



BENIN

TECHNICAL ASSISTANCE REPORT—GOVERNANCE DIAGNOSTIC

June 2023

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Governance Diagnostic

February 2023

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Governance Diagnostic

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TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS	6
PREFACE.....	8
EXECUTIVE SUMMARY	9
I.INTRODUCTION	13
II.IMPROVING THE LEGAL AND PRUDENTIAL FRAMEWORK FOR ECONOMIC DEVELOPMENT	
17	
A. Rule Of Law And Business Climate	17
B. Legal And Institutional Anti-Corruption Framework.....	21
C. Efforts To Combat Money Laundering And The Financing Of Terrorism (Aml/Cft).....	27
D. Financial Sector Supervision	31
III.PROGRESSING IN REVENUE MOBILIZATION.....	34
A. Tax Policy.....	34
B. Tax And Customs Administrations	38
IV.PROGRESS IN PUBLIC FINANCIAL MANAGEMENT.....	50
A.Budget Transparency.....	50
B.Management In Program-Based Budgeting Mode	51
C.Public Procurement.....	52
D.Supervision Of State-Owned Enterprises.....	56
E.Internal And External Audit And Control.....	58
F.Digitalization	59
BOXES	
1. Investment Incentive Regimes.....	35
2. Tax and Customs Governance System – Main Developments	39
3. Theoretical Framework for Assessing Public Expenditure Financing Needs.....	41
4. Typology of Anti-Corruption Integrity Technologies.....	44
5. DGD – Examples of Red Flags for Operations with a High Likelihood of Fraud and Collusion... 46	
6. Key Elements of an Integrated Strategy for the Standardization of Trade with Nigeria.....	47
7. Strategic Thrusts of a Joint Approach to Tax and Customs Risk.....	48
8. Findings from the ARMP Audit Report on the Procurement Procedures of the Université d’Abomey-Calavi – Fiscal Years 2016 and 2017	54
CHARTS	
1. IIAG Justice and Rule of Law Score	15
2. Budget Transparency in Benin – Comparative Data.....	50
TABLES	
1. Summary of Key Recommendations	12

ANNEXES

I. Detailed Table of Recommendations 62

II. Definitions of Governance and Corruption According to the 2017 IMF Policy 67

III. National Integrity System Assessment 69

IV. Points on the Anti-Corruption Legal Framework in the Penal Code 71

V. Main DGI and DGD Computer Applications 74

VI. Tax Intelligence Management within the DGI..... 75

ACRONYMS AND ABBREVIATIONS

AML/CFT	Anti-money laundering/Combating the financing of terrorism
ANDF	National Land Agency (Agence Nationale du Domaine et du Foncier)
ANLC	National Anti-Corruption Authority (Autorité Nationale de Lutte contre la Corruption)
ARMP Publics)	Public Procurement Regulatory Authority (Autorité de Régulation des Marchés Publics)
BEF	Economic and Financial Brigade (Brigade Economique et Financière)
CBU	WAEMU Banking Commission (Commission Bancaire de l'UEMOA)
CdC	Court of Auditors (Cour des Comptes)
CDI	Investment Code (Code des Investissements)
CENTIF	National Financial Information Processing Unit (Cellule Nationale de Traitement de l'Information Financière)
CNCA	National Committee for the Coordination of AML-CFT Activities (Comité National de Coordination des Activités LBC-FT)
CPI	Corruption Perceptions Index
CRIET	Court for the Repression of Economic and Terrorism Crimes (Cour de Répression des Infractions Economiques et du Terrorisme)
CSM	Superior Council of Magistrates (Conseil Supérieur de la Magistrature)
DGB	Directorate General of the Budget (Direction générale du budget)
DGD	Directorate General of Customs (Direction générale des douanes)
DGI	Directorate General of Taxes (Direction générale des impôts)
DGMP	Directorate General of Public Procurement (Direction générale des marchés publics)
DGTCP	Directorate General for the Treasury and Public Accounting (Direction générale du Trésor et de la comptabilité publique)
EPNFD	Designated non financial businesses and professions (Etablissements et professions non financières désignées)
FAD	IMF Fiscal Affairs Department
FSAP	Financial Sector Assessment Program
FTE	Fiscal Transparency Evaluation
GIABA	Intergovernmental Action Group against Money Laundering (Groupe Intergouvernemental d'Action contre le Blanchiment d'Argent)
HCPC	High Commission for the Prevention of Corruption (Haut-Commissariat à la Prévention de la Corruption)
HRM	Human resource management
IGF	Inspectorate General of Finance (Inspection Générale des Finances)
IIAG	Ibrahim Index of African Governance
IMF	International Monetary Fund
LEG	IMF Legal Department
MCM	IMF Monetary and Capital Markets Department
MEF	Ministry of Economy and Finance (Ministère de l'Economie et des Finances)
MER	Mutual Evaluation Report

MJL	Ministry of Justice and Legislation (Ministère de la Justice et de la Législation)
NIS	National Integrity System
NRA	National Risk Assessment
OBS	Open Budget Survey
OHADA	Organization for the Harmonization of Business Law in Africa (Organisation pour l'Harmonisation en Afrique du Droit des Affaires)
PAG	Government Action Program (Programme d'Action du Gouvernement)
PBB	Program-based budgeting
PEP	Politically exposed person
PFM	Public financial management
SEZ	Special economic zone
SGPR	Secretariat General of the Office of the President of the Republic (Secrétariat Général de la Présidence de la République)
SIGFP	Public Financial Management Information System (Système d'Information et de Gestion des Finances Publiques)
TCC	Commercial Court of Cotonou (Tribunal de Commerce de Cotonou)
UNCAC	United Nations Convention Against Corruption
UPF	Fiscal Policy Unit (Unité de Politique Fiscale)
WAEMU	West African Economic and Monetary Union

PREFACE

At the request of the Minister of State, Minister of Economy and Finance of Benin, a joint mission was conducted by the IMF Fiscal Affairs Department (FAD), Legal Department (LEG), and Monetary and Capital Markets Department (MCM) between June and September 2022 to review the state of governance and analyze, in particular, vulnerabilities to corruption that may jeopardize the achievement of the nation's development objectives. Following a virtual session in June, the mission traveled to Cotonou from September 12 to 27 to finalize the work.

In the absence of the Minister of State, the mission met with Mr. Hermann Takou, Chief of Staff to the Minister, whom it thanked warmly for the welcome. The mission would also like to thank the officials from the Ministry of Economy and Finance and the Ministry of Justice and Legislation as well as the representatives of the various institutions it had met, namely the National Assembly Finance Committee, the Supreme Court, the Court of Auditors, the High Court of Justice, and the National Financial Information Processing Unit.

At the end of its visit, the mission presented its findings during a feedback meeting attended by all the parties it had met. It also met with the Minister of State, Secretary General of the Office of the President of the Republic, Mr. Pascal Koupaki, and with the Minister of Justice and Legislation, Mr. Séverin Maxime Quenum.

The mission is deeply grateful to all of the individuals with whom it met for their welcome and the quality of the discussions. It is especially grateful for the valuable assistance provided by the focal points appointed by the authorities, that is, Mr. Prince Sohou, Assistant to the Chief of Staff of the Minister of Economy and Finance, Mr. Zisson Facinou, Inspector General of Finance, and Mr. Zoul-Kifouly Lawani, Director of Planning, Administration, and Finance of the Ministry of Justice and Legislation.

The mission also wishes to thank Mr. Younes Zouhar, IMF Resident Representative in Cotonou, and his staff for their support.

EXECUTIVE SUMMARY

At the request of the authorities of the Republic of Benin (“Benin”), a team consisting of multiple IMF departments (FAD, LEG and MCM) conducted a governance diagnostic mission from June 7 to September 27, 2022. In keeping with the IMF’s 2018 Framework for Enhanced Engagement on Governance, the diagnostic focused on weaknesses in governance and vulnerabilities to corruption in areas deemed to be macro-critical, including: (i) contract execution and protection of property rights; (ii) the legal and institutional framework for anti-corruption efforts; (iii) Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT); (iv) financial sector supervision; and (v) public finance governance (tax policy, tax and customs administration, public financial management).

The current President of the Republic Patrice Talon has repeatedly stressed the major importance of good governance for the country’s future and has made it a strong focus of his second term. Re-elected in 2021, the President of the Republic has made improving governance the first axis of the Government Action Plan (*Programme d’Action du Gouvernement – PAG*) 2021–2026, in keeping with efforts undertaken since 2016, particularly in terms of public sector performance, strengthening transparency in public finances, and increasing accountability. The authorities requested the IMF’s assistance to analyze weaknesses in governance and vulnerabilities to corruption and thus contribute to the efforts set forth in the PAG 2021–2026 through appropriate and realistic recommendations.

The Governance Diagnostic shed light on very positive developments in recent or ongoing reforms, but also highlighted what needs to be done to overcome the weaknesses in governance in some areas. In particular, progress has been made in public finances (successful program budget implementation, fiscal transparency, commencement of internal control and audit reform, creation of a Court of Auditors), tax policy (strengthening the governance of tax expenditures), AML/CFT (update of the legal framework and adoption of an action plan following the GIABA report), and rule of law (accessibility of legislation, creation of commercial justice, development of e-procedures). However, there is still room for improvement, primarily with respect to (i) weaknesses in the legal and institutional framework; (ii) a lack of transparency regarding certain specific, vital procedures (disciplinary powers and appointment of magistrates, for example), and (iii) an occasional lack of capacity or tools. Making improvements in these areas can help ensure the medium and long-term sustainability of already observed progresses, beyond the political will currently expressed in a system relying heavily on a strong presidential impetus and on the strategic as well as operational involvement of units directly attached to the Office of the President.

More specifically, the situation in the various areas can be summarized as follows:

- Rule of law, contract execution, and protection of property rights have seen some progress (digitalization of land-related services and procedures underway, successful creation of a Commercial Court in Cotonou, and ongoing creation of new courts). The planned creation of a court specializing in land matters and the establishment of a Commercial Court of Appeal will be welcome additions. The perception of interference in the judicial system and of corruption among certain judges is still strong and should be countered through, notably, greater transparency regarding the promotion of judges and the sanctions imposed on them.
- The legal and institutional anti-corruption framework has been radically altered since 2020 with the repeal of the 2011 anti-corruption law and the elimination of the National Anti-Corruption Authority (*Autorité Nationale de Lutte contre la Corruption* – ANLC). The fight against corruption is now essentially adjudicated through the Court for the Repression of Economic and Terrorism Crimes (*Cour de Répression des Infractions Economiques et du Terrorisme* – CRIET) created in 2018, which relies on the Economic and Financial Brigade (*Brigade Economique et Financière* – BEF). The publication of CRIET rulings and statistics on its various activities would, however, strengthen its authority and legitimacy. A High Commission for the Prevention of Corruption (*Haut-Commissariat pour la Prévention de la Corruption* – HCPC), attached to the Office of the President of the Republic, is not operational yet. The repeal of the 2011 law, replaced in part by provisions introduced in the 2018 Penal Code and by the 2020-09 HCPC law, leaves gaps with respect to good practices and international commitments entered into by Benin, including the absence of sufficient protection for whistleblowers, no conflicts of interest framework, and no asset declarations framework to extend the requirement of public officials to declare assets, beyond the President and ministers.
- Progress has been made in AML/CFT following the recent mutual evaluation and adoption of an action plan to strengthen the system's effectiveness. More still needs to be done with regard to all the pillars of the AML/CFT mechanism to mobilize its tools in the fight against corruption, including the transparency of legal entities and access to information on beneficial owners, as well as with regard to strengthening supervision of the real estate sector in order to limit the risk of laundering the proceeds of corruption in that sector.
- Financial sector supervision underwent a desk review as part of the present governance diagnostic, based on the results of the Financial Sector Assessment Program (FSAP) conducted in 2022 within the West African Economic and Monetary Union (WAEMU). The recommendations made in connection with the WAEMU FSAP seem likely to address the specific vulnerabilities facing Benin's banking sector and revolve around increasing the regional supervisor's independence, ensuring more consistent use of sanctions by the latter, and enhancing its resources and capacities.
- Revenue mobilization still has considerable governance vulnerabilities, despite ambitious reforms. In terms of tax policy, efforts to increase transparency in tax expenditure and progress on the new Investment Code must be supplemented with the publication of

additional details on beneficiaries of tax breaks and of regimes subject to agreements and rulings. The tax and customs administration is still plagued by a strong perception of corruption, which is a barrier to the development of tax and customs revenue. This perception can be changed through continued efforts to digitalize procedures, an ambitious reform of human resource management, and better management of tax and customs risk to address specific vulnerabilities in the Beninese economy, particularly as concerns the normalization of trade in goods with Nigeria. Aside from that, tax and customs revenue targets would benefit from being set using a more structured approach, with the adoption of a Medium-Term Revenue Strategy (MTRS) as a potential vector to enhance responsiveness and accountability of the tax and customs administrations.

- *Public financial management (PFM)* has seen considerable progress, recognized in particular by the Open Budget Survey 2021 (May 2022). Nevertheless, efforts must still be made to reap all the benefits of the transition to program-based budgeting (PBB) as far as the administration's accountability is concerned and to finalize the internal audit and control reform (an area in which Benin is already a pioneer across Francophone Africa), an essential counterweight to the new responsibilities entrusted to managers. Public procurement management still has room for improvement, in terms of both accountability (audits of the largest contracts) and transparency tools (e-procurement). Supervision of State-owned enterprises and improvement of IT tools also pose major issues in terms of enhancing transparency and internal control tools. Lastly, the swift operationalization of the Court of Auditors created by the 2019 institutional reform is a prerequisite for the credibility of the new institution.

All in all, the recommendations made in the diagnostic report (summarized in **Table 1** below and detailed in **Annex I** of the report) focus on macro-critical aspects in keeping with the IMF's mandate, i.e., those areas for which strong evidence suggests that they may have significant effects on macroeconomic stability. Their implementation will require, in addition to the mobilization of undeniable capacities already existing within the Beninese government, efforts backed by strong political will and by support from technical and financial partners.

Table 1. Summary of Key Recommendations

	Measure	Authority	Timetable¹
Rule of law and business climate			
1	Improve transparency surrounding judicial promotions and sanctions	MJL, CSM	ST
2	Operationalize the Commercial Court of Appeal and the Specialized Land Court	MJL	ST
Anti-corruption efforts			
3	Revise the Penal Code by introducing or supplementing provisions concerning the criminalization and repression of acts of corruption, in accordance with the United Nations Convention against Corruption (UNCAC)	MJL	ST
4	Revise the legal framework on conflicts of interest and that which pertains to asset declarations, in accordance with the UNCAC	MJL	ST
5	Operationalize the HCPC while working in parallel to strengthen its legal framework in order to ensure its independence and consider transferring to it the jurisdiction of the judicial police for acts of corruption	MJL, SGPR	ST/MT
Efforts to combat money laundering and the financing of terrorism (AML/CFT)			
6	Take measures to mitigate significant money laundering risks in the real estate sector	CNCA, CENTIF, ANDF	ST/MT
Tax policy			
7	Publish (i) Investment Control Commission reports, (ii) the full list of tax exemptions, and (iii) a list of SEZ-approved enterprises	MEF, APIEX	ST
Tax and customs administration			
8	Determine, in an objective and structured manner, the country's fiscal potential and focus, through the future MTRS, on narrowing the gap between this potential and actual performance as an overall indicator for measuring the effectiveness of revenue agencies	MEF, DGI, DGD	ST
9	Strengthen human resource management within revenue agencies by: (i) adapting human resources to the strategic objectives of administrations through the development of forward-looking management of jobs, workforces, and skills; (ii) modernizing policies and motivators for agents; and (iii) restructuring the individual and collective performance evaluation system	MEF, DGI, DGD, Ministry in charge of the Public Service	MT
10	Improve tax and customs risk management to address specific vulnerabilities in the Beninese economy by: (i) exercising greater vigilance over customs operations with a high likelihood of fraud and collusion; (ii) putting in place an integrated strategy for standardizing trade in goods with Nigeria; and (iii) defining areas of strategic focus for a joint approach to tax and customs risk between the DGI and the DGD	DGI and DGD	ST/MT
Public financial management			
11	Make the audit of high-stakes public contracts by independent auditors systematic, publish audit reports on the website, and arrange follow-up on recommendations arising from those reports	ARMP	ST
12	Improve public procurement tools by (i) establishing a computer database on public procurement to improve turnaround times for the production of public procurement statistics and (ii) wrapping up e-procurement work	ARMP, DNCMP	MT
13	Produce and publish the financial statements of State-owned enterprises and disseminate financial information on liquidations/privatizations	DNPED	ST/MT

¹ The summarized recommendations are divided into short-term (ST), for implementation within 12 months, and medium-term (MT), for implementation that may take 24 to 30 months.

I. INTRODUCTION

1. Benin is a quite densely populated country, with approximately 12 million inhabitants, endowed with a 121 km coastline and extensive land borders with four countries, including Nigeria, stretching over more than 2,100 km. This geographical position means that it plays a significant logistical role, particularly through the Autonomous Port of Cotonou, one of the largest ports in West Africa alongside Lagos and Abidjan. The country is rather stable and secure, despite the recent rise in attacks by armed extremist groups in the northern part of the country across the borders with Niger and Burkina Faso. The current President of the Republic, Patrice Talon, was elected in 2016 and re-elected for a second term in 2021. Legislative elections were held on January 8, 2023.

2. Economic activity, concentrated in the South as a reflection of the weight of logistics activities, suffered from the COVID-19 pandemic and the closure of the border with Nigeria, but has been recovering since 2021. Although efforts are being made to diversify it, economic activity is highly concentrated in the coastal part of the country in the South around the Port of Cotonou. The informal sector employs 85 percent of the active population, particularly in services and agriculture, as Benin is one of Africa's top cotton producers, along with Mali. Benin saw steady growth before the COVID-19 pandemic (+6.4 percent annually on average during the period from 2017 to 2019), which placed it in the lower-middle-income country category in 2020 (based on 2019 figures).² After a more difficult year 2020 because of COVID-19 and the closure of the border with Nigeria, a strong recovery took place in 2021. Since 2019, Benin has gained access to international capital markets.

3. Governance and vulnerabilities to corruption are a major issue for Benin. Although no recent documents offer a shared assessment on this topic,³ perceptions of corruption are still widespread (2019 AFRISTAT study and international rankings, including those of Transparency International and the Mo Ibrahim Foundation). This perception and reality of corruption must be addressed to ensure that the "development bargain"⁴ desired by Beninese political and economic elites is entirely successful and gives rise to strong and inclusive growth improving the general standard of living, thus replacing a low-growth regime where elites focus on rent capture and the protection of the status quo. The analysis grid used by this report, the main principles of which are set out in **Annex II**, aims to contribute to these efforts in order to improve governance for the sake of development.

4. The Beninese authorities are very much aware of the issue. President Patrice Talon, who was elected in 2016 and re-elected in 2021, has repeatedly pointed out how crucial good governance

² The per capita GDP in 2021 was US\$1,428 (source: World Bank).

³ A "White Paper" on corruption prepared in 2020–2021 by the staff of the Office of the President and by the National Anti-Corruption Authority has never been published and remains confidential.

⁴ To use the terminology of Stefan Dercon: *Gambling on Development – Why Some Countries Win and Others Lose*, Oxford University Press, April 2022.

is to the country's future and has initiated a series of reforms in that respect, detailed later in the report.

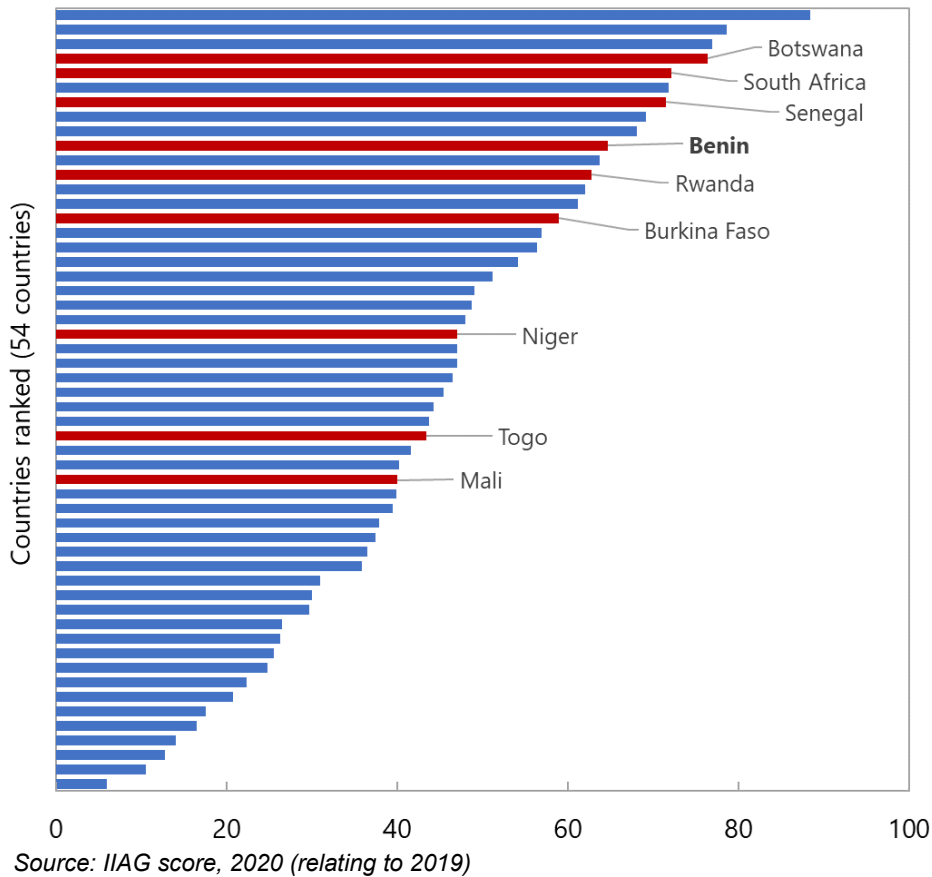
5. In 2016, an assessment of the National Integrity System (NIS) provided an overview of governance in Benin and was used as a basis for reform projects carried out by the new authorities. This assessment, presented in greater detail in **Annex III**, was conducted by the nongovernmental organization Transparency International (TI) with funding from the European Union. Using the TI-developed methodology, it covered a very broad field and included, aside from economic and financial governance, anti-corruption efforts, and rule of law, elements relating to freedom of the press and of the media, elections, and political parties. This assessment concluded that the political and economic foundations in Benin were not very resistant to corruption and that Benin was marked by "systematic and tolerated" corruption at the time, with corruption efforts "plagued by a lack of political will." Taking note of these findings, the new authorities focused on improving governance under the Government Action Program (*Programme d'Action du Gouvernement* – PAG) 2016–2021 with the implementation of a monitoring mechanism, whose coordination was entrusted to the Inspectorate General of Finance (*Inspection Générale des Finances* – IGF).

6. The PAG 2021–2026 puts governance and rule of law at the center of actions planned for the President's second term. Building on the reforms already carried out under the PAG 2016–2021, the new program makes governance and rule of law its first pillar, divided into two strategic thrusts: "Strengthening democracy and rule of law" and "Consolidating good governance."

7. This focus on governance is welcome, given the persistently strong perception of corruption according to international rankings. The TI Corruption Perceptions Index (CPI) gives Benin a score of 42 out of 100, with 100 representing the lowest level of perceived corruption. This result is almost in line with the average score of 43 for the 180 countries analyzed by the CPI. It also compares with the average of 33 out of 100 for sub-Saharan Africa, where 44 out of 49 countries scored below 50.

8. In terms of rule of law more specifically, the Ibrahim Index of African Governance (IIAG) puts Benin among the top ranked countries in Africa, but with a score still far from optimal in absolute terms. Benin ranks 10th in Africa on the justice and rule of law index (see **Chart 1** below), far ahead of most WAEMU countries, but behind Senegal. However, its score of 64.7 out of 100 still leaves plenty of room for improvement.

Chart 1: IAG Justice and Rule of Law Score



9. Governance in Benin in recent years has been highly centralized, even by the standards of a presidential regime. The Constitution of 1990 provides for a presidential regime and therefore grants significant powers to the President as the sole chief executive. Since 2016, however, reform efforts have gone hand in hand with an increased concentration of decision-making and control powers in the Office of the President. This is evidenced through the expansion of the presidential staff and staff members' involvement in the operations of major government entities, coupled with the role that the President plays in making executive appointments within these entities. The role of the presidential staff, aside from the strategic supervision of sectoral ministries through a sort of "delivery unit,"⁵ now includes the review of a large number of administrative decisions at a fairly fine level (a unit in charge of analyzing a large number of draft ministerial and prefectural orders has been

⁵ A "delivery unit," based on the model tested in the United Kingdom from 2001 to 2010, is an administrative entity responsible for assisting the chief executive in the implementation of public policies, used to monitor progress and build necessary capacity to fulfill firm political commitments. Its main role is to oversee sectoral ministries and spur them to implement the priorities of the Executive Branch.

in place within the Office of the President since 2016).⁶ This role also extends to territorial governments (a unit in charge of monitoring and overseeing municipal management was created within the Office of the President in 2022, a task that usually falls to a sectoral ministry in charge of local authorities).⁷

10. While highly centralized power can be an asset in the short term for monitoring and implementing reforms, efforts to improve governance and reduce corruption must be put on a larger footing to be sustainable over the long term. A 2018 World Bank report described Benin’s political economy as “a concentration of powerful interests and a resulting uneven playing field, weak institutions, poor governance, and incidents of corruption.”⁸ The report also points out the concentration of economic power and the strong interactions between political and economic elites. In such an environment, a centralized approach can certainly bear fruit initially in terms of reform swiftness and implementation capacity, but a balance must also be maintained, and operational risks linked to an excessive centralization of decisions and their implementation must be avoided (possible bottlenecks in decision-making, obstacles to the development of internal capacities in ministries and institutions). All in all, a healthy separation of powers, together with concerted efforts by the executive, judicial, and legislative powers to reduce opportunities for corruption, are crucial to ensuring the efficiency and stability of various State bodies in the medium term. Findings and recommendations in this regard are detailed and discussed later in the developments that will follow, particularly as concerns anti-corruption institutions.

11. The remainder of this report will take a detailed look at governance practices in the main functions of the State as they relate to the conduct of macroeconomic policy and to macro-fiscal issues. It will begin with a section discussing the development legal framework (including anti-corruption efforts) and financial supervision, before moving on to aspects related to revenue mobilization and ending with public financial management. The purpose of the findings and recommendations is to support the authorities in their current efforts to improve governance, particularly through the PAG 2021–2026.

⁶ Decree no. 2016-530 of August 24, 2016, creating the analysis unit for draft ministerial and prefectural orders, amended by Decree no. 2022-248 of April 20, 2022.

⁷ Decree no. 2022-303 of May 25, 2022, on the creation, powers, organization, and functioning of the municipal management monitoring and control unit.

⁸ World Bank, *Country Partnership Framework for Benin for the Period FY19–FY23*, dated June 6, 2018.

II. IMPROVING THE LEGAL AND PRUDENTIAL FRAMEWORK FOR ECONOMIC DEVELOPMENT

12. This section addresses a set of assessments and recommendations that cover: (i) the legal framework for fighting corruption; (ii) the legal framework for promoting transparency, rule of law, and the legal principles governing the business climate; (iii) the fight against money laundering and the financing of terrorism; and (iv) financial supervision. Improving governance in all these four areas would help attract the private investment needed for the country's development and promote efficiency in public spending.

A. Rule of law and business climate

Contractual rights

13. The Ministry of Justice and Legislation (MJL) has taken strong actions to enhance the effectiveness of Benin's judicial system but is faced with resource constraints. The law provides for the creation of 28 additional courts, 17 of which are operational. The MJL states that its efforts have been partly frustrated by a lack of financing for the quick operationalization of new courts. The authorities told the mission that discussions for 2023 are underway with the Directorate General of the Budget (*Direction Générale du Budget* – DGB), but budget prospects are not very favorable given the current economic backdrop. Discussions in Cotonou revealed case backlogs (delays of up to 18 months) and insufficient funding allocated to the judicial system, with some judges pointing out that they were forced to work on personal laptops and use personal email accounts as they lack proper equipment in the courts.⁹

14. Perceptions of the judicial system in Benin remain largely negative. Although the Beninese Constitution (Article 125) provides for judicial independence, overarching concerns of political interference and corruption in the judiciary are quite widespread.¹⁰ The mission was alerted to vested interests that are likely to influence the protection and enforcement of contractual rights. Overall, those before the courts have little confidence in obtaining a fair trial, and there is still a widespread perception that the outcome of a case is often preordained depending on the identity of the parties.¹¹ Weak contract execution leads to raised transaction costs. The knock-on effect on

⁹ The Commercial Court of Cotonou (*Tribunal de Commerce de Cotonou* – TCC) referenced an annual operating budget (not including salaries) of CFAF 52.124 million (equivalent to US\$78,000), which was described by the court as insufficient.

¹⁰ Bertelsmann's 2022 Benin Report claims that over 50 percent of magistrates in Benin have been involved in financial scandals. It also notes that the National Union of Benin Magistrates (*Union Nationale des Magistrats du Bénin* – UNAMAB), the trade union representing magistrates, has consistently complained about a lack of transparency in both nominations and promotions of judges. See Bertelsmann Stiftung's Transformation Index (BTI) 2022 for Benin at this link <https://bti-project.org/en/reports/country-report/BEN>.

¹¹ See, for example, Freedom House's 2022 Benin report (<https://freedomhouse.org/country/benin/freedom-world/2022>) and Social Watch's 2021 Civil Society Report for Benin (<https://uncaccoalition.org/new-civil-society->

investor sentiment may harm the efforts of the Beninese authorities to revitalize the economy and attract further capital. Under the auspices of the PAG 2021–2026, Benin must intensify its commitment to strengthen the independence and impartiality of the judiciary.

15. In terms of disputes, the MJL highlighted the recent establishment of the TCC, a specialized court that focuses on commercial- and debt-related claims. The TCC has been fully operational since December 2017 and is divided into three sections, each with a different focus area. Provision for the creation of the Commercial Court of Appeal was initially made in the same July 2016 law that established the TCC itself but is not yet in effect. The result is that appeals of the TCC's decisions are currently heard in the standard Court of Appeal, which lacks specialized expertise and dedicated judges to hear commercial cases.¹² Such ability to appeal to a competent court is a necessity for the vitality of the economy. Consequently, steps ought to be taken to operationalize the Commercial Court of Appeal without delay, while striving to ensure the new court's independence from outside influence.

Property rights

16. Analysis of the protection of property and land ownership rights in Benin reveals several reforms implemented in recent years that lay the foundations for more forward momentum. Steps to digitalize systems are noteworthy and should be continued at pace. The National Land Agency (*Agence Nationale du Domaine et du Foncier* – ANDF) highlighted progress in digitalizing Benin's national cadaster and stated that approximately 36 percent of Benin's territory is now covered by an online cadaster, where details such as land plot size, legal boundaries, and identity of legal owner can be obtained quickly.¹³ The move towards digital systems helps accelerate the transfer of land in Benin and is welcome progress. However, coverage so far on the cadaster system is mostly in urban areas (covering only 13 of Benin's 77 communes), so efforts to cover the entirety of Benin's national territory should be accelerated.

17. Property rights are guaranteed in the Beninese constitution and are codified in domestic legislation in the Land Act of 2017, although compliance remains incomplete.¹⁴ Notwithstanding progress with modernizing previously document-based systems, there are several structural weaknesses that prevent reliable and consistent protection of property rights. While official court statistics were not provided, the consensus among international observers is that land disputes account for a majority of cases that come before Beninese courts. This amplifies the need to address shortcomings in the system as a matter of priority.

report-on-benin-impartial-anti-corruption-bodies-and-private-sector-transparency-needed-to-effectively-combat-corruption/).

¹² The TCC informed the mission that disputes up to CFAF 5 million (approx. US\$7,500) are not eligible for appeal after judgment is rendered, but that all disputes for claims above this amount may be appealed under Beninese law.

¹³ Benin's electronic national cadaster is available at: <https://cadastre.bj>.

¹⁴ Law no. 2017-15 of August 10, 2017, (amending and supplementing Law no. 2013-01 of August 14, 2013, establishing the Code on Private and State-Owned Land in the Republic of Benin): <https://sgg.gouv.bj/doc/loi-2017-15/>.

18. Notaries in Benin play a key role in real estate transactions, and modernization of the profession has begun. The ANDF maintains a list of authorized notaries in Benin, of whom there are 47¹⁵ and whose role is to serve as agents of the State (judicial officers) in land transactions and to guide the process of transferring real estate. Whereas notaries in Benin previously had to be physically present to obtain hard copies of title deeds and other documents prior to any transaction, the process has been significantly streamlined with the launch of an online system.¹⁶ However, while online systems promise swift turnaround times, legal practitioners informed the mission that long delays in land transactions are still common. While the ANDF's work to digitize title deeds has been commended, generating new title deeds is cumbersome. In some instances, obtaining new deeds can take a year or more. Lawyers in Benin are required to present title deeds to banks to unlock financing and complete transactions, so the impact of delays in issuing new deeds is considerable.

19. The planned creation of a court specializing in land matters is a pragmatic response to justice system delays in this field and should be completed promptly. A moratorium is imposed in Benin on real estate subject to litigation, which freezes all activity pending resolution of the underlying dispute. The ANDF, the business community, and legal professionals in Benin underlined the long delays in rendering judgments in these cases, given the difficulty finding a competent authority able to make a ruling. According to multiple market participants with whom the mission met, this gridlock impedes commercial activity. To remedy this, the authorities planned to create a court specializing in land matters as a pragmatic, original response. The MJL confirmed that a draft bill to create such a court is pending review with the National Assembly, which should be completed soon.

Accountability and transparency

20. Access to information in the legal system for citizens is easier overall in Benin than in other countries in the region. A 2015 law provides for public access to all official records.¹⁷ In practice, the government's Secretariat General website allows citizens to access all legislation (orders, laws, decrees, and ordinances) as well as summaries of the weekly meetings of the Council of Ministers.¹⁸ The website is well organized and seems to be updated regularly. Some courts, such as the TCC (for commercial law decisions)¹⁹ or the Supreme Court publish their judgments on their respective websites. However, other courts' decisions are not available online, and the process for obtaining copies is not well-known.

¹⁵ All authorized notaries in Benin are identified on the ANDF's website: <https://www.andf.bj/index.php/informations/liste-des-notaires-du-benin> (this list is for 2018–2019; a more recent list is not available).

¹⁶ The "E-Notaire" system can be accessed here: <https://enotaire.andf.bj/>.

¹⁷ Law 2015-07 of March 20, 2015, establishing the Information and Communication Code in the Republic of Benin: <https://sgg.gouv.bj/doc/loi-2015-07/>.

¹⁸ <https://sgg.gouv.bj/documenttheque/lois/>.

¹⁹ <https://www.tribunalcommercecotonou.bj/activites/decisions-de-justice?own=0>.

21. In terms of sanctions imposed on magistrates, the system in place seems likely to reconcile the accountability of judges and the guarantee of independence. The MJL informed the mission that there is “zero tolerance” for judicial misconduct (whether related to corruption, or otherwise). The MJL stressed that judges in Benin suspected of wrongdoing are investigated by the Inspectorate General of Legal Services (*Inspection Générale des Services Juridiques* – IGSJ), which then refers its reports to the Superior Council of Magistrates (*Conseil Supérieur de la Magistrature* – CSM). The CSM’s role in this regard is enshrined in Article 128 of the Constitution of Benin,²⁰ and the CSM has the sole authority to recommend sanctions against judges. Penalties range from demotions to outright dismissals. The most serious sanctions give rise to the adoption of an individual measure in the Council of Ministers.²¹

22. However, the MJL stated that the facts underlying the judge’s reprimand are not disclosed to the public once the final decision is rendered. This is a shortfall in transparency likely to fuel suspicions that personal or political vendettas may be taken against judges. Integrity in the judicial profession is of paramount importance and, therefore, all facts should be made available to the public to justify every such decision to sanction a judge. Any report of a demotion, suspension, or dismissal of a judge in Benin should include, at a minimum: (i) the nature of the allegation(s) made; (ii) a summary of the investigation; and (iii) details of the evidence. The MJL confirmed that this topic is being given consideration within the CSM to balance transparency and privacy. This could therefore mean publishing and regularly updating a collection of anonymized decisions on the Internet.

23. While notable progress has been made, the business environment in Benin suffers from the lack of an easily searchable company register. The Chamber of Commerce and Industry of Benin (*Chambre de Commerce et d’Industrie du Bénin* – CCIB) told the mission that a database of key company information is available to banks to enable them to conduct due diligence when considering loan requests from companies, but this database is not publicly available. Benin does not currently have a register of companies where commercial actors can obtain key company information.

24. Transparency of, and access to, company information is vital, particularly in a fast-developing economy such as Benin’s. Information that is supposed to be available to the public in a future Beninese register of companies should cover the essentials routinely made available in other countries, such as: (i) the legal structure of the company (corporation, limited liability company, etc.); (ii) identities of company directors and other directorships held by them; (iii) shareholding information; (iv) insolvency information, and (v) details of mortgages and other security interests registered against companies, among other things. Maintaining a coherent register of companies would bring benefits to Benin by, among other things, avoiding conflicts of interest and promoting greater transparency.

²⁰ Article 128 of the Constitution: “The Superior Council of Magistrates shall rule as Disciplinary Council of the Magistrates.”

²¹ For example, the following Council of Ministers decision refers to the demotion of a judge, but discloses no reasons or motivations behind this decision: [Minutes of the Council of Ministers meeting of Sept 22, 2021 | Secretariat General of the Government of Benin \(sgg.gouv.bj\)](#).

Recommendations

- Improve transparency as concerns the promotion and punishment of magistrates (ST)
- Operationalize the Commercial Court of Appeal and the Specialized Land Court (ST)
- Make progress with regard to transparency by (i) establishing a company register, (ii) continuing to digitize all title deeds, and (iii) expanding the scope of the national cadaster to the entire territory (MT)

B. Legal and institutional anti-corruption framework

Overview

25. Over the past few years, Benin has made progress in the perception of corruption, which has been notably recognized by the most recent 2021 Afrobarometer survey. While far from the optimal score of 100, the 2021 Worldwide Governance Indicators of the World Bank (WB)²² gave Benin a score of 50.48 with respect to control of corruption, demonstrating a considerable improvement from 2016, when the country had a score of just 35.58. Furthermore, the 2021 Afrobarometer survey²³ shows that a large majority of Beninese (70 percent) feel that corruption is decreasing. Compared to the 2014/2015 survey, the proportion of Beninese who feel that corruption is on the rise dropped by 53 points, which is the most favorable development of the countries in the sample, except for Tanzania (-58 points). Moreover, according to the said 2021 survey, 74 percent of Beninese approve of the government's anti-corruption efforts.

26. However, some indicators highlight the persistence of significant corruption phenomena, as reported by stakeholders met by the mission, that are likely to harm growth and development. In this regard, it is noteworthy that the aforementioned 2021 Afrobarometer survey indicates that 46 percent of Beninese view police corruption as widespread. Comparable figures for tax officials and members of Parliament are 52 percent and 50 percent, respectively, making Benin one of the top five countries in the sample with the highest perception of corruption. Discussions held by the mission also cited the judiciary, public procurement, and customs as sectors vulnerable to corruption. Fears of elite capture were also noted as likely to threaten anti-corruption efforts and hamper good governance.

Legal anti-corruption framework

27. A prerequisite for effective law enforcement is to ensure that the legal and institutional architecture to prevent and punish corruption offenses is in place. Benin is a signatory to a number of key international conventions that aim to tackle corruption. These include the United

²² Available at <https://info.worldbank.org/governance/wgi/Home/Reports>.

²³ Available at <https://www.afrobarometer.org/wp-content/uploads/migrated/files/publications/Dispatches/ad488-pap2-africans-see-growing-corruption-afrobarometer-dispatch-4nov21.pdf>. The survey was conducted between July 2019 and July 2021 in two waves in a total of 34 African countries.

Nations Convention Against Corruption (UNCAC), ratified by Benin in 2004, and the African Union's Convention on Preventing and Combating Corruption, ratified in 2007. By virtue of its membership in the WAEMU, Benin is also subject to the WAEMU directive on the fight against money laundering and the financing of terrorism.

28. Following the overhaul of the previous anti-corruption law, the main anti-corruption legislative provisions appear in the Penal Code. The legal system in Benin is based on the civil law tradition. In this regard, the mission learned that Benin adopted Law no. 2011-20 of October 12, 2011, (the "2011 law") on combating corruption and other related offenses, which established a comprehensive anti-corruption framework. This 2011 law was, however, subsequently repealed by two successive laws - first partially by Law no. 2020-09 of April 23, 2020, on the creation, mission, organization, and functioning of the High Commission for the Prevention of Corruption, and then fully by Law no. 2020-23 of September 29, 2020, amending and supplementing Law no. 2012-15 of March 18, 2013, establishing the Code of Criminal Procedure. Consequently, the main provisions to combat corruption now appear in the above two 2020 laws and primarily in Law no. 2018-16 of June 4, 2018, establishing the Penal Code, which sets forth the corruption offenses and the applicable penalties.

29. Overall, the Penal Code provides a strong basis for combating corruption. The provisions of the Penal Code (cf. **Annex IV** for the excerpts in question) comprise elements that are generally compliant with the UNCAC in terms of the definition of corruption relating to national public officials, foreign public officials, or officials of international organizations, trading in influence, abuse of office, illicit enrichment, and corruption within the private sector. In addition to this, the Code includes offenses not listed in the UNCAC, such as corruption in public procurement or corruption in the recruitment of public officials.

30. Notwithstanding the above, amendments to the Penal Code are, however, necessary to fully implement the UNCAC. In particular, these amendments should include (i) the criminalization of embezzlement, misappropriation, or other illicit use of property by a public official, (ii) the obstruction of the proper administration of justice, (iii) the liability of legal persons; (iv) participation and attempt, and (v) the statute of limitations.

31. Beyond that, further improvements are needed to address the significant shortcomings of the anti-corruption legal framework. Such shortcomings essentially relate to three aspects: whistleblower protection, the definition of conflicts of interest, and the obligation to file and publish asset declarations.

32. The rules on whistleblower protection in Benin leave a great deal of room for improvement. Whistleblower protection is an essential part of the anti-corruption mechanism, as evidenced notably by the study that the G20 has carried out in that regard.²⁴ Article 375 of the Penal Code only sanctions public officials (to the exclusion of any other person) who reveal the identity of whistleblowers; it provides no broad definition of whistleblower, and includes no protection for

²⁴ In particular, the principles adopted during the 2019 Osaka summit and the 2010 study on whistleblower protection best practices.

whistleblowers against potential retaliation. Consequently, the legal framework should be supplemented in respect of these gaps. In addition, to ensure the effectiveness of the protection granted to whistleblowers, the possible avenues for making disclosures should be explicitly mentioned in the law, including the possibility of making such disclosures anonymously. The authorities should also consider increasing whistleblower involvement in ongoing investigations. Other relevant good practices are contained in a guide that was recently published by TI²⁵ and include drafting dedicated legislation and establishing an independent agency for the effective implementation of whistleblower protection.

33. Contrary to the abovementioned 2011 law, the current legal framework does not discuss conflicts of interest. To the extent that conflicts of interest situations are not properly identified and managed, they can seriously endanger the integrity of organizations and be a source of corruption, in the public and private sectors alike. The current legal framework does not describe the circumstances that can give rise to a conflict of interest situation, nor does it provide specific guidelines in that regard. This shortcoming should be remedied. Furthermore, the legal framework should also identify measures for preventing the occurrence of conflicts of interest and set out procedures for clearly establishing the existence of such an offense. The law should also provide for proportionate sanctions, including disciplinary actions, in the absence of compliance with the existing framework.

34. Lastly, the legal framework on asset declarations for politicians and senior public officials is highly inadequate, even though requiring public officials to declare their assets and interests is one of the most effective tools for preventing, identifying, and combating corruption.²⁶ Benin's current asset declaration regime does not align with international best practices or the tenets of the UNCAC.²⁷ Article 52 of the Constitution of Benin requires the President of the Republic and members of Government to declare their assets upon entering and leaving office.²⁸ The repeal of the 2011 law (specifically Article 3 thereof) removed provisions that required an exceedingly large number of public officials – including all secondary authorizing officers – to submit asset declarations. However, Article 9 of Law no. 2020-09 (mentioned in the preceding paragraph) simply states that *a decree adopted by the Council of Ministers defines the list of public officials who shall be required to declare their assets, in addition to those required to declare their assets pursuant to the Constitution*. Moreover, Benin does not make the asset declarations of officials publicly available, and beneficial owners of assets are not required to make such declarations. Lastly, contrary to the 2011 law, which provided for a fine of up to six months' salary (Article 4) in the event of a false or

²⁵ *A Best Practice Guide for Whistleblowing Legislation*, Marie Terracol, https://transparency.eu/wp-content/uploads/2018/03/2018_GuideForWhistleblowingLegislation_EN.pdf.

²⁶ See, for example, the Income and Asset Disclosure Topic Guide published by TI in 2015. https://knowledgehub.transparency.org/assets/uploads/kproducts/Topic_Guide_Income_and_Asset_Disclosure.pdf

²⁷ See articles 8(5) and 52(4) of the UNCAC in particular.

²⁸ The same requirement applies to the High Commissioner for the Prevention of Corruption under Article 9 of Law no. 2020-09, mentioned earlier.

incomplete declaration, the current legal framework does not make provision for penalties for failure to declare assets, for late submissions, or for misreporting.

35. All things considered, a review of the legal framework on asset declarations is urgently needed to address the abovementioned deficiencies. As it stands, the President and members of Government are the only officials required by law to disclose their assets. The Court of Auditors, the custodian of asset declarations, informed the mission that political authorities have effectively fulfilled their obligations and that some officials - formerly subject to the filing requirement - have recently submitted their asset declarations, despite the repeal of the 2011 law. This situation, where in the absence of a legal basis a declaration is made in effect on a purely voluntary basis, is untenable. The decree implementing the 2020 law must list the authorities and public officials required to declare their assets. It must also specify the assets, liabilities, and interests that public officials must declare and how they will be verified.²⁹ However, this decree alone will be far from sufficient to conceive an effective asset declaration regime. The factors that will align the legal framework with international good practices are (i) including close family members of officials in the declaration regime, (ii) publishing declarations, preferably online, while taking the privacy and security concerns of officials and their families into account, (iii) disseminating general information on the relevant activities of the asset declaration system (percentage of declarations received, measures taken to ensure compliance with obligations), and, lastly, (iv) criminalizing the failure to submit asset declarations, late submissions, or misreporting.

36. The authorities have undertaken work to update the Penal Code, which can serve as a vector for some of these reforms. In this regard, the mission encourages the authorities to take advantage of the opportunity that this work, launched at end-September 2022, has opened to complete Benin's legal anti-corruption framework and thus align it with international best practices.

Institutional anti-corruption framework

37. While a number of reforms have been initiated to advance the institutional anti-corruption architecture, some institutions continue to be fragile or remain inoperative, with priority having been given to the repression rather than the prevention of corruption. The adjudication of corruption cases is handled by the CRIET and the BEF. By contrast, other aspects of the mechanism are not yet fully operationally, namely the HCPC; or are highly constrained in their effectiveness, namely the High Court of Justice (*Haute Cour de Justice* – HCJ). In the absence of an operational HCPC, there is currently no institution in charge of preventing corruption and coordinating anti-corruption actions outside the criminal sphere - two essential components of an effective anti-corruption strategy.

38. The CRIET, established in 2018, has emerged as a fundamental tool in the fight against corruption, but would benefit from adopting more transparent procedures. It has been cited numerous occasions by the authorities and other stakeholders as crucial to anti-corruption efforts.

²⁹ In addition to personal and business assets, it is considered good practice for public officials to also declare their sources of income, positions held in profit or nonprofit firms, debts, gifts, advances, reimbursements, payments for travel by third parties, as well as the assets and income of spouses and dependent children.

The CRIET has jurisdiction over economic crimes and terrorism offenses, as well as drug trafficking.³⁰ The authorities believe that the CRIET has dealt decisive blows to corruption and therefore has a strong deterrent effect on the population in the broad sense. However, it has been criticized in the past for an alleged lack of impartiality, resulting in prosecutions and convictions targeting opposition figures. To combat these perceptions, it is important to ensure that the public has access to information on the prosecutions conducted and the sanctions imposed by the CRIET. Such access—including the publication of not just statistics, but also rulings on a dedicated website, as is done by the Supreme Court—would likely boost public confidence in the institution and facilitate monitoring of major trends in corruption in Benin. The CRIET’s magistrate selection mechanisms could also be reviewed to increase their independence.

39. The BEF effectively supports the CRIET in its anti-corruption mission. The BEF is a central investigation unit that falls under the judicial police and is therefore under the authority of the public prosecutor. It has been around for more than 40 years and is responsible for a large number of corruption-related arrests. Although the authorities did not provide any specific statistics, the BEF highlighted the significance of its activities over the past five years. The BEF does not, however, exercise its powers independently of the Executive Branch, which may have contributed to perceptions of its lack of impartiality.

40. Conversely, the HCPC, which was created by the 2020-09 law, is not yet operational. Taking a contrasting approach to the recommendations made in the 2016 NIS assessment, the authorities decided in 2020 to dissolve the ANLC (created by the 2011 law) and to replace it with the HCPC (created by the 2020-09 law) on the basis that the ANLC yielded no results. According to the 2020-09 law, the HCPC is attached to the Office of the President of the Republic (Article 3), with the High Commissioner himself being appointed by the President (Article 4). The High Commissioner has no investigative powers with regard to corruption offenses but is required to monitor the enforcement of preventive measures in State institutions and administrations and can initiate anti-corruption actions in both the private and the public sectors. Delays in the operationalization of the HCPC undermine the effectiveness of the institutional anti-corruption framework in the absence of an institution dedicated to anti-corruption efforts in Benin. This deficiency is not offset by the creation in 2022 (under Decree 2022-040) of a unit for the analysis and processing of complaints and disclosures as this unit - also within the Office of the President - is not yet operational and has its activities carried out by other units within that Office.

41. The effective operationalization of the HCPC should go hand in hand with legal safeguards regarding its independence. To ensure that the HCPC is fully effective, its legal framework should guarantee the absence of any political interference. Aside from Article 7 of the 2020-09 law asserting the independence of the High Commissioner, an appropriate procedure for the High Commissioner’s appointment and the end of his term, as well as guaranteed independence from the Office of the President, are essential. Giving the anti-corruption agency judicial police powers could also be considered. In this regard, it is important to bear in mind that anti-corruption

³⁰ Its jurisdiction was expanded in 2021 to crimes against women.

agencies are likely to hold senior officials and institutions accountable, when the said agencies are independent of the government and empowered to freely tackle corruption allegations.³¹

42. Lastly, in its 20 years of existence, the HCJ has yet to effectively play its role in holding political figures accountable. Under the Constitution, the HCJ is a special court with the jurisdiction to try the President and members of Government on charges of high treason and other crimes committed while in office. The opening of an investigation is subject to a majority vote of two-thirds of the National Assembly, as the investigation is conducted by magistrates from the indictment division of the Court of Appeal of Porto Novo. Once the investigation has been completed, Parliament must hold a new vote with the same majority to decide whether the HCJ can begin the trial. This “double lock” has never been broken in 20 years. Moreover, the public and civil society do not play a role in initiating prosecution or contributing to the proceedings in any way whatsoever. As such, a reform is necessary to remedy a growing imbalance between “ordinary” Beninese—brought before the CRIET—and top political figures—tried by the HCJ. This reform could include the possibility of referral by the general public and the end of the parliamentary “double lock.” It should be noted that the authorities are aware of the need for a reform, the principle of which is already enshrined in the PAG 2021–2026, although the exact terms remain to be determined.

Recommendations

- Revise the Penal Code by introducing or supplementing the provisions concerning the criminalization and repression of acts of corruption, in accordance with the UNCAC (ST)
- Revise, pursuant to the UNCAC, the legal framework on conflicts of interest and that which pertains to asset declarations, particularly for political figures and high-ranking officials, by (i) revising the legal framework to specify the assets (including when the declarant is the beneficial owner), liabilities, and interests subject to declaration, (ii) requiring close family members of any declarant to also be subject to the obligation to declare assets, (iii) making the filed declarations publicly available, and (iv) making the failure to declare assets, late submission, or erroneous declarations a criminal offense (ST)
- Revise the legal framework applicable to the protection of whistleblowers in alignment with international good practices (ST)
- Operationalize the HCPC while working in parallel to strengthen its legal framework to ensure its independence and consider transferring to it the jurisdiction of the judicial police for acts of corruption (ST/MT)
- Adopt appropriate measures to enhance the effectiveness of the HCJ and enable for criminal liability of the President and ministers (MT)
- Increase transparency by publishing on a dedicated government website (i) the final judgments rendered by the CRIET and related statistics, (ii) the statistics on arrests and activities carried

³¹ See, in particular, <https://www.transparency.org/en/projects/anti-corruption-agency-strengthening-initiative> for good practices applicable to anti-corruption agencies.

out by the BEF, and (iii) any other anti-corruption information produced by government agencies, that may be relevant to the public (ST)

C. Efforts To Combat Money Laundering And The Financing Of Terrorism (AML/CFT)

Overview

43. A recent assessment of Benin's AML/CFT frameworks by the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA)³² revealed some progress but also serious deficiencies across all pillars of effectiveness. While the GIABA Mutual Evaluation Report (MER) positively noted improvements to the AML/CFT framework, particularly the promulgation of the new AML/CFT law,³³ the adoption of the National Risk Assessment (NRA) in 2018, and the establishment of CRIET in 2018 as well (see preceding section on anti-corruption efforts), it also identified serious deficiencies. These had to do (*inter alia*) with a lack of risk-based supervision of designated non-financial professions, insufficient use of financial intelligence, low prosecutions for AML/CFT, ineffective confiscation mechanisms, and limited international cooperation.

44. To address these deficiencies and their potential consequences, the authorities have now adopted an action plan in response to the GIABA MER. The absence of sustained action to address the weaknesses identified in the MER may lead to a public listing by the Financial Action Task Force for strategic AML/CFT deficiencies, with potential pressures on correspondent banking relationships and cost of borrowing. In response to the GIABA MER, Benin has recently adopted an AML/CFT action plan to correct the deficiencies identified, in an encouraging signal of high-level political commitment to undertake necessary reforms. The strengthening of Benin's AML/CFT framework in response to the GIABA report also presents an opportunity to harness the AML/CFT toolkit in broader anti-corruption efforts.

45. The 2018 NRA identifies corruption as one of the most significant proceeds-generating crimes in Benin. Other key predicate crimes include smuggling, tax fraud, cybercrime, and human and drug trafficking. While the risk assessment exercise has shed some high-level information on corruption as a predicate offense, the authorities could benefit from a more granular analysis of sectoral vulnerabilities to corruption and trends in flows of corrupt proceeds both within the country (to sectors like real estate) and outside of Benin. Policy and institutional priorities, including resource allocation, should be informed by such a thematic risk assessment and should focus on tackling money laundering from corruption offenses. Further, additional synergies between the AML/CFT and anti-corruption frameworks should be exploited (for instance, through greater coordination between CENTIF and anti-corruption agencies, or complementarity between the asset disclosure system and

³² The Mutual Evaluation Report was adopted by the GIABA Plenary in May 2021 and is available at <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/GIABA-Mutual-Evaluation-Report-Benin-2021.pdf>.

³³ Law no. 2018-17 of July 25, 2018, on AML/CFT.

the requirements for politically exposed persons- PEPs) to tackle the strong nexus between these two crimes.

46. Weaknesses in the preventive measures applied by reporting entities and their limited AML/CFT risk-based supervision can be exploited to channel corrupt proceeds within and outside of Benin. The MER notes wide inconsistencies in the understanding of risk, in application of preventive measures, and in reporting of suspicious transactions in the financial sector. The MER notes that banks face considerable challenges in collecting beneficial ownership information and identifying domestic PEPs. Nonbank financial institutions are in an even more precarious position as concerns the implementation of AML/CFT controls. Moreover, the MER notes low coverage and frequency in supervisory engagement. To remedy these shortcomings, national authorities like CENTIF should enhance cooperation with regional supervisors and explore avenues for joint action to improve risk-based supervision. Domestically, CENTIF should also issue regular guidance on preventive obligations to help reporting entities better apply AML/CFT controls and improve reporting of suspicious transactions. In a welcome move, CENTIF is preparing guidance on PEPs for financial institutions.

47. The MER also identified serious weaknesses related to compliance by designated nonfinancial businesses and professions (*établissements et professions non financières désignées* – EPNFDs) with AML/CFT obligations that the appropriate risk-based supervision should help to correct. The authorities have indicated some improvement in the application of preventive measures due to ongoing training and awareness efforts. Decree 2022-350 of June 22, 2022, designates the National Committee for the Coordination of AML-CFT Activities (*Comité National de Coordination des Activités en matière de LBC-FT* – CNCA) as the sectoral supervisor for all EPNFDs, excluding the gambling and casinos sector and the real estate sector. The CNCA is being established and informed the mission that it is expected to commence risk-based supervision in Q1 2023.

Real estate sector

48. The authorities have begun to address the real estate sector's very high vulnerabilities to AML/CFT due to prevalent informality and the absence of oversight to date. In a very welcome move, the authorities are undertaking broad-based reforms to reduce informality in the real estate sector through measures that include digitalizing the cadaster and requiring notaries to handle all real estate transactions. For instance, the ANDF's new "e-notaire" database allows notaries to verify land ownership information online during real estate transactions. Ownership information contained in the database is also accessible to CENTIF and other competent authorities upon request to the ANDF. Furthermore, CENTIF is currently coordinating a risk assessment of the real estate sector, the results of which can help improve understanding of AML/CFT risks. Finally, the authorities aim to designate the ANDF as the AML/CFT supervisor in the real estate sector.

49. Despite this progress, efforts must still be made to strengthen AML/CFT supervision in real estate. The authorities should ensure adequate upskilling of ANDF staff to allow it to commence AML/CFT risk-based supervision in 2023, with short-term supervisory priorities informed by the findings of the sectoral risk assessment. Moreover, the ANDF could expand its database to include

beneficial ownership information for legal entities holding property in Benin. In the short term, ANDF databases should be fully accessible to competent authorities. In the medium term, the ANDF should move towards greater publication of real estate and land ownership data (legal and beneficial owners).

50. Notaries should also play an expanded role in mitigating ML/FT risks in the real estate sector. While notaries are obliged entities under the AML/CFT law, the MER notes that their implementation of AML/CFT controls (including customer due diligence, reporting of suspicious transactions, etc.) has been virtually nonexistent. However, statistics shared by the authorities indicate a mild increase in the reporting of suspicious transactions by notaries, which is attributed to increased awareness and training efforts. As public officials, notaries should play an expanded role in mitigating money laundering risks, particularly through greater cooperation with the ANDF and CENTIF. As a first step, the authorities could set up a legal basis to require notaries to collect beneficial ownership information during land transactions involving legal entities and transmit the same to the ANDF for inclusion in its database.

Information on beneficial owners

51. Law enforcement authorities have access to basic company information; however, availability and access to beneficial ownership information remains challenging. As a first step in enhancing transparency regarding legal persons, CENTIF is conducting a risk assessment on misuse of legal entities and is convening a workshop for stakeholders, including the Investment and Export Promotion Agency (APIEX), the TCC, the Chamber of Commerce (CCIB), the DGI, and the National Agency for the Identification of Persons, to deliberate on the review of the legal framework in order to collect beneficial ownership information and make it accessible to law enforcement agencies. CENTIF indicated preliminarily that the APIEX would be the entity responsible for collecting beneficial ownership information. The authorities should set up an adequate legal basis for systematic collection and management of beneficial ownership information with mechanisms for verifying and updating information and sanctions for failure to file or for false reporting. This information should be accessible to the competent authorities and, in the medium-long term, should be published.

52. Pending the creation of a comprehensive database, mobilizing data on beneficial owners obtained through public procurement or the ANDF allows for short-term progress. In addition to accessing beneficial ownership information held by reporting entities, CENTIF and law enforcement agencies can take advantage of public procurement reforms to access or verify information on beneficial owners. For instance, Benin has published beneficial ownership information for all companies awarded pandemic-related government contracts and is taking steps to extend this publication to all government contracts. Such beneficial ownership information published during public procurement processes could be a valuable source of beneficial ownership data. Data on beneficial ownership maintained by the ANDF (see above) would be another useful source.

Enforcement capacities and cooperation mechanisms

53. The AML/CFT action plan identifies steps to improve CENTIF's institutional and analytical capabilities, with planned financial, staffing, and technical enhancements. There was

a slight increase in staff size at CENTIF in 2021, with further resource augmentation expected in 2022–2023, which includes setting up IT systems for improved access to the databases of other competent authorities. Authorities report high levels of cooperation between CENTIF and law enforcement agencies, such as the BEF. On the other hand, the MER notes low levels of information exchange between CENTIF and the ANLC. The authorities should set up appropriate channels for cooperation between CENTIF and the ANLC's successor, the Office of the HCPC, through, for instance, memorandums of understanding on information exchange, access to relevant databases, and regular meetings.

54. Authorities report that AML/CFT investigations and prosecutions have increased since the GIABA onsite visit, with enforcement primarily focusing on self-laundering. The statistics collected show an increase in money laundering prosecutions since the operationalization of CRIET, but the number of AML/CFT prosecutions remains low compared to the total number of predicate offenses. The authorities also estimate that corruption is the most common predicate offense in money laundering investigations; however, the extent of systematic money laundering investigations for corruption offenses cannot be determined in the absence of statistics. Fewer money laundering investigations for other predicate offenses may indicate hurdles in cooperation between the BEF and other law enforcement agencies. Authorities report the lack of an agency to manage seized and confiscated assets as a significant obstacle. Furthermore, cross-border investigations are hindered by limited cooperation from foreign counterparts in the region. Preliminarily, authorities should improve cooperation between the BEF and other law enforcement agencies to ensure the systematic investigation of AML/CFT across predicate crimes and establish mechanisms for the management of seized assets.

Recommendations

- Conduct a thematic risk assessment of sectoral vulnerabilities to corruption and trends in flows of corrupt proceeds both within the country (to sectors like real estate, extractive industries, etc.) and outside of Benin. Ensure that the findings of this assessment inform policy and institutional priorities (ST)
- Strengthen risk-based supervision in relation to AML/CFT by (i) increasing opportunities for cooperation with regional AML/CFT supervisors, (ii) seeking better compliance from reporting entities through the regular publication of national guidelines, and (iii) developing risk-based tools for EPNFD supervision (ST)
- Take steps to mitigate significant money laundering risks in the real estate sector by (i) commencing risk-based supervision in real estate taking into account the conclusions of the sector risk assessment, (ii) improving the application of preventive measures by notaries as well as their cooperation with other public authorities, and (iii) expanding the ANDF database to include information on beneficial owners, accessible to the competent authorities at a minimum, with a medium- and long-term objective of providing public access to information on legal and beneficial owners (ST/MT)

- Create mechanisms to improve beneficial ownership transparency (including, for instance, the establishment of a legal basis for the collection of beneficial ownership information by the APIEX, full accessibility of this database for competent authorities with publication as a medium/long-term objective, and mechanisms for verification, update, and discrepancy reporting). Leverage existing reforms (publication of information on beneficial owners in public procurement) to improve access to such information (ST/MT)
- Improve cooperation between AML/CFT law enforcement agencies, in particular by (i) encouraging the BEF to systematically investigate money laundering where predicate offenses are involved, (ii) ensuring greater cooperation between CENTIF and the HCPC to proactively share financial intelligence related to corruption, and (iii) formulating the future regime on asset declarations and obligations applicable to politically exposed persons (ST)

D. Financial Sector Supervision

55. This section provides an overview of governance vulnerabilities related to financial sector supervision, which, in the case of Benin, is conducted mainly by the regional supervisors at the WAEMU level. As Benin’s banking sector is regulated and supervised by regional supervisors—the Central Bank of West African States (BCEAO) and the Banking Commission of the West African Monetary Union (CBU),³⁴ this section draws on the findings and conclusions of the 2022 Financial Sector Assessment Program (FSAP)³⁵ for the WAEMU and does not make recommendations which are specific to Benin.

Overview of Benin’s banking sector

56. Banks dominate the financial sector in Benin, accounting for over 90 percent of total assets.³⁶ Benin’s banking sector comprises 15 licensed banks, accounting for about 9.6 percent of overall WAEMU banking sector assets; four of the largest banks are pan-African banks. Three of WAEMU’s systemically important banks are from Benin. The capital adequacy ratio of Benin’s banking sector was 13.6 percent at end-2021, which is slightly higher than the figure for the WAEMU banking sector as a whole at 12.6 percent. While the preliminary gross non-performing loans (NPL) ratio for Benin’s banking sector has decreased from 16.2 percent at end-2020 to 12.5 percent at end-2021, it is

³⁴ The banking supervision and regulation system within the Union brings together four institutional players. The WAMU Council of Ministers is responsible for defining the regulatory environment of the banking sector. The BCEAO contributes to the development of accounting and prudential regulations as well as banking supervision through the means it allocates to the CBU, which is responsible for ensuring the organization and oversight of credit institutions and has administrative and disciplinary sanction powers to that effect. The Minister of Finance has decision-making power over certain matters under the Banking Law. The CBU must be consulted and its assent must be obtained for all acts involving a ministerial decision (licensing of credit institutions, various authorizations for carrying out certain operations).

³⁵ [West African Economic and Monetary Union: Financial Sector Assessment Program—Financial System Stability Assessment \(imf.org\)](https://www.imf.org/en/Publications/WAEMU-FSAP/2022/01/01/WAEMU-FSAP-2022-01-01).

³⁶ [Benin Financial Sector Review: Stability for a Better Inclusion \(worldbank.org\)](https://www.worldbank.org/en/publication/benin-financial-sector-review-stability-for-a-better-inclusion).

still higher than WAEMU's average at 10.3 percent.³⁷ Two small State-owned banks, which reported losses and capital shortfalls in recent years, merged in June 2020. The recent authorization (2021) for "La Poste" to provide new banking services (e.g., "Post Mobile Banking") is expected to leverage the large postal network to enhance access to financial services. Before the COVID-19 pandemic, Benin's banking sector was shallow and vulnerable, limiting its ability to support credit to the private sector and, ultimately, economic growth.³⁸

57. Recent IMF reports³⁹ noted significant efforts to foster the resilience of the banking sector over the past two years, but vulnerabilities remain, and further structural reforms are necessary. These reports mention that regional authorities took supervisory measures in rebuilding banks' capital buffers and moving towards the implementation of Basel II/III and IFRS 9 standards. However, long-lasting vulnerabilities remain: (i) many measures were taken to decrease banks' NPLs, but this ratio is still among the highest in the WAEMU; (ii) most banks have recently conducted recapitalization plans to comply with new prudential capital requirements, but a few small banks (representing 5 percent of banking sector assets) failed to meet the minimum capital requirements at end-December 2021; and (iii) the banking sector continues to suffer from relatively high credit concentration among a small number of clients.

Main FSAP findings and recommendations to address governance vulnerabilities in the WAEMU context

58. WAEMU FSAP 2022 found that an ambitious regulatory reform consolidated the prudential base during the past five years and established the conditions for further strengthening of banking supervision. The FSAP noted that WAEMU's institutional reforms have clarified the authorities' control mandate and strengthened their legal autonomy and the powers over sanctions and corrective measures available to them. The new banking law has established an overarching framework for banking supervision, which has been made more proactive and risk-based with the gradual implementation of the Basel II/III framework. Four circulars on corporate governance, risk management, internal control, and compliance were upgraded in 2017 and imposed stricter regulatory requirements on banks.

59. The FSAP identified some governance vulnerabilities in the WAEMU context and provided recommendations to address them. From an institutional standpoint, the FSAP recommended to enhance supervisory independence, strengthen enforcement, and reinforce supervisory resources and capacity.

³⁷ [Annual Report of the WAMU Banking Commission for 2021](#).

³⁸ [Benin: 2017 Article IV Consultation and First Review Under the Extended Credit Facility Arrangement and Request for Modifications of Performance Criteria-Press Release; Staff Report; and Statement by the Executive Director for Benin \(imf.org\)](#).

³⁹ [Benin: 2022 Article IV Consultation and Requests for an Extended Arrangement under the Extended Fund Facility and an Arrangement under the Extended Credit Facility-Press Release; Staff Report; Staff Statement; and Statement by the Executive Director for Benin \(imf.org\)](#); and [Benin: Sixth Review under the Extended Credit Facility Arrangement, and Request for Augmentation of Access-Press Release; Staff Report; and Statement by the Executive Director for Benin \(imf.org\)](#).

60. The FSAP highlighted that the CBU's independence from member States should be strengthened. This includes modifying the annex to the Convention governing the CBU to institute the independence of the CBU's supervisory college from member States. The principle of independence, which prohibits CBU members from receiving instructions from external entities (including member States), should be explicitly enunciated in the annex to the CBU's governing convention. The CBU's governing documents should also require State representatives in the CBU supervisory college to serve in a non-voting capacity or amend the college's composition to increase the representation of members nominated by the WAMU Council of Ministers (CM) based on their professional qualifications. Finally, maintaining the CM's appellate jurisdiction over CBU decisions also raises institutional independence concerns. Therefore, the WAEMU Court of Justice should be the sole appellate jurisdiction for decisions rendered by the CBU's supervisory college.

61. The FSAP underlined the need for a more consistent use of sanctions to address issues with compliance with prudential rules in a timely manner. While the CBU has a broad range of sanctions at its disposal, the FSAP found that the sanctions seem not to be strict enough toward entities that violate prudential requirements over extended time periods, particularly with respect to minimum capital requirements. The CBU tends to repeatedly rely on unpublished written censures and on stays of proceedings. It was recommended that sanctions should be published to enhance their effectiveness, with monetary sanctions used more frequently. Repeated stays of proceedings in the same case should be avoided to the extent possible. Resolution and liquidation tools should be applied promptly to address undercapitalized and nonviable banks.

62. The FSAP recommended to continue strengthening the resources and capacity of the CBU and its secretariat. The FSAP noted that resources are still insufficient, despite recent recruitment efforts. The teams at the CBU Secretariat General are experienced and qualified, but their capacity should be strengthened further to respond adequately to the changing banking sector landscape, including a rising complexity and a stronger presence of cross-border groups, which gives rise to new types of risks. Continued IT investments are also needed to optimize and automate the off-site supervision toolkit.

III. PROGRESSING IN REVENUE MOBILIZATION

63. This section analyzes basic vulnerabilities in Benin’s revenue mobilization system. It discusses tax policy first and then on the tax and customs administration. It is based, in particular, on recent work carried out by FAD missions.

A. Tax policy

64. Substantial reforms have been undertaken over the past few years to improve tax policy governance in Benin. With regard to natural persons, the introduction in 2022 of a semi-dual personal income tax system, further to the recommendations made by FAD (Wen et al. 2019), should lead to revenue gains, greater transparency, and lower management costs. For small individual entrepreneurs, a simplified tax regime based on turnover, the single business tax (*taxe professionnelle synthétique* – TPS),⁴⁰ replaced a negotiation-based regime in 2015.⁴¹ In terms of tax expenditure, where non-transparent and discretionary procedures are after a major source of governance issues (cf. analyses of the Tax Collaboration Platform, 2015),⁴² the reform of the Investment Code (CDI) in 2020 tends to foster simplicity and transparency. On this solid basis, two courses of action to strengthen tax policy governance can be considered: (i) tax expenditure design, management, and evaluation; and (ii) institutional anchoring for tax policy development.

Tax expenditure design, management, and assessment

65. The efforts that have already been made place Benin among the best tax expenditure managers in the subregion. A detailed report on tax expenditure is published annually as an annex to the budget and contains detailed information on each tax expenditure. It covers all taxes and specifies the reference rate, the tax base, the tax liability threshold, and the taxpayers targeted. Moreover, a TaxPolicy Unit (*Unité de politique fiscale* – UPF) has undertaken work to better understand the impact of tax expenditure. With the support of a regional program run by the Economic Community of West African States (ECOWAS),⁴³ the 2021 report includes an assessment of the impact on market prices of VAT exemptions for rice, gas for domestic use, and the first tranches of the water and electricity consumption tariff for individuals.⁴⁴

⁴⁰ The high TPS rate may, however, act as a disincentive to formalizing informal activities, even though the inclusion of liberal and regulated professions within its scope does not seem justified (see Vellutini, Loeprick, Brun, and Messier 2022).

⁴¹ Previously, under another simplified regime, the flat-rate taxable profit amount was determined following an inspector’s assessment.

⁴² Available from [World Bank Document \(tax-platform.org\)](https://tax-platform.org).

⁴³ ECOWAS, through the West African Fiscal Transition Support Program (*Programme d’Appui à la Transition Fiscale de l’Afrique de l’Ouest* – PATF) initiated the assessment of the socioeconomic impact of VAT exemptions on high consumption products. See also Brun, Chambas, and Tapsoba. (2021)

⁴⁴ For guidelines on stepping up these initial, partial efforts, see: Vellutini et al. 2022 and IMF 2022 (forthcoming).

66. Ending the practice of granting agreements outside the code improved the transparency of special tax regimes considerably. No new agreement outside the code (General Tax Code, General Customs Code, or Investment Code) granting tax and nontax benefits to investors in Benin has been signed since 2016. The main conventions outside the code that had been approved in the past are no longer in force today, particularly those with telephone operators. Transparency regarding requirements on eligibility for available tax benefits reduces uncertainty for investors and narrows the individual negotiation margin.

67. Significant progress has also been made in recording and tracking VAT and customs duty exemptions. Since 2017, these exemptions have been officially handled by the State through a pro forma revenue system (*recettes d'ordre*). The system has two major advantages: (i) the direct and transparent recognition of tax expenditures arising from these exemptions; and (ii) better monitoring of individual allocations (in a fully exempt contract). This mechanism helps to curb abuse stemming from exempt purchases in excess of the total exemptions provided for a contract, including fraudulent resale to third parties.

68. However, streamlining tax expenditure continues to be a priority for Benin to reduce complexity and distortions. Although the total amount of tax expenditures has decreased from approximately 2.6 percent of GDP in 2019 to 1.7 percent in 2020, the size of the amounts involved and, even more so, the distortions that preferential regimes and other exemptions can generate in the economy warrant further efforts. For example, the multitude of corporate tax (IS) rates leads to significant administrative costs.⁴⁵ Special economic zones (SEZs) and exemption regimes under the CDI (cf. detailed presentation in **Box 1**) can cause issues with profit transfers between exempt and nonexempt activities⁴⁶ (Vellutini et al. 2022), while the IS exemption for agricultural activities also complicates tax compliance when agricultural product processing activities are exempt (Wen et al. 2019). The developments that follow will place particular emphasis on investment incentives under the CDI, which pose a structural challenge.

Box 1: Investment Incentive Regimes

Benin is seeking to encourage investment through SEZs and exemption regimes provided for in the CDI.

- Since 2017, Beninese legislation has allowed the creation of SEZs in the national territory. The only one created thus far is Glo-Djigbé (the “Glo-Djigbé Industrial Zone” or “GDIZ”). Investors approved under the SEZ regime have access to exceptional tax benefits, including an exemption from customs duties, VAT, and other indirect duties and taxes on most inputs, an exemption from all taxes for exports, and a total IS exemption.

⁴⁵ The activities of large enterprises must be distinguished, and additional oversight may be necessary to prevent false classifications.

⁴⁶ Article 6 of the CDI provides for separate accounting for preferential and non-preferential activities carried on within the same enterprise; however, ensuring the accuracy of such accounting requires extensive verification with detailed information on transactions between intra- and extra-regime enterprises and can be a source of disputes.

- The new CDI, in effect as of 2020, sets forth three special so-called “basic” regimes (A, B, and C) under which identical tax benefits are granted for the investment period, including a near-total exemption from import duties and taxes on materials, tooling, utility vehicles intended for production, and spare parts. For the operating period, the three basic regimes provide for an exemption from IS, profit-based tax installments, a flat-rate minimum tax, a business license tax, and an exemption from the employer salary contribution (*versement patronal sur salaire – VPS*) at a level that varies depending on the regime (and, indirectly, according to the invested amount). The length of the investment period is subject to negotiation between the investor and authorities, while the period during which the tax benefits are granted for the operating phase ranges from 5 to 17 years, depending on the regime and the zone in which the investment is made. Furthermore, two “special” regimes apply to investments in strategic economic activities or sectors (agroindustry, agriculture, digital technology, health, and technical and vocational training).

Additional incentives are available for start-ups:

- For new enterprises, a reduction in IS and business profit tax amounting to 25 percent for the first two fiscal years of such an enterprise and 50 percent for its third fiscal year.⁴⁷
- Innovative companies in the information and communication technologies field (start-ups) with turnover not exceeding CFAF 100 million are exempt from IS and VPS for the first two years of activity, followed by a 50-percent reduction in those taxes for the third year.

Lastly, legal persons with industrial activity, with the exception of extractive industries, are subject to IS at a reduced rate of 25 percent, compared to the general rate of 30 percent.

Source: Mission, based on Loeprick and Vellutini (2022) and Vellutini et al. (2022)

69. The 2020 CDI reform has certainly improved monitoring of licensed enterprises. The decree enforcing the CDI⁴⁸ establishes annual control in the investment phase by the Investment Control Commission (*Commission de contrôle des investissements – CCI*), pursuant to Article 11, as well as fines and the withdrawal of licensing in the event of “noncompliance with investor commitments under the licensing agreement” (Article 15). Moreover, CDI licensing is now granted in two ways: (i) licensing for the investment phase covers only exemptions from indirect duties on imports of capital and construction goods; (ii) another license is granted for the operating phase at the end of the investment phase, depending on the actual investment amount. Since the generosity of benefits is conditional on the amount actually invested, this system in theory limits abusive receipt of benefits on the basis of projects with overstated amounts.

70. However, the sanctions for noncompliance with licensing conditions seem to be rarely, if ever, imposed. No fines or license withdrawals have been observed since the adoption of the CDI in 2020. No CCI annual control report was shared with the IMF (Vellutini et al. 2022). Aside from that,

⁴⁷ These enterprises are also exempt from TPS and the business license tax for the first 12 months of activity as well as from VPS on the employment of employees of Beninese nationality during their first fiscal year.

⁴⁸ Decree no. 2021–005 of January 6, 2021, establishing the procedures for granting licenses to Investment Code regimes in the Republic of Benin.

the fact that CCI secretariat duties are carried out by the APIEX (Article 12 of the aforementioned decree), the body that reviews licenses, makes it more difficult for controls to be independent and runs counter to the recommended practice of monitoring investment compliance through a mechanism separate from the one used to grant benefits.

71. The good practice of systematically publishing individual licenses under the CDI should be extended. The website of the government's Secretariat General⁴⁹ publishes individual licensing decrees, specifying the beneficiary's identity, the regime granted, and the list of equipment and construction goods exempt from indirect duties. However, transparency best practices should also include (i) an updated, comprehensive list of licenses, likely on the APIEX website, and (ii) the publication of future CCI reports. In addition, high transparency requirements should be enforced for activities in new SEZs. All licenses obtained by SEZ companies must be published and include the names of the beneficial owners.

72. It is also advisable in the medium term to consider implementing an investment tax credit, the central component of a simplified investment incentive regime. Such a system would interconnect with the one in force in countries of the subregion, such as Rwanda (UNCTAD 2022), where incentives are granted based on automatic criteria, for the benefit of registered investors who meet the conditions set out in the schedule to the investment promotion and facilitation law. Such a change would eliminate the ex-ante selection and approval process and would fit into the logic of an international tax context that aims to reduce tax competition via a global minimum tax (Vellutini et al. 2022).

Institutional aspects

73. The creation of the UPF within the DGI in September 2017 is a major step forward. Under DGI authority, the unit seeks to focus the debate on tax policy, based on independent data analyses and facts. This applies in particular to the production of the tax expenditure reports mentioned earlier, in cooperation with staff from the DGDDI and the tax mission on regimes offering exemptions (*Mission fiscale des régimes d'exception* – MFRE).

74. However, the UPF should be attached directly to the Ministry of Economy and Finance (MEF). Making the UPF an external body of the DGI attached to the MEF would establish a strict distinction between the tax and customs administration (DGI, DGD) and tax policy. Such an institutional positioning would also bring the UPF closer to the Office of the Minister of Economy and Finance and would de facto extend its analysis scope to all ministerial bodies that play a role in tax policy in Benin. It would also reflect the fundamental difference between the UPF's analysis and reflection mission and that of other DGI units, action through revenue collection. From a pragmatic standpoint, such a change would help resolve the disconnect in management: DGD representatives currently must go through the chain of command and therefore through their own director general and the DGI rather than approaching the UPF directly.

⁴⁹ <https://sgg.gouv.bj/recherche/?type=tout&begin=&end=&keywords=code+des+investissements>

75. Changing the UPF's positioning in this way would also strike a better balance between investment promotion and the need to safeguard tax revenue. The creation of the Interministerial Investment Promotion Committee in February 2021⁵⁰ is reflective of the predominance of the objective to promote private investments, in keeping with the developments analyzed earlier regarding SEZs in particular. Attached to the MEF, the UPF will be in a better position to play its role as the "brains" behind tax policy in Benin, including through a balanced investment promotion policy compatible with enhanced tax revenue mobilization.

76. Lastly, this new positioning would reduce the risk of the UPF prioritizing DGI interests over the overall coherence of the tax system. Tax policy changes can lead to considerable adjustments for the DGI and (to a lesser extent) the DGD. A unit internal to the DGI could therefore be less inclined to propose far-reaching changes to the tax system, even if they make it more consistent and efficient as a result. However, the UPF's recommended transfer to the MEF must, of course, safeguard this unit's human resources and the procedures it has developed and must therefore carry all the guarantees for the continuity and career development of existing staff members.

Recommendations

- Publish (i) Investment Control Commission reports, (ii) the full list of tax exemptions, and (iii) a list of SEZ-approved enterprises (ST)
- Introduce an investment tax credit as a central component of a simplified investment incentive regime (MT)
- Attach the UPF at the ministerial level to the MEF (MT)

B. Tax and customs administrations

77. This chapter identifies tax and customs system vulnerabilities that can result in poor governance or corruption and proposes solutions to limit their adverse impact. It is based on work carried out by FAD in this area and on the analyses conducted with guidance from the DGI and the DGD during the mission.

Background

78. Major reforms have been implemented in recent years to improve governance in tax and customs operations. The main ones are outlined in **Box 2** below.

⁵⁰ Decree 2021-68 of February 17, 2021, on the powers, composition, organization, and functioning of the Interministerial Investment Promotion Committee.

Box 2: Tax and Customs Governance System – Main Developments

Benin introduced a series of major reforms, the most notable of which are the following:

- Creation of the National Committee to Combat Smuggling and Human Trafficking;
- Codification of user rights and obligations (General Tax Code, Customs Code, Taxpayers' Charter, Practical Guide to Duties and Taxes, Customs Procedures Manual, etc.) and the strengthening of administrative remedy mechanisms (Valuation Committee, Reconciliation Committee, Tax Committee, etc.);
- Codification of administrative powers (Tax Procedure Code, Code of Ethics and Professional Conduct, ISO certification, etc.). The DGI and the DGD have a range of graduated sanctions and procedures guaranteeing, in principle, the right to a fair hearing;
- Introduction of results-based management methods (strengthening of the design, planning, and monitoring functions; development of performance indicators) and the publication of strategic plans and performance reports to promote transparency and accountability;
- Strengthening of internal audit with programs covering different risk areas, including operations, performance, and the computer system; strengthening of the inspectorate; and introduction of external audit (IGF);
- Streamlining of procedures by simplifying tax forms, segmenting taxpayers (DGE, CIME, and CIPE) and customs users (authorized economic operators, etc.), introducing at-source withholding mechanisms, adapting procedures to small taxpayers, and making transactions paperless;
- Ongoing adoption of the accrual accounting system (reliability of taxpayer accounts, easy reconciliation of liquidated and collected cash flows between revenue agencies and the Treasury, increased accountability of actors in the revenue chain);
- Modernization of the risk management system (creation of a unit dedicated to risk management and quality, progressive design of a central risk register, and a strategy for identifying, assessing, and mitigating operational and institutional risks);
- Use of customs and tax administration diagnostic assessment tools (TADAT) to evaluate dispute resolution procedures and internal assurance mechanisms;
- Collaboration between the DGD and two companies, Bénin Control and Webb Fontaine, for better revenue security through a series of measures (introduction of document-based inspections at the destination, stricter transit management, strengthening of risk management and investigation and intelligence functions, improvement of operator information via the website).

Source: Mission

79. Despite these major advances, shortcomings remain and result in persistently low tax pressure. Despite reforms designed to improve and modernize the tax and customs administrations in recent years, the taxation rate is still around 11.2 percent of GDP, below the WAEMU average of approximately 12.9 percent (2021 data). This situation can certainly be explained by a number of reasons external to the governance of the revenue authorities, such as the following: (i) Benin's tax system is characterized by a narrow tax base and significant tax expenditures (1.7 percent of GDP in 2020); (ii) the revenue mobilization level is highly dependent on international trade, hence the particular sensitivity to disturbances in the international market in general and to the ups and downs with Nigeria in particular; and (iii) regional tax competition is eroding the tax base (particularly between various ports in the subregion).

80. However, the lack of adherence to the tax and customs system is an indicator of a worrying vulnerability. A large proportion of Beninese economic operators operate in the unregistered sector. According to an AFRISTAT study,⁵¹ most of the unregistered production units in Benin (56 percent compared to 54.1 percent for WAEMU) claim not to know whether they have to register, 21.1 percent compared to 25.3 percent think that registration is not mandatory, and 17.1 percent compared to 9.2 percent believe that the registration steps are too complicated. Also according to this study, the heads of these units are not willing to contribute to the national development effort by paying their taxes. In fact, 76.1 percent of the operators surveyed (compared to 67.1 percent from the WAEMU) stated that they were not willing to pay tax on their activity. This contrasts with 19.5 percent (26.2 percent for the WAEMU) who responded favorably to the principle. Only 4.4 percent already pay tax on their activity, compared to 6.7 percent for the WAEMU.

81. This poor result is associated with the perception that there is a high level of corruption in the tax and customs administrations. The above study also revealed that tax and customs administration agents seem to have the most tarnished image in the eyes of the public in terms of the prevalence of corruption (72.2 percent), ahead of the police (65.4 percent), judges, magistrates, and judicial staff (69.7 percent), and deputies and members of Parliament (69.1 percent). It comes as no surprise that there is a discrepancy between the reforms launched and the perceptions because perceptions change gradually. The recommendations outlined later in the document will attempt to bridge this gap.

82. The remainder of this section proposes a strategy for improving governance in tax and customs operations. The strategy is based on four priorities: (i) improve the setting of tax and customs revenue targets; (ii) make progress in human resource management; (iii) make advances in the use of computer technologies to fight corruption; and (iv) step up efforts to combat tax and customs fraud.

Setting overall revenue targets for tax and customs administrations

83. The methods used to set revenue targets are not without consequences for the performance of revenue agencies. International experience has shown that a revenue target that is

⁵¹ Cf. AFRISTAT 2019. Regional Integrated Survey on Employment and the Informal Sector, 2017-2018: Final report. Bamako, Mali, AFRISTAT.

too ambitious can be a factor of unnecessary pressure and/or discouragement and lead to involvement in unplanned, often unproductive, and potentially illegal actions. Conversely, targets that are too weak do not bridge the gap between theoretical revenues and the amounts actually collected, which can even “legitimize” deviant behavior.

84. Yet, the current method used to determine revenue targets is still rudimentary. Tax projections are based on a by and large empirical approach. They are calculated on the basis of figures from previous years weighted, as applicable, by the GDP growth rate, inflation, and the impact of new tax measures. The shortcomings in these tax revenue projection methods likely explain the apparent inconsistency between the good performance claimed by revenue agencies relative to budgetary targets, on the one hand, and the persistently low tax pressure rate, on the other.

85. The transition to a more structured approach to determining revenue targets appears to be needed. It should be based on the following three steps: (i) define a theoretical framework for assessing public expenditure financing needs; (ii) determine the country’s untaxed tax potential; and (iii) establish the level and pace of the reduction of the untaxed potential. The medium-term revenue strategy (MTRS), slated to be adopted by end-September 2023 under the terms of the program concluded with the IMF, can be the preferred vehicle for such an approach.

86. The first step, that is, to define a theoretical framework for assessing public expenditure financing needs, can build on recent advances. The progress made in public policy planning and in the concurrent identification of financing sources, presented in **Box 3**, is an excellent starting point.

Box 3. Theoretical Framework for Assessing Public Expenditure Financing Needs

A budgetary planning mechanism: Three key programs formalize the authorities’ commitment in this regard, namely the National Development Plan (*Plan national de développement* – PND) 2018–2025, the Government Action Program (*Programme d’actions du gouvernement* – PAG) 2016–2021, and the Growth Agenda for Sustainable Development (*Programme de croissance pour le développement durable* – PC2D) 2018–2021.

- The PND determines the strategic vision for Benin’s development. It helps ministries formulate their sectoral development programs and ensures their full adherence to the Sustainable Development Goals (SDGs) by 2030.
- The PAG lists three major drivers to help Benin achieve these SDGs and categorizes them into priority projects, flagship projects, and structural reforms.
- The PC2D ensures that the PAG is implemented. It also creates a framework that facilitates dialog between the government and donors for SDG financing.

A financial evaluation of key public expenditures. With the IMF’s support, the studies conducted to this end estimate the cost of expenditures required to achieve the SDGs by 2030 at around 21.3 percent of GDP.

A public expenditure financing strategy structured around the following main pillars: (1) the streamlining of current expenditure; (2) the improvement of public investment effectiveness; (3) the implementation of a new legal public-private partnership framework to attract investors; and (4) the substantial increase of tax and customs revenue.

Source: Mission

87. The second step, namely to determine the country's untaxed tax potential, assesses the margins associated with improving tax compliance. The tax gap (difference between potential and actual revenues) can be calculated in the aggregate or by tax; it must lead to the identification of economic sectors and/or taxpayers that are at risk and to the specification of methods for dealing with such risks.

88. The third and final step is to determine the level and pace of the reduction of the untaxed potential. Based on its policy, economic, and social objectives, the government must decide—and include in the MTRS—the annual level and pace of reduction of this untaxed potential and make it the main objective for judging the effectiveness and efficiency of revenue agencies. All in all, such an approach “tightens up” tax and customs administrations and brings them in line with the country's macroeconomic and macrofiscal objectives.

Human resource management

89. The authorities are aware of the importance of modernizing human resource management (HRM) to establish effective governance in tax and customs administrations. Recent draft laws and legislation have led to significant changes. For Customs, many programs and legislation (Law 2020-17 of July 3, 2020, Order 4480 of August 19, 2015, MADAO project) describe staff recruitment conditions, career management, the content of initial and continuous training, and the gradual implementation of tools for forward-looking management of jobs, workforces, and skills (*gestion prévisionnelle des emplois, des effectifs et des compétences* – GPEEC). At the DGI level, the provisions of Law 2015-18 of September 1, 2017, on the general status of the public service are applicable, particularly articles 108 and 109 governing the recruitment and employment of agents to limit fraud and foster transparency in candidate selection.

90. Increased demand for results from revenue agencies must be offset by greater HRM decision-making autonomy. Although accountable for their results, revenue authorities are still not adequately involved in policies—which are still highly centralized and not differentiated between ministries—on recruitment, training, remuneration, evaluation, and career management. To make HRM a strategic focus of good governance in tax and customs operations, the following changes can be considered: (i) develop GPEEC tools to facilitate the adaptation of human resources to the strategic objectives of public administrations; (ii) modernize policies and motivators for agents; and (iii) modernize the performance evaluation system.

91. Adapting human resources to the administrations' strategic objectives requires the development of appropriate GPEEC tools. Revenue agencies are in a conflicting situation where they are both overstaffed in some agent positions, but also understaffed in other business lines. The implementation of GPEEC computer tools facilitates workforce data collection and analysis from both a quantitative and a qualitative standpoint. Their operational use guides recruitment and training policies to monitor demographic trajectories and changes in missions, taking account of the medium-term impact of the computerization of procedures and the increased need for experts in specialized units.

92. The modernization of policies and motivators for agents must include increased pay transparency. There are a number of points worth considering: (i) include all pay components, particularly incentive plans, on pay slips and in the budget; (ii) award bonuses and other incentives according to objective and transparent criteria that are known in advance (stemming chiefly from the job description); and (iii) gradually phase out the system of financing incentive plans through the direct collection of fines and penalties, insofar as this creates serious distortions in the execution of control and collection activities.

93. The performance evaluation system must also be overhauled. Without any real measurement tools or indicators on which to base individual evaluations, current methods have proven ineffective in promoting multiple performance components (productivity, responsiveness, efficiency, service quality) or making use of skills (technicality, scope of responsibilities) and reconciling individual and group performance.

94. To become centers of excellence in governance, revenue agencies will have to become employers of choice. A more suitable workforce, recruited with higher qualifications, will certainly create fertile ground for innovation in: (i) the pay policy, which will have an individualized structure based on position, skills, and performance; (ii) career opportunities (less top-down and more expertise-focused); and (iii) the promotion of other appointment factors (quality of working conditions, more room for initiative and innovation, consistency between objectives and professional values). This approach should allow public authorities to reconcile cost control while maintaining a high level of employee engagement.

95. Reconciling the needs of a renewed HRM in the tax and customs administrations with the general rules applicable to the public service is a major problem. The preceding developments have presented only a brief overview of the main issues, which deserve to be explored further as part of specific work beyond the scope of this report.

Computerization and anti-corruption efforts

96. The computerization of procedures is at the core of the strategy to combat deviant behavior in the tax and customs administrations. Many applications have been developed to improve access to information, limit agents' discretionary authority, and reduce red tape. The application architecture of the DGD, centered around ASYCUDA World, and that of the DGI, organized around SIGIBé, have been considerably expanded in recent years with a view to making procedures paperless and increasing data sharing. **Annex IV** provides an overview of this architecture.

97. There is little doubt that a correlation exists between increased computerization in government and reduced corruption. It is generally accepted that automation creates an environment conducive to (i) the reduction of opportunities for corruption in repetitive operations, (ii) transparency, which can help reduce discretion and thus enable the detection of anomalies, outliers, and underperformance; (iii) the preventive detection of deviant behaviors through network surveillance and the monitoring of individuals; (iv) awareness-raising to empower the public and inform it of its right to resist arbitrary treatment; (v) the creation of complaint channels that can lead

to specific actions and help punish violations and close loopholes; (vi) dissuasion, by disseminating information on reported cases of corruption; and (vii) the promotion of ethical attitudes through public engagement and online discussion. In that respect, **Box 4** presents a brief topology of integrity technologies.

Box 4. Typology of Anti-Corruption Integrity Technologies

e-Government Services and Digital Public Services

- Public service automation
- Greater transparency in government operations
- Examples: *Open system* (South Korea 1999), *JAGA App* (Indonesia 2016), *Sema! Piga Ripoti*⁵² (Kenya 2013)

Crowdsourcing platforms

- Means for citizens to publicly report corruption (trend: petty corruption)
- Corruption visibility and highlighting of trends
- Example: *ipaidabribe.com* website developed in India and then made available in a number of countries

Whistleblowing platforms

- Means of reporting corruption, including anonymously (trend: grand corruption)
- Protection of the identity of reported persons and data use for criminal proceedings
- Examples: *GlobaLeaks* (open source type, Italy) and *BKMS* (owner type, Germany)

Transparency platforms

- Information on government operations that could reveal corrupt behavior
- Deterrent effect on corruption
- Examples: *WhatDoTheyKnow* and *Alaveteli* platforms implemented by *mySociety* (nonprofit social enterprise based in Great Britain)

News reporting

- Information on corruption-related events in a given country/area
- Public awareness of corruption and how to fight it
- Example: *K-Monitor* (Hungary 2007), *Nikorupciji.org* (Ukraine)

Blockchain technologies

- High level of transparency and accountability in transactions
- Considerable reduction of opportunities for fraud and deception
- Examples: *TruBudget* (KfW, Germany), *Blockchain-based land registry system* (Georgia)

Source: Niklas Kossow, Victoria Dykes, *Embracing Digitalisation: How to use ICT to strengthen Anti-Corruption*, GIZ, 2018.

98. However, computerization is not fully effective as an anti-corruption instrument within revenue agencies unless certain conditions are met. The main ones are presented below. There are also conditions that fall within the general anti-corruption framework (cf. above), such as adequate protection of victims of acts of corruption who report such acts (“whistleblowers”) and the existence

⁵² In Swahili, meaning “Speak up! File your complaint.”

of a suitable, firmly enforced penalty system regardless of the political, economic, or social status of the persons implicated.

99. What must first be implemented is a system to measure the impact of digitalization on deviant behaviors. Ex ante and ex post indicators can be established during the launch of production of various applications and modules to measure progress in achieving the objectives pursued.

100. Reducing the remaining clusters of manual management as much as possible is also important. In the tax administration, for example, small business taxpayer centers (*Centres des Impôts des Petites Entreprises* – CIPE) are still operating without the use of a computer system, leaving a significant proportion of DGI taxpayers (over 80 percent) in a manual environment.

101. This is coupled with an effort to put in place prerequisites for taxpayers and users to use “e-services,” namely Internet access and availability of electricity. This clearly extends beyond the framework of tax and customs administrations. Although Internet penetration in Benin is considerable (67.53 percent),⁵³ a not insignificant proportion of the population is always without Internet access and therefore cut off from these tools and innovations. It is crucial for steps to be taken to increase connectivity and reduce Internet access costs. Likewise, the lack of reliable access to electricity can also be an obstacle, making it difficult and costly for people to charge their phones and other devices, particularly in rural areas. According to key 2021 figures from the Directorate General of Energy Resources, the national electricity access rate for 2020 was 36.5 percent, including 10.4 percent for rural areas and 64.9 percent for urban areas.

102. Lastly, the new instruments put in place highlight the issue with computer system integrity and security. This is a key governance issue insofar as it is up to public authorities to equip themselves with the means to protect IT assets (computers, servers, network components, databases, etc.) against various accidental (flood, fire, earthquake) and deliberate (virus, hacking) threats.

Improvements to tax and customs risk management

103. According to the mission, good governance in revenue must take account of the specific circumstances of the Beninese economy to manage tax and customs risk. The weight of international trade and logistics (“storage economy”) and the length and porosity of borders—particularly with Nigeria—need special attention, which requires the implementation of adequate tools and close cooperation between the tax and customs administrations. In the absence of such an approach, the risk of revenue loss and impunity for collusive behavior increases very sharply.

104. The modernization of procedures and methods, beyond the IT aspects presented above, is therefore a major issue. Progress should revolve around three points to address the specific issues affecting Benin’s economy: (i) greater vigilance over operations with a high likelihood of fraud and collusion; (ii) the implementation of a specific strategy to deal with the flow of undeclared goods

⁵³ Internet Observatory. Dashboard of December 31, 2021, ARCEP, Benin.

between Benin and Nigeria; and (iii) a comprehensive and coordinated approach to tax and customs risk based notably on an appropriate intelligence strategy.

105. For customs, the first requirement is to strengthen the capacity to spot red flags in operations with a high likelihood of fraud and collusion. A number of specific characteristics are “red flags” (cf. **Box 5** below) that may indicate the presence of fraudulent operations. It is important for customs staff to have appropriate tools to identify these red flags, for agents to be trained on how to handle them, and for appropriate internal control to be conducted to ensure that there is no collusion between agents and operators.

Box 5. DGD – Examples of Red Flags for Operations with a High Likelihood of Fraud and Collusion

Declared import value

- Less-than-container-load (LCL) cargo from Asia with an unusually low value
- Declared value for products carrying the bulk of revenue not cross-checked with external data

Product descriptions on customs declarations

- Highly suspected false descriptions to benefit from preferential tariffs and taxes
- Classification of merchandise in tariff nomenclature insufficiently centralized in the specialized unit of the Directorate General

Suspensive duty and tax regimes

- Temporary admission according to overly flexible rules or without clearance for past transactions that can be used to obtain a lifelong exemption
- Uncleared bonded transit operations
- Non-optimal bonded warehouse control

Exemption from duties and taxes

- No suitable program for monitoring compliance with exemption conditions for imported products, particularly regarding the use of these products following customs clearance

Source: Mission

106. The flow of goods between Benin and Nigeria not declared to Customs or incorrectly declared is a major ongoing problem. Due to logistical and administrative difficulties in Nigerian ports, combined with restrictions on imports to Nigeria, large volumes of goods transit through the Cotonou port before crossing the border informally or fraudulently. This “parallel economy” is likely to fuel corruption at various levels (within customs and other administrations) and give rise to money laundering, as established in the recent GIABA report (cf. previous section on AML/CFT).

107. The return to more orthodox practices, necessary to respect regional and continental integration commitments, requires an integrated strategy. Consideration must be given to various factors, including the social and economic impact, foreseeable resistance to change, and direct competition between West African ports. The implementation of an administrative customs

framework consistent with international standards and based on stronger collaboration between the two countries' customs administrations would initiate such a process of restoring order, thereby eradicating a major source of current and potential corruption. **Box 6** presents the main suggested measures to be implemented in an integrated manner.

Box 6. Key Elements of an Integrated Strategy for the Standardization of Trade with Nigeria

Use of the international transit customs procedure

- Establish a mandatory computerized and digitalized procedure for customs transit between the Cotonou port and a customs office (or a reduced number of authorized offices) in Nigeria with a single customs declaration, an absence of bulk breaking at the border, and a direct computer link between the Beninese customs office and the Nigerian office or offices for automated clearance.
- Strengthen controls using departure and arrival scanners and a comparative analysis of systematic images using artificial intelligence and, for necessary physical inspections, joint Beninese and Nigerian customs teams.
- Establish a duty collection fast-track in case of missing goods and a procedure for investigating those responsible.

Prevention and punishment of undeclared flows

- Develop and enforce dissuasive customs sanctions for the non-use of the transit procedure for border crossings.
- Put in place mobile customs surveillance operations and strategy for the border area, ensuring optimal geographic and time coverage.
- Activate seamless coordination of the anti-smuggling strategy and operational command between the two administrations (like the National Committee to Combat Smuggling mentioned earlier, created in Benin).

Other actions

- Eliminate so-called "adjusted" import values and fully implement the WTO Agreement on Customs Valuation.
- Implement a framework with Nigeria to monitor progress and cease unilateral border closures.
- Engage in discussions with ECOWAS to align the practices of countries likely to be indirect stakeholders (Togo, Ghana, and Niger, in particular).

Source: Mission

108. The silos between administrations must be overcome so that a comprehensive, coordinated approach to tax and customs risk can be implemented. Given the magnitude of international trade revenue risks and their impact on the domestic tax system, the two tax and customs administrations must pool their resources and help each other to resolve the specific, crosscutting problems. It will be a matter of jointly determining the objective indicators to define the risk level for each operator whose activity falls under both administrations and, consequently, assess

the degree of control or facilitation that tax and customs staff must or can apply in respect of the operator. **Box 7** below proposes the strategic thrusts of a holistic approach to tax and customs risk.

109. Intelligence is a key part of this comprehensive, coordinated approach to tax and customs risk. Shortcomings in collecting, enriching, and using tax intelligence are a major impediment (cf. **Annex V**). According to DGD officials, these challenges are also largely shared by the customs administration.

Box 7. Strategic Thrusts of a Joint Approach to Tax and Customs Risk

Area	Mechanism	Objective	Prerequisite
Assessment of the individual level of risk to operators	The DGI and the DGD identify objective indicators to determine the overall (tax and customs) risk level of each operator whose activity falls within both sectors.	Increase the relevance of the "operator" risk analysis and harmonize the level of control and/or facilitation to be applied to each operator by tax and customs staff	Identification of indicators to take into account to objectively determine the risk level
Fraud prevention	The DGI provides access to: (1) the active taxpayer file, (2) the file of taxpayers subject to VAT; and (3) the annual turnover of importing enterprises and their shareholders to facilitate the assessment of customs risks and the identification of shell companies.	Alert customs staff to a taxpayer's current status vis-à-vis the tax administration (all taxpayers whose tax identification numbers have been deactivated or who are importing more than CFAF 50 million in goods, the VAT trigger threshold, will only be given access to their cleared goods after they settle their tax situation)	Regular update of taxpayer records and files.
Identification of cases of tax and customs fraud	<p>Sharing of the risk management methodology and results (citizen taxpayers, low risk, high risk, etc.)</p> <p>Sharing of customs or tax offenses</p> <p>Reconciliation and joint analysis of information on taxpayer/operator declarations, particularly significant discrepancies between customs and tax data.</p>	<p>Identify suspected cases of bulk imports/exports or those made under fictitious names or declared as casual that, in reality, are made by established economic operators.</p> <p>Identify smuggling or underdeclaration in customs as well as in domestic taxation.</p> <p>Detect false declarations of goods values aimed at reducing customs duties and taxes and/or domestic charges.</p>	Better knowledge of the tax fabric

Control over tax and customs fraud	Joint tax-customs control	Increase the effectiveness of controls over (1) "bulk" imports, ⁵⁴ (2) enterprises whose financial statements show smuggled supply risks, and (3) the value and age of investments giving rise to the tax credit.	Improved control selectivity
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Source: Mission

Recommendations

- Determine, in an objective and structured manner, the country's fiscal potential and focus, through the future MTRS, on narrowing the gap between this potential and actual performance as an overall indicator for measuring the effectiveness of revenue agencies (ST)
- Strengthen human resource management within revenue agencies by: (i) adapting human resources to the strategic objectives of administrations through GPEEC development, (ii) modernizing policies and motivators for agents, and (iii) restructuring the individual and collective performance evaluation system (MT)
- Include the automation of current procedures in a comprehensive anti-corruption approach by (i) developing a system to measure the impact of digitalization on deviant behaviors; (ii) reducing the remaining clusters of manual management as much as possible; (iii) implementing "e-services" prerequisites for users through the expansion of Internet use and access to electricity; and (iv) guaranteeing the integrity and security of IT systems (ST/MT)
- Improve tax and customs risk management to address specific vulnerabilities in the Beninese economy by: (i) exercising greater vigilance over customs operations with a high likelihood of fraud and collusion; (ii) putting in place an integrated strategy for standardizing trade in goods with Nigeria; and (iii) defining areas of strategic focus for a joint approach to tax and customs risk between the DGI and the DGD, based in particular on the appropriate use of tax and customs intelligence (ST/MT)

⁵⁴ Imports made by multiple operators under a single identifier, that is, either under an assumed name or through an intermediary (forwarder).

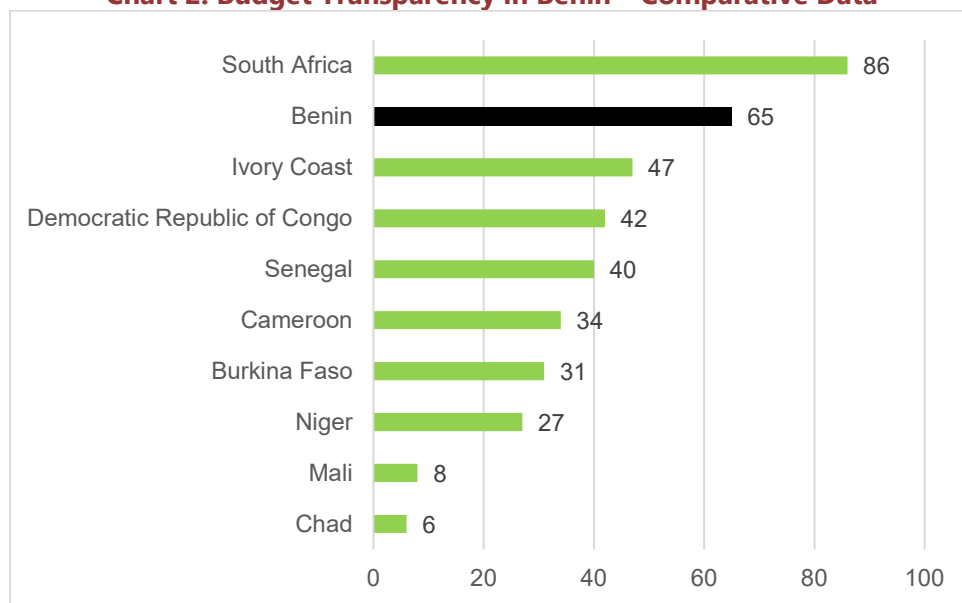
IV. PROGRESS IN PUBLIC FINANCIAL MANAGEMENT

110. This section discusses areas of public financial management (PFM) vulnerable to poor governance. It draws on recent FAD work, particularly the Fiscal Transparency Evaluation (FTE) conducted in 2021, that resulted in recommendations, which are still relevant. However, it will not discuss the details of those recommendations here. The section will also not repeat the detailed recommendations and findings contained in the Fiscal Safeguards Review (FSR), conducted in parallel with this mission.

A. Budget transparency

111. A number of recent diagnostic assessments have shown encouraging progress in Benin as concerns transparency in PFM. This emerges from the terms of the FTE conducted by FAD in 2021, but also the results of the 2021 Open Budget Survey (OBS), published in May 2022, placing Benin first in Francophone sub-Saharan Africa and second in Africa behind South Africa, with a score of 65 out of 100 in terms of budget transparency (**cf. Chart 2** below).

Chart 2: Budget Transparency in Benin – Comparative Data



Source: 2021 OBS. Scores below 60 are deemed insufficient while scores above 61 are deemed sufficient.

112. Increased budget transparency helps to reduce corruption if it is backed by strong measures. Some empirical studies establish a causality interconnecting transparency and corruption, whereby greater budget transparency lowers corruption, and vice versa. However, this is subject to

the adoption of strong measures, such as an effective penalty system, whose effectiveness is guaranteed by appropriate control and audit mechanisms (cf. above).

B. Management in program-based budgeting mode

113. Program-based budgeting (PBB) is now the only way to present, vote on, and execute the State budget in Benin. This reform, at the heart of the new public financial governance, was launched at the community level through the 2009 guidelines on the harmonized PFM framework in the WAEMU. It is based on three key guiding principles (transparency, accountability, and performance), the implementation of which leads to a culture change toward a budgetary approach centered on results and their reporting.

114. Good governance and the PBB are closely linked: the PBB is conducive to good governance, but an appropriate governance level is also a prerequisite for the transition to the PBB. The PBB highlights the real effectiveness and efficiency of public spending through the performance mechanism in place (annual performance plans (*projets annuels de performance* – PAPs) associated with the draft budget law and annual performance reports (*rapports annuels de performance* – RAPs) associated with the draft budget discharge law), which compares the appropriations used against the results obtained. However, it can be counterproductive if it is implemented in an environment plagued by corruption.⁵⁵ It grants new freedoms to managers, which they can misuse if the performance mechanism is purely a bureaucratic obligation with no real consequences for manager evaluations, for instance, and if it is not supplemented by appropriate internal and external audit control mechanisms and effective sanctions.

115. In Benin, the choices made for PBB application have wisely left plenty of room for experimentation. Rather than switching to the PBB hastily under the constraint of community deadlines, the authorities opted for the prior appropriation and prefiguration of the reform. As a result, over the course of five years, Benin prepared two draft budgets, one in traditional mode voted on by Parliament and one in PBB mode annexed to the budget bill for information purposes. This is how the main expenditure actors were able to familiarize themselves with the new paradigms so that they could prepare and execute their 2022 budgets in PBB mode, with satisfactory feedback on the first few months of PBB execution according to the authorities.

116. The PBB's progression toward its target mechanism is a gradual step up toward stronger governance. As part of this progression, priority will have to be given to improving the quality of performance documents (PAPs and RAPs), implementing management oversight of program managers, continuing to roll out internal control within ministries, and automating the production of reporting data and budget reports. All of these aspects should enhance manager accountability, both within government and vis-à-vis Parliament and citizens. To that end, the performance mechanism presented in budget documents must be well built, and relevant indicators

⁵⁵ IMF/FAD - *A Basic Model of Performance-Based Budgeting*, prepared by Duncan Last and Marc Robinson, 2009.

must be integrated to measure the effectiveness and efficiency of public policies.⁵⁶ Education about the reform, through better training for civil society and an overhaul of PFM training courses (university courses or vocational schools run by the MEF and other ministries) taking account of PBB contributions, appears to be essential.

Recommendation:

- Boost the current PBB momentum by developing missing tools, training all actors, including civil society, and updating the university curriculum on PFM (ST/MT)

C. Public Procurement

117. The legal framework on public procurement in Benin is moving toward good practices.

It was updated with the adoption of a new Public Procurement Code (*Code des marchés publics – CMP*) in 2020.⁵⁷ The Public Procurement Regulatory Authority (*Autorité de régulation des marchés publics – ARMP*), an independent administrative authority attached to the Office of the President of the Republic, is playing a bigger role as public procurement regulator;⁵⁸ it has a website on which to make its missions as regulator more transparent through, in particular, the publication of requests for opinion, reconciliation, and arbitration, its opinions and decisions, and training tools on public procurement. Although these initial steps are fairly encouraging, World Bank staff scheduled an evaluation for 2023 of Benin’s public procurement system according to MAPS,⁵⁹ which will conduct a thorough assessment of the current system.

118. The effective professionalization of the person responsible for contracts (*Personne Responsable des Marchés – PRM*) is a progress that promotes transparency and integrity. Under Article 11 of the CMP, PRMs are now selected from a pool of candidates with the profile and skills required to perform this role. They are appointed by presidents of institutions, ministers, prefects, directors general of EPs, or mayors, as applicable. This reduces the risk of PRMs being appointed, above all, because they are close to the institution’s head. If they fail to fulfill their obligations, PRMs are sanctioned by the ARMP.

119. With the implementation of the PBB and the decentralization of the expenditure authorization process, the organization of public procurement has seen some encouraging progress. The MEF National Directorate for Public Procurement Control (*Direction Nationale du Contrôle des Marchés Publics – DNCMP*) continues to perform its role of control and supervision of public procurement (above certain thresholds, from CFAF 80 million to 500 million, depending on the

⁵⁶ Enrollment rate, absenteeism rate, proportion of health facilities audited with respect to resource management, success rate in end-of-second-cycle examinations, rate of physical execution of the public investment program, average rate of court cases cleared relative to the number of cases listed and decision times, etc.

⁵⁷ Law no. 2020-26 of September 29, 2020, on the Public Procurement Code.

⁵⁸ Decree no. 2020-595 of December 23, 2020, on the powers, organization, and functioning of the ARMP.

⁵⁹ MAPS: Methodology for Assessing Procurement Systems.

type of service⁶⁰) and oversees a network of public procurement control units (*cellules de contrôles des marchés publics* – CCMP) placed with contracting authorities. Furthermore, the creation of specialized procurement bodies in each ministry and institution—person responsible for public procurement (*personne responsable des marchés publics* – PRMP) and their permanent secretariat—fosters proper public procurement organization. PRMPs in sectoral ministries and institutions are operational and appointed from a pool of executives with specific training and/or proven experience in public procurement. They are appointed by the president of the institution or the minister, as the case may be, and, just like their collaborators, can be subject to sanctions by the ARMP. These sanctions appear on the red list published on the ARMP website.

120. The main provisions of the CMP on transparency and good governance in public procurement are gradually being implemented by Benin. The DNCMP public procurement portal provides contracting information, including procurement plans (*plans de passation des marchés* – PPM),⁶¹ as well as some statistics on public procurement flows, and publishes the public procurement red list. The ARMP website allows anyone to file a complaint online. Appeal decisions, subject to legal deadlines, and any sanctions imposed are published on this site. Aside from activity and audit reports, the ARMP website also contains a red list of individuals from the private sector and enterprises excluded from public procurement in Benin. The most recent list is dated July 2022.

121. There is nevertheless still room for improvement in moving toward greater transparency and good governance in public procurement and taking full advantage of the PFM reforms underway within the MEF. These areas of improvement revolve around five priorities: (i) the contract approval and receipt process, in line with the accountability framework for PBB reform; (ii) the public procurement audit function for greater transparency and more impact on improvements to public procurement; (iii) complete computerization for monitoring public procurement; (iv) the availability of recent statistics on public procurement; and (v) the implementation of e-procurement, which has already progressed well.

122. However, for contracts that fall under DNCMP jurisdiction,⁶² the public procurement validation process is still centralized in the hands of MEF officials. Despite the decentralization of the expenditure authorization process since early 2022, the MEF is still the one ultimately approving government contracts, while ministers and institution presidents have all the power to do so as the main authorizing officers in their ministry or institution. Three MEF directorates are represented on government contract receipt committees, that is, the National Financial Control Directorate (*Direction nationale du contrôle financier* – DNCF), the National Directorate for Public Procurement Control (*Direction nationale du contrôle des marchés publics* – DNCMP), and the Directorate General for Material and Logistics (*Direction générale du matériel et de la logistique* – DGML) (materials

⁶⁰ Article 9 of Decree no. 2020-599 of December 23, 2020, setting the thresholds for public contract award, request for quotations, exemptions, and control.

⁶¹ In September 2022, the PPMs of 294 contracting authorities were published on the public procurement portal.

⁶² With the exception of contracts with communes and corporate bodies governed by private law.

accounting), whereas responsibility for the service performed lies with the authorizing officer according to the new program budget accountability framework. Only the DGML, whose main task is to look after State assets, can sit on these committees. Furthermore, the development of an internal control mechanism involving the authorizing officer is likely to strengthen the latter's accountability.

123. Independent audits of government contracts have not been carried out by the ARMP since 2017 due to a lack of financial resources. Since 2018, only internal audits are conducted sporadically by the Inspectorate General of Finance (*Inspection Générale des Finances* – IGF).

Only a few internal audits could be conducted by the IGF since 2018 because the Inspectorate only reports on them in its audit reports, which always include a section on public procurement. These reports are transmitted to the ARMP for follow-up, as needed. The independent audit function assigned to the ARMP must be strengthened for greater effectiveness and timeliness of anti-corruption efforts and coupled with better monitoring of the implementation of recommendations arising from the audits conducted. **Box 8** below provides excerpts from a 2017 ARMP audit report.

Box 8: Findings from the ARMP Audit Report on the Procurement Procedures of the Université d'Abomey-Calavi – Fiscal Years 2016 and 2017

The procurement procedure compliance review of the Université d'Abomey Calavi (UAC) for the fiscal year 2016 leads us to make the following conclusions:

Of the seven contracts awarded following an open call for tenders, six followed regular procedures or regular procedures subject to noncompliance and one followed a procedure for which the auditor is unable to express an opinion

✓Favorable opinion

Considering the above conclusions and the percentage of regular procedures, we believe that the majority of procedures were conducted in compliance with the regulations in force.

The procurement procedure compliance review of the Université d'Abomey Calavi (UAC) for the fiscal year 2017 leads us to make the following conclusions:

Out of the nine contracts audited, four procedures were declared unsuccessful. The consultant therefore expressed opinions on five contracts.

Of the five contracts and amendments reviewed, five followed regular procedures or regular procedures subject to noncompliance.

✓Favorable opinion

Considering the above conclusions and the percentage of regular procedures, we believe that the majority of procedures were conducted in compliance with the regulations in force.

We conducted our audit in accordance with the International Standards on Auditing (ISA), international standard ISAE 3000 "Assurance Engagements Other Than Audits or Reviews of Historical Financial Information," Law no. 2009-2 of August 7, 2009, establishing the code for public procurement and public service delegations in the Republic of Benin, its implementing decrees, and its orders.

Our responsibilities under these standards and provisions are to verify the compliance of procurement procedures and to outline any observed anomalies, inaccuracies, and irregularities in our report. We certify that we are independent of the Université d'Abomey Calavi (UAC) pursuant to the Code of Ethics and Professional

Conduct applicable to our profession. We consider the audit evidence we obtained during our mission provides a sufficient and appropriate basis for our opinion.

Professional contact details and signature of auditor

Source: Summary excerpt from the ARMP audit report on the procurement procedures of the Université d'Abomey-Calavi – Fiscal years 2016 and 2017, published on the ARMP website in March 2022.

124. The monitoring of government contracts, the advertisement of procurement contracts, and the production of related statistics still have weaknesses. The absence of an exhaustive database shared with the ARMP does not allow for a thorough understanding of the entire public procurement process, from contract award to the end of contract execution. Procurement contracts are not published as there is no formal provision under the CMP, which provides that only final award notices are to be advertised on the public procurement website and in the official public procurement journal (*Journal Officiel des Marchés Publics – JOMP*).⁶³ Such deficiencies hamper efforts to make the public procurement process more transparent. To address this concern, a draft contract format for publication was developed and is being implemented to replace the final award notice. The timely availability of public procurement statistics continues to be a challenge. At the time of the mission, the most recent statistics available on the public procurement portal dated back to 2018 and only covered DNMCP government contracts (above the thresholds provided for by regulations), which does not provide a comprehensive overview of public procurement in Benin. Statistics for 2019 to 2021 have since been completed and published.

125. Despite work being underway since 2017, e-procurement has yet to be rolled out. E-procurement bundles software solutions that the State or any public purchaser has for online purchases and supplies. One of the objectives of e-procurement is to make public procurement more transparent by allowing all actors to participate in the process. Such an integrated solution can contribute considerably to anti-corruption efforts and improved visibility—and thus the effectiveness of public procurement expenditure—in addition to ensuring fast feedback to improve the service provided.

Recommendations:

- Systematize the independent audit of high-stakes government contracts based on DNMCP control thresholds (CFAF 80 million to 500 million, depending on the type of goods or services), publish audit reports on the site, and arrange follow-up on the recommendations stemming from these reports (ST)
- Improve public procurement tools by (i) establishing a computer database on public procurement to improve turnaround times for the production of public procurement statistics and (ii) by wrapping up the e-procurement work (MT)
- Transfer contract approval authority to contracting bodies and phase out participation by the DNCMP and the DNCF in contract receipt committees (ST/ MT)

⁶³ Article 87 of the CMP.

D. Supervision Of State-Owned Enterprises

126. The legal framework, updated and unified in 2020, aims to improve the performance of State-owned enterprises and public institutions (*entreprises et établissements publics* – EEPs). In addition to State-owned enterprises in the classic sense of the term, this new legal framework⁶⁴ includes in its scope public institutions that are still called offices and agencies; it gives public institutions, offices, and agencies an opportunity to opt for accounting and financial management rules under private law (notably the keeping of private accounts) and places their financial and accounting management under the responsibility of a finance director, who will then be subject to an accreditation procedure as a public accountant by the MEF. This framework lays down clear rules on economic and financial surveillance, the transfer of shareholdings, denationalization, and the winding-up of EEPs. Finance directors are thus selected through calls for applications from a pool of candidates with the required profile.

127. The MEF Directorate General of the State Portfolio and Denationalization (*Direction générale du portefeuille de l'Etat et de la dénationalisation* – DGPEd) supervises EEPs and produces an annual report on developments in the portfolio's performance. According to its 2021 activity report, the DGPEd covered 191 EEPs at end-2021, of which 170 were public institutions and 21 were State-owned enterprises, as well as 39 State minority shareholdings. While 100 of the 170 public institutions generate their own resources, 70 exclusively receive subsidies to operate, which is contrary to good practice since public institutions should have their own resources. Supported by a project undertaken by the French Development Agency, the DGPEd improves the tools that enable it to better fulfill its mission.

128. The fiscal risks tied to this EEP sector are gradually being taken into account in the main budgetary documents. In keeping with the conclusions of the 2021 FTE, financial transfers between public administrations and State-owned enterprises are presented in the DPBEP. According to the interviews carried out, the DPBEP also presents all the financial resources of public institutions. However, the assessment of global risks related to the EEP sector must be consolidated and improved in the fiscal risk analysis documents attached to the annual initial budget bill.

129. The State has a draft participation strategy pending validation, with eight performance contracts signed with some EEPs at end-2019. While the performance mechanism overseen by the DGPEd has changed little since 2020, the linkage between this mechanism and the PBB performance framework (performance contract)—for which EEPs can be a significant financial driver—has yet to be fully thought out with the DGB.

130. Improving portfolio governance and increasing the transparency of transactions in the EEP sector are a major challenge. More specifically, this has to do with (i) the limitation on the term of office of EEP executives; (ii) the enhanced comprehensiveness and quality of information contained

⁶⁴ Law 2020-20 of September 2, 2020, on the creation, organization, and functioning of State-owned enterprises in the Republic of Benin – particularly articles 34 and 35.

in State budget annexes; (iii) the evaluation of the need to maintain public institutions that do not have own resources; (iv) EEP accountability oversight; (v) the improvement of EEP internal control and accounting systems; and (vi) the publication for citizens and Benin's partners information on EEP wind-ups, denationalizations, transformations, and transfers.

131. The absence of a limitation on the number of renewals of terms of office served by directors general (DGs) can be an obstacle to good governance in government entities.

Although the 2020 legal framework mentioned earlier led to the welcome professionalization of the finance director function, the absence of a limitation on the number of renewals of terms of office served by DGs is an obstacle to good governance in entities, even if the person is bound by an objective-based contract upon appointment.

132. The lack of visibility of financial information on EEPs in State budget documents conceals the efforts made toward good governance in the sector. To date, the budget documents produced with the budget bill do not reflect the performance of the EEP sector and offer little visibility, particularly with respect to this sector's human and financial resources.

133. In 2022, only 20 percent of EEPs produced financial statements out of the 200 entities that fell within the scope of the DGPED (all structures combined in 2022). Accountability is the number one factor in financial management transparency in respect of all internal and external actors of an entity. Although the legal framework is relatively recent, greater assertiveness is required in enforcing the obligation to render accounts within the expected formats and deadlines and in taking all the support and sanction measures necessary to ensure that the mechanism envisaged by the legislator is promptly implemented.

134. EEP wind-up operations are not transparent or advertised to citizens and civil society. Although the procedures are legally defined, notably through decrees ordering dissolutions and liquidations, it is clear that some parts of the liquidation process remain opaque, particularly as concerns the selection of a liquidator, a task that currently rests with the DGPED DG, and the absence of any advertising to civil society on the ultimate beneficiaries of these liquidation and dissolution operations, regardless of their legal form (natural person, legal person, or other structure).

Recommendations:

- Limit the number of renewals of terms of office served by DGs in EEPs (ST)
- Continue to develop a consolidated vision of the EEP sector and the associated budgetary risks by strengthening the financial information in annexes to the draft budget (MT)
- Produce and publish the financial statements of all EEPs and widely disseminate information on the dissolutions and liquidations of State-owned enterprises and public institutions, particularly to civil society (ST/MT)

E. Internal And External Audit And Control

135. The internal and external audit and control functions are central to accountability and help ensure that government entities pursue and achieve their objectives. These two functions therefore become increasingly important in the context of new public finance reforms, particularly in the transition to the PBB. They play a major role in guaranteeing integrity and good governance.

Internal audit and control

136. Benin has implemented a legal framework to develop internal audit and control at the ministerial level. This framework, established by Decree 2018-396 on the reform of the administrative branch oversight bodies (*organes de contrôle de l'ordre administratif* – OCOA), introduces an internal audit mechanism within each ministry that consists of an internal audit ministerial committee (*comité ministériel d'audit interne* – CMAI) and an internal auditor, who is responsible for the ministry's OCOA (IGF or Ministerial Inspectorate General (*Inspection générale ministérielle* – IGM)). In particular, the internal audit mechanism is responsible for ensuring the quality of the ministerial internal control mechanism. The latter is led by another committee, namely the Ministerial Risk Control Committee (*Comité ministériel de maîtrise des risques* – CMMR), which oversees the establishment of a ministry risk map and produces a report on internal control.

137. This mechanism is already making Benin a pioneer in Francophone Africa. Very much modeled on developments in France over the past decade, it also has an interministerial linkage, ensured by the IGF, which coordinates the implementation of the internal audit function within IGM ministries by providing them with methodological tools and training. The vision is that of internal audit that uses a risk-based approach, replacing the traditional inspection model based on compliance monitoring. A State internal audit reference framework (*cadre de référence de l'audit interne de l'Etat* – CRAIE) was adopted in August 2018 and supports this vision.

138. A reform of this magnitude must be gradual and phased in order to slowly move closer in line with international standards. Although the development of the internal audit function can rely on OCOAs, these differ in size and capacity from ministry to ministry. The internal audit mechanism is therefore more successful within the MEF than within other ministries, reflecting the differences in staff numbers (15 within the IGF and 2 to 4, on average, within IGMs) and in jurisdiction. Ministerial internal control is still struggling to emerge, and few ministries have made significant progress in their risk mapping. Capacity development will be needed to move this reform forward. This could be a step up and lead to a gradual alignment with international standards, in relation to which deviations still exist in practice (lack of clear separation of the internal audit and inspection functions, for example).

External audit

139. The Court of Auditors (*Cour des comptes* – CdC) is the external auditor of the public sector and the supreme audit institution for public finance. Its recently implemented legal framework provides for a largely adequate level of autonomy and has sufficient access to information. It prepares and approves its audit plans, which contain audits initiated by the CdC and audit work imposed by law (particularly the budget law execution report and the general declaration of compliance).

140. The CdC is not yet fully operational. The CdC has yet to formally adopt and disseminate, in a transparent manner, a compendium of the professional external audit standards it applies. Since 2018, neither the new institution nor its predecessor has published a public annual report, which reduces its visibility to the general public and Parliament. It is not carrying out its fiscal discipline mission yet, even though this is very important in terms of manager accountability and sanctions for any wrongdoing. The external audit function is therefore still at a very preliminary stage of practical implementation, relative to international standards, and the CdC staff size is still small. The recruitment of advisers and auditors is supposed to be completed very soon and can give the institution new momentum.

Recommendations:

- Continue to implement the internal audit and control reform defined by OCOA Decree 2018-396 (ST/MT)
- Continue to operationalize the Court of Auditors, particularly by recruiting advisers and auditors (ST/MT)

F. Digitalization

141. PFM digitalization is an important driver of actors' financial transparency and accountability, fostering good governance. Its purpose is to provide faster, timelier, and more accurate information for decision-making and increase the efficiency of management tools and processes. By automating controls, ensuring the traceability of actions, and eliminating interpersonal contacts, it limits opportunities for corruption and misappropriation and improves the services provided to citizens.

142. Benin has made major digitalization progress that should be consolidated over time. This progress includes (i) the implementation of the integrated public financial management system (*système intégré de gestion des finances publiques* – SIGFP) in early 2022, incorporating budget formulation, budget execution in PBB mode (expenditure), and accounting; (ii) the interconnection of the SIGFP to the central bank clearing system linked to the Treasury Single Account (TSA); and (iii) the development of e-procedures in a number of areas of PFM vulnerability (e-payment of taxes, e-receipt for the Treasury, online reporting of corruption, etc.).

143. By integrating the three main PFM functions—formulation, budget execution, and accounting—the SIGFP tool ensures the reliability of financial information, the traceability of actors and transactions, and information security. This new integrated computer system incorporates the “budget-accounting” backbone and has, since January 2022, replaced three applications used up until then: the integrated State budget preparation computer system (*système informatique de préparation intégrée du budget de l’Etat – SIPIBE*), the SIGFIP for State budget execution in medium mode, and the ASTER software for cash accounting. Integrating this system ensures the integrity of the repositories used and therefore the quality of the information.

144. The SIGFP, connected to the TSA through applications interfaced with the Central Bank’s payment system, ensures payment traceability. This linkage includes a single point of validation of expense payments at the Government Treasurer General level, which secures TSA payment transactions via the SIGFP and its related applications; these payments are carried out according to the cash flow plan managed by a dedicated Committee.

145. Developing e-procedures within the MEF improves transparency and good governance. The development of a set of e-services, such as electronic payment for tax revenue arriving directly in the TSA, the payment of nontax revenue via mobile money (fees for examinations and competitions, penalties for offenses, etc.), the computerized issuance of receipts, and the rollout of specific portals allowing agents or pensioners to access their pay slips or pension files online, helps to reduce opportunities for corruption and embezzlement.

146. By making information from other computer systems more reliable, interfacing with the SIGFP contributes to good governance in PFM: By running a set of controls based on unified repositories, the interface ensures the integrity and reliability of incoming information. The use of modern interfacing tools, such as an application programming interface (API), increases this reliability. For example, the interface with the debt computer system will make debt transaction accounting more reliable within the SIGFP, and the interface with the State agent payment management computer system will improve the reliability of budget execution of staff costs within in the SIGFP. PFM decision-making could be supported by reliable data from a number of computer systems.

147. Integrating control and audit functions into the computer system increases the transparency of PFM information: The purpose of integrating the control function into the computer system is to improve the quality of the information handled during management. In particular, it is based on (i) onboard controls that ensure the reliability of (entered or incoming) data, of their exhaustive processing throughout the process, and of the integrity of the repositories used, and on (ii) the integration of configurable control plans. By integrating the audit function, the computer system makes the auditor’s job easier by providing a range of tools on the traceability of data, processes, and actors, and by facilitating data extraction and multicriteria queries. For example, in a given process, an external auditor like the CdC would be able to quickly view all dates related to the payment of a batch of expenditure authorizations, with average lead time calculations, from commitment to payment, and therefore ensure processing continuity and promptness. Any unusual timing in the chain likely to raise concerns of corruption could then be investigated further.

148. The data warehouse is a tool that facilitates PFM governance and the communication of understandable financial information to citizens: By aggregating data from multiple computer systems (PFM data, environmental, social, and geographic data, population data, etc.) and by offering options for storing important data and powerful multicriteria query tools, the data warehouse enhances the information from various management computer systems. In terms of governance, it is the preferred tool for developing dashboards and monitoring management and performance indicators. By making technical information accessible through cross-referencing with other data, it facilitates communication with citizens.

Recommendations:

- Continue to integrate the SIGFP by prioritizing interfaces with integrated systems for procurement, tax and customs revenue management, debt management, and payroll management for State employees
- Strengthen the internal control and audit component of the SIGFP and enhance information in an MEF data warehouse

Annex I. DETAILED TABLE OF Recommendations

	Measure	Authority	Objective	Timetable ⁶⁵
Rule of law and business climate				
1	Improve transparency surrounding judicial promotions and sanctions	MJL, CSM	Contribute to stronger protection of contractual and property rights in Benin by strengthening the integrity conditions applicable to judges	ST
2	Operationalize the Commercial Court of Appeal and the Specialized Land Court	MJL	Foster growth and investment through a better functioning justice system linked to an increased specialization of the courts	ST
3	Make progress with regard to transparency by (i) establishing a company register, (ii) continuing to digitize all title deeds, and (iii) expanding the scope of the national cadaster to the entire territory	MJL, APIEX, TCC, ANDF	Increase transparency regarding land ownership rights and corporations in Benin	MT
Anti-corruption efforts				
4	Revise the Penal Code by introducing or supplementing provisions concerning the criminalization and repression of acts of corruption, in accordance with the United Nations Convention against Corruption (UNCAC)	MJL	Strengthen the prevention of and fight against corruption through an appropriate legal framework	ST
5	Revise, pursuant to the UNCAC, the legal framework on conflicts of interest and that which pertains to asset declarations, particularly for political figures and high-ranking officials, by (i) revising the legal framework to specify the assets (including when the declarant is the beneficial owner), liabilities, and interests subject to declaration, (ii) requiring close family members of any declarant to also be subject to the obligation to declare assets, (iii) making the declarations publicly available, and (iv) making the failure to declare assets, and late submission or erroneous declarations a criminal offense	MJL	Strengthen the prevention of and fight against corruption through an appropriate legal framework	ST
6	Revise the legal framework applicable to the protection of whistleblowers in alignment with international good practices	MJL	Enhance the prevention of corruption	ST/MT
7	Operationalize the HCPC while working in parallel to strengthen its legal framework to ensure its independence and consider	MJL, SGPR	Enhance the prevention of corruption	ST/MT

⁶⁵ The recommendations are divided into short-term (ST), for implementation within 12 months, and medium-term (MT), for implementation that may take 24 to 30 months.

	transferring to it the jurisdiction of the judicial police for acts of corruption			
8	Adopt appropriate measures to enhance the effectiveness of the HCJ and enable criminal liability of the President and ministers	MJL, HCJ, Parliament	Ensure that political decision-makers set a better example and improve equity between citizens	MT
9	Increase transparency by publishing on a dedicated government website (i) the final judgments rendered by the CRIET and related statistics, (ii) the statistics on arrests and activities carried out by the BEF, and (iii) any other anti-corruption information produced by government agencies, that may be relevant to the public		Enhance transparency and access to information relating to anti-corruption efforts	ST
Efforts to combat money laundering and the financing of terrorism (AML/CFT)				
10	Conduct a thematic risk assessment of sectoral vulnerabilities to corruption and trends in flows of corrupt proceeds both within the country (to sectors like real estate, extractive industries, etc.) and outside of Benin. Ensure that findings of this assessment inform policy and institutional priorities	CENTIF, CNCA	Improve understanding of financial flows related to corruption (both domestic and international)	ST
11	Strengthen risk-based supervision in relation to ML/FT by (i) increasing opportunities for cooperation with regional AML/CFT supervisors, (ii) seeking better compliance from reporting entities through the regular publication of national guidelines, and (iii) developing risk-based tools for EPNFD supervision	CENTIF, CNCA	Improve AML/CFT supervision in high-risk sectors	ST
12	Take measures to mitigate significant money laundering risks in the real estate sector by (i) commencing risk-based supervision in real estate, taking into account the conclusions of the sector risk assessment, (ii) improving the application of preventive measures by notaries as well as their cooperation with other public authorities, and (iii) expanding the ANDF database to include information on beneficial owners, accessible to the competent authorities at a minimum, with the medium- and long-term objective of providing public access to information on legal and beneficial owners	CENTIF, CNCA, ANDF	Tackle high AML/CFT risks in the real estate sector, which can make this sector a prime repository for the proceeds of predicate offenses, particularly corruption	ST/MT
13	Create mechanisms to improve beneficial ownership transparency (including, for instance, the establishment of a legal basis for the collection of beneficial ownership information by the APIEX, full accessibility of this database for	CENTIF, CNCA, ANDF, APIEX	Prevent the use of legal persons for the purpose of concealing financial flows stemming from corruption	ST/MT

	competent authorities with publication as a medium/long-term objective, and mechanisms for verification, update, and discrepancy reporting) Leverage existing reforms (publication of information on beneficial owners in public procurement) to improve access to such information			
14	Improve cooperation between AML/CFT law enforcement agencies, in particular by (i) encouraging the BEF to systematically investigate money laundering where predicate offenses are involved, (ii) ensuring greater cooperation between CENTIF and the HCPC to proactively share financial intelligence related to corruption, and (iii) formulating the future regime on asset declarations and obligations applicable to politically exposed persons.	CENTIF, BEF, CNCA, HCPC, MJL	Improve the outcomes of AML/CFT legal proceedings, regardless of the predicate offense	ST
Tax policy				
15	Publish (i) Investment Control Commission reports, (ii) the full list of tax exemptions, and (iii) a list of SEZ-approved enterprises	MEF, APIEX	Enhance transparency for private investment projects, thereby limiting the risk of capture inherent to any approval and sanction regime with a discretionary component	ST
16	Introduce an investment tax credit as a central component of a simplified investment incentive regime	MEF	Align with international best practices proposing a simplified investment assistance regime where assistance is provided automatically if the established criteria are met	MT
17	Attach the Fiscal Policy Unit (UPF) at the ministerial level to the MEF	MEF	Establish a clear separation between fiscal policy development and implementation and strengthen the UPF's role in direct support of political decision-making	MT
Tax and customs administration				
18	Determine, in an objective and structured manner, the country's fiscal potential and focus, through the future MTRS, on narrowing the gap between this potential and actual performance as an overall indicator for measuring the effectiveness of revenue agencies	MEF, DGI, DGD	Improve the procedures for setting revenue targets to align them with the funding needs of the development program	ST
19	Strengthen human resource management within revenue agencies by: (i) adapting human resources to the strategic objectives of administrations through GPEEC development, (ii) modernizing policies and motivation levers for agents, and (iii) restructuring the individual and collective performance evaluation system	MEF, DGI, DGD, Ministry in charge of the Public Service	Reduce vulnerabilities to corruption and improve the efficiency of tax and customs administrations through human resource management by putting in place suitable incentives	MT

20	Include the automation of current procedures in a comprehensive anti-corruption approach by (i) developing a system to measure the impact of digitalization on deviant behaviors; (ii) reducing the remaining clusters of manual management as much as possible; (iii) implementing “e-services” prerequisites for users through the expansion of Internet use and access to electricity; and (iv) guaranteeing the integrity and security of IT systems	DGI, DGD	Reduce corruption risks and improve the capacity to detect corruption through digitalization	ST/MT
21	Improve tax and customs risk management to address specific vulnerabilities in the Beninese economy by: (i) exercising greater vigilance over customs operations with a high likelihood of fraud and collusion; (ii) putting in place an integrated strategy for standardizing trade in goods with Nigeria; and (iii) defining areas of strategic focus for a joint approach to tax and customs risk between the DGI and the DGD, based in particular on the appropriate use of tax and customs intelligence	DGI and DGD	Reduce the risk of fraud and corruption related to illicit financial flows from fraud and smuggling	ST/MT
Public financial management				
22	Boost the current PBB momentum by developing missing tools, training all actors, including civil society, and updating the university curriculum on public financial management	DGB and sector ministries	Move towards the target budget management system in program mode	ST/MT
23	Make the audit of high-stakes public contracts by independent auditors systematic, publish audit reports on the website, and arrange follow-up on recommendations arising from those reports	ARMP	Ensure efficient delivery of goods and services to citizens (“value for money”)	ST
24	Improve public procurement tools by (i) establishing a computer database on public procurement to improve turnaround times for the production of public procurement statistics and (ii) wrapping up e-procurement work	ARMP, DNCMP	Enhance transparency by computerizing contract monitoring and modernizing the public procurement process, and identify potential anomalies related to gaps in competition	MT
25	Transfer contract approval authority to contracting bodies and phase out participation by the DNCMP and the DNCF in contract receipt committees	MEF	Give contracting bodies greater accountability in their capacity as the main authorizing officer of their expenditure in program mode	ST
26	Limit the number of renewals of terms of office served by DGs in EEPs	PRC, MEF	Reduce governance vulnerabilities associated with executives’ excessively long terms of office, which increases information asymmetries relative to the shareholder and the risk of	ST

			undetected poor governance behaviors	
27	Continue to develop a consolidated vision of the EEP sector and the associated budgetary risks by strengthening the financial information in annexes to the draft budget law	DNPED, DGB, DGTCP	Strengthen EEP monitoring and transparency	MT
28	Produce and publish the financial statements of State-owned enterprises and disseminate financial information on liquidations/privatizations	DNPED	Improve supervision of State-owned enterprises and transparency in the liquidation and privatization process to avoid poor governance in the acquisition of assets that belonged to liquidated or privatized companies	ST/MT
29	Continue to implement the internal audit and control reform defined by OCOA Decree 2018-396	IGF, IGM, CMAI, CMMR	Establish a true culture of internal audit and control within government and make it operational	ST/MT
30	Continue to operationalize the Court of Auditors, particularly by recruiting advisers and auditors	CdC/MEF	Enhance transparency and accountability in public finances	ST/MT
31	Continue SIGFP integration by prioritizing the SYGMAP/SIGFIP interfaces on tax and customs revenue and debt management	DSI, DG IT units within MEF	Ensure financial data integrity and consistency	MT
32	Strengthen the internal control and audit component of the SIGFP and enhance information in an MEF data warehouse	DSI, DG IT units and business line actors within MEF	Strengthen onboard controls and accessibility to financial data, particularly with a view to their use by the risk management mechanism (internal control) and internal (ministerial IG/IGF) or external audit	ST

Annex II. Definitions of Governance and Corruption According to the 2017 IMF Policy

In 2017, the IMF adopted a policy on the Fund's role in governance and corruption issues.⁶⁶ The policy defines some key terms, and the work done by other entities is based on this. The definitions are repeated here because they are relevant for this assessment.

Governance refers to the institutions, mechanisms, and practices through which governmental power is exercised in a country, including for the management of public resources and the regulation of the economy. This includes processes at the country level, including institution-level structural arrangements. It is an inherently neutral term, describing the framework for exercising authority without illustrating its results.

Good governance is a more normative concept, which recognizes that the quality of governance can impact its effectiveness and efficiency in achieving desired outcomes. Although the Guidance Note encompasses governance and, in particular, "good governance," it would not be feasible in a single review to examine the Fund's work in these broader areas. The reason is that the Fund's work to promote good governance has grown tremendously, as discussed below. Indeed, promoting good economic governance is central to the Fund's everyday work in surveillance, use of Fund resources, and capacity development. Moreover, work under each of these areas of involvement is assessed through dedicated policy reviews. Accordingly, this stocktaking does not attempt to provide additional perspectives on the Fund's involvement in the broad levels of governance and good governance. Instead, it focuses on that part of the Fund's involvement that relates to analyzing and providing advice on corruption issues.

Regarding corruption, a generally accepted definition is the abuse of public office for private gain. This definition has been adopted by a variety of organizations and is consistent with the provisions of the United Nations Convention against Corruption (UNCAC).⁶⁷ The definition focuses on abuse by public stakeholders, meaning that fraudulent acts perpetrated exclusively by private citizens are not covered.⁶⁸ It is recognized, of course, that corruption is often facilitated—and sometimes initiated—by private stakeholders (for example, offering a bribe). Therefore, any meaningful anti-corruption strategy needs to address conduct within the private sector. It should be emphasized that an act can be corrupt even if it does not result in direct financial gain; an official also engages in a corrupt act if, because of political interference, he or she abuses public office. Initially, although corruption is often associated with the misapplication of the law, it can also pervert the law-making

⁶⁶ Available at <https://www.imf.org/en/Publications/Policy-Papers/Issues/2017/08/01/pp080217-the-role-of-the-fund-in-governance-issues-review-of-the-guidance-note>. This document lays the analytical foundations of current IMF policies on involvement in matters of governance, published in April 2018 (<https://www.imf.org/~media/Files/Publications/PP/2018/pp030918govpaper.ashx>).

⁶⁷ Article 19 of the UNCAC on abuse of functions provides that: "Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity." UN General Assembly, 2003.

⁶⁸ For example, tax evasion and illicit cross-border flows committed solely by private actors are generally outside the scope of this paper except to the extent they relate to the proceeds of corruption.

process itself, i.e., where the decisions of legislators are motivated exclusively by private interests, often as result of the influence of powerful business networks (“state capture”).⁶⁹

The foregoing discussion illustrates that governance and good governance are broader concepts than corruption. It is possible for a country to have poor governance even in the absence of significant corruption, for example, because of ineffective, inefficient, or inequitable policies and institutions. The presence of corruption, however, generally indicates shortcomings in good governance. The premise of the ongoing review—and indeed the International Monetary and Financial Committee’s guidance—is that systemic corruption has a particularly pernicious effect on economic performance. It should be acknowledged, however, that any effective strategy for addressing corruption problems must be more comprehensive than simply anti-corruption measures to have a lasting impact; durable solutions will encompass governance improvements more broadly, including about transparency, accountability, appropriately balanced regulation, and effective institutions. In sum, promoting good governance is the most durable way of addressing systemic corruption.

⁶⁹ The May 2016 IMF Staff Discussion Note entitled “Corruption: Costs and Mitigating Strategies” (SDN / 16/05) defines “systemic corruption” as a circumstance in which “corruption is no longer a deviation from the norm, but is manifested in a pattern of behavior. Systemic corruption was also defined as “omnipresent and organized, affecting a variety of levels of government and practiced by bureaucrats and politicians in nearly every ministry.” Alam, M Shahid, 1989, “Anatomy of Corruption: An Approach to the Political Economy of Underdevelopment,” *The American Journal of Economics and Sociology*, Vol. 48(4), pages 441–56.

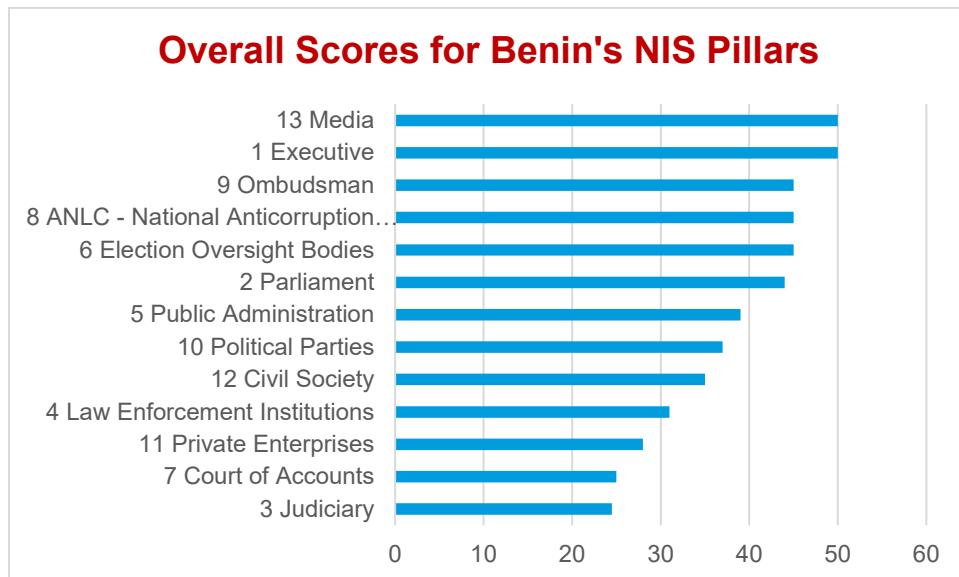
Annex III. National Integrity System Assessment

At the Beninese government's request, Transparency International (TI) assessed the country's National Integrity System (NIS) with financial support from the European Union and in partnership with the Beninese consortium consisting of two nongovernment organizations, namely the Association for the Fight against Racism, Ethnocentrism, and Regionalism (*Association de Lutte Contre le Racisme, l'Ethnocentrisme et le Régionalisme – ALCRER*) and Social Watch Benin.

This assessment was based on a TI-developed methodology used in over 80 countries, which consists of 13 "pillars" derived from the NIS. Each of these 13 pillars is assessed along three dimensions: (i) the institution's overall capacity to function (resources and independence); (ii) its own internal governance rules in terms of integrity, transparency, and accountability; and (iii) and its role in contributing to the overall integrity of the national governance system. The score can range from 0 to 100 (0–20: very weak integrity; 21–40: weak; 41–60: moderate; 61–80: strong; 81–100: very strong). The assessment was conducted from February to July 2016 and therefore coincided with the inauguration of President Patrice Talon (April 2016), providing an overview of the practices in use over the period 2011–2016.

The main findings of the assessment are set out below.

- Overall, the integrity level was between low and medium: The assessment of the 13 pillars showed that most had a low integrity level (7 out of the 13 pillars had a score between 21 and 40, whereas the other 6 had a medium level with scores between 41 and 60). The chart below shows details of those scores.



Source: NIS Diagnostic 2018

- Corruption could be considered as "systemic, downplayed, and tolerated," necessitating a radical break with past practices.

- According to the assessment, anti-corruption efforts had been plagued by a lack of political will. The demonstrated increase in anti-corruption efforts between 2011 and 2016 had no measurable impact on curbing corrupt practices.
-
- Justice was deemed to be the most fragile pillar in the integrity mechanism, with a score of 24/100. According to the 2016 NIS, the judiciary was faced with a set of constraints relating to human, material, and financial capacities, preventing it from properly delivering justice in due course across the country.

On this basis, the 2016 NIS assessment included a number of recommendations, the key ones being the following:

- Provide the human and financial resources needed for the proper operation of Benin's judicial system;
- Make anti-corruption efforts a priority for political parties, Parliament and the Executive Branch;
- Take the necessary steps to apply or supplement the legal framework on whistleblower protection, conflicts of interest, asset declarations, and right of access to information and administrative documents;
- Strengthen criminal chains (focused on tracking down corruption offenses) notably by revising the Penal Code and the Code of Criminal Procedure and by creating two offices for the collection and management of assets and proceeds of corruption;
- Support the reform of the National Anti-Corruption Authority (*Autorité Nationale de Lutte contre la Corruption* – ANLC) on multiple fronts (organic law making the ANLC a constitutional institution, creation of a supervisory board, and recruitment through a call for applications of a candidate for the top position within the ANLC).

The implementation of recommendations made in the 2016 NIS assessment was reviewed by the Beninese authorities under the coordination of the Inspectorate General of Finance. On some points, the actions undertaken by the authorities deviated significantly from those recommendations, the most notable being the elimination of the ANLC for the reasons explained earlier in the body of the report.

Annex IV. Points on the Anti-Corruption Legal Framework in the Penal Code

Corruption:

Article 335: Is punished by **imprisonment for a period of five (05) years to ten (10) years** and a fine equal to three times the value of the agreed promises or things received or requested, without the said fine being less than two hundred thousand (200,000) CFA francs, **any public official who has directly or indirectly solicited or accepted offers or promises or received gifts or presents or other undue advantages** for himself, or for another person or entity, to perform or refrain from performing his duties or employment, whether fair or not, but not subject to remuneration.

Article 337: Is punished by **imprisonment for a period of five (05) years to ten (10) years** and a fine of one million (1,000,000) to five million (5,000,000), **anyone who uses physical force, threats, or intimidation or any other means** to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of one of the following offenses:

- 1- corruption of foreign public officials and international civil servants;
- 2- misappropriation;
- 3- the illicit use of public property;
- 4- influence peddling;
- 5- false declaration;
- 6- corruption in the private sector;
- 7- corruption in public procurement;
- 8- corruption in the recruitment of civil servants;
- 9- concealment.

Influence peddling:

Article 358: Is punished by imprisonment for one (01) year at least and five (05) years at most and the fine provided for in Article 344 of this code, **any person who has solicited or accepted offers or promises or solicited or received donations or presents or other advantages** to cause or attempt to cause to obtain decorations, medals, honors, or awards, positions, functions, or jobs or any favors whatsoever granted by the public authority, contracts, businesses, or other benefits resulting from agreements entered into with the authority or with an administration under the control of the public authority, or, in general, a favorable decision of such an authority or administration, thus abusing real or supposed influence.

However, if the guilty party is one of the persons referred to in the first paragraph of Article 369 of this code and has abused the real or supposed influence that his mandate or position gives him, the prison sentence is two (02) years at least and ten (10) years at most.

Article 359: Is punished by the same penalties as those provided for in the said articles against the corrupt person, whether or not the coercion or corruption has taken effect, anyone who **has used assault or threats, promises, offers, gifts, or presents or other advantages, or yielded to solicitations tending to corruption**, to have someone perform or abstain from performing an act or to obtain one of the favors or advantages provided for in Article 358 above of this code, even if he did not take the initiative.

Corruption in public procurement:

Article 341: Is punished by **imprisonment for a period of five (05) years to ten (10) years** and a fine equal to three times the value of the agreed promises or things received or requested, without the said fine being less than two hundred thousand (200,000) CFA francs, or only one of these two penalties, any public official who intentionally failed to comply with one or more legislative or regulatory provisions aimed at **guaranteeing the freedom of access to and the equality of candidates in public contracts**, in particular:

- 1- any public official who has voluntarily worked to declare a successful bidder a tenderer who has not complied with the rules of procedure with regard to tendering of public contracts or who has not fulfilled the conditions required by the applicable legislative or regulatory provisions;
- 2- any public official who has voluntarily informed, prior to tendering, any successful bidder of the conditions for awarding the government contract.

The tenderer is punished as an accomplice, with the same penalties, if he was aware of the violation of the regulations in his favor and refrained from informing the competent authorities accordingly.

Corruption related to international public officials:

Article 342: Is punished by **imprisonment for a period of five (05) years to ten (10) years** and a fine equal to three times the value of the agreed promises or things received or requested, without the said fine being less than two million (2,000,000) CFA francs, **any foreign public official or civil servant from a public international organization** who has **directly or indirectly solicited or accepted offers or promises or received gifts or presents or other undue advantages for himself, or for another person or entity**, to perform or refrain from performing his duties or employment, with a view to granting, obtaining, causing to be obtained, retaining, or causing to be retained a contract or another undue advantage in international trade.

Corruption within the private sector:

Article 344: Is punished by imprisonment of two (02) years to five (05) years and a fine equal to twice the value of the proceeds of corruption, without the said fine being less than five hundred thousand (500,000) CFA francs:

- 1- the promise, offering, or giving by any individual, directly or indirectly, of an undue advantage to any person who directs or works in any capacity whatsoever for a private sector entity, for the person himself, or for another person, in order for him to act or refrain from acting, in breach of his duties;
- 2- the solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works in any capacity whatsoever for a private sector entity, for the person himself, or for another person, in order for him to act or refrain from acting, in breach of his duties.

Abuse of power against the public good and protection of the identity of whistleblowers:

Article 375: Is punished by imprisonment of five (05) years to ten (10) years and a fine of at least two million (2,000,000) CFA francs, without this fine exceeding five million (5,000,000) CFA francs:

1- **any public official who has intentionally abused his functions or his position** by performing or refraining from performing, in the exercise of his duties, an act in violation of the laws in order to obtain an undue advantage for himself or for a person or entity;

2- **any public official who**, in violation of the provisions of the law, has **revealed the identity or address of whistleblowers** or a witness;

3- any staff member of the corruption prevention bodies who, except in cases where the law authorizes him to act as a whistleblower, has revealed all or some of the information known to him in the course of his duties.

Annex V. Main DGI and DGD Computer Applications

DGD applications

- ASYCUDA World, which has enabled the interconnection of 80 percent of customs units and the implementation of the goods verification program
- E-SAD interface, which digitalizes the submission of declarations and their supporting documents
- E-receipt for online collection and direct payment transfer to Treasury accounts
- SIGMAT for the interconnection of computer systems for customs transit management in the region (Niger, for the time being)
- MMTE, which provides automated management of stock accounting for stores, container terminals, warehouses, and the customs depot
- Implementation of the port single window and the foreign trade single window
- "Mobile control" application for the en route control of customs documents
- Dispute management application, for complete management of dispute proceedings

DGI applications

- SIGIBé for the automated and integrated management of all tax functions and operations
- E-services for online filing and payment by taxpayers
- RFU and LOGIL for registration and payment of local taxes
- Mobile Tax for online filing and payment of the motor vehicle tax
- GESEXO Web for the management and monitoring of exemption applications
- E-registration to facilitate pre-settlement, online payment of duties, and assignment of citations to acts
- CFISC for data exchange between the DGI, the DGD, the DGB, and the DGTCP
- SYGMEF for certification of invoices issued and centralization of data within the DGI

Annex VI. Tax Intelligence Management within the DGI

A review of the current tax intelligence management protocol identified the following shortcomings, which are partly due to deficiencies in computerization, but also by and large have causes of a more organizational nature:

- Lack of a formalized intelligence management strategy;
- Insufficient digitized information collected in real time;
- Existence of information not stored in the system;
- Insufficient digitized external data accessible in real time;
- Insufficiently exploited collection potential;
- Filing and payment data for small segments of the tax population not centralized;
- Insufficient large-scale cross-checking of certain available information;
- Data analysis and production of intelligence on a large scale incomplete and not automated;
- Specific deficiencies related to data automation;
- Insufficient contact details for registered taxpayers.

An analysis of available data revealed the following cases of tax noncompliance, which could have been detected through better management of tax intelligence available to the DGI:

- VAT collected at source by authorized bodies not remitted;
- Unregistered economic agents conducting commercial operations;
- Economic agents conducting commercial operations unknown to the DGI;
- Suppliers subject to VAT not remitting the VAT collected;
- Taxpayers not subject to but charging VAT;
- Enterprises considered inactive conducting business operations;
- Chronic or occasional defaulting taxpayers;
- Undervaluation of items declared by taxpayers (turnover, purchases, imports, etc.).

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