

## Benin

### Summary

Benin is one of the most stable African democracies and its citizens enjoy relatively strong civil liberties. The Constitution guarantees “the right to freedom of thought, of conscience, of religion, of creed, of opinion, and of expression with respect for the public order established by law and regulations,”<sup>1</sup> and states that “freedom of the press shall be recognized and guaranteed by the State.”<sup>2</sup> In general, these freedoms are respected by the government.

However, protections for whistleblowers are very limited. A Law on The Fight Against Corruption and an associated decree prohibit retaliation against anyone who reports corrupt practices to national authorities, but no viable channels for reporting information are provided, and disclosures to other entities, including the media, are not protected.

Journalists operate in a relatively free media environment, and Freedom House rates Benin’s press as “partly free”. In January 2015, the National Assembly passed the Information and Communication Code of Benin, which defines the rights and freedoms of journalists. While defamation is no longer punishable by imprisonment, heavy financial penalties can be applied and custodial sentences remain in place for incitement to violence or property destruction, or for threats to the “internal security of the state.”<sup>3</sup>

### Legal and Policy Framework

The Law on The Fight Against Corruption and Other Connected Infractions in The Republic Of Benin (2011) provides whistleblowers, witnesses, experts, victims, and their relatives with limited “special protection” against reprisals or intimidation for the disclosure of corruption-related information.<sup>4</sup> The conditions for this special protection are set out in a 2013 Decree on the Conditions of Special Protections For Whistleblowers, Witnesses, Experts and Victims, which states that no whistleblower, expert, or victim of a corruption-related crime can be harassed, reprimanded, or sanctioned for having reported or denounced corruption.<sup>5</sup> The Decree calls for reinstatement and/or compensation for employees who have been sanctioned or dismissed for collaborating with the authorities in the “fight against

---

<sup>1</sup> Constitution of Benin (1990), Article 23, [https://www.constituteproject.org/constitution/Benin\\_1990.pdf?lang=en](https://www.constituteproject.org/constitution/Benin_1990.pdf?lang=en)

<sup>2</sup> Constitution of Benin (1990), Article 24, [https://www.constituteproject.org/constitution/Benin\\_1990.pdf?lang=en](https://www.constituteproject.org/constitution/Benin_1990.pdf?lang=en)

<sup>3</sup> Freedom House, Freedom of the Press, Benin, 2016, <https://freedomhouse.org/report/freedom-press/2016/benin>

<sup>4</sup> Law on The Fight Against Corruption and Other Connected Infractions in The Republic of Benin (2011), Article 31

<sup>5</sup> Decree on the Conditions of Special Protections For Whistleblowers, Witnesses, Experts and Victims, Article 4

corruption.”<sup>6</sup> Where threats are made or a whistleblower is in danger, the minister in charge of security or the minister in charge of national defense must ensure the person’s security through the service of the police or security force.<sup>7</sup>

Whistleblowers have the right to list the police station as their address for security reasons,<sup>8</sup> and in cases in which the whistleblower’s life is in danger, a judge may allow his or her statements to be collected anonymously.<sup>9</sup> However, anonymity is “not possible” in cases in which “knowledge of the identity of the person is essential to the rights of the defense. Convictions cannot be made solely on the basis of anonymous statements.<sup>10</sup> Illegally revealing the identity of a whistleblower is punishable by up to 10 years in prison.<sup>11</sup>

Whistleblowing is not discussed in the Labour Code, and dismissal for whistleblowing is not identified in the law as an unfair labor practice. Contracts can be terminated in the event of negligence<sup>12</sup> or “objective and serious” reasons related to the employee’s health, their ineptitude for the position, or professional insufficiency.<sup>13</sup> Acts that can represent negligent conduct include refusal to execute duties, malpractice, assault, intoxication, and, notably, the violation of professional secrecy.<sup>14</sup> No examples of practices that constitute unfair dismissal are given, but damages can be awarded where unfair dismissal is proven.<sup>15</sup> According to the Code, labor inspectors are available to investigate complaints and they are compelled to keep the details confidential.<sup>16</sup>

### **Legal, Legislative, and Policy Gaps**

Whistleblowing legislation in Benin is limited. There are no clear channels for disclosing information, protections are limited to disclosures made to the national authorities, and protections are inadequate. Whistleblowing in the workplace is not supported by meaningful protection against retaliation, and employers are not obliged to accept or act on complaints.

---

<sup>6</sup> Decree on the Conditions of Special Protections For Whistleblowers, Witnesses, Experts and Victims, Article 4

<sup>7</sup> Decree on the Conditions of Special Protections For Whistleblowers, Witnesses, Experts and Victims, Article 5

<sup>8</sup> Law on The Fight Against Corruption and Other Connected Infractions in The Republic of Benin (2011), Article 32

<sup>9</sup> Law on The Fight Against Corruption and Other Connected Infractions in The Republic of Benin (2011), Article 33

<sup>10</sup> Law on The Fight Against Corruption and Other Connected Infractions in The Republic of Benin (2011), Article 36

<sup>11</sup> Law on The Fight Against Corruption and Other Connected Infractions in The Republic of Benin (2011), Article 53

<sup>12</sup> Labour Code of the Republic of Benin, Article 42

<sup>13</sup> Labour Code of the Republic of Benin, Article 45

<sup>14</sup> Labour Code of the Republic of Benin, Article 56

<sup>15</sup> Labour Code of the Republic of Benin, Article 42

<sup>16</sup> Labour Code of the Republic of Benin, Article 269

That may soon change, however. In February 2017, the Economic Community of West African States (ECOWAS) facilitated a meeting between Beninese civil society, government, and the media, during which participants agreed on the importance of early warning systems and whistleblower protections in the fight against corruption, and urged the National Assembly to enact comprehensive national legislation on the protection of whistleblowers.<sup>17</sup> No action has yet been taken, but the issue is pending in parliament. Subsequent meetings were held into 2018, with all parties agreeing that a whistleblower protection law was needed. No law has yet been enacted, however.

### **National Security Exemptions**

The Information and Communication Code of Benin provides for broad access to state information, and specifically notes that state agents “may disclose and provide evidence of all illicit behavior in public administration. Except in the case of slanderous denunciation, they shall not, in so doing, incur any administrative penalty or disciplinary measure,”<sup>18</sup> Restrictions on the right of access to public information are “justified only in exceptional circumstances” such as public interest, defense secrecy and confidential judicial proceedings,<sup>19</sup> Public bodies are not obliged to share commercial secrets<sup>20</sup> and they may not disclose information obtained from a person responsible for the prevention or detection of a crime if so doing could jeopardize an investigation, reveal a confidential source of information, endanger any person, or impair the right of a person to an impartial hearing.<sup>21</sup>

The Law on the Organization of National Defense Secrets, proposed in early 2017 but not yet enacted, provides for prison sentences of up to 20 years for disclosing national defense secrets to a “non-qualified person” or bringing these documents to the knowledge of the public.<sup>22</sup>

### **Laws and Policies Governing Press and Speech**

The Information and Communication Code of Benin reiterates that “the freedom to speak and write, to print and to publish, to read and to receive information, ideas, thoughts and opinions of choice is guaranteed in the Republic of Benin”, while noting that “these freedoms are exercised in accordance with the law [and] the duty of truth.”<sup>23</sup> Journalists are expressly forbidden from publishing material that incites regionalism, ethnocentrism, discrimination, xenophobia, violence, crime or suicide.<sup>24</sup> Under the Code, the High Authority for Audiovisual

---

<sup>17</sup> Economic Community of West African States, *La CEDEAO préconise la mise en place d'une stratégie de protection des lanceurs d'alerte*, <http://www.ecowas.int/la-cedeao-preconise-la-mise-en-place-dune-strategie-de-protection-des-lanceurs-dalerte/?lang=fr>

<sup>18</sup> Code of Information and Communication of the Republic of Benin, Article 73

<sup>19</sup> Code of Information and Communication of the Republic of Benin, Article 83

<sup>20</sup> Code of Information and Communication of the Republic of Benin, Article 85

<sup>21</sup> Code of Information and Communication of the Republic of Benin, Article 87

<sup>22</sup> Law on the Organization of National Defense Secrets (Proposed), Article 2

<sup>23</sup> Code of Information and Communication of the Republic of Benin, Article 6

<sup>24</sup> Code of Information and Communication of the Republic of Benin, Article 36

and Communication (HAAC) has the authority to punish “media actors” who violate the Code, including through malicious insinuations, the use of offensive words, defamation, calls for public disorder, compromise of public interest, and violations of privacy.

Defamation of courts, tribunals, armed forces or public administration is punishable with a fine of up to approximately 18,000 USD,<sup>25</sup> as is defamation of government officials,<sup>26</sup> the president, or heads of foreign governments.<sup>27</sup> Defamation of other citizens carries a much smaller fine.<sup>28</sup> Prison terms of up to three years can be imposed for the publication of material with the goal of distracting security forces from their duties;<sup>29</sup> or for the publication of false news that could disturb the “public peace” or undermine the “discipline and morale of the armed forces”.<sup>30</sup> The publication of material that incites crimes against domestic security, such as murder, assassination, arson, or destruction of houses, shops, and infrastructure, is punishable by up to five years in prison.<sup>31</sup>

The Code recognizes that journalists are “bound by professional secrecy” and cannot be obliged to disclose the source and origins of information received in confidence.<sup>32</sup>

In its *2018 Freedom of the Press report*, Freedom House notes that “Benin remains one of Africa’s more open press freedom environments” and rates its press freedom status as “free”.<sup>33</sup> The report finds that freedom of speech is generally respected by the government, and notes that the 2015 Information and Communication Code of Benin has brought much-needed clarification on the rights of journalists. However, Freedom House observes that some custodial penalties for press offenses were retained in the Code, even if these penalties are no longer implemented.

Reporters without Borders (RWB) ranks Benin 84 out of 180 countries in its 2018 World Press Freedom Index, representing a slide of six places since 2016. RWB notes that state television has provided more coverage of opposition activities since the Talon government took office in March 2016. The report also notes that Benin’s journalists enjoy “some freedom of expression and, even if they are sometimes prosecuted and convicted, the sentences are rarely enforced.”

### **Whistleblower cases**

---

<sup>25</sup> Code of Information and Communication of the Republic of Benin, Article 269

<sup>26</sup> Code of Information and Communication of the Republic of Benin, Article 270

<sup>27</sup> Code of Information and Communication of the Republic of Benin, Article 277

<sup>28</sup> Code of Information and Communication of the Republic of Benin, Article 271

<sup>29</sup> Code of Information and Communication of the Republic of Benin, Article 265

<sup>30</sup> Code of Information and Communication of the Republic of Benin, Article 266

<sup>31</sup> Code of Information and Communication of the Republic of Benin, Article 265

<sup>32</sup> Code of Information and Communication of the Republic of Benin, Article 35

<sup>33</sup> Freedom House, *Freedom of the Press, Benin, 2016*, <https://freedomhouse.org/report/freedom-press/2016/benin>

The 2009 murder of a PeaceCorps volunteer in Benin made international headlines. Kate Puzey was violently killed after reporting suspected sexual assault of minors in the school in which she worked. Despite assurances that her disclosures would be kept confidential, the alleged perpetrator “became aware of Kate’s role in accusing him”.<sup>34</sup> He and his brother were arrested for the murder, but acquitted in 2017.<sup>35</sup>

### Relevant legislation

- Benin’s Constitution of 1990
- Law on The Fight Against Corruption and Other Connected Infractions in The Republic Of Benin (2011)
- Decree on the Conditions of Special Protections For Whistleblowers, Witnesses, Experts and Victims (2013)
- Code of Information and Communication in the Republic of Benin (2015)
- Labour Code (1998)
- Law on the Organization of National Defense Secrets (Proposed 2017)

### Organizations of Interest

#### OLC (Observation de Lutte Contre la Corruption)

The Anti-Corruption Observatory (OLC) is responsible for the development and coordination of anti-corruption programs in Benin, and is an autonomous body independent of all the institutions of the State. It was established by the ministers of finance and justice. Headquartered in Cotonou, the OLC’s duties include researching and analyzing corruption and related offenses; and collecting data on corruption and taking measures necessary for the protection of witnesses.

Contact person and title (if known): Not available

Address: 2ème et 3ème étage - Immeuble SETON - Batiment Moov, Etoile Rouge, Cotonou.  
PO Box: 01 BP 7060

Tel: +229 21 30 86 86, +229 97 07 10 95, + 229 21 31 20 02

Fax: +229 21 30 10 10

Website: Not available

E-mail: Not available

#### Front des Organisations Nationales contre la Corruption (FONAC)

---

<sup>34</sup> ABC News, *Kate Puzey Law Would Protect Whistleblowers, Victims of Sex Assault*, <http://abcnews.go.com/Blotter/kate-puzey-law-protect-whistleblowers-victims-sex-assault/story?id=13912617>

<sup>35</sup> Atlanta Journal Constitution (blog), *Accused killers of Peace Corps volunteer from Georgia acquitted*, <http://politics.blog.ajc.com/2017/02/28/accused-killers-of-peace-corps-volunteer-from-georgia-acquitted/>

The Front of National Organizations against Corruption (FONAC)'s mission is to fight corruption in all its forms, including misappropriation of public funds, illicit infringement, trading in influence, forgery and forgery, impunity and all practices contrary to good faith. Its activities include identifying and denouncing corruption and economic and financial offenses and following up files transmitted to law enforcement.

Contact person and title (if known): Not available

Address: Building CHITOU WASSI, Avene Delorme, Carre 003, 08 BP 07 69 Cotonou, Dem. Of Benin

Tel: + 229 21 31 20 02

Fax: Not available

Website: [www.fonacbenin.com](http://www.fonacbenin.com)

E-mail: [fonac1998@gmail.com](mailto:fonac1998@gmail.com) ; [jeanbaptiste\\_elias@yahoo.fr](mailto:jeanbaptiste_elias@yahoo.fr)

### **Social Watch Benin**

Social Watch Benin is a network of NGOs and associations that promotes citizen control of public action in many areas, both at the national level and municipality level. These include interventions to promote transparency and accountability, as well as education on the rights and duties of citizens.

Contact person and title (if known): Not available

Address: Cotonou, 6ème Arrondissement, C/487 Jéricho, Immeuble IBIKUNLE Latif 03 BP 2065 Cotonou

Tel: +229 21042012 +229 21321518

Fax: Not available

Website: <http://socialwatch-benin.org>

E-mail: Through webform: <http://socialwatch-benin.org/index.php#contactform>

### **Further information**

A provision in the Criminal Procedure Code allows any person to apprehend and bring a person committing a crime punishable by imprisonment to the nearest police station, potentially allowing vigilante justice against journalists.<sup>36</sup>

### **Keeping Score: Benin versus International Standards**

The following standards for whistleblower laws are derived from guidelines developed by the OECD, Council of Europe, Government Accountability Project, Blueprint for Free Speech and Transparency International.

#### Key

1 = National law is recognized as consistent with international standards

2 = National law is partially recognized as consistent with international standards

3 = No national law or national law is not recognized as consistent with international standards

---

<sup>36</sup> Criminal Procedure Code, Article 73

	<b>Standard</b>	<b>Public Sector</b>	<b>Private Sector</b>
1.	A broad range of organisations and workplaces are covered	3	3
2.	A broad range of offenses may be reported as whistleblowing	3	3
3.	The definition of who may qualify as a whistleblower is broad	3	3
4.	A range of disclosure channels to report internally or to regulators is in place	3	3
5.	People who make disclosures to external organizations, the media or the public are protected	3	3
6.	The threshold for protection is a reasonable belief that the information disclosed is true	3	3
7.	There are opportunities and protections for anonymous disclosures	3	3
8.	Whistleblower confidentiality is protected unless expressly waived	3	3
9.	Organizations are required to establish internal disclosure procedures	3	3
10.	Whistleblowers are protected from a broad range of retaliatory acts	3	3
11.	Victimized whistleblowers have access to a full range of remedies and compensation	3	3
12.	Those who retaliate against a whistleblower are subject to sanctions	3	3
13.	A whistleblower oversight or regulatory agency has been designated	3	3

14.	Whistleblower laws are administered and reviewed transparently	3	3
-----	--	---	---