

# CONSTITUTION OF THE REPUBLIC OF BENIN

*Adopted at the referendum of 2 December 1990*

## PREAMBLE

We, the Beninese people,

Reaffirm our fundamental opposition to any political regime founded on arbitrariness, dictatorship, injustice, corruption, misappropriation of public funds, regionalism, nepotism, confiscation of power, and personal power;

Express our firm will to defend and safeguard our dignity in the eyes of the world and to find again the place and role as pioneer of democracy and of the defence of human rights which were formerly ours;

Solemnly affirm our determination by this present Constitution to create a state of law and pluralistic democracy in which the fundamental human rights, public liberties, the dignity of the human being, and justice shall be guaranteed, protected and promoted as the condition necessary for the genuine harmonious development of each Beninese in his temporal and cultural dimension as well as in his spiritual;

Reaffirm our attachment to the principles of democracy and human rights as they have been defined by the Charter of the United Nations of 1945 and the Universal Declaration of Human Rights of 1948, by the African Charter on Human and Peoples' Rights adopted in 1981 by the Organization of African Unity and ratified by Benin on 20 January 1986 and whose provisions make up an integral part of this present Constitution and of Beninese law and have a value superior to the internal law;

Affirm our will to co-operate in peace and friendship with all peoples who share our ideals of liberty, of justice, of human solidarity based on the principles of equality, of reciprocal interest and of mutual respect for national sovereignty and for territorial integrity;

Proclaim our attachment to the cause of African unity and pledge ourselves to leave no stone unturned in order to realise local and regional integration;

Solemnly adopt the present Constitution which shall be the Supreme Law of the state and to which we swear loyalty, fidelity and respect.

## TITLE I: THE STATE AND SOVEREIGNTY

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### Article 2

The Republic of Benin shall be one - indivisible, secular, and democratic. Its principle shall be: "Government of the people, by the people, and for the people".

### Article 3

National sovereignty shall belong to the people. No portion of the people, no community, no corporation, no party or political association, no trade union organisation nor any individual shall be able to abrogate the exercise of it. Sovereignty shall be exercised in accordance with the present Constitution which is the Supreme Law of the state. Any law, any statutory text and any administrative act contrary to these provisions shall be null and void. Consequently, any citizen shall have the right to appeal to the Constitutional Court against the laws, texts, and acts presumed unconstitutional.

### Article 4

The people shall exercise their sovereignty through their elected representatives by means of the referendum.

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**Article 5**

Political parties shall co-operate in the expression of suffrage. They shall be formed and shall freely exercise their activities under conditions determined by the Charter of Political Parties. They must respect the principles of national sovereignty, of democracy, of territorial integrity and of the secularity of the state.

**Article 6**

Suffrage shall be universal, equal and secret. The electors shall be, under the conditions determined by law, all Beninese nationals of both sexes over the age of eighteen and in full possession of their civil and political rights.

**TITLE II: RIGHTS AND DUTIES OF THE INDIVIDUAL****Article 7**

The rights and duties proclaimed and guaranteed by the African Charter on Human and Peoples' Rights adopted in 1981 by the Organization of African Unity and ratified by Benin on January 20, 1986 shall be an integral part of the present Constitution and of Beninese law.

**Article 8**

The human person is sacred and inviolable. The state has the absolute obligation to respect it and protect it. It shall guarantee him a full blossoming out. To that end, it shall assure to its citizens equal access to health, education, culture, information, vocational training, and employment.

**Article 9**

Every human being has a right to the development and full expansion of his person in his material, temporal and intellectual dimensions, provided that he does not violate the rights of others nor infringe upon constitutional order and good manners.

**Article 10**

Every person has a right to culture. The state has the duty to safeguard and promote the national values of civilisations, as much material as spiritual, as well as the cultural traditions.

**Article 11**

All communities comprising the Beninese nation shall enjoy the freedom to use their spoken and written languages and to develop their own culture while respecting those of others. The state must promote the development of national languages of intercommunication.

**Article 12**

The state and public authorities shall guarantee the education of children and shall create conditions favourable to this end.

**Article 13**

The state shall provide for the education of the youth by public schools. Primary education shall be obligatory. The state shall assure progressively free public education.

**Article 14**

Religious institutions and communities shall be able to co-operate equally in the education of the youth. Private schools, secular or parochial, may be opened with the authorisation and control of the state. The private schools may benefit from state subsidies under conditions determined by law.

**Article 15**

Each individual has the right to life, liberty, security and the integrity of his person.

**Article 16**

No one shall be arrested or accused except by virtue of a law promulgated prior to the charges against him. No citizen shall be forced into exile.

**Article 17**

Any person accused of an unlawful act shall be presumed innocent until his culpability has been legally established in the course of a public lawsuit during which all guarantees necessary to his free defence shall have been assured to him. No one shall be condemned for actions or omissions which, at the moment when they were committed, did not constitute an infraction according to the national law. Likewise, he may not have a more severe penalty inflicted than that which was applicable at the time when the offence was committed.

**Article 18**

No one shall be submitted to torture, nor to maltreatment, nor to cruel, inhumane or degrading treatment. No one shall have the right to prevent a detainee or an accused person from being examined by a doctor of his choice. No one may be detained in a penal institution if he does not fall under the provisions of a penal law in force. No one may be detained for a duration greater than forty-eight hours except by a decision of the magistrate before whom he must have been presented. This delay may be prolonged only in circumstances exceptionally provided for by law and may not exceed a period greater than eight days.

**Article 19**

Any individual or any agent of the state who shall be found responsible for an act of torture or of maltreatment or of cruel, inhumane or degrading treatment in the exercise of, or at the time of the exercise of his duties, whether of his own initiative or whether under instruction, shall be punished in accordance with the law. Any individual or any agent of the state shall be absolved of the duty of obedience when the order received shall constitute a serious and manifest infringement with respect to human rights and public liberties.

**Article 20**

The domicile shall be inviolable. House visits or searches may be carried out only according to the forms and conditions provided by law.

**Article 21**

The secrecy of correspondence and of communications shall be guaranteed by law.

**Article 22**

Every person has the right to his property. No one shall be deprived of his property except for state-approved usefulness and in exchange for a just and prerequisite compensation.

**Article 23**

Every person has the right to freedom of thought, of conscience, of religion, of creed, of opinion and of expression with respect for the public order established by law and regulations. The exercise of a creed and the expression of beliefs shall take place with respect for the secularity of the state. The institutions and the religious or philosophical communities shall have the right to develop without hindrances. They shall not be subject to the guardianship of the state. They shall regulate and administer their affairs in an autonomous manner.

**Article 24**

Freedom of the press shall be recognised and guaranteed by the state. It shall be protected by the High Authority of Audio-Visuals and Communications under the conditions fixed by an organic law.

**Article 25**

The state shall recognise and guarantee, under conditions fixed by law, the freedom to go and come, the freedom of association, of assembly, of procession and of demonstration.

**Article 26**

The state shall assure to everyone equality before the law without distinction of origin, race, sex, religion, political opinion or social position. Men and women are equal under the law. The state shall protect the family and particularly the mother and child. It shall take care of handicapped and aged persons.

**Article 27**

Every person has the right to a healthy, satisfying and lasting environment and has the duty to defend it. The state shall watch over the protection of the environment.

**Article 28**

The storage, handling, and removal of toxic wastes or pollutants originating from factories and other industrial or cottage industry units installed in the national territory shall be regulated by law.

**Article 29**

The transportation, importation, storage, burying and the discharging on the national territory of toxic wastes or foreign pollutants and any agreement relating to it shall constitute a crime against the nation. The applicable sanctions shall be defined by law.

**Article 30**

The state shall recognise for all citizens the right to work and shall strive to create conditions which shall make the enjoyment of this right effective and shall guarantee to the worker just compensation for his services or for his production.

**Article 31**

The state shall recognise and guarantee the right to strike. Each worker may defend, under the conditions provided by law, his rights and interests whether individually, whether collectively, or by trade union action. The right to strike shall be exercised under conditions defined by law.

**Article 32**

The defence of the nation and of the integrity of the territory of the Republic is a sacred duty for every Beninese citizen. Military service shall be obligatory. The conditions for the accomplishment of this duty shall be determined by law.

**Article 33**

All citizens of the Republic of Benin have the duty to work for the common good, to fulfil all of their civic and professional obligations, and to pay their fiscal contributions.

**Article 34**

Each Beninese citizen, civilian or military, has the sacred duty to respect, in all circumstances, the Constitution and the established constitutional order as well as the laws and regulations of the Republic.

**Article 35**

Citizens responsible for a public office or elected to a political office have the duty to fulfil it with conscience, competence, probity, devotion, and loyalty in the interest of the common good.

**Article 36**

Each Beninese has the duty to respect and to consider his own kin without any discrimination; and to keep relations with others that shall permit the safeguarding, the reinforcement and

promotion of respect, dialogue and reciprocal tolerance with a view to peace and to national cohesion.

**Article 37**

Public property shall be sacred and inviolable. Each Beninese citizen must respect it scrupulously and protect it. Any act of sabotage, vandalism, corruption, diversion, dilapidation or illegal enrichment shall be suppressed under conditions provided by law.

**Article 38**

The state shall protect the rights and legitimate interests of Beninese citizens in a foreign country.

**Article 39**

Foreigners in the territory of the Republic of Benin shall have the benefit of the same rights and liberties as the Beninese citizens, and this under the conditions determined by law. They must conform to the Constitution and to the laws and regulations of the Republic.

**Article 40**

The state has the duty to assure the diffusion and the teaching of the Constitution, of the Universal Declaration of Human Rights of 1948, of the African Charter on Human and Peoples' Rights of 1981 as well as all of the international instruments duly ratified and relative to human rights. The state must integrate the rights of the individual into the programs of literacy and of teaching in the various scholastic and university academic cycles and into all the educational programs of the Armed Forces, of the Public Security Forces and of comparable categories. The state must equally assure the diffusion and teaching of these same rights in the national languages by all the means of mass communication, and particularly by radio and television.

**TITLE III: EXECUTIVE POWER**

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**Article 58**

The President of the Republic, after consultation with the President of the National Assembly and the President of the Constitutional Court, shall be able to take the initiative of the referendum on any question relative to the promotion of and the reinforcement of human rights ...

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**Article 66**

In case of a *coup d'état*, or a *putsch*, of aggression by mercenaries or of any action by force whatsoever, any member of a constitutional agency shall have the right and the duty to make an appeal by any means in order to re-establish the constitutional legitimacy, including recourse to existing agreements of military or defence co-operation. In these circumstances for any Beninese to disobey and organise himself to put a check to the illegitimate authority shall constitute the most sacred of rights and the most imperative of duties.

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**TITLE V: THE CONSTITUTIONAL COURT**

**Article 114**

The Constitutional Court shall be the highest jurisdiction of the state in constitutional matters. It shall be the judge of the constitutionality of the law and it shall guarantee the fundamental human rights and the public liberties. It shall be the regulatory body for the functioning of institutions and for the activity of public authorities.

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**Article 117**

The Constitutional Court shall rule obligatorily on:

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- The constitutionality of laws and regulatory acts deemed to infringe on fundamental human rights and on public liberties, and in general on the violation of the rights of the individual;

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#### **Article 120**

The Constitutional Court must rule within a period of fifteen days after it has been informed of a text of a bill or of a complaint of the violation of human rights and of public liberties. However, at the demand of the government, if there is an emergency, this period shall be reduced to eight days. In this case, the submission of the matter to the Constitutional Court shall suspend the deadline for the promulgation of the law.

#### **Article 121**

The Constitutional Court, at the request of the President of the Republic or of any member of the National Assembly, shall give its opinion on the constitutionality of laws in advance of their promulgation. It shall give its opinion automatically on the constitutionality of laws and any regulatory text deemed to infringe on the fundamental human rights and on the public liberties. It shall decide more generally on the violations of the rights of the individual and its decision must be reached within a period of eight days.

#### **Article 122**

Any citizen may complain to the Constitutional Court about the constitutionality of laws whether directly or whether by the procedure of the exception of unconstitutionality invoked in a matter which concerns him before a court of law. This must grant a stay until the decision of the Constitutional Court which must be reached within a period of thirty days.

#### **Article 123**

The organic laws in advance of their promulgation; the Rules of Procedure of the National Assembly, of the High Authority of Audio-Visuals and of Communications, and of the Economic and Social Council before their enforcement must be submitted to the Constitutional Court which shall give its decision on their conformity to the Constitution.

#### **Article 124**

A provision declared unconstitutional may not be promulgated or enforced. The decision of the Constitutional Court shall not be subject to any appeal. They shall be imperative for public authorities and for all civil, military and jurisdictional authorities.

### **TITLE VI: JUDICIAL POWER**

#### **Article 125**

Judicial power shall be independent of the legislative power and of the executive power.

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### **TITLE IX: TREATIES AND INTERNATIONAL AGREEMENTS**

#### **Article 144**

The President of the Republic shall negotiate and ratify treaties and international agreements.

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#### **Article 146**

If the Constitutional Court, upon a submission by the President of the Republic or by the President of the National Assembly, shall have decided that an international obligation allows a clause contrary to the Constitution, the authorisation to ratify it may occur only after the revision of the Constitution.

**Article 147**

Treaties or agreements lawfully ratified shall have, upon their publication, an authority superior to that of laws, without prejudice for each agreement or treaty in its application by the other party.

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**TITLE XI: REVISION****Article 154**

The initiative for the revision of the Constitution shall belong concurrently to the President of the Republic, after a decision taken in the Council of Ministers, and to the members of the National Assembly. In order to be taken into consideration, the draft or proposal of revision must be voted by a three-fourths majority of the members composing the National Assembly.

**Article 155**

The revision shall be agreed to only after having been approved by referendum, unless the draft or the proposal involved shall have been approved by a four-fifths majority of the members composing the Assembly.

**Article 156**

No procedure for revision may be instituted or continued when it shall undermine the integrity of the territory. The republican form of government and the secularity of the state may not be made the object of a revision.

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