

HOW TO MAKE PRESIDENTIALISM WORK

Mathias HOUNKPE*

The people of Republic of Benin chose, at the historic Conference of the National Vital Forces of February 1990, to build a liberal democracy in Benin. Few months after this option was adopted at the National Conference, it were to be materialized in the Constitution voted by referendum in December 1990 establishing a presidential system qualified at the time of “strong presidentialism” by the political scientists and other observers of the national political scene.

Indeed, the Constitution of 1990 grants rather broad powers to the President of the Republic. He is the head of the State, head of the Government, supreme head of the Armies and guarantor of the independence of the Nation, of the integrity of the territory and of the respect of the Constitution, of the treaties and international agreements. He has, like the MPs, legislative initiative and ensures their promulgations; he exerts also the regulation power;¹ he appoints² and revokes the cabinet members; he appoints three (03) of the seven (07) members of the Constitutional Court, the President of the supreme Court, the President of the Authority in charge of the regulation of the Media,³ etc.

* Political Scientist Development policy analysis unit near Benin National Assembly. Cellule d’analyse des politiques de développement de l’Assemblée nationale (CAPAN).

¹ The so called “pouvoir réglementaire” in French meaning that he is allowed to set the regulations on matters that are not within the scope of the law. The domain of the law is fixed by the constitution.

² Except for the members of the Constitutional Court (for whom he has discretion), the President of the Republic is only obliged, for the other appointments, to consult the Bureau of the National Assembly which is doesn’t have to follow. We have had ministers appointed against the view of the Bureau of the National Assembly.

³ The Haute Autorité de l’Audiovisuel et de la Communication (HAAC).

The Benin President is allowed by the Constitution to take exceptional measures when he thinks that the independence of the Nation, the integrity of the national territory or the implementation of international engagements are under serious and immediate threats and that the normal functioning of public and constitutional authorities is threatened.⁴ He constitutionally has the means of collecting resources and of undertaking expenditure without any credible opposing force. In other words, the Parliament is not able to prevent the operation of the central Administration and the undertaking of a large part of the State expenditures (thus of the program of the President).

The evolution of Benin new political system has so far known ups and downs. Indeed, some successes were recorded —e.g. a fairly good level of political conflicts management, a stable political system, a type of accountability, etc.— even though there still is a long way to go —e.g. a representative and reasonably accountable government, a well functioning judicial system, the formulation of relevant and efficient public policies, etc.— to reaching the shore of a consolidated presidential system in Benin.

In this paper, we support that the uneven evolution of Benin presidentialism can be explained, at least partly, by: 1) some of the institutions chosen at the National Conference and their amendments since 1990; and 2) some unexpected factors.

The rest of the paper shows how the evolution of Benin strong presidentialism can partly be explained by the two above mentioned factors. It also stresses some of the challenges that need to be taken up for the consolidation of Benin new democracy. But before that, few words are necessary about the domestic socio-political context in 1990.

BRIEF HISTORY OF BENIN POLITICAL EVOLUTION SINCE INDEPENDENCE

The political history of Republic of Benin⁵ from its independence in 1960 to date can roughly be divided into three (03) phases.

⁴ He is just asked to consult, without any obligation, the presidents of the National Assembly and of the Constitutional Court.

⁵ Republic of Dahomey at independence, the country's name has been changed to People's Republic of Benin in 1975 and to Republic of Benin since 1990.

The first phase (1960-1972), was characterized by a chronic political instability with frequent military interventions⁶ on the political scene mostly because of: (A) the extreme ethnicisation of politics; and (b) the inadequacies of the institutional frameworks. The second phase (1972-1990) started with a military coup in 1972, followed two years later by the radicalization of the regime through the adoption by the military junta of Marxism-Leninism as “philosophical guide” with the scientific socialism as the development path. This phase of Benin political evolution was characterized by a military dictatorship and arbitrary exercise of power, a bad performance of the economy (which has been completely nationalized), the bankruptcy of the banking system and a deep degradation of citizens’ standard of living. In response to this internal crisis of governance and given the new World economic and political orders, the military regime, the leaders of the various national “political sensitivities”, the diaspora as well as the domestic opinion leaders agreed to discuss on how to put the country politically and economically back on track at the National Conference held in February 1990.

As to the third phase (1990 to date), it started with the national Conference at which a new political orientation was chosen followed by the adoption of a new constitution in December 1990. The democratic order from then on is organized, among other things, around a presidential system, an integral multipartism and the principle of election of political leaders on a background of political alternation (through measures to guarantee term limit), a strong protection of the basic human rights, a choice of a rather special type of constitutional judge, etc.

The preference⁷ for a “strong” presidential system by the constituents can partly be explained by the fact that they sought to solve (to prevent) two main problems. One was the resurgence of the country’s tumultuous political past, the turbulence of its political class, and consequently the extreme permanent variability of the political geometry of the parties’ landscape. This constituted, in the 1990 constituents’ eyes, a serious risk for any form of political system which would make the stability of the Executive depends on the confidence of the Parliament. Secondly, the pressing need felt at the national Conference for avoiding at all costs in

⁶ For the first twelve (12) years of independence, the country has known 6 successful military coups and at least the same number of failed attempts coups.

⁷ As opposed to semi-presidential or parliamentary regime.

the future, the dictatorship and the arbitrary use of power which characterized the Marxist-Leninist period (1972-1990).

The following sections present some of the aspects of the evolution of Benin presidential system (success and failures) and some of their determinants. They will mainly be about political stability, accountability and the limitation of the President's large powers.

1. *The political stability*

One of the major risks associated with presidential systems is that of instability rising from permanent conflicts between the various State powers, but especially between the Executive and Legislative powers, resulting sometimes in the blocking of the political system. In new democracies, mostly characterized by a deficit of democratic culture and tradition, there are also risks of conflicts within institutions, especially when they are "plural" —e.g. when they are made up of various interests such as Parliaments—, which can extend to spaces of interaction between all the other domestic institutions. Constitutional as well as empirical factors⁸ have, so far, contributed to avoiding the jamming or the instability of Benin strong presidential system.

A. A model of separation of powers which prevent inter and intra institutions conflicts

The constituents of 1990 have designed a separation of powers which avoids, at least to some extent, the blocking of the functioning of the State's institutions. This is seen through constitutional provisions which allow each of the two major powers —the Executive and the Legislative— to play a specific role "almost alone", without any credible constitutional means left to the other power to set bounds to it. The only limit is the Constitution as interpreted by the constitutional Court which is the supreme constitutional judge in Benin, and which can, if need be, make use of its "secret weapon": its power of regulation.

Thus the Legislature enjoys a true power in terms of the vote and the implementation of legislations. Even if it shares the legislative initiatives

⁸ On the most important in our view are presented here.

with the Executive, its right of amendment⁹ constitutes a serious and formidable weapon with respect to the final contents of legislations, especially as far as laws other than the finance law are concerned, making of the Parliament the only true power on ordinary legislations matters.¹⁰

On the other hand, with regard to the finance law which is the first and most important instrument of the operation of the government and for the implementation of its policies, its final form and its implementation depend almost exclusively on the Executive. This was done via two mechanisms.¹¹ The first consists in providing for constitutional provisions to restrict the Parliament's amendment power through the considering of the balance of the State budget and the obligation for the Parliament to find the means of respecting it.¹² The second mechanism consists in avoiding the situation where the Executive and its head (the President) will not be able to collect the necessary resources needed for the operation of the State's institutions. The Constitution has provided two kinds of solutions to that, according to whether the responsible for the delay in the vote of the finance law is the Executive or the Legislative. In the first case, i.e. when the Executive is responsible of a delay in the adoption of the financial law, it can continue to mobilize resources through the so-called "douxime provisoire"¹³ that the Parliament has the obligation to votes to him up until the budget's adoption. In the second case, i.e. when the Parliament is responsible of the delay, or in the event of major disa-

⁹ The fact the Parliament is in total control of its agenda is a supplementary advantage as to the fate of the bill introduced by the Government. We have seen several bills introduced by the Government, sometimes in emergency procedure (procedure d'urgence), stay years in Benin National Assembly.

¹⁰ One needs to add here that in fact, the Government has a veto power, but a "weak veto power", since it can be overruled by an absolute majority of MPs. Most of the times when the Government has tried it, the parliament maintained it vote.

¹¹ The presentation here is really brief; it can be nuanced in several aspects. However, it is not too far from the reality.

¹² For instance, according to the constitution, all bills (and hence all amendments) whose adoption would have as a consequence either a decline in public resources, or an increase in public charges (expenditures), is declared inadmissible if it is not accompanied with a suggestion of credible ways of increasing public resources or making equivalent saving.

¹³ The douxime provisoire means that the Government keep collecting each month, the 1/12 th of the previous State Budget.

greements between the two powers, the President is allowed by the Constitution to implement the draft budget decree if necessary.

B. A constitutional Court able to prevent intra and inter institutional conflicts

If despite the above-mentioned measures provided for by the Constitution, a major conflict were to arise within or between institutions, then the constitutional Court which has as one of its main functions, the regulation of the proper functioning of the State's institutions and of the activity of public authorities, is the natural constitutional recourse.

This mechanism helps in the event of conflict between the two major powers through the Court's decisions which is a final decision that everybody has to abide by. This constitutes the ultimate instrument provided for by the Constitution to avoid the jamming of functioning and interaction between State's institutions and this has worked rather well so far. The constitutional Court thus intervened on several occasions in the conflicts:

- Between the various political groups within the Nation Assembly and between them and Civil society organizations on issues related to how to account for the different components of the society's organized groups while establishing a political or social body¹⁴ (like the Electoral commission, etc.).
- Between politicians on attempts by some MPs to prevent some candidate from running for election through the introduction of restrictive eligibility provisions in a new electoral code (especially for the 2006 presidential election).
- Between the Government (and the Head of the State) and other institutions on procedural issues, etc.

C. Other conflict resolution institutions

Beside the separation of powers and the Constitutional Court, there are other conflict arbitration institutions which also contribute to the relative

¹⁴ To the extent that we feel sometimes that the Court goes beyond its competences.

stability of Benin new democracy. These include, as far as State institutions are concerned:

- The National Ombudsman (Mediateur de la Republique),¹⁵ created in 2006.
- The High Authority of Audio-visual and the Communication (HAAC), which helps in the resolution of the conflicts between the media and the government, the media and the citizens and the media themselves.
- The Economic and Social Council (ESC), which contributes to the resolution of the conflicts between the State and certain social intermediate bodies (for example, trade unions, etc.).

D. *Some unanticipated factors*

Beyond *the above mentioned formal factors, some unanticipated others—in the sense that they were not directly provided for by the legislation—have also helped in maintaining political stability in Benin.* These unanticipated factors include:

- The Deontology and Ethics in Media Watch (Observation de la Deontologie et d’Ethique dans les Medias, ODEM), set up by Media professionals since 1999 in order to contribute to the overseeing of the enjoyment of the freedom of the press and media professionals’ possible mistakes. This instrument, a real peers’ court, gradually gained credibility at a point where, today, even members of the government prefer to complain in front of it instead of the normal judicial bodies.
- The positioning of the political actors during presidential elections. For all the four presidential elections organized to date in Benin, the large majority of the key political actors support one of the two leading candidates, either before the first round, or for the second one. This eventually, works as a conflict prevention mechanisms since it considerably reduces the credibility of

¹⁵ This institution has just been created and it is too soon to appraise its contribution to the conflict resolution in Benin.

contestations and of endless recourses before the Constitutional court on the ground that the election would have been rigged.

- The behavior of the political actors, who even when they are losers do not seek to resort to illegal means to hold on or to seize power. The last presidential election which knew the victory of a true political outsider over the old political class gave a perfect illustration of this. Instead of seeking the ways of sabotaging the process, the latter created a coalition to increase their capacity of negotiation with each one of the two candidates qualified for the second round, etc.¹⁶

2. *The limitations on Government's (president's) inclination to be autocrat*

The search for adequate balance between immobility and tendency to autocracy and personalization of the presidency is another major concern when one wants to set up and implement a presidential system in a country. Given the strong presidential system established in Benin, there is more risk of the tendency to autocracy than that of immobility. Several factors —both legal (provided for in the legislation) and unanticipated— have contributed to the reduction of the risk of personalization of the power and the tendency to autocracy of Beninese presidency.

A. *The Constitutional Court*

The constitutional Court, already shown as one of the most important conflict resolutions mechanisms, is also one of the first factors of protection against the tendency to autocracy of the presidency in Benin.

The constitutional Court, as Constitutional Judge, is indeed the natural recourse for all the other State institutions whenever the Executive —and most of the times in fact the President— seems to them to be overstepping their prerogatives. Since 1990, the constitutional Court had thus contributed in several occasions to the protection of the prerogatives of the other institutions as well as ordinary citizens human rights and li-

¹⁶ Especially since they had the statistics on their sides, with about 53% at the first round, and they could have created confusion (at least a psychological one) by gathering together in second round instead mostly all of them supporting the outsider.

berties against the President's (the Government's) attempts to encroach them.

Thus the Court, in several occasions, had to settle recourses sent by:

- The National Assembly to prevent the Government from regulating by decrees matters which are normally in the domain of the law or the reverse.
- The HAAC to prevent the President from exceeding the limits of his prerogatives in the regulation of the media.
- The judicial Power, via the Union of the magistrates which shows the Government, to prevent the President and the Government from encroaching on their prerogatives, etc.

B. The sacralization of Human fundamental rights and liberties

With the aim of avoiding abuses of power, the constitution has provided for mechanisms for the protection of citizens' fundamental rights and freedoms.

The first of these mechanisms is, once again, the constitutional Court before which the ordinary citizens are allowed to take recourses when they think their basic rights and freedoms to be threatened by government decisions. This mechanism is abundantly used by the citizens to the extent that their recourses represent more than 60% of all the cases brought before the Court.

Another mechanism, which intervenes only indirectly, against abuses of power by the Government (the president) is the recognition and the sacralization of citizens' fundamental freedoms —of thought, association and expression— by the Constitution.

The enjoyment of these fundamental freedoms has given rise to the blossoming of civil society organizations. Since then, these organizations contribute qualitatively to the functioning of Benin new democracy, especially with respect to the protection against the tendencies of other institutions and authorities to abuse their powers. This contribution was done through the gradual formation and development of the public opinion, the protection of the State institutions (systematic denunciation of any attempt of violation of the Constitution, abuses of power), etc.

The press constitutes also a significant mechanism which helps in the protection from possible tendencies to the abuse of power or autocracy from

the part of Beninese presidency. Indeed, it enjoys a quasi-unlimited freedom and since the liberalization of the media and of the frequencies, it gradually extends to cover the almost all the national territory through written press, radios (national as well as local and community ones), tvs, etc.

The media in Benin contributes a substantial share to the consolidation of Benin young democracy. This contribution is done through press campaigns, the taking of stands by press organs in favor of general interest issues (fight against corruption, etc) and in significant national debates (such as the revision of the Constitution, the holding and management of elections, etc.) as well as through the variety of programs which they offer for the formation of the public opinion (the “grogne”,¹⁷ interactive programs in French and in the most of dialects, the press reviews in dialects, the airing of information in most villages and all over the country through Community radios, etc.).

As we already mentioned above, the combined effect of the blossoming of the Medias organs and the efforts of the press professionals to reach all the social classes ended up contributing to the gradual creation of what could be called a national public opinion. It is rare today in Benin that a question of national interest —dismissal of high ranking public officials, revision of the constitution, political parties evolution, corruption and impunity, management of public affairs in general, etc.— is not the subject of public discussions on all the radios (in the form of debates, of interactive emissions, grognes in several dialects).

This phenomenon —of gradual formation of the public opinion— became so important that public actors, politicians and public officials, national and local authorities, seriously account for it. Indeed, very often the President of the Republic, especially the new one, ministers, high ranking officials in the Central Administration, local authorities find themselves obliged to come forward and give, through press conferences, explanations on issues that have agitated the opinion the last few days.

C. Influence of the electoral system

The electoral system (uninominal with two rounds for presidential election and list-proportional with an average national Magnitude bet-

¹⁷ Talk shows which give opportunity to citizens to air their concerns about everything, especially the way public businesses are being managed.

ween 3 and 4 for the legislative ones) also contributed, indirectly, in the prevention of the personalization of the power and the tendency to autocracy by Beninese presidency. The influence of the electoral system has, so far, observed through two (02) principal channels:

- The gradual improvement of the credibility of elections, especially the subtraction of the elections' management (through the creation of the electoral body, CENA)¹⁸ from the control of the incumbent government, also helps with the limitation of the ruling class. These factors have contributed to the non reelection of the first president of the democratic era, Mr. Nicéphore Solgo, who was blamed by almost all the political actors for his tendency to autocracy and dictatorship.
- The other channel materializes through the extreme fragmentation (one could even say atomization) of the parties' landscape and hence that of the National Assembly coupled with the notorious indiscipline of political parties. This situation makes difficult the realization and especially the maintenance of a parliamentary majority. As a proof of that, over the first 13 years of the democratic era (1991-2003), Benin Parliament had a majority in the opposition for about eight (08) years. This situation has necessarily had an impact in term of moderation of the tendency to the personalization of power and to autocracy that one should have expected given the strong presidential system chosen by Benin constituents. For example, between 1991 and 2003, the Executive was obliged to adopt the budget by decree in four occasions; the creation of the CENA which contributed to pave the way for the victory of the opposition to the incumbent president in 1996; the unreliability of the parliamentary majority; etc. One of the three reasons advanced by President Kérékou to justify his decision not to ask for the revision of the Constitution to hold on to power at the end of his second mandate was the unreliability of his parliamentary majority which, even though very large, about 75% of the deputies.

¹⁸ Commission électorale nationale autonome.

3. *Accountability*

Whereas the strong presidential system implemented in Benin does not allow for a credible *a priori* control of the actions of the government, the formal (constitutional) mechanisms provided for *interim* and *a posteriori* controls do not function adequately either. The few positive results which are currently observed as to the accountability of the Executive are rather due to accidental factors, not formally prescribed by the law.

Indeed, constitutional mechanisms —e.g. questions to the Government, inquiry and information commissions, vote of the Budget settlement laws,¹⁹ etc.— available for the Parliament to monitor, to oversee and possibly to influence how public affairs are being managed generally ineffective. The procedure for bringing these questions into play reduces their impacts which were already weak; it is not only the majority which can set up a parliamentary inquiry commission, but, what is more, the outcomes of the investigations give place, at best, to recommendations to the Government; the budget settlement laws, which must be initiated by the government, has no compulsory elements for the Government since here too, MPs are only allowed to make some recommendations to the Government, etc.

Beyond the above-mentioned weaknesses, ethnicity and its implication in politics constitute an additional obstacle for an adequate control of the government by the Parliament. Indeed, a minister, and even the President, is seen as a representative of his group (with which he is supposed to share what he can obtain from the public good) within the State powers. So, controlling his management, and if necessary sanctioning him, is rarely accepted by his group's members and mostly lead to electoral retaliation from their part. This constitutes a major deterrence for the deputy belonging to the same group as the minister or the President as well as for the one whose party would seek votes beyond its own group in the future, for example, for a presidential election.

The credible actions as regards accountability have mainly come from civil society organizations (CSO) combined with the political will of the President and/or cabinet members. Indeed, civil society organizations are currently at the forefront of the battle against corruption and public affairs mismanagement. The most significant actions from this point of

¹⁹ Loi de regelement.

view have been televised debates between ministers or high ranking public officials and members of CSO over suspicions aspects of the former management of ministries and/or public bodies. One can also mention the public presentation (on television) by a network of CSO of a list of former ministers on whose managements there were some suspicions right before the formation of the new President (elected in march 2006) first cabinet. It seems that this action has had some impact on the formation of the government.

On the whole, one can say that factors provided for in the legislation (mostly the Constitution) as well as unexpected elements have contributed to the stability and the reasonable balance between immobility and the tendency to autocracy and the personalization of the power observed with the strong presidential system implemented in Benin since 1990. However, much remains to be done as far as accountability, representation, relevant public policy formulation and implantations... are concerned.