

A Blueprint for Mental, Economic, and Legal Freedom in Benin: Re-Imagining a Legal System
Rooted in African Philosophy

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Comparative Law: Markets, Democracy, and Foreign Legal Traditions

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Introduction

Benin (formerly Danxome) is a West African nation situated between Nigeria and Togo. The total area of Benin is 112,622 sq. km (slightly smaller than the U.S. state of Pennsylvania). As of July 2017, the population was 11.4 million, with the Yorùbá and Fon ethnic groups constituting approximately half of the overall population. Two of its largest cities (by population) include the capital of Porto-Novo (*Hogbonu*) and the commercial center and seat of government, Cotonou (*Kutonou*). Although the nation is overwhelming Black/African in its makeup, the official language of the nation is French. This is not unusual considering that Benin, like much of the other 53 recognized African nations,¹ has been colonized by European and Middle Eastern populations at various points in its history. Pre-colonization, empires, villages, and confederacies spanned the African continent. Where historically appropriate, I will refer to Benin as Danxome, distinguishing between the government structures in operation prior to and after to the destruction of Danxome. It is important to note that while Benin is no longer officially called Danxome, the peoples who inhabit the nation-state as it exists today are the same as those that inhabited it during the reign of Danxome. These peoples include such Gbè-speaking² communities as the Fon, Aja, and Mahi, in addition to the Yorùbá (who also speak a Niger-Congo language).

This paper explores the dual legal systems operating in Benin – that of customary law and civil law (modeled on the French civil law system). Currently, many aspects of Benin’s economic and legal systems retain elements of French colonialism and prioritize foreigners³ over indigenes.

¹Colonialization of the continent stretches back to a time when African nation-states did not exist in the geo-political terms that we understand them to exist today. I divide colonialism (whether overt, institutionalized, and the physical occupation of territories or largely covert and physiological), specifically as it relates to the African context, into three periods: The first period is pre-1870 C.E. (includes the Maafa, or “trans-Atlantic slave trade,” and Arab slave trade, kwk[etc.]; the second period is 1870-1960; and the third period is 1960-present).

²Gbè languages constitute approximately 20 related languages stretching across the area between eastern Ghana and western Nigeria.

³Foreigners, in the context of this paper, is defined as all non-indigenous Blacks/Africans residing on or off the African continent.

The French civil law system is a foreign legal system that was imposed through force and violence.⁴ This system is inherently incompatible with and undermines native/indigenous customary law in Benin. In line with a principle of self-determination, I argue that it is necessary for Benin to modify its economic and legal systems in order to compete more effectively in regional and global markets and ultimately achieve autonomy from foreign powers. For example, I address the need for Benin to codify some of its customary laws and modify its existing Constitution and statutes to more align with indigenous African philosophical principles. One proposed seemingly cosmetic alteration to current government policy, specifically within the judicial branch, is that concerning the wearing of European, white and yellow wigs by members of the judiciary.⁵ This practice must be outlawed immediately. The wearing of these wigs adversely impacts the self-perceptions of many African peoples both sub-consciously and consciously, especially youth, who see their elders wearing these vestiges of second-wave colonialism.⁶

This paper centers on property and commercial law. I propose that Benin, and other African nations, implement protectionist policies that prioritize the growth of domestic industries through regional trade, restrictions on foreign direct investment (FDI), and other inward facing initiatives, much in the same way that Japan has done. One could argue that Japan's protectionist policies during its Edo (Tokugawa) period (1600 – 1868) contributed not only to a sense of national and ethnic pride among the citizenry, but also, primed the nation to become a global economic superpower. To that end, this paper briefly explores Japanese history during this period

⁴France increasingly implemented imperialist policies and engaged in outright genocide of African peoples in the late 19th century, in an effort to control the powerful Danxomean Empire.

⁵Many former European colonies, both on the African continent and outside of Africa, still wear these wigs. See Kevin Sieff's opinion piece in the *Washington Post*, "It's been 50 years since Britain left. Why are so many African judges still wearing wigs?" <http://wapo.st/2oBFsRL>

⁶See footnote 1

of limited foreign trade and inward focus on Japanese arts and culture, as well as legislation following the Edo period that affirmed Japan's commitment to domestic industries and self-reliance.

Part I explores indigenous African philosophy as expressed in Yorùbá, Fon, and Aja cultures. Here, I delve into African customary law, with an emphasis on family and property rights and obligations. This section also explores the history and government of the Danxomean Empire leading up to its dissolution and contact with the French in the latter 19th century. Part II explores the implementation of French legal standards in Benin (then a French territory). This section also discusses independence and post-independence, including the writing of the 1990 Constitution of Benin. Part III explores the post-independence legal structure and laws operating in Benin, with a focus on property and commercial law. Finally, Part IV explores Japanese history with respect to its protectionist policies and its administrative guidance with respect to commercial law. This section also proposes concrete changes to Benin's current legal structure, specifically its Constitution and commercial laws, such as its Uniform Acts⁷ and Land Property Act. Guiding documents in this paper include the aforementioned Constitution, Uniform Acts and Land Property Act, as well as the Banjul (African) Charter on Human and Peoples' Rights and the Revised Treaty of the Community of West African States (ECOWAS).⁸

⁷Benin is one of several nations that is part of the Organization for the Harmonization of Corporate Law in Africa (OHADA). OHADA's aim is to foster economic development in West and Central Africa.

⁸Article 3 of the Revised Treaty of ECOWAS states aims and objectives: "...harmonization and co-ordination of national policies and the promotion of integration programs and activities, particularly in food, agriculture, and natural resources, industry, transport and communications, energy, trade...human resources, science, technology...legal matters." ECOWAS aims to liberalize trade between Member States.

I. **Ijinle Ogbon: African Philosophy**

Self-Actualization as Fundamental to Well Being and Community Progress

Before addressing customary law in Benin, we should first discuss African philosophy, specifically the philosophies of the Yorùbá and Gbè speaking populations, who comprise the majority of the nation's population, and who are indigenous to the region making up what is now known as Benin and Nigeria. While there are thousands of African ethnic populations, there is a great deal of unification in terms of cultural beliefs and practices, worldviews, and so forth. Additionally, there is actual, shared blood kinship. Therefore, such inquiries as to the philosophy of the Yorùbá, Fon, and Aja peoples as expressed through axiology (values), ontology, cosmology, morals, cosmogony, art forms, social organizations and institutions, and language are important and appropriate. Yorùbá philosophy (*ijinle ogbon*) is highly complex and communitarian its approach. Humankind is governed by the Creator, divinities, and ancestors (both deified, natural, and the living and their actions and destinies).

As in other African societies, the Yorùbá philosophical system guides each person in the society. There is an affirmation of the humanity of both male and female. Additionally, the rights of members of the society extend to the unborn, the living, and the dead, representing the cyclical nature of existence among the Yorùbá and other African societies. There are five main guiding values among the Yorùbá: the (1) value of good health until old age; (2) value of financial security; (3) value of intimate companionship and love; (4) value of parenthood and having good children; and (5) value of secure self-actualization. These are the values belonging to all members of the society collectively (*ire gbogbo*).

For the purpose of this paper, self-actualization or self-determination (*nujipeto*) is the primary principle that I focus on. I advance the perspective that Benin, as with other African

nations, cannot experience true independence without implementing economic and legal policies that center on African self-determination, self-reliance, and prosperity. To that end, I advance some proposed goals in line with my blueprint for mental, economic and legal freedom:

- (1) The creation of sustainable infrastructure (not funded through aid programs) that utilizes a domestic workforce
- (2) The implementation of agroforestry programs
- (3) The implementation of state and regional training programs, which allow African youth to acquire and hone skills in industrial and construction trades as well as civil, chemical and computer engineering
- (4) Legislative review; grading systems for elected officials by the citizenry; election of leaders who pledge and adhere to (through government policies) an “Africa first”⁹ administration
- (5) The development of indigenous African cultural and spiritual schools, and multi-ethnic language schools
- (6) The promotion of cooperative economics and regional trade

Many of the ideals discussed in this paper have been advanced and implemented by such figures as Booker T. Washington, the late Thomas Sankara, the late Harriet Tubman, HRM Agelo Fawesagu Djísoví Agbòví I, the late Patrice Lumumba, the late Funmilayo Ransome-Kuti, the late Malcolm X, Mound Bayou and other “Black Wall Street” communities, those who

⁹I have proposed the following: “Africa first” describes systematic government policies that prioritize African peoples, such as the safeguarding of natural and mineral resources through trade policies; restrictions on foreign direct investment; the protection of biodiversity from desecration, especially by corporate entities (e.g., petroleum companies); government austerity, the development of local infrastructure and growth of a domestic workforce, kwk (etc).

spearheaded and carried out the Haitian Revolution, and countless other Africans, recognized and unsung. We are indebted to them for blazing the trail.

African Customary Law

Some Key Concepts

Yorùbá	Fon¹⁰
<i>Aṣa</i> – Custom or implicit law	<i>Su</i> – Custom or implicit law
<i>Oṣin</i> – Hard law	<i>Sen / Hèn</i> – Hard law
<i>Ìwà pẹ̀lẹ̀</i> – Gentle character (good character)	<i>Jijo dagbe</i> – Good character

African societies have customs that stretch back to the time immemorial. Yorùbá customary law is organic law that regulates the lives and transactions of the group. The Yorùbá had a complex, pre-colonial system of urban residence, economic production, and trade.¹¹ Yorùbá society deeply revolves around agriculture, as many Yorùbá are farmers, and therefore, deeply tied to their lands. Land equates to wealth, freedom, liberty, and spiritual heritage. An example of the symbiotic relationship between African peoples and land is evidenced in how deceased family members are typically buried on family property, such as in compounds.¹²

¹⁰See Ayinon Agelo Fawesagu Djísoví Agbòví I's *Gbèsu Wema Kulito The Book of Divine Ancestral Law Volume I*.

¹¹(Onakoya, 221)

¹²It is considered taboo and an affront to one's ancestor to bury them not only in a foreign land, but also, away from the family (in essence, away from the family land). There are often spiritual repercussions to the lineage for doing so.

Property Rights and Obligations

Examples of Rights and Obligations under Customary Land Law

Individual	Community or Family
Use and enjoyment of land	Alienation
Alienation <i>only</i> with the consent of other family members	Ownership
Obligation to care for and work the land	Obligation of dispute resolution

Under African customary law, property rights are community and family focused. Rulers and chiefs, while being able to exercise significant authority in other areas, do not have individual power to alienate lands at their disposal. The family, as a corporate unit, has the primary authority. Concepts like “owner” and “alienation,” which are commonly used legal terms as part of European common law and civil law traditions, do not easily translate over within African customary law. Part of this has to do with the fact that in African languages many African words and concepts do not have a one-to-one comparison when translated into non-African languages, especially the English language. As it relates to property, physical control is vested in the family. Individuals cannot alienate land without the consent of the family head and principal family members. Further, no individual can lay claim to any portion of land as its “owner”. In terms of alienation, unlike in property regimes where rights are individual centric, in an African customary law system, alienation is readily frowned upon. In the philosophy of African societies, such as the Yoruba, Fon, and Aja societies there is a belief that alienating family land is an insult to departed ancestors. (Onakoya, 2015).

The Structure of the Danxome Government¹³

In Danxome (established 1620 CE), the ruler of the *xotome* (monarchy) was known as *Axosú* (king). This title predates the creation of Danxome by at least 1,000 years. The word *axosú* is rooted in *axo* – that individual of greatest title of the *xotome*. *Axosú* is a male monarch. However, many of the pre-Danxome monarchies of the Aja culture had many Supreme *Axosi* – female monarchs. For instance, the monarchy of Xevie, which predates Danxome by 800 years, had 21 female rulers out of a total of 55. However, in Danxome, the *axosi* was the primary wife of the *axosú*. Yet, she still had her own entourage and wielded considerable influence and power in the *xotome*.

The *vidaxo* (crown prince) was the heir apparent but not necessarily an automatic shoe in as successor. The crown prince had to prove himself worthy of rulership. If the *vidaxo* was shown to be unworthy, then another sibling could be selected. By rule, in Aja culture, no *vidaxo* could be appointed to any position of power or real importance. This contributed to the stability of Aja monarchies before their corruption as a result of the tragedy of captivity.¹⁴ However, the *vidaxo* often did have his own personal entourage and influence in certain quarters of the monarchy. The *vidaxo* was usually the eldest son of the primary queen. However, prior to the formation of Danxome, this same office could have been held by the eldest girl.

The *axosú* was usually surrounded by many women of varying degrees of power and importance. One such regiment of women were the *mino* (our mothers) who have been mistakenly referred to as “Dahomean Amazons” by European writers. These were extremely powerful and mysterious women warriors; said to possess

¹³See the works of author and historian, HRM Ayinon Agelo Fawesagu Djísóví Agbòví

¹⁴Trans-Atlantic, or triangular, trade

special, mystical powers in spiritual and physical warfare. These same minor were a significant factor in defending Danxome against the original attempts of European takeover. Danxome, as well as other Aja monarchies before and contemporary to it, had a special class of “royal mothers”. In fact, uniquely, each male official had a “mother” counterpart. Every time they reported, their “mother” was present as a check. For instance, the two highest ranking officers, the *migan* (like a prime minister) and the *mewu* (second in command to the migan), were under the strict eyes of the female counterparts called the *gundeme* (for the migan) and the *yewe* (for the mewu). The *axosú* himself had a “counterpart” in the *kpojito* – a woman who was often the chief advisor to the king and in many ways in control of a lot of the political and spiritual apparatus of Danxome.

The Bonugan Structure

The *Bonugan* was the overall palace chieftaincy structure. *Gan* means chief.

The *migan* commanded the police, was a spokesperson for the people to the *axosú*, and was the highest judicial functionary, directly responsible for dealing with issues of the village heads. On the death of the *axosú*, the *migan* obtained administration of the realm.

The *mewu* was a spokesperson for the *axosú* to the people, as well as largely in charge of the “supervision” of the royal family. The *mewu* was also the supervisor of the tax system. The *tokpo* was the overseer of agriculture. The *tokpo* was especially important once the palm oil trade gained prominence in the 19th century. The *owutunun* were male eunuchs and bodyguards for the *axosú*. Of the *owutunun* were:

- *Ahwangan* – military chiefs

- **Ajaxo** – commander of the secret police and spies, and the one who watched over the royal “harem”
- **Binazon** – royal treasurer
- **Gawu** – commander in chief of the army
- **Ilari** – These are chiefs who commanded much respect and delivered messages from the king. The royal symbol for the axosú is called a *makpo*. This is a “scepter” that rests on his left shoulder. They were known by their hair being half shaved off.
- **Kangbode** – commander of the royal bodyguards
- **Tononun** – head eunuch and royal groomer who tasted all foods prepared for the axosú

Many of these offices were hereditary by right; being passed on to the oldest son upon the death of the title holder. The **akplogan** was chief of all spiritual matters and a spiritual advisor to the axosú. The **Dokpwegan** was the head of the **dokpwe**, or work force.

As it relates to the migan and mewu, the power of one was checked by the other. The ahwangan were checked by the powerful leader of the mino. The **togan** (village chiefs) would be like your modern-day governors. They reigned over specific areas. Village heads worked for the national interests of the monarchy. Togans were confirmed, upon the death of the previous one, when the son would bring the clothing of the deceased togan to the axosú. If the axosú approved of the new appointee, he gave them back to the son. It was his job to make sure people did not migrate to other areas. Thus, the togan was a diplomat, who had to take care of the people, so they would not want to go away. The togan maintained law and order in the provinces. He settled cases, disputes,

and punished criminals. The togan represented the interests of the people to the axosú. However, his decisions could be appealed to the axosú. He was spoken for by the *tonuhwe*, who spoke on all occasions on behalf of the togan.

II. French Colonialization

French Civil Law¹⁵

Danxome's relationship with France was far from amicable. In 1890 and 1894, in particular, France instigated the First and Second "Franco-Danxomean Wars," in which France made repeated efforts to subjugate and take over Danxomean lands and ports. In a particularly abhorrent action by the French (the murder of thousands of Africans in Danxome was and is extremely heinous), the warrior, King Gbèhanzin¹⁶ (who opposed the French takeover) was forcefully ousted and exiled to Martinique and then Algiers (where he remained for the remainder of his life).

Africans were not considered equal before the law. From 1887 to 1946, Africans in the French colonies were governed under the punitive *Indigenat*¹⁷ system. No consent was given by Africans to be governed under the French legal system. It was imposed forcefully. In 1946, France officially rejected much of the remaining elements of customary law and replaced it with the Civil

¹⁵The French Civil Code, or Napoleonic Code, was established in 1804, and has roots in 6th century Justinian revisions to Roman civil law. French Civil Law takes a natural law approach. The Code divided law into the following categories: (1) persons; (2) property; (3) acquisition of property; and (4) civil procedure (is a separate code). Characteristics of civil law include that it is non-adversarial (as compared to common law traditions), and judges play the role of fact-finders. Additionally, cases are adjudicated on a case-by-case basis and are non-binding on future cases. Under African customary law, witnesses and community members play a significant role in fact-finding. Additionally, spiritual leaders and oracles play important evidentiary roles.

¹⁶King Gbèhanzin was the eleventh ruler of Abome, 1890-1894.

¹⁷"Using the *Indigenat* implemented in Algeria as a model, the Third French Republic instituted it in sub-Saharan Africa, beginning with Senegal in 1887. It was then extended to the AOF as a whole in 1904. The *Indigenat* included several severe punishments, such as forced labor, a head tax, and expropriation. What was more, colonial functionaries had free reign to decide what did or did not constitute an infraction (for example, anything that constituted a peril to "public safety") and could assign punishments with complete discretion and without appeal." (Berinzon and Briggs, 343).

Code. Everyone under the French Union (Dahome was brought into the French Union in 1947)¹⁸ were then considered equal before the law under the new Constitution.

In 1894, following the second widely known war between Dahome and France, Dahome became a French protectorate, and by 1904, was incorporated as one of 12 colonies, called French Dahomey, under the umbrella label of French West Africa. (*l'Afrique occidentale française*, or AOF).¹⁹ In 1903, France made a decree that customs were prohibited from contradicting “principles of French civilization”:

Customary law was meant to resolve disputes between Africans by maintaining the already existing jurisdictions covering them. Over time, however, it evolved to a point where colonial administrators were positioned as the adjudicators of these disputes (despite their having no clear sense of what "African law" was). The only restriction as to which local customs could be applied was based on the decree of November 10, 1903, which prevented customs from contradicting the “principles of French civilization” (*principles de la civilisation française*). (Berinzon and Briggs, 342).

Essentially, the French applied a repugnancy test²⁰ to native law. Okereafoezeke (2002) describes levels of interaction with regard to native and foreign systems:

¹⁸The French Union became known as the French Community in 1958.

¹⁹AOF consisted of Benin, Burkina Faso, Guinea, Ivory Coast, Libya, Mali, Mauritania, Niger, Senegal, and Togo. (Berinzon and Briggs, 340).

²⁰A repugnancy test denies official enforcement of a tradition, custom, or native law that conflicts with an official law. See Okereafoezeke, 2002.

Levels of Interaction

Level	Characteristics
1	Least intrusive; cooperative interaction; sharing but each society preserves its native systems
2	Pluralistic interaction; native systems maintained but alternative systems developed and operated simultaneously; prone to create an anomic, or confused, population
3	Most intrusive; substitutive interaction; results in a society abandoning (internally or externally engineered) its native systems and replacing them with foreign alternatives

In 1958, rather than vote against France's constitution (a vote of no would mean independence and the removal of all "aid" from France)²¹ Dahomey (Danxome)²² voted yes to the Constitution and instead was given the status of "autonomous republic."²³ Dahomey (Danxome) was considered a self-governing republic, called *République du Dahomey*. In 1960, Dahomey (Danxome) became re-integrated into the French Community and purportedly gained sovereignty. Being a member of the French Community granted former colonies more autonomy but not true full independence. Guinea rejected France's proposal to join the French Community. In response to this, "all French aid was terminated and departing French officials took with them all of the French property they could carry – famously including the light bulbs in government buildings. (Berinzon and Briggs, 343)."

The Banjul Charter and the Formation of Benin's Constitution

In 1975, the republic name was changed to the Republic of Benin. In 1990, following the authoring and ratification of the Banjul Charter, adopted in Nairobi, Kenya, in 1981 by the former Organization of African Unity (now the African Union), the Republic of Benin authored its

²¹Danxome (Benin) is owed reparations from France for colonialism. However, Danxome should have rejected the offer to become just an autonomous republic.

²²This is an incorrect spelling by the French.

²³See Berinzon and Briggs, 343.

Constitution, in the spirit of the Charter's provisions. The Charter is centered on African self-determination. For example, the Preamble states that parties to the Charter are conscious of their "duty to achieve the total liberation of Africa...to eliminate colonialism, neo-colonialism, and apartheid." Beninese courts often rely on the Banjul Charter. As Okafor (2007) notes, "the African Charter enjoys constitutional status in Benin, and as a result is superior to any conflicting domestic statute." (237).²⁴

III. Post-Independence Government Structure

In post-independence Benin,²⁵ the sources of law include the Constitution, statutes, treaties, charters, and case law. Such charters and treaties, of which Benin is a signatory, include the Banjul (African) Charter (1981) and the Revised Treaty of the Economic Community of West African States (ECOWAS) (1993).

Rule of Law²⁶

As with virtually all nations in the world, there is some level of political corruption, which should be addressed. In terms of rule of law standards, Benin has a system in place that, when working efficiently, holds government officials accountable: the High Court and Constitutional

²⁴See the Madame Bagri (dismissed employee sued for wrongful dismissal, invoking the right to work provision in the Constitution and the guarantee of equal access to public service provision in the Banjul Charter) and Developmental Associations (the Benin Constitutional Court struck down a decree as unconstitutional in violation of the freedom of association provision in Art. 10 of the Banjul Charter) cases. (Okafor, 2007).

²⁵Post-1960

²⁶The World Justice Project regularly releases its Rule of Law Index, which measures countries' adherence to the rule of law. It relies on four internationally accepted principles of the Rule of Law: (1) accountability; (2) just laws; (3) open governments; and (4) access and impartial dispute resolution.

Court. Additionally, Benin’s Constitution, which is largely inspired by the Banjul Charter,²⁷ is progressive when compared to some other world constitutions.²⁸

Benin’s judicial branch consists of the Supreme Court, the Constitutional Court, the High Court²⁹ of Justice, the Court of Appeal, district courts, village courts, and *assize*³⁰ courts. The High Court is the only court among the aforementioned courts that can judge the President. Through the Constitutional Court, private citizens may challenge the government on constitutional matters. The legislative branch is called the Unicameral National Assembly. Members of the Assembly are directly elected by representational vote and serve four-year terms. The highest branch, the executive branch, consists of the President. The President³¹ is elected to five-year terms (not to exceed two terms) and has the authority to appoint the Prime Minister.

Land Rights

Some Contract Types

<i>Ahaya</i>	Customary loan type of agreement where landlord and tenant are typically close relatives
<i>Aikougbanwhihoue</i>	Customary borrowing type of agreement based on a landowner renting to a tenant of good moral character
<i>Deman</i>	An offer of land in exchange for a share cropping type of agreement between landowner and tenant

²⁷See the Preamble to Constitution of the Republic of Benin and Article 7, which states, “The rights and duties proclaimed and guaranteed by the African Charter on Human Peoples’ Rights...shall be an integral part of the present Constitution and of Beninese law.”

²⁸For example, the Constitution affirms that: (1) “the human person is sacred and inviolable” and citizens have “equal access to health, education, culture, information, vocational training, and employment.” (Art. 8); (2) “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.” (Art. 10); (3) “The state shall protect the family and particularly the mother and child. It shall take care of handicapped and aged persons.” (Art. 26); and (4) “The state shall recognize and guarantee the right to strike.” (Art. 30).

²⁹The High Court includes members of the Constitutional Court, Parliament and the president of the Supreme Court. The High Court cannot include the President of the nation as a member.

³⁰The word *assize* refers to the sittings or sessions (Old French *assises*) of the judges, known as “justices of assize”, who were judges who travelled across the seven circuits of England and Wales on commissions of “oyer and terminer”, setting up court and summoning juries at the various assize towns.

³¹Patrice Talon took office in 2016.

See Yemadje et al., 2014 for further discussion

In Benin, property laws consider customary and civil law. There is essentially a hybridized land system, where there are often tensions between individual and communitarian approaches to property rights and obligations. As expressed earlier, under customary land tenure, rights are usually vested in the family unit. In an English sense, the family is a corporate unit and the family head (usually the most senior male family member but can also be a senior woman in the family or a woman in the family of good character).³²

Land Registration

My issue is with an individual centric and investment approach to land rights, particularly in rural areas where custom still heavily thrives. I do not inherently have an issue with land registration. In fact, I encourage formalization (e.g., written agreements, the recording of deeds, etc.) for greater land protections for African individuals and families. I take issue with commercial development in rural areas, especially as by initiated and / or led by foreigners. One aim of the Millennium Challenge Account (MCA) land-titling program in Benin was to secure investment (not just personal but especially commercial) in land in rural areas. Of its objective, MCA-Benin stated:

to ensure fair access to land, guarantee security of investment in land, and efficient management of tenure conflicts, so as to contribute to poverty reduction, to the consolidation of social peace and harmony, and to the realisation of integrated sustainable development. (MCA-Benin 2010, p. 21) (Yemadje et al., 2014, 357).

³²African societies value good character. For example, there are Yoruba proverbs that relegate the moral and social status of a person of bad character to that of an animal. Animals are valued in the society, but an animal is not considered to share the same status as a human. In the property context, there is a borrowing type of agreement called *aikoughbanwhihoue*, where landowners rent land to select tenants who are of good character. (Yemadje et al., 2014).

Some advantages of legal hybridization in land systems in Benin are that national efforts, such as community land titling programs encourage community members to formalize land agreements and receive titles to land.

Some challenges to legal hybridization in land systems include (but are not limited to) the overloading of courts with land dispute cases and the issue of landless tenants (for example, those tenants who do not have written proof of tenancy due to custom). Some advantages to a customary system are that the system prevents native peoples from becoming tenants to outsiders on their own ancestral lands and prevents absentee landlords and exorbitant rent rates for farmers.

Benin's Economy

Currently, Benin's key export commodity is cotton. Along with cotton, other key agriproducts include yams, beans, corn, palm oil, and cassava. Key industries include the food processing, textile, and construction materials (especially cement) industries. In 2017, the nation's gross domestic product (GDP) was an estimated \$25.29 billion. (CIA Factbook, 2018). Like other African nations, Benin has commodities that can benefit not only the nation, but also, regional trading partners. In exploring key commodities in neighboring nation-states, we see the following:

- Nigeria – key export commodities are petroleum and petroleum-based products, cocoa, and rubber; main export partner is India (34%)
- Togo – key export commodities are cotton, phosphates, coffee, and cocoa; main export partners are Benin (17.5%), Burkina Faso (15.9%), and India (7.6%)
- Burkina Faso – key export commodities are cotton, gold, and livestock; main export partner is Switzerland (65.7%)

With the exception of Togo, none of the aforementioned neighboring nations have a fellow African nation as its main export partner. Imagine the fruition of growth and self-reliance if African nations were to trade more amongst themselves.

In terms of aid, Benin receives aid from its “former” colonizer, France.³³ One could argue that aid to former colonies is fair compensation from colonial powers, and should, instead be re-characterized as repatriations. The issue of how to define aid in a colonizer-colonized context is a separate and layered conversation. Repatriations *is* an important issue and former colonies should be compensated. However, what I am asserting in this paper is that aid programs cripple African nations by locking them into long-term debt and allow unscrupulous government officials to siphon these monies into hidden or off-shore accounts, thereby filling their personal coffers to the detriment of the citizenry. I take a Sankara approach³⁴ to foreign aid. Benin also receives aid from China. However, the China approach to aid to African nations is touted as not aid in the traditional sense, but rather an infrastructure centric approach.³⁵ Specifically, China provides several African nations, such as Angola, Kenya, Nigeria, and Benin with construction loans for infrastructure

³³France is the “third-largest bilateral provider of official development assistance (ODA) to Benin after Germany and the Netherlands.” See <https://www.diplomatie.gouv.fr/en/country-files/benin/france-and-benin/>

³⁴The late Thomas Sankara (1949-1987) was the president of Burkina Faso from 1983-1987. Sankara rejected foreign aid from France to Burkina Faso and called for other African nations to follow suit in rejecting foreign aid. Prior to his assassination, the Sankara administration implemented several successful initiatives, such as: (1) housing and infrastructure projects (e.g., the development of brick factories and a rail system that connected all regions of the country); (2) irrigation programs; and (3) fertilization programs, including the planting of one million trees and the creation of thousands of village nurseries. In addition to outlawing female genital mutilation (FGM) and appointing women to high ranking government positions, Sankara instituted a government austerity program. During Sankara’s tenure, Burkina Faso attained food self-sufficiency, in large part due to the fertilization and irrigation programs implemented.

³⁵For the last several decades, particularly in the late 1950s / early 1960s (when African nations were gaining independence from European nations), China has made efforts to position itself as a partner to the African continent. To achieve this, China provided military assistance to African liberation movements and openly gave (and continues to give) vocal and written support to African politicians, among other actions. Additionally, China has provided funding to preserve heritage sites on the continent and financed the building of cultural sites. In Kutonu, Benin, there exists the China Cultural Center which promotes Chinese culture and history. I searched at length but was unable to find any Benin cultural center in China, in any of its provinces. See the David Pillings piece in the *Financial Times*, “Chinese investment in Africa: Beijing’s testing ground” for perspectives on China’s relationship with the African continent. <http://on.ft.com/2slqLon>

projects on the continent.³⁶ These construction loans come with terms that will not benefit African nations in the long run. For example, China's construction loans often mean that African nations must use their natural resources as collateral to secure the loans and that the percentage of non-African firms that supply workers must be from approximately 70% Chinese owned firms and 30% African owned firms.³⁷

IV. Recommendations and Conclusion

Japan's Protectionist Policies and Administrative Guidance

Japan's Tokugawa period (1600 – 1868) was characterized by a strict sense of social order under the shogunate,³⁸ internal peace, the cultivation of indigenous arts and culture, and economic growth, especially as a result of rice cultivation.

In response to foreign competition on Japanese soil from America's Big Three (Ford, General Motors, and Chrysler, known in Japan as Kyoritsu Motors), who were operating plants in Japan since 1925 and out producing Japan, the nation implemented the Automobile Manufacturing Industries Act of 1936.³⁹ The Act forced the Big Three to halt production, and in 1939, due to mounting pressures, discontinue production and withdraw from Japan. Since the 1960s, Japan has

³⁶See Kenya's Nairobi-Mombasa railway line. The line was "\$3.8 billion, 298-mile stretch of railway is the work of the China Road and Bridge Corporation, a state-owned enterprise that build on Beijing's behalf in Africa. The Chinese began building the line in December 2014 and completed the first section, the Nairobi-Mombasa line, 18 months early. The line...follows closely after a \$4.2 billion, 470-mile railway linking the Ethiopian capital Addis Ababa with Djibouti, a port country on the Red Sea." See the Conor Gaffey's piece in *Newsweek*, "Kenya just opened a \$4 billion Chinese-built railway, its largest infrastructure project in 50 years." <http://bit.ly/2rkQyug>

³⁷See Kiala, 2010.

³⁸In 1600, shogun Tokugawa Ieyasu seized power and established a government at Edo (present day Tokyo). The last shogun of the period was Tokugawa Yoshinobu. In 1567, Ieyasu took on the name Tokugawa, reviving an ancestral place name.

³⁹Post-Edo period, Japan instituted commercial laws that restricted or outright banned foreign manufacturing plants from operating on Japanese soil, limited foreign direct investment to under 50-percent (see the Broadcast Act), prohibited inward direct investment by a foreign investor if it had an adverse effect on the "smooth management of the Japanese economy" (see Article 27 of the Foreign Exchange and Foreign Trade Act of 1949), granted subsidies to Japanese firms (see the Military Vehicle Subsidy Act), and so forth.

been among the top-three countries that manufacturer automobiles, with such popular brands as Toyota, Honda, Subaru, Nissan and Mazda.

The Need to Amend Benin's Constitution

Currently, Article 1 of Benin's Constitution states that the official language "shall be French." The Beninese government should (in line with the Banjul Charter) amend the Constitution to formally recognize Yorùbá and Gbè languages and identify them as official languages. Although Article 11 of the Constitution states that "all communities comprising the Beninese nation shall enjoy the freedom to use their spoken and written languages," the government needs to make a more explicit stance that African languages are valued and remove the former colonizer's language as the official language. It is disrespectful to African peoples given the history of Benin's / Danxome's relationship with the French. This move would also be in line with the Revised Treaty of the Community of West African States (ECOWAS), of which Benin is a Member State. Regarding official and working languages, Article 87 of the Treaty states:

The official languages of the Community shall be all West African languages so designated by the Authority as well as English, French, and Portuguese...The working languages of the Community shall be English, French, and Portuguese.

For reasons expressed in this paper and based on history as documented by a multitude of African and non-African sources, African nations should expediently remove from this treaty and their Constitutions, English, French, Portuguese (colonial languages) and other non-African languages as official languages. My proposed change to Article 87(1) is that it read: "The official languages of the Community shall be all West African languages."

Article 5(2) of the Treaty states:

Each Member State shall in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this treaty.

It is therefore appropriate for Benin to amend the Constitution to say the official language “shall be Yorùbá and Fon.” A large segment of the Beninese population speaks or reads (and is ethnically) Yorùbá and / or Fon. De-prioritizing colonial languages is in line with indigenous African philosophy, which values self-determination as necessary to the complete wellness of the person and community. Further, listed working languages must include West African languages. The regional and global markets currently advantage those who have fluency in such colonial languages as French.⁴⁰ A significant portion of Beninese speak French as one of their primary languages due to the intense process of forced immersion into French culture.

Other suggested revisions to the Constitution include:

- The inclusion of “every family” to the right of property in Article 22, as family and property are intimately connected under customary land rights
- The removal of the German word, *putsch*,⁴¹ from Article 66 of the Constitution – There is no reasonable purpose to using the German rendition of this concept. A Yorùbá or Gbè word could be used instead to describe this concept.

Uniform Acts and Land Property Acts

In general, there are several measures that the Beninese government can take to codify self-determinative African principles into its commercial laws:

⁴⁰For example, a significant number of speakers from West and Central African nations speak, write and conduct business in French due to colonialization. Further, legal documents in many of these countries, case in point Benin, are authored in French. Therefore, the present demands some level of comprehension in French in order to navigate the legal and economic systems.

⁴¹A violent attempt to overthrow a government

- Make it such that firms must be majority African owned, putting some regulations on foreigners looking to immerse themselves in the Beninese economy;
- Place restrictions on foreign real estate firms as to the amounts of land (and place restrictions on the number of foreign firms that can operate in the country) they can lease; make it such that these businesses can only lease land in the country, for a period of time; and
- Encourage written contracts and securing of written titles to land for African peoples, especially in the rural parts of Benin

Relevant to this discussion are OHADA's Uniform Act on General Commercial Law and its Uniform Act on Commercial Companies and Economic Interest Groupings. Neither of these Acts place any restriction on the shareholder percentage for foreign investors. No other relevant foreign guidelines appear to be in place, such as regarding management roles by foreign employees. Additionally, the 2013 Land Property Act does not place any restrictions on foreigners. In terms of trade policies, regionally, Benin is a member of the Economic Community of West African States (ECOWAS), the West African Economic and Monetary Union (WAEMU) and the Community of Sahel-Saharan States (CEN-SAD). Benin is also a member of the World Trade Organization (WTO). To facilitate more inward facing trade-related policies, Benin will need to reconsider its level of commitment to the WTO, especially considering the WTO's Most-Favoured-Nation (MFN)⁴² obligation:

Pursuant to the WTO agreements countries cannot normally discriminate between their trading partners. If a Member grants to a country a special favour (such as a lower customs

⁴²See Article 2 of the General Agreement on Trade in Services (GATS) and Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

duty on one of its products) it must grant the favour immediately and unconditionally to all WTO members.

There are some exceptions, under strict conditions, that allow nations to discriminate in trade, such as allowing a country to set up a free trade agreement that applies only to goods traded within the group – discriminating against goods from outside.

Conclusion

Benin (and other African nations) should adopt a *kaikin*⁴³ (borrowed from the Chinese *haijin*) like approach to trade similar to what Japan used, especially during its Tokugawa period (1600 – 1868), whereby Japan restricted its trade with and influence from non-Japanese sources, such as the Chinese and the Dutch. Instead, Japan was inward focused; growing its own economies, cultural institutions and so forth. Benin can instead engage in regional or intra-Africa trade through its membership in ECOWAS, for example. Benin should put a cap on foreign direct investment and refuse to receive aid from foreign nations, in the same way that Burkina Faso did under the late Thomas Sankara. Instead, Benin must strengthen its relationships with other African nations.

⁴³Government restrictions on maritime travel and trade. See Arano Yasunori, *Kinsei Nihon to Higashi Ajia* (Early Modern Japan and East Asia), and other works by Yasunori.

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