

CRIMINAL JUSTICE SYSTEMS IN FRANCOPHONE AFRICAN COUNTRIES

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"The **criminal justice system** is the term used to explain and understand all of the agencies whose goal is to control crime.

- Law enforcement (police)
- Adjudication (courts)
- Correction (prison)

So, it's more than just criminal law: we have to look at the law, but also at procedures, organizations and policies.

Now, why look at Francophone African countries as a group?

The legal systems of 18 sub-Saharan African countries are derived from the Roman law or civil law system that was introduced into former French and Belgian territories (as opposed to common law, which was introduced by the British).

- The states with French legal heritage include:
 - o the former French West Africa: Benin, Guinea, Cote d'Ivoire, Mali, Mauritania, Niger, Senegal and Burkina Faso;
 - o the former French Equatorial Africa: CAR, Chad, Republic of Congo, Gabon; Madagascar
 - o the former League of Nations mandates: Togo and Cameroon (although Cameroon is of course a special case)
- The states with Belgian tradition:
 - o DRC
 - o Rwanda
 - o Burundi

We'll be looking at the agencies dealing with the offenders, from the investigation to the punishment, but first we need to understand the historical background which in turn helps us understand the dynamics at work in those countries.

So, in introduction, I will quickly look at what happened at independence.

When the Sub-Saharan countries gained full independence, their new constitutions stated that legislation in force would continue to apply until repealed or replaced.

Subsequent trends were towards:

- recodification
- Nationalization (or Africanisation)
- Simplification of the criminal law and criminal procedures received from France and Belgium.

New penal codes were adopted in most Francophone African countries in the 60s. (Niger, Mali : 1961, Madagascar: 62, Gabon, Senegal and Guinea: 65)

Codification or recodification served several purposes:

- permitted the continuation of the legal system received from France and Belgium;
- it facilitated the elimination of customary law;
- It was necessary to nationalize or Africanize the codes. African societies were given much consideration, although customary criminal law was practically abolished.

Overall, the aggravation of penalties appeared to be the main trend, in order to achieve national unity, and social and economic development.

In my presentation, I will try to see how these various trends were translated into each of the agencies of these criminal justice systems (and how they differ from the French model, or are similar in some cases).

- Law enforcement
- Criminal courts and procedures
- What happens after conviction: punishment.

I. The Police

The Police are usually the first contact an offender has with the criminal justice system.

In France and Francophone African countries, the judicial police investigate and make the arrest under the direction of the Prosecutor (Procureur de la République).

In that sense, the police are accountable to the law rather than to the government, or at least should be in a democracy.

What are the functions of the police?

The Police perform two major functions:

- Deviance control: is a very conservative function, which refers to the police mission to reinforce community values and laws.
- Civil Order control: differs from deviance control in that there often is a strong political component to the activities being controlled: actions that disturb the civil order may be extremely threatening to a government.

So, when looking at the police, the first question to ask is: What arrangements are in place for dealing with the two major police functions?

We will see that although Francophone African countries usually organized the police following the French model, actual structures reflect specific historical developments.

So, how is the police organized in France?

The organization of the French police is unusual, with both military and civilian bureaucracies.

There are two French police organizations, both with conventional deviance control and civil order control responsibilities. But they work in different places:

- The Police Nationale, which operates within the Ministry of Interior, is responsible for urban areas.
- The Gendarmerie Nationale, which operates (or used to operate) within the Ministry of Defense, is responsible for small towns and rural areas.

In France, recent legislation has allowed local government to hire their own police officials and officers, with the idea of local self-management. It is also the case in some Francophone African countries (such as Senegal and the CAR).

The GN has two main divisions:

- The Gendarmerie Departementale: perform all basic police tasks
- The Gendarmerie Mobile: assigned to civil disorder

The PN also has specialized forces that perform civil order control: The Garde Républicaine.

It is important to note that civil order control is an essential component of French policing, because of a very bumpy political history.

It is also essential in most African countries because of troubled political histories.

Overall, in the French system, specialized units tend to be militaristic in nature and not as accountable as it should be in a democracy.

B. Concrete examples show that the actual structures reflect specific national histories

a. The Republic of the Congo

- After the 1970 and 1973 coup d'Etat: the official police has been integrated into the Army.
- Militia created in 1965 to defend the so-called Revolution and also integrated into the army.
- So, the principle of control of the judiciary police by the Prosecutor (Procureur de la Republique) was not respected anymore.

- Then : after 1983 : there was not even an official control of the judicial police by the prosecutor, but directly by the administration.

b. The DRC

Independence: three distinct police forces:

- Gendarmerie
- Local police
- Traditional chief's police

More or less based on the French model but reshuffled, reorganized and purged all the time by Mobutu and Kabila.

So today, the police do not really look like the French model anymore and is still in a reorganization process.

c. The CAR

Good example of the problems encountered by the police in some Francophone African countries, not to say in most African countries.

- Problems of personnel:
 - o Insufficient numbers (only 1800 men in the GN, and 1400 in the PN). Almost all based in the capital city of Bangui.
 - o Among these men, there is no cohesion, no discipline, and therefore no capacity
- Big Human resources issues:
 - o Bad recruiting procedures
 - o Bad training
 - o No planning
- Lack of financial resources and infrastructures

II. Criminal Procedures and Courts

A. **Judicial Organization**

Except for a few details, most judicial systems in Francophone African countries are similar.

They all adopted the French model, which has 3 important features, as far as criminal procedure is concerned.

- The division of criminal offenses into 3 categories, which affect the kind of investigation and the level of involvement by police and the courts

- o Minor crimes (contraventions) and misdemeanors (delits) are handled by police investigators and prosecuting attorneys. Minor crimes usually carry a correctional penalty (such as a maximum of 10 years in prison and a fine).
- o Felonies (crimes) are handled through the extensive process of pretrial investigation (instruction) that characterizes Civil law systems. Major crimes are generally punishable by death or prison for more than 10 years.
- The double degree of jurisdiction : which means that if the accused is convicted in the French system, he or she has the right to appeal in a higher court.
- The last feature has to do with the distinction between civil law and criminal law.
 - They often overlap because the same facts may give rise to both criminal sanctions and liability. The offender is held responsible to society and sentenced under the criminal law, and at the same time held responsible to the individual victim.
 - The legal systems derived from the common law make a rather clear distinction between civil and criminal procedures. They separate the two regimes, and provide for different rules of evidence and procedure before criminal and civil courts.
 - For example, an English criminal court may force a defendant to pay a fine as punishment for his crime. But the victim of the crime pursues his claim for compensation in a civil, not a criminal, action.
 - In France and in most Francophone African countries, the victim of a crime may be awarded damages by a criminal court judge.
 - Individuals are allowed to intervene in criminal proceedings. Usually, it is the Prosecutor who brings up the case, but individuals can actually start it up (it's called 'constitution de partie civile')

a. Trial Courts : 1st degree

There are three levels of trial courts that hear cases according to the seriousness of the crimes involved.

- At the bottom: Minor courts (tribunaux d'instance)
 - o Tribunaux de police: minor misdemeanors and violations
 - o Tribunaux correctionnels: serious misdemeanors

They have different names in the various countries, but they basically serve the same function (Ex: justices de paix à compétence étendue, tribunaux populaires de district ou d'arrondissement, tribunaux régionaux).

- Assize courts (Cour d'Assise): major felony cases

b. Appeal Courts: 2nd degree

As I have already mentioned: If the accused is convicted in the French system, he or she has the right to appeal in the courts of appeal or in the Cour d'Assise (in the case of a felony). he appeal may consider both questions of law and questions of fact.

c. Cour de cassation

It is the highest court of appeal in both civil and criminal cases. However, it's not a third degree of jurisdiction because the Cour de Cassation does not review the facts of criminal cases. It only considers issues of law and can only overturn the judgement.

In most Francophone African countries however, there is no Cour de Cassation per se. The control of legality is handled by a Cour Supreme (also called Cour d'Etat in Niger).

These courts are more than just Cour de Cassation. They regroup the powers of the Cour de Cassation, the conseil constitutionnel (which controls the legality of the new laws before they are put into effect), the conseil d'Etat (which is the equivalent of the Cour de Cassation for conflicts with the administration), d'une cour des comptes (which oversees the states' use of public funds).

Some countries are now trying to reform this and to create more democratic institutions, with less power, following the French model.

- In Senegal, the Supreme Court has been suppressed in 92, with the creation of a Cour de Cassation and a Conseil d'Etat. However, the Cour Supreme was reestablished in 2008.

d. Hautes Cours de Justice

It is a Court for judging the President and the members of government, for high treason or crimes which have been committed while exercising their functions. Their decisions are final.

B. Criminal procedure

Francophone African countries have adopted the French Inquisitorial procedure which refers to the extensive pretrial investigation and interrogations that are designed to ensure that no innocent person is brought to trial.

The procedure includes several steps:

- Garde à vue: after a crime has been committed, a suspect can be brought in for questioning:
 - France: the suspect can be held for up to 24
 - Mali: 48 hours
 - It really depends on the countries
- The judicial police, the prosecutor and the juge d'instruction proceed with the investigation. The juge d'instruction is the person responsible for a complete investigation of the facts.

- The pretrial investigation in France involves the calling of witnesses on both sides, gatherings of facts and testimony, and careful questioning of the accused prior to a final decision to bring the case to trial. T
- This pretrial investigation is conducted in secret by the juge d'instruction, with the help of police investigators and the procurator.
- The potential for abuse is obvious because the proceedings are long and secret pretrial proceedings is obvious. In effect, the accused may spend long periods of time in detention while these proceedings are going on.
- Ajouter. Juge d'instruction controversé. Pouvoirs du juge trop importants.

III. After conviction: punishment

A. Penal policies

At independence, the ambition was to build a modern and efficient legal system, promoting national unity and development (both social and economic).

So, although France was the model, penal policies had to be adapted to these specific objectives.

Overall, aggravation of sanctions was the major trend.

a. Promoting national unity and development

The new codes protect the authority of the state, and fully define subversion.

Conspiracies are really strictly punished in most Francophone African states.

- Niger and Sénégal: punished by servitude for life
- Burkina Faso, CAR and Mali : punished by the death penalty

Also, because of the fear of tribal and ethnic opposition, local customs are severely repressed.

- Scarifications and traditional tattoos on the head and the neck are forbidden in Ivory Coast and the Republic of the Congo

The repression of local customs was also seen as a way to achieve social development

As far as economic development is concerned, an important feature of African penal codes is the repression of activities that may endanger the fiscal stability of the nation. These offenses include:

- propaganda against the collection of taxes;
- Individual or organized refusal to pay taxes;
- Propaganda that may damage the credit of the state.

b. The aggravation of sanctions

It has been done in 3 different ways:

- By raising the judges' power to apply harsh sanctions
 - Increasing the sanctions
 - Inventing new Crimes (especially those that I have just mentioned concerning national unity and national development)
- Limiting the judge's moderating power (both in the pretrial and in the trial phase):
 - In the pretrial phase : mostly by making pretrial detention mandatory in some cases
 - In the trial phase: in most Francophone African countries, the law limits the application of suspended sentence and attenuating circumstances.
- Simplifying the rules of procedure

B. Prisons

Two features specific to the French system:

- The proportion of pretrial detainees (due to the inquisitorial procedure which I have already discussed).
- The corrections judge (juge d'application des peines) which I will tackle here.

The juges d'application des peines was created in 1958. They are appointed by the government to perform two functions:

- determining the actual length of time that a particular prisoner remains in prison or released on parole.
- overseeing prison conditions and prison procedures. They have the responsibility of visiting the prisons at least once a month, hearing individual complaints.

Following the creation of the correction judges in France, loads of Francophone African countries have done the same. But they are not really efficient because they lack both human and financial resources.

That's why countries such as Senegal and Mali have decided not to have correction judges.

The problem in both cases is that the implementation of the sanctions depends on the prison administration. There is no judiciary control.

b. Problems and limits in prisons administration

Problems include:

- Overcrowding
- Lack of proper sanitation
- Bad food
- Juveniles being incarcerated with adults

On these issues, see the ISS report on Benin.

But some countries are working on these issues.

Mali for instance recently started a process of renovation of its prisons system.

- In 1999, the Kidal prison, which was a symbol of barbaric detention conditions, was closed.
- In 2001, a new law was adopted to internalize human rights international conventions.

There is a will from African governments to tackle these issues.

CONCLUSION

To conclude briefly, I would like to point out that, if at independence all Francophone African countries adopted the French criminal justice system as a whole, overtime, there was a trend in all these countries to adapt to local societies, local political conditions, and local resources.

Unfortunately, it has been done most of the time with no overall penal policy.

So, the main challenge today is probably to make these systems coherent and functional, so they really are systems, and not just different agencies dealing with crimes.