. There are no restrictions on objectives, on the condition that these are legal, and do not breach the public order and morals. However, the time required to register CSOs is long (an average of 4 months) due to the lack of resources of competent administrations to deliver the receipts of declaration of CSOs. CSOs in the country are numerous and spread all over the territory. The administration has not put in place any mechanism to force CSOs to comply with the legal texts that govern CSOs. Government oversight, almost non-existent, leaves ample room for unorthodox/fraudulent practices.

CSOs operate freely and are largely dependent on outside financing from national and foreign development partners. Donations made to CSOs are rare; philanthropy is not a custom among the population of Benin. Public funding is accessible, but is very limited. CSOs intervene in all development areas, including political and legal processes, through a wide range of activities on their own initiative. CSOs are also represented in several political and administrative bodies. Cooperation between the Government and CSOs is not regulated by a specific law, but several national policy documents foresee a partnership with CSOs in their implementation strategy. Until April 2016, there was a Ministry in Charge of Civil Society and a Centre de Promotion de la Société Civile (CPSC, Centre for the Promotion of Civil Society) established by this Ministry to promote effective and efficient participation of CSOs in the national development. There are also consultation frameworks at the level of municipalities, and between the Government, technical and financial partners, and CSOs.

However, besides the consultation frameworks promoted by development partners, existing framework agreements between ministries and specific CSOs, and the

representation of CSOs in some state bodies, cooperation between the Government and civil society in general is limited most of the time to ad-hoc consultations which, according to the respondents, are not done on time. Communication is regular between both but is essentially informal, and this relationship can be characterised as one of mutual mistrust.

The freedoms of expression and peaceful assembly deteriorated significantly over the last few years under the previous Head of State, Yayi Boni (2006-2016). The Administration under Boni was characterised by a considerable intolerance towards critical voices and by massive infringements on freedoms, leading to major protests on the part of civil society actors. CSOs have expressed their opinion despite intimidation, threats, arbitrary arrests and physical violence against them.

The media is most affected by these infringements. Usually independent and pluralistic, the written and audio-visual press paid the price for arbitrary and subjective decisions made by the High Authority for Audio-Visual and Communication (HAAC), whose allegiance to the Head of State was blatant. Besides HAAC's excessive indoctrination, some press organs were forced to change their editorial policy under pressure of the Government.

One positive change was the adoption of the Code of Information and Communication in 2015, which removed, following the wish of media players, prison sentences for offenses against the person (defamation, slander, insulting the President), but not however for offenses against the state and criminal incitement.

This code also provides for access to information, which is very difficult in Benin due to a culture of secrecy surrounding authorities and public administration officers. It also protected sources of confidential information and provided for remedies in case of the information request is unsatisfactory. The effects of this code in practice cannot yet be seen as it was only recently adopted.

A reform of the legal framework for associations is currently underway. A draft law on freedom of associations is currently under study at the Supreme Court of Benin. However, some of the provisions of this draft law are worrying, as they tend to limit freedom of association and give room to Government interference.

## **ii. Introduction**

After the Second World War, the world saw the emergence of a new player within states, and even within international relations: civil society organisations (CSOs). Their role was so important that one could talk about a universal explosion of associations.

Benin was not immune to this development. The democratisation of Benin in 1990 fostered freedom of association, of assembly and of expression. Within 25 years of democracy, over 4,000 civil society associations, movements and groupings were established in Benin for a population of less than 10 million inhabitants.<sup>1</sup> CSOs in Benin are involved in all social sectors in Benin and play an increasingly active role in monitoring public policies. Increasingly acknowledged through their actions, associations in Benin play the noble role of brokers of dialogue with all players (government, private sector, and multilateral organisations).<sup>2</sup>

Benin became independent in 1960. After a long period of instability and dictatorship, the country became a democracy in 1990. Since then, the functions of the President of the Republic and Members of Parliament (MPs) are filled in after free and transparent elections. The freedoms of expression, association and assembly are guaranteed, even though it can at times be difficult to exercise these rights. Articles 23, 24 and 25 of the Constitution of Benin of 11 December 1990, are the legal foundation of these freedoms. However, the freedom of association is regulated by a law of 1901, dating back to the colonial era. Hence the need to initiate a legal reform to adapt the exercise of this right to the new developments in society that Benin has known.

Civil society organisations have the role to ensure this reform complies with international standards and that it does not restrict the fundamental freedoms.

This assessment was timely and led to the identification of the strengths and weaknesses of the freedom of association at all levels - administrative, legal or socio-economic - in order to prescribe an adequate remedy.

## **iii. Methodology**

This report was drafted based on the contributions of the Expert Advisory Group members and their experiences in terms of freedom of association and assembly in

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<sup>1</sup> Data published following the last population census (2013) by the National Institute of Statistics.

<sup>2</sup> Data taken from the interviews with the public officers in charge of receiving declarations on the establishment of associations.

Benin. The research team, with the assistance of the Expert Advisory Group, selected two essential dimensions among the optional dimensions, as outlined in the EENA Research Guide<sup>3</sup>, to assess the nature of the environment of CSOs in Benin, namely Taxation and Access to Information.

The team members conducted additional desk research besides individual interviews and focus group discussions to identify the relevant legal standards, and to check factual information. The research team also convened three work sessions aiming at validating the final report, with the assistance of the members of the Expert Advisory Group.

The research team also used the research guide provided by CIVICUS and ICNL; this Guide facilitated the structuring of the data collection. The National Consultation, at which took place at the end of the research process to validate the research findings.

For practical reasons, the research focused on two regions as a sample, namely the Departments of Atlantique and Littoral. Individuals interviewed were selected in order to obtain a representative and concrete sample of the various experiences encountered in Benin on this matter. In total, twenty representatives from CSOs and the Government (public services and ministries) were interviewed.

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<sup>3</sup> The EENA methodology was developed by CIVICUS and the International Center for Non-Profit-Law (ICNL) under the Civic Space Initiative. It contains six mandatory dimensions and four optional dimensions.

## **I. Formation**

### **1. The formation of associations (CSOs or NGOs) in Benin**

The Constitution of Benin is the supreme law regulating most institutional domains of the state of Benin, and guarantees fundamental rights and freedoms. Article 25 states that "*The state shall recognise and guarantee, under conditions fixed by law, the freedom to go and come, the freedom of association, of assembly, of procession and of demonstration*". This provision does not provide details as to the content of freedom of association. The fundamental text, which regulates not-for-profit associations, is the French law of 1 July 1901 on the freedom of association, which was retained in the legal order of Benin after its independence on 1 August 1960.

Should one consider all of the rights associations need to adequately carry out its role and functions, one can consider that the 1901 law was completed on some points by Decree No 59 of 28 December 1966. In addition to this comes Law No 2001-09 of 21 June 2002 on the right to strike in Benin; Decree No 2001-234 of 12 July 2001 regulating the formation and operation of non-governmental organisations (NGOs) and their umbrella organisations, besides modes of implementation and requirements for the authorisation of foreign NGOs. Among implementation rules of laws and decrees are:

- Decree No 2006-132 of 9 March 2006 on the definition of the various forms of trade unions and its criteria of representation.
- Inter-Ministerial Decree 2002 No 15/MCRI SCB/MISD/DC/SG/DBEVA/SA on the establishment of the Ad Hoc Disciplinary Council of NGO and Umbrella Organisations.
- Inter-Ministerial Decree 2002 No 16/MCRI-SCB/MISD/DC/SG/DBEVA/SA on the application to obtain public utility status.
- Inter-Ministerial Decree 2002 No 22/MCRI-SCB/MISD/DC/SG/DBEVA/SA on the application for a Framework-Agreement with the Minister in Charge of Relations with Institutions, Civil Society and Benin Subjects living Overseas (MCRI-SCBE).
- Inter-Ministerial Decree 2003 No 17/MCCAG-PD/MAEIA/MFE/MISD/DC/SG/DAJD/DBEVA/SA on the Regulation of Agreements on foreign NGOs Headquarters in the Republic of Benin.

Regional or international standards (Conventions, Agreements and Treaties) also guarantee the freedom of association. These are:

- The Universal Declaration of Human Rights of 10 December 1948 (Articles 19 and 20).
- The International Covenant on Civil and Political Rights 16 December 1966, implemented on 23 March 1976 (Articles 21 and 22).
- ILO Convention c87 on the freedom of association and the protection of the right to organise of 9 July 1948 (Articles 2-8).
- The African Charter on Human and People's Rights (Articles 10 and 11 paragraph 2).
- The African Charter on the Rights of the Child (Article 8a).

In addition to these international conventions, certain cooperation agreements, declarations and principles to which Benin adheres to strengthen, for the benefit of civil society, the right to free association, with regards to its participation in the development of the country and the achievement of truly democratic nations. These are for example:

- Partnership Agreement 2000/483/CE between the members of the Group of African, Caribbean and Pacific States on the one hand, and the European Community and its members states, on the other hand, signed in Cotonou on 23 June 2000.
- The Istanbul Principles for CSO Development Effectiveness of 29 September 2010.
- The Busan Partnership for Effective Development Co-Operation (multilateral agreement taken at the 4<sup>th</sup> High Level Forum on Aid Effectiveness, held from 29 November to 1 December 2011 in Busan, Republic of Korea).

Any group of individuals fulfilling the criteria prescribed by the Law of 1 July 1901 and Decree No 2001-234 of 12 July 2001 can establish an association. Title II of Decree No 2001-234 of 12 July 2001 on Formation of NGOs and Umbrella Organisations , stipulates, in its 9<sup>th</sup> Article, that "*Any person wishing to establish an NGO shall comply with the following requirements:*

- Form a constitutive body (General Assembly, Congress, etc.);
- Submit to this body, for adoption, the draft articles of association including the objectives and mission of the NGO, duration, head office, bodies with their

responsibilities and mode of operation, resources, provisions regarding amendments and changes, system of property devolution in case of dissolution and the operational procedures of the NGO.

- Record the minutes of the meeting of the constitutive body, with a mandatory statement on the composition of the managing body, including details and addresses of the members of this body, who shall sign the minutes.

Individuals excluded could be those that do not fulfil the prescribed criteria, set out in Law 1901 and to the above-mentioned decree. These can be under-aged children and individuals with a criminal record, imprisoned individuals, etc.

Any individual of legal age in Benin can be part of an association on the condition that the objectives of this association are legal, its character not-for-profit, and its structure non-partisan.

According to the CSO Charter, "*A member of the Board of Directors cannot claim a nominative political position or accept such a position without stipulating in writing his or her intention to do so to the Board of Directors and resign from the organisation*". Still according to this Charter, an association has a social base considered as a wider group of individuals (natural or legal persons). No minimum number of individuals is required. However, to establish the association, more than one person is required (normal practice applied in Constitutive General Assemblies, congresses, etc). No specific number is therefore required, but it is advisable to mention the presence of a few people in attendance during the General Assembly. There is no specific profile for the members, just members who share a common social belief.

Article 10 and subsequent articles of Decree No 2001-234 of 12 July 2001 prescribe the procedures of the registration of accreditation of associations. Any association or umbrella organisation must be declared by its founding members to the administrative jurisdiction where the head office of the association is based. A certificate of deposit of the declaration is to be issued by the competent authority, within a period that cannot exceed two months from the date the declaration documents were submitted. Once this period is over, silence from the competent authority is considered as a recognition of the association, authorising the formality of publication in the Official Gazette. The organisation shall then proceed to the formality of publication of the certificate of deposit. The competent authority, which issues the declaration receipt, shall, within a month, send a copy to the Ministry of the Interior, alongside full copy of all the documentation:

- 4 copies of the minutes of the constitutive General Assembly;
- 4 copies of the attendance registry to the constitutive General Assembly;
- 4 folders;
- Police clearance certificates of the President, the Secretary General and the Treasurer of the organisation;
- The receipt of the payment of 50,000 CFA (about 85 USD);
- 4 copies of the statutes;
- 4 copies of the rules of procedure.

The competent authority to issue the receipt is the Prefect. In addition, the maximum period to issue the declaration receipt for a foreign CSO is 4 (four) months. Within a period of one month from the date of notification of the declaration receipt, the association's managers have to publish an extract of the receipt in the Official Gazette, with the date of the declaration, the title of the association's objectives as well as the address of its head office. Article 22 of the Decree dated 12 July 2001 states that "*the declaration receipt becomes null and void when the managers of an NGO or NGO's umbrella organisation voluntarily refrains from publishing the said receipt in the Official Gazette within the period stipulated in Article 12<sup>4</sup> of the present Decree.*" The cost of the publication in the Official Gazette varies between 50,000 CFA (85 USD) to 100,000 CFA (170 USD), depending on the goals pursued by the association.

Usually, the acknowledgement of the association by the Ministry of Interior is not sufficient. Associations also need to get acknowledged by the Ministry corresponding to the activities they develop: The Ministry of Health, if its aim is to create a health centre, the Ministry of Education, if it is involved in the education sector, etc. The registration application must be presented by one of the main managers of the structure to be established, often its President or Secretary General. No capital is required to establish an association.

Authorities can base a rejection of an association's registration on the untruthful character of the declarations by the individuals promoting the association. In case the documentation to be provided for the registration is not up to date or when the association's activity is not clearly defined in its statutes, the registration can also be rejected. Rejections are usually due to a lack of certain information (addresses and functions of managers), illicit objectives of the association, non-conformity with good

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<sup>4</sup> Art. 12 of Decree No 2001-234 of the 12th of July 2001 "Within a period of one month from the date of notification of the declaration receipt, the association's executives have to publish an extract of the receipt in the Official Gazette, with the date of declaration, the title of the association's object as well as its head office."

morals or creating public disturbances and other discretionary reasons. For other cases of rejection, the reasons mentioned are: the statutes and internal rules of procedure do not comply with the standard in force or the association wishes to develop activities in the area of finance with the aim to generate profit. The latter requires prior approval of the Ministry of Finance.

All CSOs need to make a declaration of their objectives, as a basic requirement. *Maison de la Société Civile (House of Civil Society)* has stated that there are no known cases of rejected registrations of organisations working on the protection of human rights or the promotion of democracy. The statutes of associations always need to mention the general and specific objective of the association, all of which need to be declared.

There is no information available on administrative or legal remedies in case of a rejection of a registration. However, decisions regarding the registration of associations can be the subject of an appeal before the Constitutional Court for example, since the Constitution of Benin, in its Article 25, guarantees the freedom of association. The Constitutional Court of Benin developed a rich jurisprudence on freedom of association.

The Constitutional Court reviewed an appeal by Mr. Moïse BOSSOU on 25 January 1994, in which he requested the Court to declare Decree No 260/MISAT/DC/DAI/SAAP of 22 of November 1993 on terms and conditions related to the registration of associations as unconstitutional. By decision D.C.C. 16-94 of 27 May 1994, the Court first observed that the said decree, in its Articles 8, 10 and 12, laid "limitative conditions to freedom of association." Taken into account Articles 25 of the Constitution, and Article 10 of the African Charter on Human and People's Rights regarding freedom of association and the conditions of its operation and limitations, and Article 98 of the Constitution on the domain of the law and especially providing for "fundamental guarantees given to the citizens for the exercise of public freedoms" fall within the domain of the law, the high jurisdiction noted that "in the present case, the Minister of the Interior, of Security and Territorial Administration, by deciding that only one development association will be incorporated by administrative entity", "that an association normally declared can obtain its registration document following an investigation on the association's good morals", "that associations whose authorisation is rejected or withdrawn, must immediately cease their activities, and proceed to the liquidation of their goods within a period of a month from the date of notification of the decision, in compliance with the provisions in their statutes and of the law of 1 July

1901”, has encroached upon the area reserved to law. The Court therefore declared Decree No 260/MISAT/DC/DAI/SAAP of 22 November 1993 on the terms and conditions related to the registration of associations as unconstitutional. It appears that only the legislator can place restrictions on public freedoms in general, and especially freedom of association.

As the Administration did not want to comply with the Constitutional Court's decision, the latter not only had to remind the Administration of its jurisprudence on freedom of association, but also to bring the Administration's attention to the effects of its decisions, namely *res judicata* and the impossibility to implement a legal or regulatory act that was declared unconstitutional. This is what emerged from the following decision.

The Constitutional Court received a petition on 15 April 1995, through which the President of the Union Nationale des Scolaires et Étudiants du Bénin (U.N.S.E.B.; National Union of Students of Benin) denounced the cancellation of the registration of their association by the Minister of the Interior, Security and Territorial Administration (M.I.S.A.T.). The Court first noted<sup>5</sup> that, through a decision dated 5 October 1994, U.N.S.E.B. was registered by the department of the Ministry of the Interior, but that the association received a letter on 28 December 1994 from the Ministry of Interior informing it of the decision to cancel its registration on the basis of “security reasons” and that “as a consequence, U.N.S.E.B. is required, from this day, to suspend its activities until further notice”. The Court then recalled Articles 25 and 98 of the Constitution, as well as Article 10 of the African Charter on Human and People’s Rights, already used as a basis for its decision DCC 16-94 of the 27<sup>th</sup> of May 1994, on legal competence to – possibly - organise and restrict the freedom of association. To justify the acceptability of U.N.S.E.B.’s request, the Court did not hesitate to resort to a law, the *law of the 1<sup>st</sup> of July 1901 on the contract of association*, which states, in its Article 6, that “any association regularly declared can, without any prior authorisation, engage in legal proceedings.” On the basis of this legal standard<sup>6</sup>, the Court noted that U.N.S.E.B. was regularly declared, as testified by the receipt of the declaration of association issued to it. Therefore, the Court decided that U.N.S.E.B. had full legal capacity and was able to conduct any activity “under the terms of the law” and “without any special procedure.”

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<sup>5</sup> DCC 95-033 of the 1<sup>st</sup> of September 1995.

<sup>6</sup> This clarification was however not required since any individual can make an appeal to the Constitutional Court.

These arguments would have been sufficient to declare the deregistration of U.N.S.E.B. as unconstitutional, but the Court noted and appropriately observed a second violation of the Constitution, namely that the decision of the Minister of Interior on the cancellation of the registration was based on a provision of *Decree No 260/MISAT/DC/DAI/SAAP of 22 November 1993 regarding terms and conditions for the registration of associations*, held as unconstitutional by the Constitutional Court by decision DCC 16-94 of 27 May 1994. In compliance with Article 33, Paragraph 2<sup>7</sup> of the Organic Law on the Constitutional Court, the court recalled, a decree that is assessed by the Constitutional Court as unconstitutional, is null and void and can no longer be implemented. The Court therefore concluded that the cancellation of U.B.S.E.B.'s registration was unconstitutional.

Another decision that is noteworthy in terms of restrictions to the freedom of association, is decision D.C.C. 33-94 of 24 November 1994, which further confirmed that the Executive does not have the competency to restrict the exercise of freedom of association, and brought additional details on the extent of the the legislative powers with regards to restrictions of public freedoms. The Court indeed considered that the provision of *Decree No 94-11 of 26 January 1994 on the obligation for the members of the Constitutional Court to not "endorse a Party or a political group" or, as the case may be, to resign from it "before their installation or the performance of their duties"* violated the freedom of association. The novel and interesting aspect about this decision was that it specified the extent of legislative powers when the legislator wishes to restrict the freedom of association. For the Court, "according to Article 25 of the Constitution, the State recognises and guarantees the freedom of association under the conditions established by law (...); *if the legislator can limit its exercise by organising it, he or she cannot cancel it or prohibit it, that in any case, with respect to the hierarchy of norms, a decree cannot prohibit the exercise of a freedom or of a right recognised and guaranteed by the Constitution*"<sup>8</sup> .

The freedoms of conscience and of religion, which were restricted during the Marxist regime (1972 to 1989) are now also guaranteed by the Constitution and citizens can exercise them without state control.

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<sup>7</sup> This is taken from Article 124, Paragraph 1 of the Constitution, which states that "A provision declared unconstitutional may not be promulgated or enforced." We recall that paragraph 3, Article 3 of the Constitution also states that: "Any law, any statutory text and any administrative act contrary to these provisions shall be null and void (...)" .

<sup>8</sup> Decision D.C.C -33-94 of the 24th of November 1994, *Recueil 94*, p. 157.

From 1999 to 2016, a Minister in Charge of Civil Society, among other Institutions existed. From 2016, the Ministry of Justice subsumed the responsibility to monitor civil society.

Besides appeals made to the Constitutional Court, legal recourse against rejections of the registration of associations depends on the law and on the authorities or the administrative judge. The non-availability of an appeal procedure for such issues could be due to the fact that a large number of citizens do not know their rights and ignore their right of appeal in most cases. In all cases, since this dispute falls within administrative law, the persons affected by the decision can file a case with the competent administrative court to make the issue known. It has to be noted that several founders remain unknowledgeable of the existence of these appeal mechanisms. For other ways of appeal, the persons can also file a complaint to the supervisory authority, which is the prefect, or contact the department of associations within the Directorate General for Home Affairs (DGAI).

An association can be recognised by the Ministry of Foreign Affairs to benefit from cooperation opportunities with several international organisations. In this case, it must state this need in a written request, with its statutes and internal rules of procedure, the declaration receipt, the copy of the Official Gazette which contains the publication of their declaration and their last three annual reports.

Associations need to inform the registration authority when its objectives change or changes are made to its statutes or internal rules of procedure by sending a registration amendment request, as many times as these statutes are amended.

Associations in Benin have multiplied since the National Conference of 1990. They were often established at the initiative of civil servants who had to leave the public sector due to the implementation of the structural adjustment programme. There are no up-to-date statistical data available on the exact number of CSOs in Benin. In 1996, Benin supposedly counted at least 611 associations.<sup>9</sup> In June 2000, the directory of the Ministry of Planning and Development counted a total of 1196 associations.<sup>10</sup> It is difficult to count the number of associations, but there are a large number of associations in Benin. Maison de la Société Civile is conducting a research on the issue as did the prior Minister in Charge of Relations with Institutions (MCRI). About one hundred associations are registered at the Ministry of Foreign Affairs. At the Ministry of

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<sup>9</sup> Directory established by the Centre pour l'Environnement et le Développement en Afrique (CEDA)

<sup>10</sup> Directory established by the Ministry of Planning and Development

the Interior, at the Ministry in Charge of Relations with Institutions and at the Prefecture, there are no statistics available. However, studies are currently underway to update databases on CSOs in Benin.

Draft laws are currently under discussion which, if approved, could facilitate the formation of associations. A draft law, which reforms the law of 1901 on the freedom of association, of assembly and of expression is currently being scrutinised at the Supreme Court, together with the Information Code, which has been in force since March 2015. The objective of this draft law on the revision of law 1901 is the establishment of a framework law, formulated with a high degree of national consensus on freedom of association, assembly and expression, in compliance with relevant international and regional standards. This draft law was first reviewed in 2015 by legal experts, and is currently with the National Assembly to be voted upon. This draft law was the object of several workshops hosted by the Groupe d'Action pour le Progrès et la Paix (GAPP Bénin, Action Group for Progress and Peace), with support of ICNL. A total of six workshops took place and gathered over 250 associations in total, representing the entire territory of Benin. ICNL provided GAPP Benin with an international expert in order to support the association during training sessions. Thanks to the support of ICNL, the draft law was highly improved, and if approved by the National Assembly of Benin, will be favourable for associations.

Before the above interventions, the first draft law on freedom of association in Benin - stemming from the special session of the National Legislation and Codification Commission - included several questionable provisions regarding the formation of associations in Benin, although the aim of revision was supposed to address the obsolescence of the law currently in force, namely the law of 1901. Indeed, instead of addressing the lengthy registration process, it increased the duration of the declaration process to three months in its article 30, contravening Decree No 2001-234 of 12 July 2001 which provides for a two-month period, which is not complied with in practice. In addition, article 26 stated that a one-month time frame would be given to the competent authority to provide the applicant with possible additional information or a list of documents to be provided. It also creates confusion as to the specifics of competent authorities for the incorporation of associations by an absence of specifications on competent or delegated authority (articles 22 and 27). The entity in charge of the registration of associations (the *Préfecture* or various ministries depending of the object of associations) is no exception to challenges that are generally associated

to administrations in Benin, namely precariousness, scant resources, lack of human capacity etc. It is difficult to assess the competence of quality of staff, but it could be argued that the formalisation takes sufficient time. The public servants in charge of registration do not have the necessary tools to do so and until now, the registration process remains a manual process in most of the relevant institutions, therefore there is also a lack of reliable statistics.

The relevant entities (registration department, IT department, filing department, etc.) are concentrated in large cities, and most of the ministries concerned are in the capital, Cotonou. They are rather far from rural areas and towns, while the entities also process declarations manually. Although there seems to be a will from the public servants to do their job properly, their working conditions are not enviable: small offices, the absence of sufficient computers or software to facilitate the incorporations, amongst others.

In order to start an association, a minimum of financial means is required, even if this is not legally required. To benefit from grants from donors or financial partners, it is often required that the association be in existence for at least one (1) or two (2) years, according to several interviewees<sup>11</sup>, although a number of associations are created without even having a head office. The applications to incorporate an association often stay in state departments for several years, especially due to administrative inertia. The bureaucracy in Benin is slow and inefficient. Additionally, according to the study “Civil Society Index - Rapid Assessment” in Benin, carried out by Maison de la Société Civile with support of CIVICUS and WACSI in 2013<sup>12</sup>, almost two out of three CSOs (63.9%) have the status of tenant in the buildings hosting their organisation. This percentage varies based on the respondents’ educational level: two out of three have a higher education level (67.1%) and over 53.6% have a secondary or lower education level.

Sometimes discrimination, favouritism (on political, ethnic, religious grounds etc.) and/or corruption in the registration process can be observed. Two (2) associations can register at the same date and in the same location, and it can lead to one declaration being issued within a month, while the other declaration, after going back and forth, would only be issued six (6) months later. These are real facts but it often cannot be proven since victims refuse to complain openly for fear of being scorned or “sanctioned” by the responsible authorities. The length of a registration often depends

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<sup>11</sup> A list of interviews can be found in Annex 1.

<sup>12</sup> Maison de la Société Civile (2013). Civil Society Rapid Assessment Index in Benin. See: <http://www.civicus.org/images/stories/Benin%20CSI-RA%20edited%20by%20CIVICUS%20final.pdf>

on the identity of the applicant. A separate in-depth study would be required to obtain concrete answers on how pervasive this situation is. In addition, the research concluded that in practice, it is easier to establish a church than a CSO in Benin, due to legal requirements.

## **2. Forms of civil society organisations**

A civil society organisation (CSO) or non-governmental organisation (NGO) is first and foremost an association before being a CSO or an NGO.

In 2007, during a national seminar with the aim to reposition the concept of civil society, it was decided that the seven following components were part of civil society in Benin: associations (development, women, youth associations, etc.), NGOs, religious groups, the media, socio-professional organisations, traditional chieftainships and trade unions.<sup>13</sup>

### **2.1. Associations (CSOs) and NGOs**

The fundamental text on associations, which remains applicable in Benin, is the French law of the 1 July 1901 on the contract of associations and its implementing decree of 16 August 1901. These were retained in the internal legal order after Benin's independence. It was completed by Decree No 2001-234 of 12 July 2001 establishing the conditions of existence and operation of NGOs and of their umbrella organisations.

The law of 1901 defines an association as the convention through which two or more people join, in a permanent manner, their knowledge or their activity with an aim other than to share profits (article 1), while the above-mentioned decree designates a NGO as any national or foreign, not-for-profit association, established by private initiative, regrouping physical and legal persons in view of exercising activities of a general interest, solidarity or voluntary cooperation for development activity (article 1).

The formation and recognition of umbrella organisations follow the same procedures as the one for applying as an NGO. Foreign associations, and other specific associations such as religious or cultural associations, microfinance associations and health associations, need to send their declaration to the Ministry of the Interior. Other associations send their declaration to the prefecture of the locality where their head office is located.

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<sup>13</sup> Report on the national seminar on the repositioning of the concept of civil society (2007).

Regarding the capacity required to establish an association, the law of 1901 states that associations are regulated in terms of its validity by the general principles of the law applicable to contracts and obligations, that this capacity is of common law necessary to contract. Founding members need be at least 18 years old and never have been declared unfit through a court decision, meaning they are excluded when sentenced to a penalty involving a loss of civil rights and imprisonment. The Charter on Civil Society<sup>14</sup>, states that any person holding a political function cannot establish an association. Each year, according to the Charter, managers need to declare in writing that they are not affiliated to any political party or association, and a member of the Board cannot apply or accept an appointed political position without advising the Board of his or her intention in writing, while he/she will also need to resign from the organisation.

The reasons for the refusal to register an association or an NGO are outlined in article 3 of the law of 1901, which states that “any association founded on or that has unlawful objectives, objectives contrary to the law, morality or which aims to interfere with the interests of national territory and the republican form of Government, is null and void”. The legislator did not define the content of what constitutes “morality”. In case of a dispute, only the judge can assess this matter. Although the law of 1901 and Decree No 2001-234 of 12 July 2001 do not make any mention how to appeal a decision of the refusal of registration, in practice, the applicants can lodge a complaint with the primary authority of the administration in charge of their registration (the Prefect or the Minister of the Interior). In case the applicants are still not satisfied with the answer from the primary authority, they can appeal to the Constitution Court for violation of their constitutionally guaranteed freedom of association, or to the Supreme Court, having jurisdiction in terms of administrative disputes, for arbitrary administrative decisions. An agent of the Cotonou Préfecture told us that such appeals were rare, as they often manage to convince applicants of the validity of the grounds used for the decision to refuse registration.

## **2.2. Trade unions**

Trade unions are regulated by law No 98-004 of 27 January 1998 regarding the Labour Code of the Republic of Benin. Trade unions can freely be constituted, but objectives or limited exclusively to the study and defence of the rights of, and the material and moral interests, both collective and individual, of the individuals and professions

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<sup>14</sup> The Charter on Civil Society is a consensus document developed by associations themselves within the framework of the Maison de la Société Civile's actions.

indicated in their articles of incorporation (articles 79 and 80). In order to get legal recognition, trade unions need to file their articles of associations together with the names, nationalities, professions, addresses and positions of the members in charge of the union's management or of their administration. One copy needs to be sent to the registry of the Court of First Instance, while two copies need to be sent to the Ministry of the Interior, two copies to the Ministry of Labour, and one copy to the local administrative authority. A receipt to the applying trade union is to be issued within one month of the declaration (article 83). In reality, no such receipt is issued, only a document stating that the documents were received by the administration. Law No 2015-18 on the General Statute of Civil Servants adds that all trade union organisations of public servants need to file, from the time of its establishment, its articles of association and a list of its managers to the authority supervising the public service agents who will be part of the trade union, and to the Minister in charge of Public Service or the relevant mayor (article 33). However, this requirement is not complied with as it is inconsistent with the ILO (International Labour Organisation) international conventions.

### **2.3. The media**

In Benin news companies (newspapers, radio and television channels) are established following the same process as for all other companies. Besides the formalities needed to establish a business, they must additionally comply with the conditions provided for by law No 2015-07 regarding the Information and Communication Code of the Republic of Benin before carrying out their activities. Article 182 of this law states that the publication of any newspaper and periodical is free, but need to be registered: a prior declaration and legal deposit is required.<sup>15</sup> This declaration is made through a document stamped and signed by the publishing manager, filed with the High Authority for Audio-visual Communication (HAAC), which notifies the Ministry of the Interior and the territorially relevant public prosecutor. It must include the following information: the object of the publication, the title of the publication and its frequency of publication, the place of publication, the surname, first names and address of the publishing manager and of the owner, the receipt of the registration rights, the list of paid staff members based on the provisions of the collective agreement of the press in Benin and the documents related to the trade and personal property credit register of the publishing company (articles 183 and 184). In addition, the manager of a

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<sup>15</sup> Obligation to submit copies of the publications to the High Authority of Audiovisual Communication.

newspaper or periodical must fulfil the following conditions: be at least 18 years old and enjoy full national and civil rights, never have been sentenced to a penalty involving loss of civil rights and imprisonment, be a professional journalist with at least 10 years' experience, hold a valid national press card, not bound by an elective mandate, or be a member of a constitutional or republican institution conferring immunity (article 186).

The establishment and operation of radio and television stations is also subject to a prior authorisation issued by HAAC, which grants it by convention signed by the promotor, after a selection based on criteria within the framework of a call for tender proposals (articles 207, 213 and following). Applications for a frequency licence is to be addressed to HAAC, and must specify the type of audio-visual company the application is addressing (article 214), besides the following information: a complete and detailed list of resources that the applicant considers for its operation, the proof that at least one third of the share capital or of the equity securities belong to physical or moral persons from Benin, that these persons have, at the General Assembly, the number of votes corresponding to the proportion of shares they have, and that at least one third of management's members is made up of Benin nationals (article 218). The HAAC has a maximum of 90 days to communicate its decision of the allocation of frequencies (article 215). The promotor of written news organisations and radio or television broadcasting organisations cannot be a political party leader (article 228). A capital of at least 10 million CFA Francs (USD 17,000) is required in order to get an authorisation as a private commercial broadcasting organisation (article 233). No capital is required for non-commercial private radio and television broadcasting companies. For private commercial television organisations, the capital required amounts to 50 million CFA Francs in case of broadcasting is done terrestrially and to 100 million CFA Francs for those using cable or satellite (article 238 and followings).

The registration of all types of associations is only done once; they do not need to re-register. However, they have to notify the administration in charge of their registration of all changes made in their administration or management, as well as all amendments made to their articles of association and rules of procedure, within three months for associations, NGOs and trade unions, and 10 days for media outlets.<sup>16</sup>

As a partial conclusion, we can say that the dimension of formation of associations (CSOs or NGOs) clearly highlights the fact that challenges are numerous. First of all,

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<sup>16</sup> Cf. article 13 of Decree No 2001-234 of 12 July 2001, article 5 of Law 1901 and article 183 regarding the Information and Communication Code.

there is no operational CSO database providing a global vision of the number of CSOs registered in Benin, due to a lack of consolidation of the various existing registers. No state institution has reliable data on the number of associations legally established in Benin, although estimates mention several thousands. For example, the NGO directory published by UNDP in 2002 counted 1,155 NGOs.<sup>17</sup> This number is the most recent number that the research has found.

The same applies to trade unions. No database can provide an exact number. However, we can say that there are nine trade union umbrella organisations, namely:

- UNSTB: Union Nationale Syndicale des Travailleurs du Bénin
- CGTB: Confédération Générale des Travailleurs du Bénin
- CSTB: Confédération des Syndicats des Travailleurs du Bénin
- COSI: Confédération des Organisation Syndicales Indépendantes du Bénin
- CSUB: Centrale des Syndicats Unis du Bénin
- CSA-Bénin: Centrale des Syndicats Autonomes du Bénin
- UNSTB-FO: Union Nationale Syndicale des Travailleurs du Bénin/ Force Ouvrière
- CSPIB: Centrale des Syndicats du Privé et de l'Informel du Bénin
- CSEB: Confédération des Syndicats Engagés du Bénin

Regarding the media, 85 daily newspapers existed legally as of 7 May 2015<sup>18</sup>, 13 private commercial radio stations were operating, 5 religious radio stations, 31 community radio stations, 5 local rural radio stations, 5 private commercial television channels and 3 television channels using the MMDS package (Multichannel Multipoint Distribution Service).<sup>19</sup>

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<sup>17</sup> Electronic NGOs directory, UNDP, 2002

<sup>18</sup> Cf. HAAC decision of May 2015 on the publishing of newspapers and periodicals with legal existence in Benin.

<sup>19</sup> Friedrich Ebert Stiftung, Baromètre des médias en Afrique Bénin 2014, p.6.

## **II. Operation of associations, CSOs, and NGOs**

The legal and other documents currently regulating CSO operation in Benin are mainly Decree No 2001-234 of 12 July 2001 setting up the conditions of existence and operation of non-governmental organisations and their umbrella organisations, Law 1901 on the freedom of association, the Charter on Civil Society Organisations in Benin of 11 February 2009, article 25 of the Constitution of Benin of 11 December 1990 and the National Charter on Environmental Governance in Benin, adopted by Decree No 2004-273 of 12 May 2004.

CSOs in Benin can meet freely. However, marches and other gatherings on public roads are subject to compliance with regulatory provisions in force. In a nutshell, CSOs as non-partisan and not-for-profit entities do not need to notify public authorities when they wish to meet privately. However, prior declaration to the competent authorities, often the mayor, is required for public open meetings, such as large meetings with attendance of other individuals who are not members of the CSO.

CSOs which received or are receiving public funds are required to submit an activity and financial progress report to the relevant Ministry under which their activities fall. CSOs who have obtained a specific agreement from the government for a specific sector of activities, are required to submit financial and activity reports in order to renew the agreement. These can be CSOs of public interest.<sup>20</sup> Other CSOs are not subject to these requirements.

CSOs can work in synergy and produce an alternative watchdog report, with the introduction of recommendations for improvement. This type of practice – the production of an (alternative) report on the implementation of human rights - has already been established. The broadening of this practice to other sectors could assist the Government to review its policies and practices, especially in areas where there are shortcomings. This can be done every six months, or once a year.

Traditionally, within the implementation framework of some programmes where CSOs benefitted from government funding or or funding from technical and financial partners, CSOs can be audited. This can include ongoing audits or ex-post audits.

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<sup>20</sup> “To be considered of public interest, an NGO shall, save for special exemption granted by the Council of Ministers, fulfil the following requirements: being in regular operation as a registered organisation for a period of at least three years; pursue a public interest mission; benefit from a nationwide reputation; having established the necessary structures for efficient action and transparent management of its assets; justify of assets including securities for a minimum amount of one million (1,000,000) CFA francs. The content of the application to submit is established by joint decree from the Minister in charge of Civil Society and the Minister of the Interior.”

Government inspections or audits can take place on a yearly basis when they benefit from the government funding.

CSOs are not required to make their information public, but they often publish progress reports on a regular basis in order to get better exposure. They often also publish job offers within the framework of the implementation of their various projects. Procedural delays are often abnormally long, and sometimes, the constituent is subject to acts of corruption. According to the research conducted by the Maison de la Société Civile au Bénin (2013), most CSOs have at least one office (94,7%), one computer (86.7%) and over half of them have a printer (68.1%), over 4 out of 10 (45.2%) own a motorbike and a quarter (25.5%) have a photocopier.<sup>21</sup> CSO's might not have enough resources to rent offices.

A CSO wishing to receive funding from technical and financial partners often has to align its activities with the priorities of these donors, which might or might not be in line with the Government's priorities as defined in their national development plans and the Poverty Reduction Growth Strategy (PRGS). CSOs activities usually follow these priorities (PRGS<sup>22</sup> or the Sustainable Development Goals).

Article 27 of the Decree of 12 July 2001 states that the dissolution of any NGO or NGO umbrella organisation can only happen in compliance with the provisions of its articles of association. However, when it is established that the NGO or the umbrella organisation pursues illegal goals or objectives or takes part in activities contrary to its articles of association, it can be dissolved through a court order. Furthermore, should the members of the CSO realise that they no longer share the same vision for the association or that the mission for which the CSO was established has been fulfilled, they can decide to dissolve the association voluntarily. This dissolution is only valid when the decision is taken by a three-quarter (3/4) majority of members present, or 2/3 according to articles of association. In case of voluntary dissolution, the assets – after settling the liabilities - of the organisation are granted to a social project selected by the General Assembly. A CSO can also decide to merge with another CSO sharing similar goals and objectives.

The level of government oversight on CSOs is very low. However, the Decree of July 2001 provides for sanctions in case of non-observance of the rules regulating CSOs. Articles 22 and following of the said Decree allow for sanctions. The agency in charge of

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<sup>21</sup> Maison de la Société Civile (2013). l'Indice rapide de la Société Civile au Bénin. See:

<http://www.civicus.org/images/stories/Benin%20CSI-RA%20edited%20by%20CIVICUS%20final.pdf>

<sup>22</sup> Poverty Reduction Growth Strategy (PRGS)

CSO oversight is no exception in terms of what generally characterises administration in Benin (precariousness, meagre resources, low capacity of staff). However, it could be argued that formalisation does take some time. Our field research showed that the public servants in charge of registration do not have the necessary tools to do so and until now, the registration process remains a manual process in most of the relevant institutions. This also explains the lack of reliable statistics.

There are not known cases of suspensions or dissolution of CSOs. However, article 24 of the Decree of 12 July 2001 states that *“any NGO or any NGO umbrella organisation, as a legal person, may receive a warning or suspension. These sanctions are taken by the Minister in charge of Civil Society, after advice from the ad hoc disciplinary council provided for in article 25 when: serious irregularities are observed in projects’ or programmes’ operation or management, the activities of the NGO or of the NGOs umbrella organisation do not longer correspond to the missions and objectives defined in its articles of association, or are considered illegal based on the laws in force in the Republic of Benin.”* Legal reasons were used, for example in the **“ICC services<sup>23</sup>”** case which operated in the financial sector, outside its mission and objectives. There are non-legal reasons which, in practice, are used by the Government to close or prohibit a CSO, for political reasons for example. These dissolutions and prohibitions are usually illegal, but the administrative authorities in charge of the matter always use a supposedly valid or legitimate reason, even if it is sometimes a reason left at the discretion of the authorities. There are no known cases of CSO harassment on behalf of the state.

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<sup>23</sup> All our attempts to get the definition of the ICC Service name were unsuccessful. No structure knows the definition of the acronym.

### **III. Access to resources for CSOs**

It would be expected that CSOs own funds from membership subscription and that this makes up a large part of their resources. This is not the case. Most frequently CSOs resort to funding from foreign donors. National public or government funding is almost non-existent.

Quite often, the real barrier to substantial funding of CSOs is the lack of information. In order to get funding from a technical and financial partner (TFP), CSOs have to be declared (registered), its incorporation published in the Official Gazette and to be in existence for a certain number of years, and produce annual progress reports and financial reports. The CSO must also certify that it is regularly audited. These are the minimum requirements often requested by financial and technical partners, but very few CSOs are capable of complying with these requirements. Specifically, certified financial statements by a chartered accountant are challenging, seen the cost related to audits.

The law of 1901 and its implementing provisions prohibit CSOs to share the profits from their activities between their members. Within the framework of their activities, CSOs can recruit staff (managers, executives and others). To this effect, they are subject to the Labour Code and all laws regulating the labour sector. In addition, within the framework of financial management of their activities, they are subject to laws on financial management and accountancy.

Article 9 of Law 1901 refers to the statutory provisions of the CSO for the disbursement of the CSO's assets in case of dissolution. In their articles of association, most CSOs state that in case of voluntary dissolution or a dissolution through judicial ruling, the assets of the organisation must be allocated to another organisation pursuing similar goals, a decision made by the General Assembly. In practice, the beneficiary of the allocation of the CSO's remaining assets in case of dissolution is often stipulated in the articles of association or in the rules of procedure of the CSOs. For example, the following is mentioned in the articles of association: "in case of dissolution, liquidation will be conducted by the executive team at the time of the dissolution, based on the guidelines provided by the General Assembly, and the association's assets shall be allocated to an NGO of its choice operating in the same sector" or "in case of dissolution, the organisation's assets shall be granted to a social project selected by the General Assembly, after settlement of contingent liabilities of the organisation."

The draft law on the reforms of law 1901 regarding freedom of association, assembly and expression, currently under study at the Supreme Court, could facilitate the access to funding of CSOs. The aim is to develop a framework-law on the freedom of association, assembly and expression, with a high degree of national consensus, in compliance with the relevant international and regional standards. This draft law would include mechanisms allowing public authorities to fund associations, to organise CSOs in thematic panels and support their activities. Some provisions of this draft law mandate the state to develop a database in order to monitor CSOs activities in order to fund them efficiently and in a relevant manner.

The draft law on freedom of association, if enacted, would lead to the strengthening of the public funding of associations, as it provides for a wide range of mechanisms through which the state can financially support associations, especially article 59 which states that the grant allocated by the state and its subdivisions, or by local authorities, can be:

- a contribution in kind (provision of equipment, offices, public servants);
- a contribution to the association's expenditures and operating costs;
- an investment assistance for the purchase of hardware, equipment, assistance in the conduct of research work, on the condition that the investment takes place in a geographical area or a specific sector, to which development it will contribute;
- financial support for a project or action;
- a call for proposals initiated by a local authority, where the association can make a project proposal, followed by a selection by the local authority, taken into account the alignment with its goals. In this case, a budget can be allocated to the association in order to execute its project.

Certain non-legal barriers limit the access of CSOs to the various sources of funding, namely:

- The complete absence of a national database on national and international sources of funding.
- Difficulties regarding the access to the internet, which is the main source of information for funding opportunities.
- Failure to mobilise sources of funding sources at the national level.
- Lack of professional expertise, of staff qualified in project management.
- Lack of a structure for the capacity development of management of CSOs.

The legal access to authorised funds is assessed as reliable. The terms and conditions related to these funds vary: CSO's can take part in calls for proposal, or can send spontaneous project proposals to donors involved in its activity sector.

The sustainability and stability of CSO's financial resources is not dependent on public authorities. It depends rather on the capacity of the CSO to adequately manage the funds received from financial partners. When it concerns public funds, CSOs must comply with the terms of reference in order to remain considered for the financial support.

The legal and policy framework offers a favourable context for local resource mobilisation. Some supporting institutions exist, both at state level and non-state level, such as Maison de la Société Civile (House of Civil Society), which plays the role of a CSO observatory. Additionally, there is a CSO charter, a decree and draft law (above-mentioned). All these measures contribute to a context favourable to local resource mobilisation. However, the mobilisation of these funds often depends on the political situation (stability or instability). The context is often more flexible and enabling with regard to international organisations and institutions.

Public funds, national or international donor funds finance all CSO activity sectors. However, financial support is directed to specific sectors or themes which the donor considers as a priority. However, very few donors fund costs related to the administrative operation of CSOs, which contributes to the fragility of CSOs. CSOs often are constrained to maximise other expenditures in order to pay core costs such as office rental, office equipment and administration.

CSOs mainly depend on foreign resources to fund their activities, most often technical and financial partners (TFPs), and membership fees, although quite rare in this context. The most reliable source of funding remains international resources or funds coming from foreign organisations established in Benin or outside the country. No changes were observed in terms of funding at the national level.

### **1. Public funding**

CSOs have access to public funding but such funds are rare and allocated selectively. Not all CSOs can access these funds. It is often public interest CSOs that are the beneficiaries of this type of funding. In the absence of financial resources, CSOs cannot implement the necessary activities to reach their objectives, and therefore do not fulfil

the required conditions. The model of allocation of public funds is not democratic and transparent.

Public funding occurs at the central and the local level. There is no contractual funding by public authorities, the funds take the form of grants and donations, depending on the goals set by public authorities. Some funds are dedicated to the arts and culture sector (music, theatre, etc.) within the Ministry of Culture: the Fonds d'Aide à la Culture (F.A.C., the Fund for Support to Culture).

Other specific funds that exist solely concern sectors covered by CSOs involved in the microfinance sector. No public funding is dedicated to CSOs dedicated to human rights, good governance, health, education, etc. The public funding of initiatives often remains very discrete and unknown by the vast majority of CSOs as the selection and allocation is not very transparent.

Currently there is no law, regulation or public policy regulating or facilitating the public funding of CSOs. However, there are no legal barriers. The only barrier is the lack of political will to support CSOs. As previously mentioned, a legal framework facilitating the access to public funds is currently being developed.

Most CSOs interviewed had never submitted a request to acquire public funding. When funding is available, CSOs are often unaware of it; only CSOs supporting public authorities are assessed to benefit from it. There is no transparency or fairness in the allocation of public funds. CSOs benefit more from grants issued by foreign organisations through calls for proposal than state's public grants.

## **2. International funding**

There are no specific conditions or requirements to access local and international funding. Each donor sets its own terms and conditions for funding.

In Benin, there are no legal provisions that prohibit CSOs from receiving foreign funds. It is not compulsory to notify the public authorities in case of receiving foreign funds. There is no public control on obtaining foreign funding, unless associated with money laundering and terrorism financing.

No bilateral or multilateral agreement impacts on the capacity of foreign donors to fund or set up partnerships with CSOs. However, there seems to be an agreement between the United Nations Development Programme (UNDP) and public authorities, specifying that UNDP's funding dedicated to CSOs have to transit through the ministry in charge of the type of sector of the CSO benefiting from UNDP funding. This information stems

from CSOs that have received grants from UNDP. Attempts to get an official document confirming the above have been in vain. This agreement requires the UNDP to only fund priority sectors previously defined in the Country Programme. A similar agreement was also concluded with the European Union, the European Development Fund (EDF).

The general state of governance and of the rule of law in the country impacts the funding of CSOs by donors. In a democratic system characterised by political stability and the rule of law, and where corruption is low, CSOs could have sufficient funding from technical and financial partners (TFPs). Corruption and bad governance, especially specific and recent cases highlighted in the news, impact to a lesser extent on the funding by donors. Some financial scandals led to the departure of some international organisations from Benin. The most recent scandal relates to the misappropriation of several billions CFA (several millions USD) in the framework of the Water Supply and Sanitation Pluriannual Project (PPEA II), funded by the official cooperation of the Netherlands in Benin. Legal proceedings are currently underway, but this situation led the Netherlands to suspend their cooperation with Benin.<sup>24</sup>

### **3. Philanthropy**

From our desktop research, we did not find any law regulating philanthropy in Benin. No tax deductions are available for those engaging in philanthropy.

CSOs are allowed to benefit from individual and private sector philanthropy, which is what CSOs usually classify as gifts. The legal framework does not stimulate philanthropy and no rules exist on the matter. Additionally, there is no philanthropic tradition in Benin.

CSOs regularly organise fundraising activities to raise funds from the public or private companies. An example is provided by one of the respondents, Urbain AMEGBEDJI, one of the persons in charge of FORS ELECTIONS 2011, a group called Front des Organisations de la Société Civile pour des Élections Libres, Transparentes et Pacifiques (FORS ELECTIONS; Front of Civil Society Organisations for Free, Transparent and Peaceful Elections). FORS ELECTIONS launched a public call as to use its funds to deploy election observers across the entire national territory. CSOs seldom use public call to obtain public or private funds. They do not have any experts

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<sup>24</sup> La Nouvelle Tribune (10 July 2015). *Scandale de 3 milliards au Ppea II : les Pays-Bas rappellent leurs exigences au Bénin*. Accessed via : <http://www.lanouvelletribune.info/benin/24578-gestion-du-scandale-de-3-milliards-au-ppea-ii-les-pays-bas-rappellent-leurs-exigences-au-benin>

in partnership policy or resource mobilisation. However, there are well intentioned individuals making donations to CSOs, even though this is rare, according to the interviewed CSO representatives. Among these donors are private companies, but they seldom make donations on demand, seen that private companies, for the most part, establish their own foundations in order to implement projects and activities. Furthermore, seen the lack of incentives to make donations to CSOs, private companies do not give often.

## **IV. Freedom of expression**

### **1. Guarantee of freedom of expression**

Law No 90-32 of 11 December 1990 on the Constitution of the Republic of Benin formally enshrines freedom of expression and freedom of the press in its articles 23 and 24 respectively. Article 23 states that “*every person has the right to freedom of thought, of conscience, of religion, of creed, of opinion and of expression with respect for the public order established by laws and regulations...*”.

Article 24 states that “*freedom of the press shall be recognised and guaranteed by the State. It shall be protected by the High Authority for Audio-Visual and Communications under the conditions fixed by an organic law*”. The High Authority for Audio-Visual and Communication (HAAC) is one of the 7 republican institutions provided for by the Constitution of Benin and was regulated by Organic Law No 92-021 of 21 August 1992. This law reaffirms the right to freedom of expression in its article 1, which provides that “*audio-visual communication is free. Everyone has a right to information. No-one can be prevented or have their access to information sources prohibited, or be attacked in any way whatsoever in the regular performance of its mission as communicator if he or she complies with the provisions of this law.*”

Freedom of expression in Benin is also guaranteed in Law No 2015-07 of 20 March 2015 regarding the Information and Communication Code in the Republic of Benin, Article 6 of this Code states that: “*freedom to speak and to write, to print and to publish, to read and to receive information, ideas, thoughts and opinions of his or her own choice is guaranteed in the Republic of Benin*”. In addition, the Code also provides for a monthly timeslot to be allocated to civil society in particular, on radio and on television, in any language spoken in the country, and for the HAAC to ensure fair access to public service media (article 122). Additionally, the Code also acknowledges online multimedia publications (article 252).

At the international level, Benin has ratified a number of treaties related to freedom of expression, in particular:

- The International Covenant on Civil and Political Rights (ICCPR) which guarantees, as does the Universal Declaration of Human Rights, in its article 19, the freedom of opinion and expression for all individuals. This includes the right not to be discriminated against for one’s opinions and the right to seek, to

receive and to disseminate information and ideas, without any constraints, through any means of expression;

- The African Charter on Human and People’s Rights, integrated in the Preamble of the Constitution of Benin, states in its article 9 that “every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law”;
- The Convention on the Rights of the Child, which states that the children have the right to express their point of view, to obtain information and to communicate ideas and information, regardless frontiers (article 13);
- The African Charter on the Rights and Welfare of the Child also states that every child capable of communicating has the right to express feely his or her opinions in all areas and to communicate his or her opinions, subject to restrictions provided by the law (article 7);
- Article 27 (8) of the African Charter on Democracy, Elections and Governance states that “In order to promote political, economic and social governance, State Parties commit to: [ ] promote freedom of expression, in particular freedom of the press and professionalism in the media”;
- The Economic Community of West African States (ECOWAS) Protocol A/SP1/12/01 on Democracy and Good Governance, which includes the guarantee of the freedom of press among the common constitutional principles shared by ECOWAS member states (article 1).

## **2. Limitations to the freedom of expression**

The legislator, by enshrining freedom of expression in article 23 of the Constitution of 1990, included in the same article, a fundamental limitation to this freedom, namely “respect for the public order”, without further content, therefore leaving the door open to subjective interpretation by authorities, as will be shown below in this report.

The Organic Law on HAAC has also integrated this notion of public order by outlining situations in which the exercise of the rights and freedoms related to information, communication, expression and press can be limited, namely; “(...) *respect for the dignity of the human person, for freedom and the property of others, for the pluralist nature of the expression of thoughts and opinions; for the preservation of public order, of national unity and of territorial integrity; for public health and for the environment; for the preservation of childhood and adolescence; for the preservation of cultural identity,*

*national defence needs, public service needs, technical constraints associated with means of communication, as well as for the need to protect, promote and develop the national cultural heritage or a national industry, especially the audio-visual production industry” (article 3).*

Several people interviewed for this study consider that this discretionary power of HAAC to regulate the exercise of freedom of expression of media players, a prerogative allowing them to take circumstantial and preventive measures to avoid excesses from the press, is used in a subjective manner. According to them, the reason of the “preservation of public order and national unity” - often mentioned by the HAAC - is rather used as an excuse to prevent journalists from openly criticising the Government. This was the case of Statement No 004-14/HAAC/PT/DC/SP-C dated 29 October 2014 of the HAAC, which forbade any publication or broadcasting of statements by the members of COS-LEPI (Comité d’Orientation et de Supervision de la Liste Electorale Permanente Informatisée; Committee for the Orientation and the Supervision of the Permanent Electoral List) and of all players who are considered as not tending to facilitate dialogue to support a successful resolution to the crisis.<sup>25</sup> This statement generated a wave of indignation and contestation, to the point that its author, HAAC President Adam Boni Tessi, had to annul and replace the Statement by Statement No 005-14/HAAC/PT/DC/SP-C of 4 November 2014, in which he apologised and clarified what he meant. It also specified that the first Statement was made in the spirit of a conservatory measure to establish the conditions for a dialogue between the different opposing actors, using the press as a medium.

A number of other HAAC decisions are also considered as partial and politically tainted, as the above-mentioned statement.<sup>26</sup> For example, in 2012, by Decision No 12-035/HAAC of 20 November 2012, the HAAC suspended two interactive programmes on the private television channel Canal 3 Benin, namely “Actu matin” and “A palabre”, following a complaint dated 19 September 2012 by the President of the Republic, and

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<sup>25</sup>See article « La HAAC porte atteinte à la liberté d’expression », in 24h au Bénin, daily newspaper distributed in Benin published on 30 October 2014). *La HAAC porte atteinte à la liberté d’expression*. Available at: <http://www.24haubenin.info/?Lepi-Les-intimidations-de-la-HAAC>, accessed on 29 January 2016.

<sup>26</sup>The appointment of the HAAC president by the President of the Republic makes it appear as if the first is a supporter of the second, and is considered by several analysts as weakening the independence of the HAAC. In fact, until April 2016, HAAC was considered as an institution operating under control of the Head of State since the HAAC has been fast to sanction media that criticises the Government, giving the basis of the non-respect of the balance of opinions and publications considered as disturbing the public order, although it does not sanction the media publishing the same sort of statements but coming from the Head of State himself or his supporters. This has led to the national public service television openly violating the principles of equal access and balance of opinions. See La Croix du Bénin (7 November 2014). *Les Béninois ont besoin d’une Haac qui rassure*. Available at: <http://lacroixdubenin.com/les-beninois-ont-besoin-dune-haac-qui-rassure-2/> and La Nouvelle Tribune (27 November 2012). *Sanction contre Canal3 : la preuve que le Chef de l’Etat a donné des injonctions à la Haac*. Available on: <http://www.lanouvelletribune.info/benin/12788-la-preuve-que-yayi-a-donne-des-injonctions-a-la-haac#!/ccomment-comment=97875>, accessed on 3 April 2016.

using the grounds of “disturbance of public order and risks of weakening national cohesion”. HAAC made the decision to suspend by giving the following reasons:

Article 1: “Discussion forums on the programme “Actu Matin” on Canal 3 Benin, in which all presenters followed the same line of, agreed with or expanded on the point of the commentator on political, social or economic topics, violated the Code of Ethics of the press in Benin in its article 8, especially the requirement for having balance in commentaries.”

Article 2: “The programme « A palabre » of Sunday 16 September 2012, violated the principle of the need for balance on the topic of dismissals related to the case of the “dry port of Tori””.

This decision was strongly criticised, in particular the arbitrary use of the notion of public order, and the fact that it rather often happens that some journalists do not share the commentator’s point of view, while an imbalance of commentaries often happen on the public channel, without HAAC taking similar measures.<sup>27</sup>

In December 2014, the President of the HAAC sent a letter of formal notice to the sponsor of the private television channel Canal 3, two weeks after it hosted a debate following demonstrations organised by political forces and civil society, on Wednesday 10 and Thursday 11 December 2014 respectively, in Cotonou and in Porto Novo. The HAAC found these demonstrations were treated unprofessionally by Canal 3 and that it allowed two of its guests to severely criticise the Head of State. The television channel was also blamed for other acts, in particular the broadcasting of the critical comments of a famous trade unionist, Laurent Métognon, against the Government<sup>28</sup> during a meeting it held on 8 December 2014, before the organisation of a demonstration. The HAAC President considered such comments were likely to lead to popular uprising.

By Decision No 15-045/HAAC of 3 November 2015, the daily newspaper “Le Matinal”, famous for opposing the ruling regime, was suspended by the HAAC. In this decision, the President of the HAAC as the only signatory of the decision, blamed this daily

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<sup>27</sup> See La Nouvelle Tribune (29 November 2012). *La Haac, ne peut sanctionner au motif du « Trouble à l'ordre public »* . <http://www.lanouvelletribune.info/reflexions/opinion/12822-la-haac-ne-peut-sanctionner-au-motif-du-trouble-a-l-ordre-public> and Media Foundation for West Africa (30 November 2012). *ALERTE Bénin: Le Président Yayi Boni fait suspendre deux programmes de télévision*. <http://www.mfwa.org/fr/alerte-benin-le-president-yayi-boni-fait-suspendre-deux-programmes-de-television>, accessed on 3 April 2016.

<sup>28</sup> These words were: “...Corruption at the highest level of the state, financial scandals, abuses against poor citizen, lies by the State to cover up poor governance, the sell-off of vital economic sectors to economic operators, the country’s debt incurred by Treasury bills and bonds... And this is what we will be left with tomorrow...”, see Jolome News (30 December 2014). *Mise en demeure à Canal 3: Cabale de la Haac contre la presse privée*. Available at: <http://bj.jolome.com/news/article/mise-en-demeure-a-canal3-cabale-de-la-haac-contre-la-presse-privee>, accessed on 3 April 2016.

newspaper for using, in its editions of Monday 26 and Tuesday 27 October 2015, vocabulary comprising offensive language against the Member of Parliament Claudine Prudencio and the President of the Republic, Boni Yayi.<sup>29</sup> This decision, taken in the context of elections, was seen as a political decision by several observers, even more so seen it was issued by President of the HAAC instead of the HAAC Council.

Freedom of expression in Benin is also regulated by the recent law No 2015-07 of 20 March 2015 establishing the Information and Communication Code in the Republic of Benin.<sup>30</sup> This law prohibits the following:

Article 13 : “defamatory statements, personal attacks or unfounded insinuations towards a citizen, a group of citizens, an association or a professional body; insulting or outrageous words towards a citizen, a group of citizens, an association or a professional body; defamation violating the honour of a person or of a celebrity; call for disruption to public order; publications contrary to decency and morals; the dissemination of obscene, indecent or pornographic images, photos, publications; the publication of false information; unauthorised publications compromising the general interest; the invasion of citizens’ privacy.”

Article 36 : “Any publication promoting regionalism, ethnocentrism, discrimination, hatred, xenophobia, violence and debauchery and any incitement to crimes or suicide or the apology of the crime.”

In terms of sanctions, this Code was an improvement as it cancelled prison sentences for crimes against persons (defamation, insults, insulting the Head of State, etc.), in compliance with the wish of media players. However, prison sentences are upheld in terms of incitement to crimes in the press<sup>31</sup> (article 264), punishable by a six months to three years imprisonment and/or a fine of one to ten million CFA Francs (between

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<sup>29</sup> In its edition of 27 October 2015, “Le Matinal” has written as a headline: «Cabinet decision on Patrice Talon : Yayi Boni in panic again; proof of a rogue state; of blatant conflagration». The daily continued, revealed by the HAAC’s internal communication: «Yayi Boni and consortes... expose rogue behaviour... ». In its edition the following day, the daily wrote : Last Cabinet meeting : Yayi guilty of perjury». See AfricaHotNews.com (6 November 2015). *Bénin. Menace sur la liberté de la presse : la Haac suspend le quotidien ‘Le Matinal’*. Available at <http://news.africahotnews.com/?idnews=801558&t=Menace-sur-la-liberte-de-la-presse-la-Haac-suspend-le-quotidien-Le-Matinal> and CEil d’Afrique (9th of November 2015). *Bénin: Yayi Boni fait suspendre un média privé*. Available at: <http://oeildafrique.com/benin-yayi-boni-fait-suspendre-un-media-prive/>, accessed on 3 April 2015.

<sup>30</sup> This law abrogated the various laws and regulations regulating the freedom of the press: Law 60-12 of 30 June 1960 on the freedom of press; Decree No 69-22/PR/MJL of 4 July 1969 on suppressing the spread of publications, dissemination and reproduction of false news; Law No 84-007 of 15 March 1984 on public posters; Law N° 97-010 of 20 August 1997 on the liberalisation the audio-visual space and special legal provisions on crimes related to the press and audio-visual communication in the Republic of Benin.

<sup>31</sup> Especially incitement to murder, assassination, pillage, fire, theft, deliberate destruction of buildings, housings, shops, dams, roads, bridges, public roads and, globally, all movable or immovable properties or incitement to one of the crimes against internal security of the State.

2,000 USD to 20,000 USD) and offences against the State<sup>32</sup> (article 266) punishable by a six months to three years imprisonment and/or a fine of 500 000 to two million CFA Francs (approximately between 1,000 USD to 4,000 USD).

Regarding offenses against persons, the Code does not only sanction defamation, but also the act of re-publishing or repeating of statements that could be considered defamatory. Defamation, insults and contempt are sanctioned by a fine ranging from 500 000 to 10 000 000 CFA Francs (850 USD to 18,000 USD) based on the physical and legal persons towards which these crimes are committed (Article 269 and following).

The crime of defamation to the President of the Republic (all defamatory allegations, both regarding his or her public or private life and of a nature to compromise his or her honour and dignity) is sanctioned by a fine ranging from one to ten million CFA francs (from approximately 2,000 to 20,000 USD). The same fines apply in the case of public offences against the Heads of State, the Heads of Government and the Ministers of Foreign Affairs of foreign countries (article 277).

In addition to these main fines, the incriminated newspaper, periodical, radio, television or website can be suspended through the same court decision, for a duration not exceeding three months for newspapers or periodicals, and 15 days in the case of radio stations, television stations and website (article 318).

The HAAC can order a suspension of the publication until a final decision is made through a court decision or Decree (article 309). Fines and damages can be pursued on the company's assets (article 299).

Finally, the respondents considered that legal restrictions to freedom of expression were not a problem in se, but that the issue is the discretion left to authorities, seen that the latter often takes this opportunity to arbitrarily restrict the exercise of this freedom by CSOs.

### **3. Effectiveness of freedom of expression in Benin**

The majority of respondents consider that the above-mentioned legal texts adequately protect the freedom of expression, that it is sufficiently known and exercised by CSOs and individuals in Benin, despite some abuses. There are indeed several television or

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<sup>32</sup> The publication, dissemination or reproduction, by any mean whatsoever, of false news, made up or deceitful information supposedly from third parties, given in bad faith, disturbing the public order, or when it is of a nature to undermine the discipline and the morale of the armed forces.

radio opinion programmes, such as “Zone Franche” and “Arbre à palabre” on Canal 3 Bénin, or “Débats actuels” on Golfe Fm/TV, where opinions, including those critical of the government’s practices, are openly expressed by individuals, journalists and CSO leaders, who are often invited to the debates. Therefore, CSOs often use press conferences to publicly expose or criticise the Government.

Regarding the media, the press is independent and pluralist and often publishes very critical articles on authorities and the opposition, even though it is criticised for the poor quality of its publications. Publications are not subject to prior authorisation by the public authorities, but rather to the formality of a legal deposit. This is the obligation to deposit copies of publications to the HAAC and the Public Prosecutor’s Office of the competent court of first instance on the territory, before the publication occurs.<sup>33</sup> Deposits can be done 24 hours after publication at the latest if a copy was sent beforehand through electronic mail.

In addition, people can freely access the Internet in Benin. No specific legislation regulates internet access besides the Information and Communication Code, which requires every physical or legal person wishing to use the internet for audio-visual communication and written press services to submit an authorisation application to the HAAC (article 252). Blogs and general flows of information do not have to comply with this requirement. The application is once-off and must include the following documents:

- Surnames and first names or denomination of the physical or legal person using the online service;
- Specific indication of the location of the site and the location of the access and reception facilities;
- A solemn undertaking to comply with the terms of reference and with the provisions of this law;
- A police clearance report;
- An investigation on morals by HAAC (article 254).

The state does not block or filter internet content, maybe for lack of the means to do so. However, the state adopted an ICT (Information and Communication Technologies) Plan in 2006, entitled “Roadmap for the streamlining, the recovery and the revitalisation of the telecommunication and ICT sector in Benin”, stemming from the observation made by the public authorities in Benin that the environment for telecommunications and

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<sup>33</sup> Article 62 of the Information and Communication Code.

ICT's was affected by "a durable lack of organisation, combined with uncontrolled and complete opening, without any long term vision and in the absence of a Regulation Authority."<sup>34</sup>

#### **4. Practical barriers to freedom of expression in Benin**

The respondents of this study mentioned several material constraints limiting CSOs' capacity to openly express their opinions. The first one is associated with the poor financial capacity of CSOs, which limits them in their wish to publicly voice their opinions. Indeed, to be able to talk publicly, associations have to be capable of supporting the cost related to media coverage, which is usually not accessible to CSOs.

Then, there is "the tendency of the people of Benin to find a partisan political side to everything that is said, especially in case of interventions in political governance issues."<sup>35</sup> Political culture, while favourable to freedom of expression, does not yet tolerate the fact that CSOs take an interest in issues related to partisan politics. Public opinion tends to condemn CSOs that do so, which is why many refrain from giving their opinion to avoid such censorship or for fear of being labelled as siding with the opposition.

In addition, according to the participants in a focus group, alongside this censorship stemming from national public opinion, there are intimidations, threats, arbitrary arrests and physical violence against civil society actors, all of which are signs of the authoritarian drift of President Yayi Boni's regime, discouraging those that want to openly criticise the Government's practices.

In October 2012, fiscal blackmail related to an amount of 8 billion CFA forced the promotor of Canal 3 Bénin, a private television channel, to publicly declare its support for the actions of the Head of State, even though the channel previously always opposed this. Subsequently, we observed a sudden change in the editorial line of this channel, known for its very critical position towards the Government.<sup>36</sup>

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<sup>34</sup> Conseil des Investisseurs Privés au Bénin (CIPB), *L'internet au Bénin*, Cotonou, April 2008, p.13.

<sup>35</sup> Words from a respondent, Coordinator of a network of NGOs.

<sup>36</sup> Further details in La Nouvelle Tribune (8 October 2012). *Allégeance d'Issa Salifou au chef de l'Etat : les interrogations sur une étrange coïncidence*. Available at: <http://www.lanouvelletribune.info/benin/12383-allegeance-d-issa-salifou-au-chef-de-l-etat#!/ccomment-comment=261640> and Sonangon.net (10th of October 2012). *Suite à son ralliement au Chef de l'Etat : « Saley » accueilli comme un allié encombrant*. Available on: [http://www.sonangon.org/index.php?option=com\\_content&view=article&id=5059%3Asuite-a-son-ralliement-au-chef-de-letat-l-saley-r-accueilli-comme-un-allie-encombrant&Itemid=111](http://www.sonangon.org/index.php?option=com_content&view=article&id=5059%3Asuite-a-son-ralliement-au-chef-de-letat-l-saley-r-accueilli-comme-un-allie-encombrant&Itemid=111), accessed on the 3rd of April 2016.

In July 2013, in an official statement<sup>37</sup> on violations of public freedoms by the Yayi Boni Government, the Secretary Generals of the union confederations and unions exposed the threats to, intimidations and bashing of trade union leaders, particular the unauthorised encirclement by the public security forces of the labour exchange, disregarding the principles of openness, or the arrest of a trade union leader, Dieudonné LOKOSSOU, by the economic and financial brigade on grounds of an fictitious offence of not denouncing embezzlement.<sup>38</sup>

On the night of Monday 9 December 2013, while driving back home, Martin Assogba, President of the NGO Association de Lutte contre le Racisme, l’Ethnocentrisme et le Régionalisme (ALCRER; Association of the Fight Against Racism, Ethnocentrism and Regionalism), was the victim of a murder attempt.<sup>39</sup> ALCRER is a major civil society actor in the struggle for the promotion of transparency and accountability,

Regarding media organisations, there exists within some outlets the practice of self-censorship in order to ensure their economic survival, since they are indebted to the Government which awarded them “non-aggression agreements”.<sup>40</sup> These are lucrative advertising contracts compelling media outlets to only publish or broadcast positive news of the Government. For others, this self-censorship can be justified by the fear of a possible suspension of their newspaper, or out of fear for accusations of defamation.

While it is true that CSOs freely criticise Government’s practices in Benin, all the respondents agreed on the fact that such criticisms are not tolerated by the politico-administrative authorities. The respondents consider that the authorities, at least those in place until January 2006, did not like being contradicted, and as one of the respondents said: “people do not like the truth in this country”.<sup>41</sup>

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<sup>37</sup> Introductory statement by the Secretary Generals of the trade union organisations and confederations (Cstb, Csa-Bénin, Cgtb, Cosi-Bénin and Cspib), presented at a press conference on the 5th of August 2013 at the Cotonou Labour Exchange. Also see the statement by trade-unionist Gaston Azoua, spokesperson of the Front pour la Défense de la Démocratie (FDD), a group gathering several opposition political parties and civil society organisations, which lunched a campaign to protect public freedoms in Benin. See <http://illassa-benoit.over-blog.com/article-une-campagne-pour-la-preservation-des-libertes-publiques-initiee-au-benin-60035671.html>.

<sup>38</sup> In May 2013, Mr. Dieudonné LOKOSSOU, known for his harsh criticism of the Government, was the object of a defamatory media campaign initiated by the Government following a Council of Ministers report in which the trade-unionist was accused of non-denunciation of wrongdoings by the Executive Director of the Société Nationale de Commercialisation des Produits Pétroliers (SONACOP) while he was the Secretary General of this company’s trade union. The Economic and Financial Brigade did not find any grounds for accusation against him. See *Fraternité* (3rd of June 2013). *Indignés par la qualité de la gouvernance et les menaces sur les libertés : les nouvelles exigences des centrales syndicales*. Available on: <http://fraternitebj.info/societe/article/indignes-par-la-qualite-de-la>, accessed on the 3rd of April 2016.

<sup>39</sup> See article « Insécurité au Bénin : Le président de l’Ong Alcrer, Martin Assogba criblé de balles », in *Fraternité* of the 10th of December 2013, accessed online. [www.fraternitebj.info/societe/article/insecurite-au-benin-le-president](http://www.fraternitebj.info/societe/article/insecurite-au-benin-le-president).

<sup>40</sup> Friedrich-Ebert-Stiftung Foundation, African Media Barometer-Bénin 2014, p.12.

<sup>41</sup> President of the ALCRER NGO.

“Critical point of views and denunciations made by CSOs are not well viewed by the leaders as they think that, in criticising their governance, CSOs (other than the media) go beyond their mission which, according to them, should be limited to social issues”, said Gérard Saisonou, President of the Observatoire Béninois pour des Elections Transparentes (Benin Observatory for Transparent Elections). The respondent added that these CSOs have to examine political governance issues even if they did not want to since political opposition is unfortunately not active in Benin.

This intolerance of public authorities towards critical voices, which entice them to retaliate against the authors of such voices, leads to the fact that fear is always present for everyone when it comes to fully exercising this right. According to the respondents, this fear greatly increased since the administration of President Yayi Boni, with massive breaches of freedom of expression<sup>42</sup> that came progressively, as the following facts testify to.

Following the call on national television he made to Yayi Boni, the Head of State, on 12 January 2015, in favour of more freedom of expression, Ozias Sounouvou, a journalist and formerly considered as the sounding board of the Presidency since the election of Boni, reported receiving anonymous threats, calls and messages. He was suspended from presenting the television news, as was Prévert Noutéhou, his colleague, who had defended his actions on Radio France International.<sup>43</sup>

In March 2013, President Boni Yayi laid a complaint with HAAC against the daily newspaper La Nouvelle Tribune, which reproduced the information published by a French journal, “*La Lettre du Continent*”, regarding the phone tapping of members of Government, politicians, journalists and economic operators. The complaint accused this journal for publishing biased articles aimed at tarnishing the image of the President of the Republic and undermining the credibility of the Republic of Benin.<sup>44</sup>

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<sup>42</sup> For more information on these massive violations of freedom of expression, see the following articles: Francis Kpatiné (14 November 2012). *Une démocratie qui part en vrille*. Courrier International. Available at: <http://www.courrierinternational.com/article/2012/11/15/une-democratie-qui-part-en-vrille>, accessed on 3 April 2016 ; Marcel Zoumènou (3 March 2013). *La liberté de la presse en pleine dégringolade*. La Nouvelle Tribune. Available at: <http://www.courrierinternational.com/article/2013/05/03/la-liberte-de-la-presse-en-pleine-degringolade>, accessed on 3 April 2016; Nicolas SAUVAIN – HOVNANIAN (19 December 2013). *Bénin : crise de complotite aiguë à Cotonou, les dérivés de l'élève modèle d'Afrique de l'Ouest*. Classe Internationale. Available at <https://classe-internationale.com/2013/12/19/benin-crise-de-complotite-aigue-a-cotonou-les-derives-de-leleve-modele-dafrique-de-louest/>, accessed on 3 April 2016.

<sup>43</sup> More details in La Nouvelle Tribune (1 May 2015). *Ozias Sounouvou : des reportages de l'ORTB sont montés à la présidence*. Available at: <http://www.lanouvelletribune.info/benin/23764-revelations-d-ozias-sounouvou-des-reportages-sont-montes-a-la-presidence>, accessed on 3 April 2016.

<sup>44</sup> In its edition No 654 of 6 March 2013, *La lettre du Continent* published an article entitled « *Boni Yayi bascule dans un Etat paranoïaque* », reporting some restrictive security measures taken by President Boni Yayi, in particular phone tapping. Without attacking the French paper, the Head of State requested in his complaint that La Nouvelle Tribune is required to provide proof to support their claims. See La Nouvelle Tribune (16 April 2013). *Menace sur la liberté d'expression au Bénin Boni Yayi aux troussees de la Nouvelle Tribune*. Available at:

In August 2015, the director of the daily newspaper L'Enquêteur, Boris Tougan, was arrested on charges of attacks against the security of the State after publishing an article in which he stated that the participation of Benin in the regional force fighting the armed group Boko Haram, only aimed at allowing the Benin President to stay in power. He was detained without charges for 5 days, and then released without conditions.<sup>45</sup>

On the 24 January 2016, Elvis DAGBA, a pastor and a publicly well-known religious figure, escaped an abduction attempt at his home. Dagba made an unflattering picture of the governance under President Yayi Boni and affirmed his support for the alternative candidate Patrice Talon, in the Africa programme of Golfe TV on the February 2016 elections.

In an interview given to Le Matinal, a private newspaper, he said the following: "since this particular programme to this day, threats have come from everywhere"<sup>46</sup>. The programme took place on Friday 22 January 2016. In a similar vein, the television channel was also victim of threats for broadcasting the words of the pastor and those of the previous President Nicéphore SOGLO, campaigning against the candidature of Lionel ZINSOU (the candidate supported by the Head of State).

## **V. Peaceful assembly**

Freedom of demonstration and of assembly is guaranteed by the Constitution of Benin in its article 25, which states that "the state shall recognise and guarantee, under conditions fixed by law, the freedom to go and come, the freedom of association, of assembly, of procession and of demonstration". The freedom of assembly is further regulated in various laws and regulations, namely:

- The Law of 30 June 1881 on public meetings, a French law inherited from the colonisation era, which remains in force in Benin. The exercise of public assemblies is placed under a requirement of prior declaration and not of

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<http://www.lanouvelletribune.info/benin/14209-boni-yayi-aux-trousses-de-la-nouvelle-tribune>, accessed on 3 April 2016.

<sup>45</sup> Amnesty International (2016). *Rapport 2015/16 sur la situation des droits humains dans le monde*, P. 112. Also see La Nouvelle Tribune (14th of August 2015). *Dernière heure : le journaliste Boris Tougan arrêté*. Available on:

<http://www.lanouvelletribune.info/benin/politique/25038-derniere-heure-le-journaliste-boris-tougan-arrete-et-Afriki-Press> (17th of August 2015). *Bénin : le journaliste Boris Tougan libéré après 4 jours de garde à vue*. Available on: <http://www.afrikipresse.fr/societe/benin-le-journaliste-boris-tougan-libere-apres-4-jours-de-garde-a-vue>, Accessed on the 3rd of April 2016.

<sup>46</sup> See article: Le Matinal (26 January 2016). *Après sa déclaration de soutien à Talon le pasteur Elvis Dagba échappe à un enlèvement*. N°4756, p.2. Also see Media Foundation for West Africa (30 January 2016). *Bénin : Un Religieux Recherché pour avoir Soutenu un Candidat de l'opposition*. Available at: <http://www.mfwa.org/fr/benin-un-religieux-recherche-pour-avoir-soutenu-un-candidat-de-lopposition/>, accessed on 3 April 2016.

authorisation. The first article states that public assemblies are free and can take place without prior authorisation. However, any public meeting must be declared, stipulating its location, date and time. The declaration requires the signature of at least two persons, including one person residing in the municipality where the meeting is to be held.

The persons signing the declaration must enjoy their civic and political rights, and the declaration must include their names, qualifications and residencies (article 2). The declaration is addressed to the mayor of the municipality or to the departmental prefect on the territory where the assembly will take place. The meeting can only take place following a period of at least 24 hours after the declaration (article 2 in fine). This period is reduced to 2 hours for planned public electoral meetings, when these are held in the period between the decree, or order regarding the convening of the electoral college and the day of the election. Public assemblies cannot be held on public roads, nor can they take place after 11 PM, unless they occur in places where public establishments close later. In that case, the meetings can last until the time established for the closure of these establishments (article 6).

- Law No 2001-09 of 21 June 2002 on the exercise of the right to strike. This law gives all workers the right to defend, under the conditions provided by the law, their rights or interests, be it individually, collectively, or by union action (article 1). Disputes are to be the object of prior negotiations (article 5) and a prior strike notice is compulsory, specifying the reasons for the strike, the location, date and time of the start and the duration of the intended strike. If it concerns a renewable strike, the notice must mention it (articles 7 and 8). The notice must be received by the hierarchical authority or the management of the establishment or organisation, as well as by the Minister in charge of the Civil Service or the Minister of Labour at least three working days before the strike starts. However, when the aim of the strike is to respond to a serious infringement on the rights of the worker by a manager, this period is deduced to 24 (twenty-four) hours (article 9).
- In the private sector, provisions regarding the settlement of labour disputes is provided by the Labour Code (article 12). The Labour Code states that the strike can only be initiated in case of a failure of negotiations before the labour

inspector or manager, and that it does not lead to contract termination, save in case of gross misconduct by the employee.<sup>47</sup>

- Law No 2013-06 of 25 November 2013 on the Electoral Code in the Republic of Benin provides that election meetings are free, but cannot be held on public roads and are prohibited between 11 PM and 7 AM. In addition, a written declaration should be given to the local authority at least 4 hours before any public assembly (article 57). Each meeting must have a bureau including at least 3 members, in charge of ensuring order, preventing offences and speeches contrary to the public order and morals. These members are also held responsible in case of noncompliance with the requirements of the law (article 58). They are not public servants but members of the association.
- Law No 2001-21 of 21 February 2003 on the Charter of Political Parties in the Republic of Benin. Article 13 states that public meetings, irrespective of their objective, can be held without prior declaration, and that only processions, marches, gatherings of people and, more globally, all demonstrations on public roads are subject to the mandatory prior declaration. This article adds that the declaration for any given public event shall be submitted at least three working days and fifteen working days at the most, before the date of the gathering. The authority needs to issue a receipt after receiving the declaration. This receipt is issued for any demonstration considered as falling within the framework of political activities. Planned demonstrations can be prohibited through a motivated order when it is considered that the demonstration is likely to disturb the public order. The declaration's signatories are immediately notified of the motivated order. Decisions to prohibit a demonstration can be appealed before an administrative judge for immediate urgent matters.

Decree No 2005-377 of 23 June 2005 on the Regulation of the Maintenance of Public Order, defines the conditions under which demonstrations can be dispersed, namely:

- Article 23: "The use of force to disperse gatherings shall be preceded by two warnings from the responsible civil authority in charge or its representative, who can be identified by his or her uniform, official sash or any other visible badge of office."
- Article 24: "Warnings are made using a loudspeaker or a megaphone, in French and in the language supposedly understood by the majority of people present

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<sup>47</sup> Article 264 of the Labour Code in the Republic of Benin.

and receiving the order to immediately disperse, and are warned that force will be used. As far as possible, each warning is preceded by a bugle or trumpet call.”

- Article 25: “Force can be used without prior warnings when serious violence is exercised by demonstrators towards law enforcement or security forces.”

Regarding international standards, Benin signed all the main international conventions guaranteeing freedom of assembly, namely:

- The International Covenant on Civil and Political Rights (ICCPR), article 21: “the right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others”;
- The Convention on the Rights of the Child, article 15: “State Parties recognise the rights of the child to the freedom of association and to the freedom of peaceful assembly”;
- The African Charter on Human and People’s Rights, article 11: “every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others”;
- The African Charter on the Rights and Welfare of the Child, article 8: “every child has the right to free association and freedom of peaceful assembly, in conformity with the law”;
- The Economic Community of West African States (ECOWAS) Protocol A/SP1/12/01 on Democracy and Good Governance, article 1(j): “the freedom of association and the right to meet and organise peaceful demonstrations shall also be guaranteed”.

Usually, the freedom of assembly and demonstration is respected in Benin. Strikes are authorised both in the public and in the private sector, and demonstrations, marches, meetings, even those critical of the Government’s policy, are organised.

However, while under the rule of General Mathieu KEREKOU, the previous President of the Republic (following the democratic renewal from 1996 to 2006), administrative and police barriers to the holding of meetings could sometimes be witnessed, and with the

arrival of President Yayi Boni in 2006, such barriers became increasingly frequent and worrisome. Based on reasons that are not always transparent, the prefects - the state's representatives the departmental level, and the supervisory authority of the mayors at the level of municipalities - refuse permission for the holding of some demonstrations, often citing threats of the disturbance of public order.<sup>48</sup> It sometimes happens that the assembly is approved by the mayor at the level of the municipality but is opposed by the Ministry of the Interior, who sends security forces to disperse the protesters or actually prevents such an assembly by sending in the army. According to one respondent<sup>49</sup>, the current Government, by prohibiting a demonstration approved by the mayor of a municipality, is implicitly transforming the declaration or notification regime for the exercise of freedom of assembly into an authorisation system.<sup>50</sup>

For example, on 27 December 2013, tear gas was used by the army and the police to disperse a demonstration<sup>51</sup> organised by the country's trade union organisations and confederations, as well the construction of roadblocks to prevent the demonstrators to follow the planned itinerary to the Ministry of Labour. Trade union leaders said they had received authorisation from the Mayor of Cotonou for this demonstration, but the prefect did not support this decision. Trade union leaders subsequently organised a "ville morte" (dead town) operation on 7, 8, 15, 16 and 21 -23 January, condemning the use of force by the police and demanding the replacement of the police commissioner and of the Prefect of the Atlantic Littoral in Cotonou.

In August 2013, the Minister of the Interior and Public Safety prohibited the demonstration organised by Union Fait la Nation and the Convention Patriote des Forces de Gauche (CPFG; Patriot Convention of Left Forces) gathering several trade union organisations, to oppose the draft amendment of the Constitution initiated by

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<sup>48</sup> Gilles Badet (2010). *Bénin : Démocratie et participation à la vie politique : Une évaluation de 20 ans de « Renouveau démocratique »*, AFRIMAP and OSIWA, Dakar and Johannesburg, p.78.

<sup>49</sup> In charge of a large network of NGOs.

<sup>50</sup> The law establishing the Charter of Political Parties provides for the declaration of demonstration to be submitted to the town council, which can only prohibit assemblies for reasons of public unrest, and the authorities must immediately notify the signatories of the declaration thereof. This decision to prohibit can be subject to appeal. In August 2012, the Prefect of the Atlantique and Littoral Departments made an order to relinquish the city mayors of these two departments of their competence to handle public demonstration declarations until social tensions would cease. The order was removed in February 2014. See Jolome News (16 May 2014). *Recours contre l'arrêté querellé De Placide Azandé : La Cour Constitutionnelle se déclare incompétent*. Available at: <http://bj.jolome.com/news/article/recours-contre-l-arrete-querelle-de-placide-azande-la-cour-constitutionnelle-se-declare-incompet-838?t=similaire> and L'Événement Précis (17 February 2014). *Retrait de l'arrêté préfectoral portant interdiction de marches dans l'Atlantique -Littoral : Le préfet Placide Azandé et le gouvernement font un pas important*. Available at: <http://levenementprecis.com/2014/02/17/retrait-de-l-aret2-pr2prefectoral-portal-interdiction-de-marches-dans-latlantique-littoral-le-prefet-placide-azande-et-le-gouvernement-font-un-pas-important/>, accessed on 3 April 2016.

<sup>51</sup> It was a giant protest march organised by 6 trade union organisations and federations to oppose power abuses and demand the respect of democratic freedoms. The intervention of law enforcement agencies left some injured, including two trade union organisations leaders. See La Nouvelle Tribune (27rd of December 2013). *Sanglante répression d'une marche des syndicalistes :Todjinou et Lokassou admis à l'hôpital*. Available on: <http://www.lanouvelletribune.info/benin/17448-sanglante-repression-d-une-marche-des-syndicalistes-todjinou-et-lokossou-admis-a-l-hopital>, accessed on the 3rd of April 2016.

President Boni Yayi. The Minister used in particular the argument that CPGF was illegal and stated that he suspected that the organisers of this demonstration were trying to destabilise the current system and to discredit the Government.<sup>52</sup>

In August 2015, Jacques AYADJI, a trade unionist, invited during a press conference the citizens of Benin to a peaceful demonstration on 14 August 2015 to oppose a decision by the Constitutional Court, allowing individuals younger than 40 years old to be able to be a presidential candidate. But the demonstration was prohibited by the police on the grounds of insecurity.<sup>53</sup>

On 13 September 2015, a public meeting to be held in Parakou saw the presence of the army, preventing the launch of Patrice Talon's Fan Club's activities. Patrice Talon was an opposition candidate in the presidential election of February 2016, even though the organising committee sent the necessary information letter on the organisation of the demonstration to the city mayor on 7 September 2015.<sup>54</sup>

In February 2016, the Prefect of the Departments Borgou-Alibori issued an order prohibiting the organisation of any demonstration of a political nature before the official launch of the election campaign, even though the citizens sympathising with FCBE (Forces Cauris pour un Bénin Émergent; Cowry Forces for an Emergent Benin), the governing party, could organise as many demonstrations as they wished to praise the Government and support the President of the Republic. The order was issued on the day before a support meeting in favour of the candidate Sébastien Ajavon, a political opponent in Parakou, was to be held.<sup>55</sup>

Faced with these massive violations of the right to peaceful demonstration and to freedom of expression by the ruling government, CSOs do not hesitate to spontaneously gather to collectively expose these violations and call for popular mobilisation to defend public freedoms and democracy. Two examples of CSO action are provided below:

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<sup>52</sup> See La Nouvelle Tribune (24 August 2013). *Bénin : le gouvernement interdit la marche de protestation pacifique de la Cpgf et de l'UN*. Available at: <http://www.lanouvelletribune.info/benin/15534-violation-des-libertes-au-benin-le-Gouvernement-de-yayi-toujours-hostile-a-la-liberte-d-expression#!/ccomment-comment=298452>, accessed on 3 April 2016.

<sup>53</sup> See AFN360 (29 February 2016). *Procession vendredi à Cotonou contre une décision du juge constitutionnel sur l'âge des présidentiables*. Available at: <http://www.afn360.com/politique/procession-vendredi-a-cotonou-contre-une-decision-du-juge-constitutionnel-sur-l-039-age-des-presidentiables-555.html> and La Nouvelle Tribune (12 August 2015). *Décision Dcc 15-156 : Jacques Ayadji appelle à une procession vendredi prochain*. Available at: <http://www.lanouvelletribune.info/benin/25013-decision-dcc-15-156-jacques-ayadji-appelle-a-une-procession-vendredi-prochain>, accessed on 3 April 2016.

<sup>54</sup> See the website of Wanep – Bénin : <http://www.wanepbenin.org/elections/reports/view/22> , accessed on 3 April 2016.

<sup>55</sup> Adjinaïkou (12 February 2016). *Bénin : Interdiction de meeting à caractère politique dans le septentrion*. Available at: <http://www.journal-adjinakou-benin.info/?id=4&cat=1&id2=27265&jour=12&mois=02&an=2016> , accessed on 3 April 2016.

- The day after the prohibition of the march organised by human rights organisations and trade unionists on 12 October 2010 to protest against the prohibition of marches, to demand explanations for the disappearance of Pierre Urbain Dangnivo<sup>56</sup>, and outraged by the multiplication of abusive prohibitions of protests by social, trade union or political organisation activists to express their condemnation of how the state is managed, and physical violence against protestors. On the other side, huge logistic and financial resources were used to orchestrate folkloric marches to support the government, public meetings to glorify and to support the re-election of the President. This has led to political forces and civil society organisations to form the Front de Défense de la Démocratie (FDD; Front for the Defence of the Democracy) on Wednesday 13 October 2010.<sup>57</sup>
- Following the outbursts on the 4,5 and 6 May 2015 in Cotonou, several CSO members from the Electoral Platform of Civil Society Organisations in Benin hosted a press conference where they condemned the attitude of the Government and called on everyone to restore the process of dialogue and peace.<sup>58</sup>

## **VI. Government-CSO relations: CSO participation in political and legal processes**

According to article 1 of Decree No 2001-234 of 12 July 2001 defining the conditions of the formation and operation of non-governmental organisations (NGOs) and their umbrella organisations, NGOs are barred from conducting “any partisan political activity”. Furthermore, the Charter on Civil Society Organisations in Benin requests that directors of CSOs need to declare in writing, on a yearly basis, that they are not affiliated with any political party or movement. In addition, the Charter adds that a member of the Board of Directors cannot claim an appointed political position or accept such a position without advising the Board of Directors of his or her intention, and to have resigned from the organisation. In the case he or she claims an elected position, he or she must inform of his or her intention and resign from the organisation at least

<sup>56</sup> A whistleblower/public administration manager who allegedly refused to divert funds for the benefit of supporters of the ruling party.

<sup>57</sup> See Adjinakou (18th of October 2010). *Affaire Dangnivo : interdiction des manifestations publiques. Appel aux forces vives de la nation.* Available on: <http://journal-adjinakou-benin.info/?id=4&cat=6&id2=3974&jour=18&mois=10&an=2010>

<sup>58</sup> See La Presse du Jour (9 May 2015). *Après les affrontements sanglants les 4,5 et 6 mai 2015 à Cotonou : La Plateforme des OSC appelle les autorités politiques et judiciaires au calme.* Available at: <http://www.lapressedujour.net/archives/40998>

six (6) months prior to taking up the position. At the end of his or her appointment, the affected person can address a written request, supported by a ethic report, in order to be reintegrated into the organisation. From these provisions, we can see that CSOs are not entitled to appoint candidates, to support or to oppose political parties or candidates or to raise funds for the political parties and their candidates.

However, CSOs in Benin play a major role in political and legislative processes through several types of activities of their own initiative, and their presence in several political, administrative and human rights promotion institutions or organisations, such as the Commission Politique de Supervision de la Liste électorale Permanente Informatisée (LEPI; Political Commission of the Permanent Electoral List), the Autorité Nationale de Regulation des Marches Publics (National Public Market Regulation Authority), the Commission Consultative des Droits de l'Homme (Consultative Commission on Human Rights), the Commission Nationale des Droits de l'Enfant (National Commission on the Rights of the Child), the Commission Nationale de Codification et des Sceaux (National Commission on the Codification and Seals), the Commission Nationale sur la Transhumance Agropastorale (National Commission on the Agro-Pastoral Transhumance), the Commission Nationale Indépendante du Mécanisme Africain d'Evaluation par les Pairs (MAEP; Independent National Commission of the African Peer Review Mechanism).

CSOs are mainly involved in the following activities:

✓ **Monitoring of the electoral process:** this type of CSO activity is recognised by the Government which, within the framework of elections funding, often provides for a component entitled support to civil society to allow it to play its role in the interface and mediation during the elections.<sup>59</sup> This activity component includes the raising of awareness of citizens right to vote and the fight against electoral corruption. Not only do CSOs raise the awareness of citizens to request elections to be held at the right date, but also encourage the latter to effectively register and vote. A refusal to an opportunistically review of the Constitution in 2005 and 2015, which also opposed the link up the presidential and legislation elections in 2011, are one of the many accomplishments by civil society in the preparatory stage to elections. In addition, CSOs successfully developed a knowhow in terms of giving information on electoral

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<sup>59</sup> Me Cyrille GOUGBEDJI (2007). *Les relations du Gouvernement avec les OSC*. In : Communication, in Les Actes du séminaire national sur le recentrage du concept de société civile au Bénin, Cotonou, p. 37.

laws, the training of electoral agents, and the monitoring of the development of and organisation of the parallel vote count system.<sup>60</sup>

✓ **Advocacy and lobbying for the adoption of legislation and regulations, and on the orderly conduct of elections:** for example, we can mention actions conducted by FORS LEPI<sup>61</sup> against the Government for the consensual and transparent implementation of the electoral instrument LEPI in 2010<sup>62</sup>, the actions conducted by FORS ELECTIONS for transparent and peaceful elections in 2010<sup>63</sup>, the extensive campaign entitled “Touche pas à ma constitution” (“don’t touch my Constitution”) by Elan NGO between 2003 and 2005 and the massive advocacy campaign conducted by the following associations: Women in Law and Development in Africa (WILDAF), Réseau pour l’Intégration des Femmes des Organisations Non Gouvernementales et Associations Africaines (RIFONGA; Network for the Integration of Women in African NGOs and Associations), and others in favour of the vote of the Individual and Family Code in 2004.<sup>64</sup> The Action Group for Progress and Peace (G.A.P.P. Bénin) has more recently advocated for the reform of the draft law on the right of association, of assembly and of expression.<sup>65</sup> With the financial support of ICNL, several awareness raising and training activities took place of CSO actors and Government experts. Currently, thanks to the ICNL funding, GAPP Bénin is organising a series of activities supporting media organisations. There are no specific set conditions for the implementation of lobby or advocacy campaigns by CSOs. The success of CSO actions in this area and whether their positions are taken into account depends on the quality of their mobilisation and of their approach, of their control over the legislative process, as well as their capacity to convince. However, it must be noted that some positions of CSOs, even though valid, are not taken into account when it contravenes the interests of the authorities in place.

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<sup>60</sup> European Union/Republic of Benin, Feuille de route de l’UE pour l’engagement envers la société civile 2014 – 2017, Cotonou, 2015, p.10.

<sup>61</sup> Front des Organisations de la Société Civile pour la Réalisation de la Liste Electorale Permanente Informatisée (Front of Civil Society Organisations for the realisation of the Permanent Electoral List).

<sup>62</sup> See Orden Alladatin. *Contribution de la société civile à la mise en œuvre de la LEPI au Bénin*. Available at [http://base.afrique-gouvernance.net/docs/scte\\_civile\\_et\\_lepi.pdf](http://base.afrique-gouvernance.net/docs/scte_civile_et_lepi.pdf), accessed on 3 April 2016.

<sup>63</sup> See the article of Gilles Gnimadi (16 April 2010). *Fin du processus électoral, Fors-élections fait le bilan de ses actions*. In : Adjinakou n°1540. Available at: <http://www.journal-adjinakou-benin.info/?id=4&cat=1&id2=6431&jour=16&mois=04&an=2010>, accessed on 3 April 2016.

<sup>64</sup> See Geneviève Boko Nadjo (October 2004). *Le code des personnes et de la famille béninois*. Statement published on <http://jafbase.fr/docAfrique/Benin/PresentationCodeFam.pdf>, accessed on 3 April 2016.

<sup>65</sup> See Jolome News (26 November 2014). *Renforcement de capacités des acteurs de la société civile: Gapp-Bénin engage les réflexions sur la réforme de la loi 1901*. Available at: <http://bj.jolome.com/news/article/renforcement-de-capacites-des-acteurs-de-la-societe-civile-gapp-benin-engage-les-reflexions-sur-la-r#comments>, accessed on 3 April 2016.

✓ **Facilitation of political dialogue and mediation in political crises:** religious denominations, associations and NGOs and, to a lesser extent, traditional chieftdom, distinguished themselves in facilitating political dialogue and mediation in the political crisis characterising the last few years. For example, at the time of the political crisis around the electoral system reform in 2010, CSOs assisted with an intervention of the consultation framework of religious denominations, calling upon political players to unite for the realisation of the LEPI. Also, still in view of solving this crisis, the FORS LEPI and FORS ELECTIONS member organisations initiated a consultation and dialogue process<sup>66</sup> with the players tasked with the implementation of the LEPI, and the politicians in view of finding approaches to solutions for the situation.

✓ **Citizen control over public action:** several NGOs started taking a more serious interest in public policies and governance issues. Therefore, they developed actions regarding citizen control over development policies. At the national level, the Social Watch Network leads remarkable activities by monitoring the implementation of the state budget with the view of ensuring the achievement of the Millennium Development Goals (MDGs) and the implementation of the Poverty Reduction Growth Strategy (PRGS). At the local level, the NGO ALCRER (Association de Lutte Contre le Racisme, l'Ethnocentrisme et le Régionalisme; Association of the Fight against Racism, Ethnocentrism and Regionalism) can be mentioned: ALCRER organised citizen units for control over mayors and the governance of municipalities in most municipalities in Benin, while also raising awareness of citizens on the importance of attending the various sessions of the communal or municipal council.

### **1. Cooperation and communication between the Government and the CSOs**

There is no specific law regulating cooperation and communication between the Government and CSOs. However, several national policy documents provide for a partnership with CSOs in their implementation strategy. This is the case of the national health promotion policy, with the following as the first strategy: “*advocacy and*

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<sup>66</sup> This approach included hosting discussion sessions with the relevant players, involved in the electoral process, and to reconstitute and analyse information collected during these discussions during a citizen retreat. See L'Événement Précis (11<sup>th</sup> of August 2010). *Réalisation de la Liste électorale permanente informatisée et joutes électorales : La Société civile ébauche des pistes pour une sortie de crise*. Available on: <http://levenementprecis.com/2010/08/11/realisation-de-la-liste-electorale-permanente-informatisee-et-joutes-electorales-la-societe-civile-ebauche-des-pistes-pour-une-sortie-de-crise/>, accessed on the 3<sup>rd</sup> of April 2016.

*partnership for the involvement of the entire society in the management of health*”, and the national gender promotion policy, with the following (3<sup>rd</sup>) implementation strategy: “*Strengthen civil society’s commitment and the awareness of women and men for gender promotion, while ensuring solid involvement of men in the process*”. In addition, the Poverty Reduction Growth Strategy (PRGS 2011-2015) identified the following actions in the intervention axis “promotion of governance quality”: “*development of a solid partnership with civil society organisations in view of transparency and accountability of public management.*” In addition, law No 97-029 of 15 January 1999 on the Organisation of Communes in the Republic of Benin acknowledged the role of civil society in municipal management by authorising municipalities to use CSOs services to delegate, assist, grant, lease, subcontract or contract (article 108).

From 1996 onwards, President Mathieu Kérékou added the role of “*relations with civil society*” to the Ministry in Charge of Relations with State Institutions (MCRI).<sup>67</sup> Until now (April 2016), this role remains under this Ministry. Essentially it focuses on activities conducted by CSOs in order to help them achieve the status of public interest with the State, which opens them to certain administrative and fiscal facilities through concluding agreement with the Government.<sup>68</sup> Through its departmental Directorates in Charge of Relations with Institutions, this Ministry developed a civil society consultation framework in the municipalities, and established a Centre for the Promotion of Associations and Non-Governmental Organisations (CPA&ONG), later replaced by the Centre for the Promotion of Civil Society (CPSC), with the mission of supporting CSOs with regards to their efficient and effective participation to national development.

Additionally, civil society focal points were established in the Ministries on the initiative of the Ministry in Charge of Relations with Institutions. Unfortunately, this initiative was not a success as these focal points were not functional.

On the other hand, the establishment of the High Commissioner for Collaborative Governance by Decree No 2007-624 of 31 December 2007, and its official set up on 19 February 2008, illustrates the wish of the Head of State, Boni Yayi, to develop and institutionalise a tradition of dialogue and consultation in Benin. This institution aims at undertaking a series of initiatives to initiate, through dialogue, in-depth exchanges and the largest possible consultation, people’s suggestions as well as suggestions of

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<sup>67</sup> Gilles Badet (2010). *Bénin-Démocratie et participation à la vie politique: Une évaluation de 20 ans de « Renouveau démocratique »*. Op. Cit., p.68.

<sup>68</sup> Idem

public affairs actors on the most appropriate measures to satisfy their legitimate aspirations to good governance in all political, economic, social, administrative and cultural areas, at the national and local level.

Unfortunately, in practice, the above-mentioned cooperation frameworks are not real dialogue and collaboration incubators between the Government and CSOs. For example, the consultation frameworks established by the Ministry in Charge of Relations with Institutions (MCRI) do not enjoy the legitimacy and trust of NGOs they are supposed to represent. In addition, CPSP is not very visible and suffers from a lack of access to material and technical capacities to play its role of regulator.<sup>69</sup> In addition, there is no frank and harmonious collaboration between CSOs and those state structures that accompanies and supports CSOs in Benin.

In reality, even if the above-mentioned examples testify to the adherence of the state of Benin to CSOs' involvement in the management of state power, fundamentally, the Government-CSO relationship in Benin is supported by development partners who, in view of good governance, require collaboration with CSOs in the planning and the implementation of development policies and programmes. These partners especially worked towards the establishment of the major consultation platforms, namely: for the sectoral reviews and the joint PRSP (Poverty Reduction Strategy Paper) review; which are centred on the efficiency of development policies. These take place on an annual basis, between government players (central and local), TFPs (technical and financial partners), civil society and the private sector. Sectoral reviews allow for the examination of a given ministerial sector's performance, such as health or education, while the joint PRSP review allow for the examination of progress of the PRSP implementation, and its weaknesses, in the various areas of intervention. Besides these reviews, these players also meet on a regular basis during technical and thematic group meetings.<sup>70</sup>

Besides the consultation frameworks promoted by development partners, there are existing framework agreements between specific Ministries and CSOs, and there is CSO representation in various state bodies. Cooperation between the Government and civil society is still limited, to a large extent, to ad-hoc consultations which, according to the respondents, are not done on time. One respondent<sup>71</sup> said this was a "sham of a

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<sup>69</sup> European Union/Republic of Benin (2015). *Feuille de route de l'UE pour l'engagement envers la société civile 2014 – 2017*. Cotonou, pp.13-14.

<sup>70</sup> *Idem* p.16.

<sup>71</sup> In charge of a network of NGOs.

consultation”. In addition, respondents commented that Government authorities only associate CSOs in the execution of projects funded by United Nations agencies (UNDP) and by the European Union.

However, most of the respondents acknowledged that there is regular communication between CSOs and the Government, but mainly the communication is done informally level. CSOs organise themselves based on their personal relationships and their capacity to create a communication channel with ministerial departments related to their projects and area of work.

The relationship between the Government and CSOs is assessed as difficult, and of low quality. Governments often do not appreciate CSO criticism on issues such as good governance and the defence of human rights.

On the other hand, respondents consider that the relationship between CSOs and the Government lacks synergy and is embedded in a climate of mutual distrust: “this is the type of “I love you, me not anymore” relationship.<sup>72</sup> Those in power fear that their partisan political interests may be hindered, while CSOs fear of being captured by the state. To this effect, a respondent commented that the Government tends to try to control civil society and prefers to have a civil society to its liking.

In terms of transparency and accountability of Government’s development actions, plans and strategies, all respondents agreed that transparency and accountability is lacking at the level of management of the central State. There is, as highlighted by one of the respondents, complete opacity in the management. CSOs have to fight, to force the government’s hand to access information. In administrations, the use of the word “confidential” is systematically abused for documents that do not contain confidential information.<sup>73</sup> Accountability is not institutionalised, and civil society’s participation in the programming and evaluation of development programmes is not effective.

However, it must be noted that at the municipality level, law No 97-029 of 15 January 1999 on the organisation of municipalities in the Republic of Benin established the conditions to foster transparency and accountability of local authorities. It mandates that the Communal Councils sessions are to be public and that every person has the right to consult the minutes of the Communal Council and/or the record of proceedings (articles 30 and 34). Based on these legal provisions, NGOs or networks of

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<sup>72</sup> Comments from the President of the ALCRER NGO.

<sup>73</sup>Gilles Badet (2010). *Bénin-Démocratie et participation à la vie politique: Une évaluation de 20 ans de « Renouveau démocratique*. Op. Cit., p. 85.

NGOs such as ALCRER, Social Watch Bénin and GAPP Bénin initiated activities of citizen control over public action in some of the country's municipalities, and to promote reporting obligations by local elected representatives.<sup>74</sup> The law on decentralisation requires that the locally elected representatives organise periodical village assemblies to inform and raise awareness among the population, even though the subject of budgets of municipalities are still considered as a taboo. There are not many sources that inform the population on this particular issue.<sup>75</sup>

## **2. Appeal mechanisms against Government's decisions**

According to the respondents, CSOs and citizens alike have, and effectively have exercised, remedies to challenge decisions made by the Government, in particular the recourse to administrative, judicial and constitutional judges. Appeal to a constitutional judge, by referral of the issue to the Constitutional Court, is the easiest and the most used appeal mechanism by CSOs. The results in these instances are often successful, even though the Constitutional Court's decisions are sometimes criticised and take considerable time.

Appeal to other judges is slightly more complicated for CSOs. In order to be able to engage in legal proceedings, CSOs need to show that they have a direct interest and either have to master the procedural rules or have the financial means to hire a legal counsel. This interest, which differs from the general interest for which the public prosecutor alone responsible, must fit within the limits or the objectives pursued by the organisation, as provided for in its articles of association.<sup>76</sup> In this regard, one respondent<sup>77</sup> noted that the impossibility for CSOs to engage in civil proceedings in defence of collective rights forces them to denounce without being able to act to bring remedy. The recently adopted Criminal Procedure Code is slightly reduces this gap.

Two examples of the use of the appeal mechanism of civil society to the Constitutional Court are provided below:

*Appeal for the irregular or illegal designation and appointment of the civil society representative within the Commission politique de supervision de la Liste électorale permanente informatisée (CPS-LEPI; Political Commission of Supervision of the Permanent Electoral List), made by FORS LEPI on 29 June 2009. On 1 June, CSOs unanimously*

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<sup>74</sup> Idem, p.167.

<sup>75</sup> Idem, p.168.

<sup>76</sup> Joseph Djogbenou (2010). *Bénin-Le secteur de la justice et l'Etat de droit*, AFRIMAP et OSIWA, Dakar and Johannesburg, 2010, p.108.

<sup>77</sup> Representative of a human rights NGO.

appointed Orden Alladatin to represent them at CPS-LEPI. Following this, another meeting hosted by the Minister in charge of Relations with Institutions and Civil Society, outside of Cotonou, proceeded to appoint another civil society representative within the CPS-LEPI. This how René Tchibénou was appointed and established at the CPS-LEPI. The Constitutional Court, delivering its decision 10 months after FORS-LEPI filed its appeal, considered the election of Orden Alladatin and the appointment of René Tchibénou as the civil society representative within the CPS-LEPI as null and void, since both election processes did not occur in a consensual manner by all the components of civil society.<sup>78</sup>

*Appeal contesting the constitutionality of the Secretary General of the Union Nationale des Syndicats des Travailleurs du Bénin (UNSTB), Mr. Emmanuel ZOUNON, on 9 July 2013, against Decree No 2013-172 of 11 April 2013 on the various forms of trade unions and their criteria regarding representation and Decree No 2013-173 of 11 April 2013 on the modalities of professional elections, on the grounds that both decrees, by defining the various forms of trade unions and their representativeness criteria, are in practice discriminatory by omitting the form of trade union confederations, which can exist and is effectively existing in the area of trade unions in Benin. The Court ruled that this appeal is without purpose since both decrees discussed were replaced by two other decrees issued in December 2013.*<sup>79</sup>

### **3. Significant changes in the relationship between civil society and the Government**

In this regard, the views of the respondents vary. Some consider that the relationship between CSOs and the Government has been less conflictual and that the Government, pressured by international conventions and the development partners, increasingly involves CSOs in development planning. On the other hand, others were of the view that the level of mistrust has increased between the Government and especially CSOs working on political and election issues. This mistrust is due to the fact that several civil society players used the status of CSO to create political parties. Another respondent underlined the fact that in this area (politics/elections), the country saw a

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<sup>78</sup> Cf. Constitutional Court, ruling DCC 10-050 of 14 April 2010. See La Nouvelle Tribune (19 April 2010). *Désignation de René Tchibénou à la CPS-Lépi : La Cour joue au Ponce Pilate*. Available at: <http://www.lanouvelletribune.info/benin/5604-designation-de-rene-tchibenou-a-la-cps-lepi-la-cour-joue-au-ponce-pilate#!/ccomment-comment=15727>, accessed on the 3<sup>rd</sup> of April 2016.

<sup>79</sup> Cf. Constitutional Court, ruling DCC 14-187 of 11 November 2014. See: [http://www.cour-constitutionnelle-benin.org/doss\\_decisions/DCC%2014-%20187%20.pdf](http://www.cour-constitutionnelle-benin.org/doss_decisions/DCC%2014-%20187%20.pdf), accessed on 3 April 2016.

change, from a form of confrontation to some form of indifference or evasion. To support this claim, he gave the example of the removal of the civil society representative from the members of the Independent Electoral Commission (CENA) in the new Election Code of Benin.

#### **4. Conditions for an improved relationship between CSOs and the Government**

The respondents stated that in order to improve the relationship between CSOs and the Government, it is necessary that misinterpretations of the texts must stop. Especially, the “apolitical” character of CSOs must be nuanced. While CSOs cannot participate in partisan politics with the aim of accessing power, they cannot remain insensitive in their opinions and actions targeting development. Therefore, the Government must therefore cease their view that political issues cannot not be addressed by CSOs because the law requires them to be politically neutral. Likewise, they must cease to believe that critical views of CSOs on the Government’s political management means that the CSO is on the side of the opposition. In reality, CSOs are non-partisan rather than apolitical.

Those in power and the population in general must also integrate the concept of democracy, good governance and human rights, and its requirements. This understanding would help them to openly listen to civil society and to be open to their critiques and suggestions. On the other side, CSOs must also address governance issues with the Government with humility and courtesy.

Real CSO capacity building programmes would be very useful to improve the quality of their relationships with those who govern the country.

#### **VII. Taxation**

In terms of taxation, articles 146 and 224 of the new General Tax Code (2013) establish the tax regime for NGOs regarding income tax and value added tax (VAT). Regarding other taxes, namely those taxes collected on behalf of the Administration, associations are subjected to the general tax regime.

According to article 146 of the General Tax Code, NGOs and associations can benefit from corporate tax exemptions if they comply with the following conditions:

- Being legally incorporated;

- Not using the same management processes as commercial companies. In practice, the goal is to see if the CSO hires a large number of salaried staff and uses advertising;
- Operating on a not-for-profit basis;
- Produce an annual progress report (moral and financial) for the organisation.<sup>80</sup>

In practice, the tax authorities are not very strict regarding these criteria. Most tax officials limit their discretionary power to solely the name of the NGO without going deeper.

Regarding value added tax (VAT), exemption is given based on services provided by the organisation. But the organisations remain end consumers, and therefore a real taxpayer for all its purchased goods and services, subject to occasional exemptions in case the organisation has the public interest status, or if there is a headquarters agreement regarding foreign NGOs. NGOs benefiting from a public interest status benefit from tax and duties exemptions on imported goods and equipment (except for lubricants and fuels), or purchased on the national territory of Benin and to be used for the execution of their programmes. They can also benefit from the Government's technical support at the organisational and financial level, in the form of grants.<sup>81</sup>

In addition, within the structure of a framework agreement concluded between the Government and NGOs, the Government can also exempt NGOs from duties for office equipment, equipment needed for the implementation of projects and other taxes, with the exception of the contribution for particular services rendered. For each specific contract, an exhaustive list must specify the nature, the quality and the value of imported goods.

Besides the above mentioned exemptions, CSOs pay the following taxes and contributions:

- Income Tax payable by Natural Persons associated with Salaries (IRPP/TS), based on a progressive rate based on the gross salary amount.
- Income Tax Prepayment (AIB), which is a tax levied by CSOs on the fees charged by its service providers and must be repaid to the tax administration. It has a 5% rate for providers without a Unique Fiscal Identifier (IFU) and a 1% rate for providers with a IFU.

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<sup>80</sup> These activity reports allow the fiscal administration to evaluate the profit or non-profit character of the association.

<sup>81</sup> Article 21, Decree No 2001-234 of 12 July 2001 defining the operating mode of non-governmental organisations and their umbrella organisations.

- Social contributions, paid to the National Social Security Fund (CNSS), with a rate of 20% of the gross salary of employees. Of the 20%, the organisation contributes 16.4% and the employee 3.6%.

IFU formalities are completed with the tax administration, by filling out forms including documents proving the existence of the association and its activities.

Custom duties are payable by CSOs that do not have a public interest status, although charitable gifts are exempted from these duties. In addition, CSOs importing goods from overseas often do this with the support of a financial partner benefitting from a headquarters agreement, and therefore can take this opportunity to avoid paying the custom duties on these goods.

In terms of economic activities of CSOs, these are to be declared to the tax administration and are subject to commercial taxes, as any other commercial company based in Benin. Benefits from this activity can only be used to increase their self-financing capacity and to improve the quality of their services, and cannot be distributed to the CSO's members.

Regarding news outlets in particular, they are considered as ordinary companies, and are liable to pay the same VAT rate, the same taxes on industrial and commercial profits, progressive taxes on salaries and fees (IPTs), etc. In this regard, media owners consider the tax system as constraining, especially since this comes in addition to the high price of production costs such as paper and ink used to print the newspapers. However, the Information and Communication Code, adopted in 2015, stipulates in its article 40: "the state grants facilities to private news companies through a special favourable system. This can include tax reduction or exemption". Based on this provision, the *National Council of Press and Broadcasting Employers (CNPA-BENIN)*, following its General Assembly in December 2015, made an official statement requesting the Government to adopt a more favourable specific tax regime for the press, in return for its social role.<sup>82</sup>

In summary and as stated by the respondents, the tax regime for CSOs is rather favourable (with the exception of press companies) in Benin, fostering CSOs' financial stability. Besides the taxes of AIB, which is minimal, the costs related to being an employer are the largest burden on CSOs. CSOs do not pay local taxes. However, costs

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<sup>82</sup> See the entire statement at: <http://latribunedelacapitale.com/actualite/3374-declaration-du-conseil-national-du-patronat-de-la-presse-et-de-l-audiovisuel-cnpa-benin-sur-la-fiscalite-applicable-aux-entreprises-de-presse.html>, accessed 3 April 2016.

related to employment of salaried staff are considered as having a negative effect on the salary of CSOs staff, since most CSOs do not have sufficient resources to bear these costs. Hence, CSOs often have to negotiate with their staff to pay a lower salary.

In practice, it must be pointed out that the administration's control over CSOs almost does not exist. Some CSO promoters have taken this opportunity to shy away from their tax obligation to pay the taxes they are subjected to, and the obligation to provide tax authorities with a progress report at the end of the year. In addition, taking the opportunities presented by the tax system that are favourable to CSOs and as result of the lack of control on the part of administration, a number of them have created real commercial companies even though they are registered as not-for-profit companies.

Taxation is not used as a means of repression of CSOs activities as CSOs actually benefit from preferential treatment. However, this was the case in the country for some businessmen.

Finally, most of CSO promoters do not have a good knowledge of the tax system they are subjected to. They do not precisely know which taxes and duties CSOs are subject to. Some even believe they are completely exempted from VAT and therefore should not pay VAT for their purchases.

### **VIII. Access to information**

In the area of Access to Information, two laws can be mentioned: (1) the Information and Communication Code, initiated by journalists and adopted on 22 January 2015 and enacted on 20 March 2015, and (2) the draft legislation on the right to access to public information initiated by WANEP-Benin.

Section 5 of the Information and Communication Code is dedicated to access to public information by all citizens, and remedies in case of difficulties in accessing public information. Regional and international standards related to freedom of information can also be mentioned here, such as the Universal Declaration of Human Rights of 10 December 1948 (articles 19 and 20), the International Covenant on Civil and Political Rights of 16 December 1966, that came into force 23 March 1976 (articles 21 and 22) and the African Charter on Human and People's Rights (articles 10 and 11, paragraph 2).

There are structures and opportunities that allow the public, including CSOs, to enter into a dialogue with Government's representatives about their needs, personal and organisational interests, for example the Maison de la Société Civile (MdSC; House of Civil Society) and the Centre de Promotion de la Société Civile (Centre for Civil Society Promotion).

In practice, it is not that easy to obtain information in Benin: either information is considered as of a confidential defence nature, or the public official in charge of information says he is not authorized by his direct supervisor to provide the requested information, etc. It is therefore difficult to access information from the Government. Public authorities are often bound by confidentiality within the framework of their administrative function. It is still very difficult for CSOs to receive information from public authorities, save for international organisations. Often, requests for hearings or for information remain unanswered.

## **IX. Conclusions**

This report highlights the major challenges in seven dimensions of the Enabling Environment National Assessment (EENA) for civil society in Benin. During the research, the legal, regulatory and policy environment for CSOs in Benin were examined. Following this research, we can conclude that there exists a certain confusion between associations, civil society organisations (CSOs) and non-governmental organisations (NGOs). We hope that the legal reforms, currently underway, will clarify these concepts. Furthermore, while the legal environment seems enabling for associations, in reality, there exist numerous administrative challenges that prevent citizens enjoying the benefits in full.

Usually free of legal, regulatory and judicial restrictions in comparison with some of the other countries in the world, especially in Africa, we can say that the exercise of freedom of expression is a reality in Benin. However, there remain important challenges.

The first challenge is to build the capacity of the civil servants through training on standards related to freedom of association, especially principles to be respected by the State. This also includes providing government structures with the material resources required to do this task. The implementation of an online registration system would be a major step forward in the freedom of association. This will also provide a reliable database of civil society organisations in the country.

The second challenge is the development of the capacity of civil society (CSOs or NGOs) so they can develop into sustainable and well-structured associations. Training could focus on financial management, taxation of CSOs, human resources management, on tools and techniques to mobilise donors and fundraise, etc.

In the light of this research, transparency and accountability should ideally be a shared goal of the Government, CSOs, donors and beneficiaries. The new proposed law currently under study should consider more flexible procedures to establish and register associations, as well as the management of their relations with the government.

Regarding associations, the setting up of a normative framework on good governance should be considered in order for CSOs to carry out effective actions. A legal framework should be put in place to manage peer self-regulation within CSOs.

## **X. Recommendations**

Following this study, the following recommendations are believed to lead to an improvement in CSOs contribution to the democratic and economic development of the country. The below recommendations are several ideas selected following fruitful exchanges that took place during the EENA National Consultation.

In view of the mediocre situation, the association GAPP Bénin suggests an action plan with three steps.

1. The 1st step will be to:
  - 1.1. Provide the various administrative departments in charge of managing and registering the declarations of civil society organisations with adequate offices and work spaces.
  - 1.2. Provide administrative departments with computer equipment and create a database for the management of registrations.
  - 1.3. Create software to register and manage CSOs.
  - 1.4. Train the administrative staff on the various tools.
2. The second step will be:
  - 2.1. Build the capacities of the Maison de la Société Civile (House of Civil Society) in order for it to play its role as a platform of exchange between CSOs on the one hand, and CSOs and the Government on the other hand.
  - 2.2. Provide the Maison de la Société Civile (House of Civil Society) with training materials and tools for CSOs.
  - 2.3. Finalise the counting of associations (CSOs or NGOs), by setting up a computerised database register on NGOs as to have information on NGOs, their area of intervention, their future achievements, their strategic plans, addresses, etc.
  - 2.4. Support NGOs with the drafting of their strategic plan, research of partnerships, mobilisation of resources, etc.
    - 2.4.1. Support an independent and consensual labelling process, in order to identify eligible associations (CSOs or NGOs) and those that still have to efforts to make in order to reach a satisfying level of good governance, justifying access to national or international resources.

2.5. Provide the Maison de la Société Civile (House of Civil Society) with the necessary resources to support resource pooling efforts between associations.

Additionally, an urgent action in the form of an information workshop on the reform of law 1901, a comprehensive law on freedom of association, of assembly and of expression, is required for newly elected parliamentarians. This workshop could be an opportunity for the Members of Parliament of Benin to better understand the reform work suggested by GAPP Benin.

The third step includes the initiation of lobbying to establish a national support fund for associations (CSOs or NGOs), which should be established to provide support based on sound and transparent criteria, for CSOs based on merit (public interest) or new associations.

## **Bibliography**

1. Amnesty International, Rapport 2015/16 sur la situation des droits humains dans le monde. Adresse sur internet: <https://www.amnesty.org/download/documents/POL1025522016FRENCH.PDF>
2. Interministerial Decree 2002 No 15/MCRI SCB/MISD/DC/SG/DBEVA/SA on the establishment of the Ad Hoc NGO and Umbrella Organisations Disciplinary Council.
3. Interministerial Decree 2002 No 16/MCRI-SCB/MISD/DC/SG/DBEVA/SA on the constitution of the application to be filed to obtain public utility recognition.
4. Interministerial Decree 2002 No 22/MCRI-SCB/MISD/DC/SG/DBEVA/SA on the constitution of the application to be filed for the Framework Agreement with the Ministry in charge of relations with Institutions, Civil Society and Benin individuals living overseas.
5. Interministerial Decree 2003 n°17/MCCAG PD/MAEIA/MFE/MISD/DC/SG/DAJD/DBEVA/SA on the Regulation of Headquarter Agreements for foreign NGOs in the Republic of Benin.
6. Centre pour l'Environnement et le développement en Afrique (CEDA), Répertoire des ONG de développement et assimilées au Bénin, société civile et développement, janvier 1996.
7. African Charter of Human and People's Rights.
8. African Charter on the Rights of the Child.
9. African Charter on Democracy, Elections and Governance.
10. Charter on Civil Society Organisations in Benin of 11February 2009.
11. National Charter on Environmental Governance in Benin of 12 May 2004.
12. Statement No 004-14/HAAC/PT/DC/SP-C of 29 October 2014 of the HAAC.
13. Statement No 005-14/HAAC/PT/DC/SP-C of 4 November 2014.
14. Conseil des Investisseurs Privés au Bénin (CIPB), L'internet au Bénin, Cotonou, April 2008.
15. Convention c87 of ILO on freedom of association and protection of the right to organise of 9 July 1948.

16. Constitutional Court, ruling DCC 10-050 of 14 April 2010.
17. Constitutional Court, ruling DCC 14-187 of 11 November 2014.
18. CRED, Revue de la situation de la liberté d'expression, de réunion et d'association dans 128 pays membres des Nations Unies, mai 2010. Web: [www.ohchr.org/.../Cerclederecherchesurlesdroitsetlesdevoirsdelapersonnehumaine.pdf](http://www.ohchr.org/.../Cerclederecherchesurlesdroitsetlesdevoirsdelapersonnehumaine.pdf)
19. Ruling No 12-035/HAAC of 20 November 2012.
20. Ruling No15-045/HAAC of 3 November 2015.
21. Universal Declaration of Human Rights.
22. Decree No 2006-132 of 29 March 2006 on the definition of the various forms of trade unions and representativeness criteria.
23. Decree No 2001-234 of 12 July 2001 establishing the conditions of existence and operating terms of NGOs and of their umbrella organisations.
24. Decree No 2005-377 of 23 June 2005 on the regulation of maintain of public order.
25. EU Commission Delegation in Benin, Profil Gouvernance du Bénin, Cotonou, September 2009.
26. Francis Kpatindé, « Une démocratie qui part en vrille », *Afriqinfos*, 15 November 2012. Web: <http://www.courrierinternational.com/article/2012/11/15/une-democratie-qui-part-en-vrille>.
27. Fondation Friedrich-Ebert-Stiftung, Baromètre des médias africains-Bénin 2014. Web: <http://library.fes.de/pdf-files/bueros/africa-media/11343.pdf>
28. Geneviève Boko Nadjo, « Le code des personnes et de la famille béninois ». Web: <http://jafbase.fr/docAfrique/Benin/PresentationCodeFam.pdf>
29. Gilles Badet, Bénin : Démocratie et participation à la vie politique : Une évaluation de 20 ans de « Renouveau démocratique », AFRIMAP and OSIWA, Dakar and Johannesburg, 2010. Web [https://www.izf.net/sites/default/files/EE\\_PARTIS%20POLITIQUES%20AU%20BENIN.pdf](https://www.izf.net/sites/default/files/EE_PARTIS%20POLITIQUES%20AU%20BENIN.pdf).
29. Gilles Gnimadi, « Fin du processus électoral, Fors-élections fait le bilan de ses actions », *Adjinakou* No 1540 of the 16<sup>th</sup> of April 2010.
30. <http://bj.jolome.com/news/article/renforcement-de-capacites-des-acteurs-de-la-societe-civile-gapp-benin-engage-les-reflexions-sur-la-r#comments>.

31. <http://bj.jolome.com/news/article/la-constitution-beninoise-a-19-ans-la-longue-histoire-d-amour-entre-le-peuple-beninois-et-sa-loi-fon.>
32. [http://www.afrik.com/article16208.html.](http://www.afrik.com/article16208.html)
33. [http://levenementprecis.com/2010/08/11/realisation-de-la-liste-electorale-permanente-informatisee-et-joutes-electorales-la-societe-civile-ebauche-des-pistes-pour-une-sortie-de-crise/.](http://levenementprecis.com/2010/08/11/realisation-de-la-liste-electorale-permanente-informatisee-et-joutes-electorales-la-societe-civile-ebauche-des-pistes-pour-une-sortie-de-crise/)
34. [http://www.lanouvelletribune.info/benin/5604-designation-de-rene-tchibenou-a-la-cps-lepi-la-cour-joue-au-ponce-pilate#!/ccomment-comment=15727.](http://www.lanouvelletribune.info/benin/5604-designation-de-rene-tchibenou-a-la-cps-lepi-la-cour-joue-au-ponce-pilate#!/ccomment-comment=15727)
35. [http://www.cour-constitutionnelle-benin.org/doss\\_decisions/DCC%2014-%20187%20.pdf.](http://www.cour-constitutionnelle-benin.org/doss_decisions/DCC%2014-%20187%20.pdf)
36. [http://latribunedelacapitale.com/actualite/3374-declaration-du-conseil-national-du-patronat-de-la-presse-et-de-l-audiovisuel-cnpa-benin-sur-la-fiscalite-applicable-aux-entreprises-de-presse.html.](http://latribunedelacapitale.com/actualite/3374-declaration-du-conseil-national-du-patronat-de-la-presse-et-de-l-audiovisuel-cnpa-benin-sur-la-fiscalite-applicable-aux-entreprises-de-presse.html)
37. Joseph Djogbenou, Bénin-Le secteur de la justice et l'Etat de droit, AFRIMAP et OSIWA, Dakar and Johannesburg, 2010. Web: <http://docplayer.fr/5046046-Benin-le-secteur-de-la-justice-et-l-etat-de-droit-un-etude-d-afrimap-et-de-l-open-society-initiative-for-west-africa-par-joseph-djogbenou.html>.
38. Law No 90-32 of 11 December 1990 on the Constitution of the Republic of Benin.
39. Organic Law No 92-021 of 21 August 1992 on the High Authority for Audio-visual and Communication (HAAC).
40. Law of 1 July 1901 on the contract of association.
41. Law No 2015-07 of 20 March 2015 on the Information and Communication Code in the Republic of Benin.
42. Law of 30 June 1881 on public meetings.
43. Law No 2001-09 of 21 June 2002 on the exercise of the right to strike in the Republic of Benin.
44. Law No 2013-06 of 25 November 2013 on the Electoral Code in the Republic of Benin.
45. Law No 2001-21 of 21 February 2003 on the charter of political parties in the Republic of Benin.
46. Law No 97-029 of 15 January 1999 on the organisation of communes in the Republic of Benin.

47. Marcel Zoumènou, « La liberté de la presse en pleine dégringolade », *La Nouvelle Tribune*, 3 March 2013. Web: <http://www.courrierinternational.com/article/2013/05/03/la-liberte-de-la-presse-en-pleine-degringolade>.
48. Ministère chargé des relations avec les institutions, Les Actes du séminaire national sur le recentrage du concept de société civile au Bénin, Cotonou, septembre 2007. Adresse sur Internet : [http://www.mdscbenin.org/IMG/article\\_PDF/article\\_a90.pdf](http://www.mdscbenin.org/IMG/article_PDF/article_a90.pdf).
49. Ministère des Finances et de l'Economie, Délégation de la Commission de l'UE au Bénin, Etat des lieux de la situation de la société civile au Bénin et orientations pour le renforcement de ses capacités, rapport final, October 2004. Web: [www.mdscbenin.org/IMG/pdf/17etat-des-lieux-societe-civile-benin-rapport-final.pdf](http://www.mdscbenin.org/IMG/pdf/17etat-des-lieux-societe-civile-benin-rapport-final.pdf).
50. Ministère de la décentralisation, de la gouvernance locale, de l'administration et de l'aménagement du territoire, Appui à la mise en place des cadres de concertation entre les autorités communales et la société civile, rapport provisoire, April 2011. Web: [http://www.ancb-benin.org/Document\\_pdf/ETUDES\\_CADRES\\_DE\\_CONCERTATION\\_COMMUNE-OSC.pdf](http://www.ancb-benin.org/Document_pdf/ETUDES_CADRES_DE_CONCERTATION_COMMUNE-OSC.pdf).
51. Ministère d'Etat chargé de la Coordination de l'Action Gouvernementale, du Plan, du Développement et de la Promotion de l'Emploi, Liste des organisations non gouvernementales en activité au Bénin au 30 juin 2000, August 2000.
52. Ministère du plan, de restructuration économique et de la promotion de l'emploi, Cadre institutionnel de collaboration Etat-ONG en matière de développement, Rapport final, CEDA, July 1996.
53. Nicolas SAUVAIN-HOVNANIAN, « Bénin : crise de complotite aiguë à Cotonou, les dérives de l'élève modèle d'Afrique de l'Ouest », *Classe Internationale*, published on the 19<sup>th</sup> of December 2013. Web: <https://classe-internationale.com/2013/12/19/benin-crise-de-complotite-aigue-a-cotonou-les-derives-de-leleve-modele-dafrique-de-louest/>.
54. Orden Alladatin, « Contribution de la société civile à la mise en œuvre de la LEPI au Bénin ». Web: [http://base.afrique-gouvernance.net/docs/scte\\_civile\\_et\\_lepi.pdf](http://base.afrique-gouvernance.net/docs/scte_civile_et_lepi.pdf).
55. International Covenant on Civil and Political Rights.
56. Economic Community of West African States Protocole A/SP1/12/01 on Democracy and Good Governance.
57. Quotidien Fraternité, « Insécurité au Bénin : Le président de l'Ong Alcrer, Martin Assogba criblé de balles », *Fraternité* published on 10 December 2013. Web: <http://www.fraternitebj.info/societe/article/insecurite-au-benin-le-president>.

58. Daily newspaper Le Matinal, « Après sa déclaration de soutien à Talon le pasteur Elvis Dagba échappe à un enlèvement », *Le Matinal* N°4756, published on Tuesday, 26 January 2016.
59. Daily newspaper ADJINAKOU, « Affaire Dangnivo: interdiction des manifestations publiques. Appel aux forces vives de la nation », *ADJINAKOU* No 1633 of 18 October 2010.
60. Poverty Reduction Growth Strategy in Benin 2011-2015
61. European Union/Republic of Benin, Feuille de route de l'UE pour l'engagement envers la société civile 2014 - 2017, Cotonou, 2015. Web: [eeas.europa.eu/delegations/benin/press\\_corner/all\\_news/.../20160105\\_2\\_fr.html](http://eeas.europa.eu/delegations/benin/press_corner/all_news/.../20160105_2_fr.html)
62. Maison de la Société Civile (2013). CSI-RA Benin : <http://www.civicus.org/images/stories/Benin%20CSI-A%20edited%20by%20CIVICUS%20final.pdf>

## ANNEX 1: List of respondents and focus groups

NAMES	ORGANISATIONN
Joël ATAYI-GUEDEGBE	Nouvelle Ethique (NGO)
Dieudonné OUINSOU	Watch Benin Social Network
Guy Constant EHOUMI	ODEM (Observatoire de la déontologie et de l'éthique dans les médias)
Souleymane Koro YERIMA	SOS CIVISME (NGO)
Martin ASSOGBA	ALCRER (Association de Lutte Contre le Racisme l'Ethnocentrisme et le Régionalisme)
Gervais LOKO	ALCRER
Paul Essè IKO	CSTB (Confédération syndicale des travailleurs du Bénin)
Julien OUSSOU	WANEP-Bénin (réseau ouest-africain pour l'édification de la paix au Bénin)
Prudence DAHODEKOU	DHPD-ONG (Droit de l'Homme, Paix et Développement)
Armand VIGNON	MdSC (Maison de la Société Civile)
Damien HONFO	AS-Jeunes (Association des jeunes dynamiques du Bénin)
A agent who wished to remain anonymous	Tax Directorate
Toussaint KONDO	Cotonou Prefecture
Alain CAPO-CHICHI	Coalition Cour pénale Internationale
Patrice AFFO	Maison de la Société Civile
Josiane MARTINS	Amnesty International
Firmine Seth KPADE	AFJB (Association des Femmes Juristes du Bénin)
Ephémie TOSSOU	FB (lutte contre la mutilation génitale) (NGO)
Joseph GLELE	RODDH (Réseau des ONG de Défense des Droits Humains)
Liamidi BOLARIWA	ATAC (Association pour la Taxation des Transactions financières et pour une Action Alternative Citoyenne)
Yacoub BITOCHO	Initiative RSE-Bénin (Responsabilité Sociale des Entreprises)
Ralmeg GANDAHO	Changement Social Bénin
MAZEDEME Codjo	Fondation Regard d'Amour
SOKOU Patrick	WYSIWYG (NGO)

TOPANOU Eric	Entraide Africa (NGO)
DONKPEGAN Benjamin	IDSCA Bénin (NGO)
AFOKPA Geneviève	Fondation Mère Theresa
AGBESSI Maxime	Main Solidaire d'Afrique
VIAÏNON H. Marie Juliette	Œil d'Aujourd'hui
AKPAHOUN Serge Justin	ACEDD-Jesuhonton (NGO)
KPOGUE Marius	ADEAESPO -Bénin
AGUIAH Julien	NGO NEVIE
SEMANOU Ferdinand	GRADEI -Bénin (NGO)
CHINCOUN Modeste	DDCRI/ ATL
AGON Nestor	IJE (NGO)
AVLESSI Wenceslas	CSA-COD Bénin (NGO)
MIGNANWANDE Michel	CDH (NGO)
NONVIDE Briand Roy	Aide Sociale (NGO)

## Annex 2: Assessment matrix

EENA Assessment Matrix			
Mandatory Dimensions			
<i>Dimension #1: Formation</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What legal instruments (laws, regulations, decrees, etc.) currently govern(s) the formation of Civil Society Organizations (CSOs)?	Existence of favorable legal mechanisms ; clear, non-contradictory provisions		
2. Who is legally permitted to serve as a CSO founder? Who is excluded from serving as a founder?			Existence of binding eligibility conditions (citizenship, function, clean criminal record of founding members etc.).
3. What minimum number of individuals is required to form a CSO? What are the requirements of membership?	Minimum of 7 members, minimal eligibility conditions		
4. What procedures are required to register/incorporate a CSO? (A comparison can be made with registering business entities.)	Minimal registration procedures; comparable with registration of for-profit legal entities		
5. Is there a minimum capitalization requirement to register a CSO?		Nominal minimum capitalization requirement for most CSOs and/or burdensome capitalization requirement for foundations	
6. What are the specific grounds for rejecting a CSO's application for registration/incorporation? Are such grounds sufficiently detailed?	Minimal, clearly defined grounds for rejecting a CSO's application	Numerous, somewhat unclear grounds for rejecting a CSO's application	Extensive, vague grounds for rejecting a CSO's application (excessive discretion accorded to registrar)
7. Must CSOs adhere to certain categories of purpose before being allowed to form; or are		CSOs must declare their objectives. Sometimes CSOs are refused registration for	

some CSOs with certain agendas (human rights protection or democracy-promotion, for example) forbidden from forming?		fallacious reasons.	
8. Can registration decisions be appealed? If so, how frequently are registration decisions appealed? What are the results?	Clear, available means for unbiased appeal		
9. What documentation is required for a CSO's incorporation/registration?		Extensive documentary requirements (e.g., minutes of founders' meeting, ministerial certification, detailed statement of purpose/activities)	
10. Are CSOs required to regularly renew their registration?	No renewal required		
11. What registration fees are required?		Nominal registration fees; comparable with private sector registration fees	
12. What is the approximate cost to register a CSO, and how long does the process typically take?		Minimum registration costs ; comparable with registration costs of companies. Time : too long.	
13. How many CSOs are currently registered?	Study in progress, there are no statistics available – not at the level of the Ministry of the Interior nor at the level of the Prefecture or the Ministry in Charge of Relations with Institutions		
14. Are there draft laws or regulations that, if adopted, would restrict or, alternatively, ease the formation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease the formation of CSOs		

Perception Questions	Green Flag	Yellow Flag	Red Flag
1. Is the entity responsible for registering CSOs sufficiently funded and staffed?		Lack of human resources ; cramped spaces for offices ; shortage of materials.	
2. Is registration easily accessible? E.g., are there sufficient locations/centers around the state for registering CSOs, or is the process all done electronically?		Registration difficult to access for many CSOs	
3. What non-legal and/or non-governmental barriers, such as slow or ineffective bureaucracies, inability to access funds, or difficulty buying/leasing property, affect the formation of CSOs?		Some non-legal and/or non-governmental barriers to formation, such as unreasonable bureaucratic delays that make it significantly more difficult to form a CSO	
4. To what extent is there a perception of excessive discretion, favoritism (political, ethnic, religious, etc.), and/or corruption in the registration process?		Some perceived unfairness (discretion, favoritism, corruption)	
<i>Dimension #2: Operation</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What law(s) directly govern(s) the operation of CSOs? Do any other laws affect or influence the operation of CSOs?	Enabling laws; clear, non-overlapping regulatory regimes		
2. Are CSOs required to notify the government of any meetings? If so, of each meeting or only key meetings? Are they required to notify the government of the list of candidates for the board of directors? Of the results of	No/minimal required notification (i.e. only in case of changes in the board of directors or legal representatives of the CSO)		

elections?			
3. Are CSOs required to submit periodic reports to the government? What kind of reports – e.g. activity or financial reports –, and how often?	Annual reporting appropriate to CSO's size		
4. Are CSOs required to periodically report to the government for any other reasons? What reasons and how often?	No/minimal other reporting		
5. Are CSOs subject to government audits or inspections? How often, and what types?		Annual audits regardless of size; risk of unwarranted inspection (in principle, not in practice)	
6. What types of information are CSOs required to publicly disclose?	No/minimal other disclosure required (e.g., use of public resources)		
7. What administrative requirements affect the operation of CSOs?	Minimal, clear administrative requirements, such as basic documentation of the CSO and a contact person		
8. Are CSOs mandated to align their activities with governmental priorities as defined in national development plans?		Some alignment required (e.g. for certain types of CSOs)	
9. On what grounds is the government legally permitted to terminate or dissolve a CSO? Is there an opportunity to appeal this decision?		Many, somewhat unclear grounds for termination/dissolution; limited availability of unbiased appeal	
10. On what grounds can a CSO be voluntarily dissolved?	No limitation on voluntary dissolution		
11. Are there draft laws or regulations that, if adopted, would restrict – or,	Pending legislation/regulations that will significantly ease the		

alternatively, ease - the operation of CSOs? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	operation of CSOs		
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What level of oversight does the government have over CSOs? Extensive, moderate, or light?		Moderate, e.g. frequent reporting requirements, permits for certain activities, and/or frequent inspection or auditing	
2. In practice, do the legal and administrative requirements referred to above act as impediments to the productive operation of CSOs? Are they helpful to the daily operation of CSOs?	Helpful administrative requirements (e.g., reasonable documentation related to claiming tax benefits)		
3. Are there non-legal grounds that, in practice, the government uses or cites to terminate or dissolve a CSO? In practice, how have such terminations been conducted: according to the law or otherwise?	No non-legal grounds for termination/dissolution		
4. Is there a history of state harassment of CSOs for allegedly not adhering to administrative and/or legal requirements? Is there a history of state harassment of CSOs for other reasons or in general?		Some history of harassment	
<i>Dimension #3: Access to Resources</i>			
<i>a. General questions about the funding environment</i>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. Which financial resources do	No limitation on funding		

CSOs have legal access to: State funds? Earned income? Donations? Foreign donor funding? Other?			
2. What legal barriers hinder access to each of these potential sources of funding?		Some legal barriers to funding (e.g., must register to receive foreign funding; must establish a company to generate any earned income;)	
3. Do laws and/or regulations prohibit CSOs from distributing profits or otherwise providing inappropriate private benefit to officers, directors, or other insiders?			Vague regulation of profit distribution, private benefit
4. Upon dissolution or termination, what happens to a CSO's assets? What laws and/or regulations affect distribution of assets upon dissolution?	Clear enabling laws on CSO assets after termination/dissolution		
5. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs access to resources? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease CSOs' access to resources		
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What non-legal and/or non-governmental barriers hinder access to each of the potential sources of funding for a CSO?		Some non-legal and/or non-governmental barriers, such as an under-developed banking system, lack of CSO fundraising capacity	
2. How reliable is a CSO's access to legally permissible funds?			Extremely unreliable, limited availability of funds

And how freely available are these funds?			
3. How much does a CSO's financial sustainability depend on government oversight and approval?		Somewhat (e.g., government can exercise discretion in approving or influencing access to certain sources for CSOs)	
4. How effectively does the legal and policy framework support the mobilization of local resources?		Somewhat effectively, e.g., the laws allow donations but do not incentivize them	
5. Does government and donor funding support the full range of CSO programming and activities, including e.g., innovation, core funding, policy development and advocacy?		Limited availability of such funds (e.g., only from a couple of donors or for a few types of CSOs)	
6. What type of source of funding are CSOs most dependent on?		Limited funding sources	
7. What is the perceived reliability of different sources of funding? (or what source of funding is more reliable for CSOs)		A few reliable funding sources	
8. Are you seeing any recent changes in the funding environment at the national level? What are the impacts of any changes on CSOs?		Funding environment deteriorating and/or at risk of significantly deteriorating	
<b>b. Government funding</b>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. Is government funding currently available for CSOs? If so, is it available for any type of CSO or are there special types of CSOs that are supported by the		Government funding somewhat available from certain departments for certain types of CSOs	

government?			
2. In what form and at what levels is government funding available? E.g. are grants, subsidies, institutional (core) support provided at the central level and/or at the local level? Is there a special funding mechanism (e.g. a fund) for CSO support? Are there examples of contracting with the government by CSOs?		Limited government funding options; good practice examples exist but not widespread	
3. What are the laws, rules and policies currently governing government grants and subsidies of CSOs?	Few, clear enabling laws/rules/policies governing government funding, including those ensuring transparency in awarding grants or contracts to CSOs	Multiple, somewhat unclear laws/rules/policies governing government funding; general procurement rules applied to CSOs	Many and/or vague laws/policies governing government funding; too restrictive or no specific rules for awarding public funds to CSOs
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. To what extent is the legal framework conducive to government funding of CSOs? What are specific legal and non-legal barriers to increased, more efficient or more transparent government support?		Legal framework somewhat conducive to government funding; some legal and/or non-legal barriers to transparent government support (e.g., a law that allows funding of CSOs but no clear implementation mechanisms; or: calls for proposals do not respond to CSO priorities)	
2. Is the dispersal of government funds seen as predictable, transparent, easily understandable and impartial?		Dispersal of government funds is seen as somewhat unpredictable, opaque, and/or biased	

3. Has government support decreased or increased within the past years? What is expected in the following years?		Government support not increased recently; not expected to increase	
<i>c. International funding</i>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. Are there different standards/requirements for accessing foreign sources of funding versus domestic sources of funding?			Burdensome additional criteria/requirements for foreign funding (e.g., need to align activities to government plans)
2. What are legal barriers to accessing and using foreign resources by a CSO, if any? E.g. is there government notification and/or oversight required to acquire foreign funding? Are there additional reporting requirements when using foreign funding?			Burdensome legal barriers to foreign funding (e.g., permission and onerous reporting requirements)
3. Are there bilateral or multilateral agreements in place that affect foreign donors' ability to donate and establish partnerships with CSOs? If yes, what kind of agreements are they (statement of medium to long-term commitment to a relationship; funding framework, etc.)		Few bilateral/multilateral agreements regarding foreign funding	
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What non-legal barriers to receiving foreign funds exist in practice?		Some non-legal barriers to foreign funds (e.g. complex application and reporting processes)	
2. Has the overall state of governance and rule of law in	Overall governance and rule of law encourages donors		

the country affected donor's contribution to CSOs? If so, how?			
<b>d. Philanthropy</b>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What are the laws and/or regulations specifically addressing philanthropy?		Some, somewhat unclear laws/regulations regarding philanthropy	
2. Are tax exemptions available to those who engage in philanthropy?		Limited tax exemptions available	
3. Are CSOs permitted to be the recipients of both corporate and individual philanthropy?	Yes, under reasonable criteria (e.g., charitable purposes)	Some unreasonable or unfavorable restrictions on CSOs as recipients of corporate and/or individual philanthropy (e.g. must provide a report to every single donor)	Burdensome restrictions on CSOs as recipients of corporate and/or individual philanthropy (e.g., annual re-registration as charity to be eligible)
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. Does the legal and regulatory framework encourage philanthropy? If so, how? If not, how?		Somewhat – e.g., donations and volunteering are allowed but there are no incentives or the procedures are burdensome or unclear	
2. Is there a philanthropic tradition? What encourages it? What discourages it?		Somewhat	
3. Do CSOs regularly fundraise from the domestic public or corporations? Do CSOs have fundraising capacity? Or capacity to diversify their funding?		Somewhat – e.g., there is growing awareness of the importance of domestic fundraising, some “pioneering” organizations and successful programs to build such capacity of CSOs	
4. Do individuals regularly donate to CSOs?			No – regular donations are insignificant in the income of most CSOs

5. Do corporations regularly donate to CSOs?			No – company donations are insignificant in the income of most CSOs
<i>Dimension #4: Expression</i>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What laws affect a CSO's ability to freely express their opinions? What rights are guaranteed under the existing legal framework, including the constitution, with respect to expression, including access to the Internet?	Existence of clear and enabling laws ; there are important restrictions but these are in lign with international norms. Existence of minimal restrictions in terms of time and place.		
2. Which international treaties have been ratified that affect the ability to publicly express oneself? What treaties have been ratified that affect the right to access the Internet?	All relevant treaties have been ratified (UDHR, ICCPR, regional HR treaties)		
3. What legal barriers, if any, hinder a CSO's ability to openly express its opinions, particularly on matters critical of government policies?	No/minimal legal barriers to CSOs' expression		
4. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – CSOs' freedom of expression? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will significantly ease the expression of CSOs		
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What non-legal barriers hinder a CSO's ability to openly express its opinions?		Some non-legal barriers to expression	
2. Is open criticism of		Public criticism is	

government policies and practices tolerated? What, historically, has been the reaction of the government to such open criticism?		condemned by the government and/or occasionally retaliated	
3. Are individuals and CSOs aware of their rights with respect to expression? Does the political culture openly support these rights? Or are they actively suppressed regardless of legal protections?		Many individuals and CSOs are aware of their rights; political culture frowns on free expression	
<i>Dimension #5: Peaceful Assembly</i>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What laws address the rights to peaceful assembly, including domestic legislation/regulations and international treaties to which the country is a signatory?	Few, clear enabling laws governing assemblies; all relevant treaties have been signed and ratified		
2. Are there limits placed on who can assemble? Are groups with certain agendas or orientations forbidden from assembling?	Reasonable limits	Too much discretion to authorities who abuse it	
3. Are individuals or CSOs planning a strike/protest required to seek permission or notify the government in advance of the strike/protest?	Declaration (notification) regime, no autorisation regime.		
4. Are there limits on the time, place and manner that individuals or groups can assemble, strike, protest or otherwise publicly (and peacefully) express their views?	Minimal limits : time of the day, place or form of assembly		
5. How are aggressive/violent		Violence is not well	

demonstrators dealt with in the law and in practice?		contained; security response is disproportionate	
6. Are there draft laws or regulations that, if adopted, would restrict – or, alternatively, ease – individuals and/or CSOs right to peacefully assemble? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.	Pending legislation/regulations that will (significantly) ease the right to peaceful assembly	Pending legislation/regulations that may restrict assemblies	Pending legislation/regulations that will severely restrict assemblies
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. Is there a history of government-led violence or aggression against peaceful demonstrators, activists and/or strikers?			Frequent instances of violence or aggression
2. In practice, are groups who gather to openly criticize the government through protest, strike or other form of peaceful demonstration tolerated?			Criticism and protest are met with reprisals
<i>Dimension #6: Government-CSO Relations</i>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. To what extent are CSOs permitted to engage in the political (electoral) process? E.g., are they permitted to nominate candidates for public office? Support or oppose political parties/candidates? Fundraise for political parties/candidates? If so, under which conditions?	CSOs generally permitted to engage in the political and electoral process; but need to stay non-partisan. CSOs cannot support a political party or candidate.		
2. To what extent are CSOs allowed to participate in	CSOs allowed to participate in public policy activities;	CSOs are partially allowed to participate in public policy	CSOs, or a significant segment of CSOs, are forbidden from

public policy activities? Are they allowed to advocate (campaign) and lobby for legislation? If so, under which conditions?	advocacy and lobbying are permitted with no restrictions	activities; vague laws allow for government discretion; there are some unreasonable restrictions on advocacy and lobbying activities (e.g., must obtain government permission to organize an event)	participating in public policy activities, including advocacy and lobbying
3. What are legal / institutionalized opportunities for CSOs to participate in the decision-making process? E.g., are there open hearings, consultations, multi-stakeholder working groups?		There are some legal/institutional opportunities for CSOs to participate in decision-making	
4. To what extent are there compacts, liaison officers, committees, or other similar mechanisms to promote cooperation and communication between government and civil society?		There are mechanisms to promote the cooperation and communication between the government and civil society but they lack synergy and are not effective.	
<b>Perception Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. In general, what is the nature of the relationship between the Government and CSOs? Contentious? Harmonious? Somewhere in the middle?	Harmonious and free relationship between the government and CSOs that support the actions of the government	Existence of a somewhat contentious relationship between the government and CSOs that criticise the actions of the government.	
2. Is there regular communication between CSOs and the Government? How can the quality of the dialogue between the Government and CSOs be characterized?		There is limited, often ineffective communication between CSOs and government	
3. Are the opinions of CSOs taken into account when drafting legislation, or more generally, anywhere in the		CSOs opinions are sometimes taken into account	

legislative process?			
4. Are there timely consultations with civil society organisations in order for them to impact government decisions?		Sometimes	
5. Is there full transparency and accountability for development priorities, strategies, plans and actions by government?			There is little or no transparency and accountability
6. Do CSOs have a mechanism to dispute or appeal certain government decisions at the central or local level? Is this mechanism a reliable, genuine and effective way for CSOs to voice their dissent to particular government decisions? In practice, has this mechanism been successfully utilized by CSOs to produce a fairer result?	Yes, several such mechanisms exist and at least one has proven successful		
7. Does the Government view CSOs as partners and allies in their own work, or as potential threats to their agenda?		CSOs are sometimes viewed by government as partners and sometimes as a threat, or largely ignored	
8. Are CSOs capable of participating in a broad range of public policy initiatives and activities, or are they restricted by non-legal barriers to a narrow range of circumscribed activities?	No/minimal non-legal barriers to CSOs public policy participation		
9. Have there been any significant changes in relations between civil society and the government in your	Relations between civil society and government have improved in the last two years	Relations between civil society and government have deteriorated somewhat in the last two years	Relations between civil society and government have deteriorated significantly in the last two years

country in the last two years? If so, please describe these.			
10. Have any global events or processes in the past two years affected state-civil society relations at the national level? If so, how? (i.e. The Aid effectiveness debate, etc.)	The government has increasingly engaged CSOs in development planning.		
<i>Dimension # 7: Taxation</i>			
<b>Factual Questions</b>	<b>Green Flag</b>	<b>Yellow Flag</b>	<b>Red Flag</b>
1. What taxes are imposed on the income of CSOs? Do they affect their earned income, grants, investments, or purchased goods and services?	Few, clear enabling tax laws that provide exemptions on non-economic income of CSOs		
2. Are CSOs subject to VAT and customs taxes?	Partially, under clear and reasonable conditions (charitable donations are exempt)		
3. Are CSOs subject to local taxes, fees or charges, in addition to federal taxes? Are any other level of taxes imposed (regional or state taxes, for example)?	CSOs are generally tax exempt, or are eligible to receive tax exemptions ; CSOs do not pay local taxes.		
4. What are the tax and regulatory requirements on CSOs that engage in economic activities?	Clear tax laws/regulations enabling CSOs to engage in economic activities through partial exemptions		
5. Are tax exemptions granted to all CSOs? Are only certain categories of CSOs granted tax exemptions?	Exemptions are available to all CSOs ; those CSOs with the public benefit status have more fiscal advantages. There are clear criteria and procedures for acquiring tax exemptions		

Perception Questions	Green Flag	Yellow Flag	Red Flag
1. Have taxes been used by the state as a form of repression of CSOs practices? If yes, how so?	No		
2. Is CSOs financial sustainability affected by taxes, duties and/or fees? Does tax legislation facilitate or impede CSOs in achieving sustainability in their finances?	CSO financial sustainability is enhanced by tax legislation		
3. To what extent are the tax laws/ regulations enforced? Are taxes regularly paid? What is the capacity of the government to enforce tax payments?			Government does not have the necessary capacity to enforce tax laws/regulations and payments; avoiding taxes is the norm
<i>Dimension #8: Access to Information</i>			
Factual Questions	Green Flag	Yellow Flag	Red Flag
1. What laws and/or regulations govern or affect a CSO's access to information? Do they vary based on the type of information being sought?	Clear enabling laws govern CSO access to information		
2. Is there an appeal process for information? Has it been denied?		There is limited opportunity for fair and effective appeal	
3. To what extent are government officials themselves accessible to the public? What opportunities exist for the public, including CSOs, to meet with government officials about their personal or organizational interests and needs?			Opportunities for public to access government officials are quasi inexistent
4. Are there draft laws or	Pending		

<p>regulations that, if adopted, would restrict – or, alternatively, ease – CSOs’ access to information? If so, please summarize the content of the key provisions and in what stage of the legislative process it currently stands.</p>	<p>legislation/regulations that will significantly ease access to information</p>		
<p>Perception Questions</p>	<p>Green Flag</p>	<p>Yellow Flag</p>	<p>Red Flag</p>
<p>1. Is the process of obtaining government information transparent, smooth, sufficiently easy to navigate, and based on the rule of law, or is it difficult, seemingly arbitrary, slow, and mired in bureaucratic red tape?</p>		<p>Process for obtaining information is unclear; includes some governmental discretion and/or includes multiple burdensome steps</p>	