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II. Executive summary

Benin

1. Introduction: Overview of the legal and institutional framework of Benin in the context of implementation of the United Nations Convention against Corruption

Benin signed the United Nations Convention against Corruption on 10 December 2003 and deposited its instrument of ratification on 14 October 2004.

The Beninese legal system is characterized by legal duality between modern law (legislation of colonial origin and written legislation of national origin) and customary law.

Benin is a civil-law jurisdiction and has largely inherited the legislation and legal system of France. All texts, including the criminal code in particular, that were applicable in France until 4 December 1958 (the date on which Benin became self-governing) are still directly applicable under Beninese law. All subsequent regulations adopted by the country continue to be very similar to those of the French system.

Duly ratified treaties or agreements, once published, take precedence over national legislation, subject to their implementation by the other party (art. 147 of the Constitution).

The majority of the provisions that penalize corruption and related offences are contained in the Criminal Code of 1958; the Code of Criminal Procedure; Order No. 79-23 of 10 May 1979, establishing criminal liability for misappropriation, bribery, peculation and related offences committed by permanent State employees; Act No. 2011-20 of 12 October 2011, on combating corruption and other related offences in Benin; and Act No. 2006-14 of 31 October 2006 on combating money-laundering (hereinafter “the Money-Laundering Act”).

The main bodies responsible for preventing and combating corruption and related offences are the National Anti-Corruption Authority (ANLC) and the National Financial Information Processing Unit (CENTIF).

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

Bribery of national public officials has been a criminal offence under Beninese law since the adoption of the Criminal Code of 1958 (arts. 177 and 178). Currently, it is covered by articles 40 (passive bribery) and 41 (active bribery) of Act No. 2011-20. Those provisions cover all the constituent elements required by the Convention. The concept of public official is defined in article 2 of the same Act.

Passive and active bribery of foreign public officials and international civil servants are also criminal offences under Beninese law (arts. 43 and 44 of Act No. 2011-20, respectively). Both offences are limited to offences committed in order to provide a person with, obtain, help a person to obtain, retain or help a person to retain business or other undue advantage in international business. The concept of international civil servant is defined (art. 2 of Act No. 2011-20), but the concept of foreign public official is not.

Articles 50 and 51 of Act No. 2011-20 establish active and passive trading in influence as offences. Active trading in influence does not include the promise of an undue advantage where that promise is not accepted.

Article 58 of Act No. 2011-20 establishes criminal liability for active and passive bribery in the private sector. It should be noted that the article goes beyond the

requirements of the Convention, because it does not apply exclusively to acts related to “economic, financial or commercial” activities.

Money-laundering, concealment (arts. 23 and 24)

The Money-Laundering Act, adopted in 2006, addresses the suppression and prevention of money-laundering. The suppression of money-laundering is also covered under articles 104 to 106 of Act No. 2011-20. Money-laundering is defined in article 2 of the Money-Laundering Act and the constituent elements of the offence are as established by the Convention. Participation in, association with, conspiracy to commit and attempts to commit a money-laundering offence are criminal offences (art. 3 of the Money-Laundering Act).

The offence of money-laundering is punishable in Benin if the predicate offence is, in whole or in part, committed abroad (art. 2 of the Money-Laundering Act).

Neither the Money-Laundering Act nor Act No. 2011-20 prevents the application of the offence of money-laundering to the person who has committed the predicate offence.

Concealment is adequately covered by article 460 of the Criminal Code and article 134 of Act No. 2011-20.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Article 45 of Act No. 2011-20 provides for the punishment of any public official or person of equivalent status who has “misappropriated or dissipated public or private funds or equivalent property […] that were in his or her possession by virtue of his or her position”. Article 49 of the Act establishes criminal liability for the unlawful use of public property.

Abuse of functions is not covered in Beninese legislation in the same way as in the Convention.

Article 55 of Act No. 2011-20 establishes the criminal liability of certain, exhaustively listed categories of persons who are unable to demonstrate the lawful origin of their resources, property, assets or lifestyle.

Article 408 of the Criminal Code establishes breach of trust as an offence and defines it as the misappropriation or dissipation by a person of a particular item of property that is temporarily entrusted to him or her on the understanding that he or she will return that property. Article 64 of Act No. 2011-20 establishes liability for misuse of corporate assets and defines that offence as the use by a company manager or representative of company property or credit in a manner contrary to the interest of the company, in his or her own interest.

Obstruction of justice (art. 25)

Article 365 of the Criminal Code establishes liability for the use of promises, offers, gifts, pressure, threats, assault or ploys to obtain false testimony. Article 136 of Act No. 2011-20 contains specific provisions on corruption that use the wording of the Convention.

Beninese law also penalizes acts committed against justice or law enforcement officials through its provisions establishing the offences of resisting authority (arts. 209-212 of the Criminal Code), insulting or using violence against persons vested with public authority or law enforcement officers (arts. 222-233 of the Criminal Code) and the specific offence of obstruction of justice established under article 137 of Act No. 2011-20.

Liability of legal persons (art. 26)

Beninese legislation does not clearly establish the general principle of civil liability of legal persons. However, legal persons may be held criminally liable for corruption

offences (art. 105 of Act No. 2011-20) and money-laundering offences (art. 42 of the Money-Laundering Act), with the exception of the State and legal persons governed by public law. Applicable sanctions include exclusion from public procurement contracts, permanent or temporary closure and fines.

The liability of legal persons is without prejudice to the liability of the natural persons who have committed the offence.

Participation and attempt (art. 27)

Complicity is covered broadly by article 60 of the Criminal Code. It is established as a specific offence in relation to corruption offences (art. 141 of Act No. 2011-20).

Conspiracy to commit and participation in an offence are punishable in the context of money-laundering (art. 38 of the Money-Laundering Act).

Attempt is broadly covered by articles 2 and 3 of the Criminal Code. However, only attempted money-laundering committed by natural persons is specifically penalized (art. 37 of the Money-Laundering Act). The preparation of an offence is not, per se, a criminal offence.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The majority of the offences established by Beninese legislation in accordance with the provisions of the Convention are serious offences punishable by a term of imprisonment of between 5 and 10 years, together with a fine. Certain aggravating circumstances, such as the quantity or value of the items promised or accepted as a bribe or the status of the offender, result in the classification of offences as serious crimes (*crimes*) punishable by a minimum term of imprisonment of 10 years.

Among public officials, only members of the National Assembly enjoy immunity. Other officials or members of the Government falling within the scope of legislative and constitutional provisions have only a jurisdictional privilege. Under article 90 of the Constitution, the immunity of members of the National Assembly may be lifted only by a qualified majority vote (a two-thirds majority) of the National Assembly. The need to vote successively for the lifting of immunity and then for indictment may be an obstacle to the effective prosecution of members of the National Assembly.

The State prosecutor is hierarchically linked to the Minister of Justice and has the power of prosecutorial discretion (art. 38 of the Code of Criminal Procedure). When the penalty applicable to the offence is more than five years' imprisonment, the case must be examined by an investigating judge. The power of prosecutorial discretion is limited by the possibility of bringing a civil suit in criminal proceedings.

The Code of Criminal Procedure provides for pretrial release (arts. 124-130) and parole (arts. 580-583). The Constitution provides for presidential pardon (arts. 60 and 130).

Specific provisions have been adopted to allow disciplinary measures to be taken against public officials suspected of having committed an offence (art. 131 of the Act establishing general regulations for permanent State employees). In particular, article 137 of the Act provides for the convening of a decision-making committee in order for disciplinary measures to be imposed. The Inspectorate-General of Security Services is responsible for punishing police officers. Disciplinary decisions are recorded in the individual file of the official concerned and are independent of criminal proceedings (arts. 131 and 137 of the Act).

For corruption offences, with the exception of money-laundering, there is an additional penalty of disqualification from holding public office or holding office in an enterprise owned in whole or in part by the State (art. 38 of Act No. 2011-20).

Benin has not established measures to promote the reintegration into society of persons convicted of offences.

Articles 43 and 44 of the Money-Laundering Act and article 37 of Act No. 2011-20 provide that persons who participate or have participated in the commission of an offence established in accordance with the Convention may be granted a reduction in their sentence or exempted from punishment if they cooperate with the investigation and prosecution authorities.

Act No. 2011-20 establishes measures to conceal the identity of whistle-blowers (arts. 33 and 34), in addition to measures to protect such persons against retaliation for the duration of proceedings (arts. 31 and 32). However, those measures do not appear to be sufficient to ensure the effective protection of whistle-blowers in the long term.

Protection of witnesses and reporting persons (arts. 32 and 33)

Act No. 2011-20 contains provisions designed to protect the identity of witnesses, experts and victims (arts. 33 and 34). Article 31 of the Act also provides for special State protection from possible retaliation against such persons or their relatives, the modalities of which must be established by a decree implementing the Act. However, at the time of the country visit, that decree had not yet been adopted. In addition, Beninese legislation does not provide for the use of modern technology to enable testimony to be given remotely.

Furthermore, the protective provisions do not apply in relation to money-laundering offences.

Benin has not entered into any agreements or arrangements with other States for the relocation of protected persons.

Article 2 of the Code of Criminal Procedure allows any person who is considered to be a victim to bring a civil suit in criminal proceedings. Through such action, the victim becomes a party to the proceedings and is entitled to claim damages directly before the criminal court.

Benin has not established any specific provisions for the effective protection of whistle-blowers against retaliation. However, articles 33 and 34 of Act No. 2011-20 provide for the possibility of concealing the identity of such persons.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

Article 27 of Act No. 2011-20 provides for the possibility of freezing, seizing and confiscating proceeds derived from offences covered by the Act, property and other instrumentalities used to commit or intended to be used in the commission of offences as well as property of equivalent value where such property has been intermingled, transformed or converted, and income or other benefits derived from such proceeds, their transformation or conversion, or derived from property with which such proceeds have been intermingled. Article 36 of the Money-Laundering Act permits the seizure or confiscation of property in relation to the offence of money-laundering.

Frozen, seized or confiscated property is administered by the Legal Office of the Treasury of the Ministry of the Economy and Finance, under the direction of the investigating judge.

The seizure of bank records is possible (art. 28 of Act No. 2011-20 and arts. 33 and 36 of the Money-Laundering Act).

In accordance with general legal principles and article 36, paragraph 2, of the Money-Laundering Act, the investigating judge may order the lifting of freezing or seizure measures subject to the conditions established by law, i.e., if the offender is able to demonstrate the lawful origin of the property concerned. However, Beninese legislation does not contain any express provisions to that effect.

Beninese law does not contain provisions for the protection of bona fide third parties except in relation to requests for mutual legal assistance in the context of money-laundering (art. 62 of the Money-Laundering Act).

Bank secrecy cannot be invoked to prevent the prosecution of offences established in accordance with the provisions of the Convention (art. 28 of Act No. 2011-20 and art. 34 of the Money-Laundering Act).

Statute of limitations; criminal record (arts. 29 and 41)

Ordinary law establishes a statute of limitations period for prosecution of three years for ordinary offences (*délits*) and 10 years for serious crimes.

However, article 21 of Act No. 2011-20 establishes exceptions applicable to corruption offences and other related offences. The statute of limitations period for those offences is 20 years and begins only when the offence is discovered. The provision does not cover money-laundering offences.

The statute of limitations period is suspended if proceedings are not possible owing to, inter alia, the status, position or functions of the offender (art. 21 of Act No. 2011-20).

It is not possible to take into account foreign criminal records in criminal proceedings in Benin, despite the fact that article 61 of the Money-Laundering Act contains provisions in that regard.

Jurisdiction (art. 42)

Beninese legislation does not contain provisions relating to the territorial jurisdiction of its courts. However, under article 646 of the Code of Criminal Procedure, the courts of Benin have jurisdiction according to the mandatory rules of jurisdiction established by the treaties and conventions to which Benin is party.

Under article 643 of the Code of Criminal Procedure, any offence of which at least one of the constituent elements has been committed in Benin is considered to have been committed in the territory of Benin.

The courts of Benin also have jurisdiction when the offence has been committed against a national of Benin or by a national of Benin abroad. In the latter case, dual criminality is required only for ordinary offences (art. 639 of the Code of Criminal Procedure). Jurisdiction may be established when the offence is committed against the State in certain specific cases (arts. 639 and 644 of the Code of Criminal Procedure). Beninese legislation does not address the issue of stateless persons.

Under article 46 of the Money-Laundering Act, the courts of Benin have jurisdiction over money-laundering offences committed by any natural or legal person regardless of their nationality, even when committed abroad, provided that the offence was committed in one of the member States of the West African Economic and Monetary Union.

Benin does not extradite its nationals (art. 737 (1) of the Code of Criminal Procedure). Benin reported that it applies the principle of *aut dedere aut judicare* when a request for extradition is refused on that ground. However, its legislation contains no provisions to that effect.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

Article 156 of the Public Procurement Code establishes that any contract obtained or renewed as the result of an act of corruption is void. However, that provision is limited to public procurement.

Under article 2 of the Code of Criminal Procedure, any person who has been directly and personally affected by the commission of an offence may bring a civil suit for damages. The victim thereby becomes a party to the criminal proceedings and may seek compensation for the damage suffered. In addition, specific provisions are contained in articles 155 and 156 of the Public Procurement Code.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Benin has established a number of bodies whose work relates to preventing and combating the offences established in accordance with the Convention. There is an economic and financial brigade (BEF) within the police; however, it does not have exclusive jurisdiction.

In addition, the Observatory for Combating Corruption (OLC) was established by Decree No. 2008-08 with the primary aim of researching and analysing corruption cases, conducting investigations and initiating legal proceedings through civil action for damages. The National Anti-Corruption Authority, established by Act No. 2011-20, is responsible mainly for prevention and awareness-raising. A number of non-governmental organizations involved in combating corruption have been brought together as part of the Front of National Organizations against Corruption (FONAC).

In the area of preventing and combating money-laundering, the Money-Laundering Act established the National Financial Information Processing Unit, which is responsible for centralizing and analysing reports of suspicious transactions.

In practice, the different bodies appear to cooperate to ensure the effective prosecution of corruption offences thus detected. However, there are no written provisions for formalizing or strengthening direct cooperation between those entities.

Members of the private sector, for example, usually contact the Front of National Organizations against Corruption to report cases of corruption or excessive administrative delays. The Front transmits that information to the competent authorities and to the National Anti-Corruption Authority so that they can conduct investigations.

Furthermore, Benin has set up hotlines to encourage the reporting of acts of corruption. Calls are received by the National Anti-Corruption Authority and may be made anonymously. Anonymity does not prevent the conduct of investigations or notification of the prosecutor for prosecution purposes.

2.2. Successes and good practices

- Corruption offences (excluding money-laundering) are subject to an extended statute of limitations period of 20 years, which begins only when the offence is discovered (art. 29)
- Benin has set up hotlines to encourage the reporting of acts of corruption. Calls may be made anonymously and are received by the National Anti-Corruption Authority, which conducts investigations and transmits information to the prosecutor
- Under article 46 of the Money-Laundering Act, the courts of Benin have jurisdiction over money-laundering offences committed by any natural or legal person regardless of their nationality, even abroad, provided that the offence was committed in one of the member States of the West African Economic and Monetary Union

2.3. Challenges in implementation

- Consider not limiting passive bribery of foreign public officials and officials of public international organizations to offences committed in order to provide a person with, obtain, help a person to obtain, retain or help a person retain business or other undue advantage in international business, and consider defining the concept of foreign public official (art. 16 (2))
- Consider extending the offence of active trading in influence to cover the promise of an undue advantage where that promise is not accepted (art. 18 (a))
- Consider establishing abuse of functions as a criminal offence (art. 19)
- Consider extending the scope of application of illicit enrichment (art. 20)

- Eliminate the exemption from liability of the State and legal persons governed by public law (art. 26)
- Ensure that provisions relating to complicity, conspiracy, participation and attempt are applicable to all offences established in accordance with the Convention; Benin could also criminalize the preparation for an offence established in accordance with the Convention (art. 27)
- Consider extending the provisions establishing exceptions with respect to the statute of limitations period to money-laundering offences (art. 29)
- Ensure that the constitutional provisions relating to immunities do not prevent the prosecution and adjudication of offences (art. 30 (2))
- Consider extending the applicability of the penalty of disqualification from holding public office or holding office in an enterprise owned in whole or in part by the State to money-laundering offences (art. 30 (7))
- Consider adopting appropriate measures to promote reintegration into society (art. 30 (10))
- Consider establishing written provisions that require an offender to demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation (art. 31 (8))
- Take such measures as may be necessary to ensure the protection of bona fide third parties beyond mutual legal assistance in money-laundering cases (art. 31 (9))
- Take such measures as may be necessary to ensure the effective protection of experts and witnesses, including victims, and, as appropriate, their relatives and other persons close to them, as well as cooperating persons, against any acts of retaliation; extend protection measures to apply in money-laundering cases; and consider entering into agreements or arrangements with other States for the relocation of such persons (arts. 32 and 37 (4))
- Consider establishing appropriate measures to provide protection for reporting persons against any unjustified treatment (art. 33)
- Extend the provisions relating to the invalidity of contracts beyond public procurement (art. 34)
- Ensure that the bodies responsible for preventing and combating offences established in accordance with the Convention have, in practice, the necessary independence and human, material and financial resources to perform their duties (art. 36)
- Strengthen protection measures for persons cooperating with the law enforcement authorities, and consider entering into agreements or arrangements for their treatment at the international level (art. 37 (4) and (5))
- Establish the duty to inform the authorities responsible for investigating and prosecuting criminal offences when there are reasonable grounds to believe that an offence has been committed; and require public officials to provide to the authorities, upon request, all necessary information (art. 38)
- Consider adopting such measures as may be necessary to take into consideration foreign criminal records (art. 41)
- Determine whether the adoption of domestic rules establishing the territorial jurisdiction of national courts might be beneficial (art. 42 (1))
- Establish the jurisdiction of its national courts over offences committed by a stateless person who has his or her habitual residence in its territory (art. 42 (2) (b))

- Take such legislative measures as may be necessary to establish jurisdiction on the basis of the principle of *aut dedere aut judicare* when extradition is refused solely on the ground that the person concerned is one of its nationals (art. 42 (3)); and consider extending the scope of application of that principle to cover other grounds for refusal (art. 42 (4))

2.4. Technical assistance needs identified to improve implementation of the Convention

Benin reported that no technical assistance was required to improve the implementation of chapter III of the Convention.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

The basic provisions relating to extradition and mutual legal assistance are contained in the Act of 10 March 1927 on the extradition of foreigners, which was made applicable in the dependencies of French West Africa by a decree of 2 April 1927 and which remains in force in Benin in its original version. However, article 142 of Act No. 2011-20 makes the Convention directly applicable in relation to extradition.

Benin has concluded an extradition treaty with France and another with Ghana, Nigeria and Togo, and is party to the General Convention on Judicial Cooperation signed by the States of the African and Malagasy Union, the Convention on Extradition of the Economic Community of West African States (ECOWAS) and the Convention on Cooperation and Mutual Assistance in Matters Relating to Justice concluded by the States members of the Council of the Entente. Apart from any agreement, treaty, convention or other text relating to extradition to which it is party, Benin uses the Convention as a legal basis for extradition. Nevertheless, extradition is not conditional on the existence of a treaty.

Dual criminality is required and all offences that are punishable by at least two years' imprisonment may be subject to extradition (arts. 3 and 4 of the Act of 10 March 1927). Extradition for related offences is possible (art. 4 of the Act of 10 March 1927). Most but not all of the offences established in accordance with the Convention are punishable by terms of imprisonment sufficiently long as to render them extraditable.

The authorities confirmed that Benin does not consider any of the offences established in accordance with the Convention to be political offences.

Beninese law provides for the simplification of extradition proceedings in money-laundering cases through the direct transmission of the request for extradition to the relevant public prosecutor (art. 72 of the Money-Laundering Act).

Persons whose extradition is sought may be taken into temporary custody (art. 19 of the Act of 10 March 1927).

Beninese domestic law does not allow nationals to be extradited. However, Benin may prosecute its nationals in accordance with its laws at the request of the authorities of the country where the offence was committed (art. 641 of the Code of Criminal Procedure).

Beninese legislation does not provide for the enforcement of a sentence imposed in the requesting State if the extradition of a national sought for the purposes of enforcing a sentence is refused.

Benin refuses extradition requests that relate to political offences or offences committed for political purposes (art. 5 of the Act of 10 March 1927). National legislation does not contain any other provisions on refusal for discriminatory reasons.

Beninese law permits extradition for fiscal offences.

The possibility of consulting with the requesting State to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation is not provided for in the legislation, but Benin may carry out such consultations in practice.

Benin has concluded agreements in relation to the transfer of sentenced persons (art. LXXII of the extradition treaty with France, art. 60 of the General Convention on Judicial Cooperation and art. 14 of the extradition treaty with Ghana, Nigeria and Togo).

Benin has signed an agreement with the United Nations on the enforcement of sentences pronounced by the International Criminal Tribunal for Rwanda (ICTR). Under that agreement, seven persons convicted by the Tribunal have been transferred to Benin to serve their sentences.

Article 47 of the Money-Laundering Act provides for the transfer of criminal proceedings in money-laundering cases. Articles 21 to 32 of the ECOWAS Convention on Extradition also provide for the possibility of transferring criminal proceedings.

Mutual legal assistance (art. 46)

Mutual legal assistance is governed by Act No. 2011-20 (arts. 143-154), the Money-Laundering Act (arts. 53-70) and articles 772 and 773 of the Code of Criminal Procedure, which relate to cooperation with the International Criminal Court. In addition, Benin is a party to the ECOWAS Convention on Mutual Assistance in Criminal Matters, the quadripartite convention between Benin, Ghana, Nigeria and Togo, and various bilateral agreements between Benin and France and between Benin and Nigeria.

Benin has established the liability of legal persons (art. 105 of Act No. 2011-20 and art. 42 of the Money-Laundering Act), and may grant assistance in relation to offences for which a legal person may be held liable.

Any information regarding criminal cases that relate to corruption may be provided to any judicial authority of a foreign State, subject to reciprocity (art. 143 of Act No. 2011-20).

Through direct application of the Convention (art. 142 of Act No. 2011-20), Benin may provide information on corruption to another State Party without prior request, and can maintain the confidentiality of that information (art. 143 of the same Act).

The authorities confirmed that the prohibition from invoking bank secrecy also applies with regard to mutual legal assistance (arts. 28 and 143 of Act No. 2011-20). The Money-Laundering Act expressly states that professional secrecy cannot be invoked to refuse the execution of a request for mutual legal assistance, and the authorities confirmed that the concept of professional secrecy also encompasses bank secrecy (see art. 55 of the Money-Laundering Act and art. 4 (2) of the ECOWAS Convention on Mutual Assistance in Criminal Matters).

In the absence of dual criminality, Benin may refuse requests for mutual assistance (art. 150 of Act No. 2011-20). The authorities reported that in such cases, Benin refuses to grant the mutual legal assistance requested only if it involves coercive action. Furthermore, certain conventions, such as the ECOWAS Convention on Mutual Assistance in Criminal Matters, require dual criminality.

The transfer of detained persons or persons serving a sentence is possible (art. 142 of Act No. 2011-20, art. 60 of the Money-Laundering Act and art. 13 of the ECOWAS Convention on Mutual Assistance in Criminal Matters).

The Directorate of Civil and Criminal Cases of the Ministry of Justice is the central authority for mutual legal assistance. Benin has informed the Secretary-General of

that designation and of the fact that French is the acceptable language for requests for mutual assistance.

Requests must be addressed to Benin through diplomatic channels; Benin does not accept oral requests.

In relation to the content of requests for mutual assistance, Act No. 2011-20 refers to the Convention (art. 142). The Money-Laundering Act (art. 54) and the ECOWAS Convention on Mutual Assistance in Criminal Matters (art. 5 (1) and (3)) also contain relevant provisions.

Requests for mutual assistance are executed in accordance with the rules of procedure in force in Benin, unless otherwise specified in the request (art. 144 of Act No. 2011-20).

The hearing or questioning of a person for the purpose of execution of a request on the basis of the Convention may take place by videoconference (art. 145 of Act No. 2011-20).

Benin keeps requests for mutual legal assistance confidential and does not use the information contained in such requests for purposes other than those stated in the request (art. 142 of Act No. 2011-20, art. 56 of the Money-Laundering Act and arts. 8 and 9 of the ECOWAS Convention on Mutual Assistance in Criminal Matters).

The grounds for refusing requests for mutual assistance are established in article 150 of Act No. 2011-20 (art. 150), the Money-Laundering Act (art. 55), the ECOWAS Convention on Mutual Assistance in Criminal Matters (art. 4, para. 5) and the extradition treaty with France (art. XXIII).

Article 4, paragraph 2, of the ECOWAS Convention on Mutual Assistance in Criminal Matters expressly states that a request for mutual assistance may not be refused on the sole ground that the offence is also considered to involve fiscal matters. National legislation does not refer to that ground as a reason for refusing requests. Reasons must be given for any refusal of mutual assistance (art. 144, third paragraph, of Act No. 2011-20 and art. 55 of the Money-Laundering Act) and the authorities confirmed that requests are executed as soon as possible.

Mutual legal assistance may be postponed if it would interfere with an ongoing investigation, prosecution or judicial proceeding in Benin, on the basis of direct application of the Convention (art. 142 of Act No. 2011-20) and in accordance with article 4, paragraphs 3 and 4, of the ECOWAS Convention on Mutual Assistance in Criminal Matters. Before refusing or postponing the execution of a request, the competent authorities of Benin and those of the requesting State may consult with a view to agreeing on how to follow up the request (art. 144, fourth paragraph, of Act No. 2011-20).

The safe conduct of persons transferred for the purposes of mutual legal assistance is ensured through direct application of the Convention (art. 142 of Act No. 2011-20) and article 15 of the ECOWAS Convention on Mutual Assistance in Criminal Matters. Also in direct application of the Convention, the ordinary costs of executing a request shall be borne by Benin as the requested State (art. 142 of Act No. 2011-20 and art. 34 of the ECOWAS Convention on Mutual Assistance in Criminal Matters).

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Benin cooperates through ECOWAS, the World Customs Organization, the Intergovernmental Action Group against Money Laundering in West Africa (GIABA), the International Criminal Police Organization (INTERPOL) and the West African Police Chiefs Committee, and may use the Convention as a legal basis for cooperation between law enforcement authorities (art. 142 of Act No. 2011-20).

In the area of police cooperation, joint investigations and joint patrols are conducted by Benin and neighbouring countries such as the Niger. Benin did not indicate

whether it has posted liaison officers abroad or received such officers from abroad, because it believes that that matter is strategic in nature and relates to the security of each State.

Joint investigations are conducted on the basis of ad hoc arrangements.

The use of certain techniques such as wiretapping, electronic surveillance, controlled delivery and undercover operations is permitted in relation to the offences established by Act No. 2011-20 (art. 22), but is not yet possible in practice. Benin has neither concluded bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of international cooperation nor used such techniques at the international level on an ad hoc basis.

3.2. Successes and good practices

The fact that Act No. 2011-20 explicitly provides that any information concerning criminal cases that relate to corruption may be provided to any judicial authority of a foreign State, on condition of reciprocity (art. 143), is considered to contribute to more flexible and seamless international cooperation.

3.3. Challenges in implementation

It is recommended that Benin:

- Reduce the minimum penalty requirement for extradition to one year, and ensure that all offences established in accordance with the Convention are extraditable (art. 44 (1), (4) and (8))
- Grant extradition in the absence of dual criminality (art. 44 (2))
- Continue efforts to expedite extradition procedures and simplify evidentiary requirements relating thereto in practice, including in cases other than money-laundering (art. 44 (9))
- Consider enforcing sentences imposed abroad if extradition for those purposes is refused because the person sought is one of its nationals (art. 44 (13))
- Establish factors of discrimination, such as race, religion and ethnic origin, as grounds for refusing an extradition request (art. 44 (15))
- Consult with the requesting State before refusing an extradition request (art. 44 (17))
- Consider implementing a provision to enable Benin to provide a wider scope of assistance in the absence of dual criminality (art. 46 (9) (c))
- Accept urgent requests transmitted through INTERPOL, as well as requests made orally and confirmed in writing (art. 46 (13) and (14))
- Consider transferring criminal proceedings beyond the scope of application of the Money-Laundering Act and the ECOWAS Convention on Extradition (art. 47)
- Make the use of special investigative techniques possible in practice, and permit the use of those techniques beyond the scope of application of Act No. 2011-20 (art. 50 (1))
- Consider concluding agreements or arrangements for using special investigative techniques in the context of cooperation at the international level, or making the decision to use such techniques on a case-by-case basis (art. 50 (2) and (3))
- Ensure that controlled delivery at the international level includes methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part (art. 50 (4))

3.4. Technical assistance needs identified to improve implementation of the Convention

The following technical assistance would help Benin to improve its international cooperation:

- Capacity-building for those working in the area of mutual legal assistance. The reviewers suggested the use of on-site assistance by a qualified expert (art. 46 (30))
- On-site assistance by a qualified expert and capacity-building programmes for the authorities responsible for designing and managing the use of special investigative techniques (art. 50)