

# Human Rights Violations in Benin

ALTERNATIVE REPORT TO THE UNITED NATIONS  
COMMITTEE AGAINST TORTURE

INCLUDING THE COMMITTEE'S CONCLUDING OBSERVATIONS

82<sup>nd</sup> session

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# Human Rights Violations in Benin

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The World Organisation Against Torture (OMCT) coordinates the activities of the SOS-Torture Network, which is the world's largest coalition of non-governmental organisations fighting against torture and ill-treatment, arbitrary detention, extrajudicial executions, forced disappearances, and other serious human rights violations. OMCT's growing global network currently includes 282 local, national, and regional organisations in 92 countries spanning all regions of the world. An important aspect of OMCT's mandate is to respond to the advocacy and capacity-building needs of its network members, including the need to strengthen the participation of the non-governmental organisations in the work of the United Nations Treaty Bodies and to advocate for full implementation of human rights treaties. OMCT also ensures that children's and women's rights are fully integrated in the work of these bodies.

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## Foreword

Writing alternative reports is one of the primary activities of the World Organisation Against Torture (OMCT) and a vital source of information for the United Nations Treaty Bodies including the Human Rights Committee (HRC).

These alternative reports are a valuable source of information for the independent experts who analyse the implementation of the United Nations human rights instruments. With these reports, it is possible to see the situation as objectively as possible and to take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment or punishment.

With the support of the European Union and the Swiss Confederation, OMCT's United Nations Treaty Bodies Programme together with the Children's Rights and Violence against Women Programmes presented this report on human rights violations in Benin at the occasion of the 82nd session (18 October – 5 November 2004) of the Human Rights Committee during which the initial Beninese Report was reviewed.

This report was jointly prepared by three national human rights non governmental organisations (NGOs) in collaboration with OMCT, namely

- Association des Femmes Juristes du Bénin (AFJB)
- Enfants Solidaires d'Afrique et du Monde (ESAM)
- Human Rights Task Group (HRTG)

Representatives from these NGOs attended the HRC session, briefed the members of the Committee on the human rights situation in Benin and presented the alternative report.

The present publication constitutes a primary tool to lobby on the national and international levels. The List of issues and the Concluding Observations of the Committee have been added to the end of this document.



## **Presentation of the NGOs that have taken part in the preparation and presentation of the alternative report**

### **“ASSOCIATION DES FEMMES JURISTES DU BÉNIN” (AFJB)**

AFJB was created on 20 January 1990. Right from its foundation, the women legal experts were aware that a great majority of Benin population in general, and women in particular, ignored their rights and duties, and that ancestral customs were often the cause of degrading treatment of human beings, particularly of women. The violations of human rights that emanated from these customs led the Association to strive for the publication of written laws, namely those related to human rights and freedoms, and for the promotion of the rights and the duties of citizens, with a particular emphasis on the rights of women and children. The objectives of the Association as described in its statute are as follows:

- to base its activities on the principles enshrined in the United Nations Charter, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child;
- to spread awareness of human rights norms and standards among its members and among the general population in rural and urban areas,
- to promote legal awareness among women and to make laws accessible to a greatest number of women (through various means including awareness raising training and promotion of laws);
- to defend human rights, particularly the rights of women and children;
- to denounce any violation of rights of children and women;
- to endeavour to render all jobs and functions accessible to women without any discrimination.

### **“ENFANTS SOLIDAIRES D’AFRIQUE ET DU MONDE” (ESAM)**

ESAM is an NGO working in Benin. Its aim is to promote the development of children through supporting their survival, their health and education. The organisation combats child labour, ill-treatment and trafficking of children. It also organises training programs for NGOs on children’s and women’s rights, health, education and nutrition.

**“HUMAN RIGHTS TASK GROUP” (HRTG)**

The Human Rights Task Group is a militant association for the protection of human rights. It strives to ensure active protection of human rights, hence its interest in education of non-violence as an awareness raising strategy. HRTG is also engaged in the promoting law in rural areas and the training of law enforcement officials in grass-roots communities, namely judicial officers in order to ensure their respect for human rights.



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## **INTRODUCTION**



## 1. General historical and political situation

The political history of Benin can be divided into four periods:

### **Pre-1960**

The French colony of Dahomey was created in 1894 when the former Kingdom of Abomey joined the northern and southern regions of Allada, Porto-Novo, Houeda and Savi which were already under occupation. The colony was placed under the administration of the Governor of Porto-Novo and tied to the Government of Western French Africa, whose General Governor was based in Dakar. Twenty-four governors ruled Dahomey until it gained independence in 1960.

### **From 1960 to 1972**

Dahomey became independent in 1960. From that moment on, the country faced many difficulties in exercising its national sovereignty. Numerous governments ruled the country which experienced a number of coups d'état. In the course of twelve years the country had ten presidents.

### **From 1972 to 1990**

The country opened a new era of its political life after the coup d'état of 26 October 1972.

From 1972 to 1990, Benin experienced a Marxist regime characterised by the establishment of a one party system - the party of the Popular Revolution of Benin. The union of participation in democratic centralism, Marxism-Leninism was the main political philosophy, along with nationalisation of vital sectors of economy.

On 30 November 1975 the Republic of Dahomey became the People's Republic of Benin.

Since 1986, the country has faced a lengthy economic crisis. It reached its highest level in 1989 when financial difficulties rendered the state unable to meet expenses related to public services. The bankruptcy of financial institu-

tions and the salary arrears contributed to the country-wide spread of strike actions. In 1990, all administration was paralysed until the national conference, the Conference of “Forces vives” of the Nation, was convened.

### **From 1990 to present**

Following the national conference of February 1990 and a citizen’s debate in the Reconciliation Forum, the People’s Republic of Benin became the Republic of Benin. The Conference of the “forces vives” chose democracy and integral multi-partism that were subsequently enshrined in the Constitution of December 1990. A transitional government led the country to the democratic presidential election of March 1991.

Since then, elections have taken place every five years to elect the President of the Republic and every four years to elect the members of the National Assembly. Presidential and legislative elections, that take place without major irregularities, are signs that the democratic process is progressively becoming entrenched.

## Major steps to the return of democracy

December 1989	Marxism-Leninism was abandoned and the one party system no longer ruled the state
February 1990	Conference of the “forces vives” of the nation
March 1990	A High Council of the Republic succeeded the National Conference and played the role of a legislative assembly
August 1990	Independence Day was reinstated back to August 1. The tricolour flag replaced the flag with a red star
December 1990	Adoption of a new Constitution
February 1991	Legislative elections
March 1991	Presidential election, Nicephore Soglo becomes President
June 1993	Establishment of the Constitutional Court
April 1996	Mathieu Kerekou is elected President
March 1999	Legislative election: the party “La Renaissance du Benin (RB)” leads with 27 deputies out of 87
1999	Establishment of the High Court of Justice
March 2001	Presidential election, re-election of Mathieu Kerekou
December 2002	Municipal and communal elections
March 2003	Legislative elections

## 2. Legal framework

### 2.2 Date of ratification and entry into force of international instruments on human rights

	Date of ratification	Date of entry into force
<b>CERD</b> <sup>1</sup>	30.11.01	30.12.01
<b>ICESCR</b> <sup>2</sup>	12.03.92	12.06.92
<b>ICCPR</b> <sup>3</sup>	12.03.92	12.06.92
<b>ICCPR-OP</b> <sup>4</sup>	12.03.92	12.06.92
<b>CAT</b> <sup>5</sup>	12.03.92	11.04.92
<b>CEDAW</b> <sup>6</sup>	12.03.92	11.04.92
<b>CEDAW - OP</b> <sup>7</sup>	Only signed on 25.05.00	
<b>CRC</b> <sup>8</sup>	03.08.90	02.09.90
<b>CRC OP - AC</b> <sup>9</sup>	15	
<b>CRC OP - SC</b> <sup>10</sup>	17	
<b>Convention on apartheid</b> <sup>11</sup>	30.12.74	29.01.75
<b>Statute of Rome</b> <sup>12</sup>	22.01.02	01.07.02
<b>African Charter of Human and People's Rights</b> <sup>13</sup>	20.01.86	21.10.86
<b>African Charter on children's rights and well-being</b> <sup>14</sup>	17.04.97	29.11.99

- 1 International Convention on the Elimination of All Forms of Racial Discrimination.
- 2 International Covenant on Economic, Social and Cultural Rights
- 3 International Covenant on Civil and Political Rights
- 4 Optional Protocol to the International Covenant on Civil and Political Rights
- 5 Convention against Torture
- 6 Convention on the Elimination of Discrimination against Women
- 7 Optional Protocol to the Convention on the Elimination of Discrimination against Women
- 8 Date of signing: 25.05.2000
- 9 Convention on the Rights of the Child
- 10 Optional Protocol to the Convention on the Rights of the Child – On the participation of children in armed conflicts
- 11 Date of signing: 22.02.2002
- 12 Date of signing: 22.01.02
- 13 International Convention on Apartheid
- 14 African Charter on Children's Rights and Well-being



### 2.3 Situation of the initial and periodic reports received and awaited by the UN treaty bodies

CERD	Due date	Actual date of reception	Date of Examination	Late reports
Initial report	30.12.02	-	-	1
Second periodic report	30.12.04	-	-	1

ICESCR	Due date	Actual date of reception	Date of Examination	Late reports
Initial report	30.06.94	05.02.01	02.05.02	-
Second periodic report	30.06.07			

ICCPR	Due date	Actual date of reception	Date of Examination	Late reports
Initial report	11.06.93	01.02.04	21.10.04	-
Second periodic report <sup>15</sup>	11.06.98	01.02.04	21.10.04	-

CAT	Due date	Actual date of reception	Date of Examination	Late reports
Initial report	10.04.93	12.02.01	15.11.01	-
Second periodic report	10.04.97	-	-	1
Third periodic report	10.04.01	-	-	1

<sup>15</sup> The two reports have been submitted to the Committee in one document.

CEDAW	Due date	Actual date of reception	Date of Examination	Late reports
Initial report	11.04.93	27.06.02 <sup>16</sup>	July 2005, CEDAW	-
Second periodic report	11.04.97	27.06.02	July 2005, 33 <sup>rd</sup> session CEDAW	-
Third periodic report	11.04.01	27.06.02		
Fourth periodic report	11.04.05			-

CRC	Due date	Actual date of reception	Date of Examination	Late reports
Initial report	01.09.92	22.01.97	26.05.99	-
Second periodic report	01.09.97	-	-	1
Third periodic report	01.09.02	-	-	1

**Total of everdue reports: 6**

## 2.4 Concluding observations/Recommendations of the UN treaty bodies

Concluding observations	
ICESCR <sup>16</sup>	Benin, 05/06/2002 E/C.12/1/Add.78
CAT <sup>17</sup>	Benin, 01/11/2002 A/57/44, paras.30-35.
CRC <sup>18</sup>	Benin, 24/08/99 CRC/C/15/Add.106

16 Committee on Economic, Social and Cultural Rights

17 Committee Against Torture

18 Committee on the Rights of the Child

**Part I**

**HUMAN RIGHTS VIOLATIONS IN BENIN**



## 1. Administrative, judicial and legal structure

### 1.1 Institutional structure

Inspired by the American presidential model (with a dominant executive power), Benin's system has some common points with the French semi-presidential system (the Parliament has the power to question the President of the Republic and members of the Government). With a powerful executive, the Constitution of Benin provides for counter balance bodies such as the National Assembly and the judiciary. The preamble of the Constitution refers to the need for citizens to respect the international standards formulated in the area of human rights as stipulated in the International Bill of Human Rights. Civil, political, economic, social and cultural rights are guaranteed in Articles 7 to 31 of the Constitution; the duties of citizens are described in Articles 32 to 37, and the duties of the State in Articles 38 to 40. In addition, the African Charter of Human and People's Rights is a part of the Constitutional text (Article 7).

The preamble to the Constitution also states the will to establish a democratic State based on the rule of law in which human rights are acknowledged and respected. The independence of justice is enshrined in Article 125 of the Constitution. It states that: "The power of the judiciary is independent from legislative and executive powers. It is constituted by the Supreme Court and courts and tribunals created in accordance with the Constitution". While carrying out their duties judges are subjected only to the authority of law; as for the President of the Republic, he must ensure that justice is independent (Article 127).

The principle of separation of powers is the basis of the institutional framework of Benin. Legislative power, consisting of the National Assembly is composed of only one chamber of 84 deputies; their mandate is to vote laws, and check the government's actions (Article 79). Executive power is led by the President of the Republic. He is elected for 5 years, renewable once; he executes the laws and promotes governmental actions (Article 54). The judiciary is made up courts and tribunals of common rights (which are conciliation courts, first instance tribunals and appeals courts, competent for all matters at the appeals level), the Supreme Court (the equivalent of the cassation court), the High Court of Justice (a political court, competent to judge members of government for offences committed during their mandate) and the Constitutional Court.

According to Article 136 of the Constitution, the High Court of Justice is competent to judge the President of the Republic and members of the government and their accomplices (when they are guilty of high treason, offences committed in office) only when they conspire against national security. The ordinary jurisdictions are competent to judge members of the government for offences committed outside of their regular mandate.

Article 114 of the Constitution states that the Constitutional Court is the highest State jurisdiction in constitutional matters. It is the judge of the constitutionality of laws, and it also guarantees fundamental rights and freedoms. It is the regulating body of institutions and public authority. It is composed of seven members consisting of three magistrates, two jurists and two personalities of high reputation. The members are nominated for five years by the President of the Republic and the Board of the National Assembly. They are expected to be of high morality and character (Article 115).

The Constitutional Court checks acts which may affect the fundamental rights and public freedoms of persons (Article 117). It is supposed to give its decision within fifteen days after the filing of a complaint concerning a law violating human rights. However, if so requested by the government, in case of emergency, this may be shortened to eight days. In that case, referral to the Constitutional Court defers the promulgation of the law (Article 120). The Constitutional Court, at the request of the President or a member of the National Assembly, gives opinions on the conformity of a law to the Constitution before its promulgation. The Constitutional Court, following the request of the President of the Republic or of any member of Parliament, gives its view on any law before their entry into force. It reacts automatically on the regularity of any laws or statutory texts affecting human rights and fundamental freedoms. Broadly speaking, it gives its decision on any human rights violations within the period of eight days.

Benin's Human Rights Commission founded in 1989 by Law n°89-004 of 12 May 1989, promotes and safeguards human rights in Benin. Its main role is to help the government in ratifying all international laws related to human rights. It also studies the international instruments related to human rights in order to inform the population about them. Moreover, it advises the authorities on the measures to adopt to promote and to protect human rights. Furthermore, it supports the authorities by writing periodic reports to be submitted to the UN Treaty Bodies. One of its additional roles is to organise training and study cases of violation at the request of the authorities. Its pro-

tective mandate provides for a mediating function between citizens and State authorities and its duty is to promote the rule of law in Benin.

The Commission on Human Rights was founded specifically to promote and defend human rights. The Commission gives much hope to citizens and is given a certain aura by people because it reacts against human rights violations. A great number of victims of abuse have benefited from its actions in tribunals. The competence of the Commission reached its highest point with its active involvement in preparing the presidential election. In fact, the Commission led the Autonomous Electorate National Commission during the 1996 presidential election. This was the proof of its political impartiality. Unfortunately, the President of the Commission failed to manage the operations in a professional way and hence discredited the institution. The Commission on Human Rights became inactive after 1996 when the Human Rights Department was created in the Ministry of Justice and the Consultative Council of Human Rights was established. The Department of Human Rights, which had relatively more financial means than the Commission, became the only office implementing the decisions of the government with regard to protecting and promoting human rights. Some years ago, with the extradition to Nigeria in the Humana's case, the Commission denounced governmental interference in judicial issues. Despite this sudden role, it did nothing to carry out its role as a pioneer with regards to such an important and challenging issue.

Benin's courts apply "the criminal references to laws in use in Western French Africa" collected in a document called Code Bouvenet. These laws date back to the colonial period and are not in accordance with current legal standards.

The Code of Criminal Procedure, of 7 August 1967, provides for public and civil actions. It contains the regulations in accordance with which crimes, offences and other affairs are examined before the courts. The conditions and duration of detention are prescribed by Articles 51 and following. A person is taken to the police custody only upon proof that he/she is liable after examining a series of actions he/she has performed, that constitute a crime. In accordance with Article 51, the suspect should be presented to the public prosecutor within 48 hours. In case the investigation is carried out of his residence, the duration of police custody is three days. The police may keep a person beyond three days only with the authorisation of the public prosecutor. Criminal investigation officers are the only ones who can keep criminals in police custody. However, this principle is not respected in reality.

Security service members (for example RAID in the Ernest Lalou affair) and religious leaders still keep some of their members in abusive detention. As far as the traditional religious leaders are concerned, they may force children to stay in their convent, hence preventing them from going to school.

On the face of it, the obsolete nature of the criminal legislation is obvious. Unfortunately, nothing is done to modernise it. A reform project concerning criminal law is still pending in the National Assembly. In comparison, the Personal and the Family codes have been amended with reluctance, but they must be reviewed by the Constitutional Court in order to check their conformity with the Constitution before entering into force.

The government had prepared a programme aiming to reinforce laws and the judicial system in Benin, with an agenda for implementation from 2005 to 2007. This plan was accepted in August 2004 and was supposed to be effective from 2005. It provided for the following actions:

- Undertaking organisational diagnostic work and taking an inventory of the judicial system on the basis of the analysis of information received from judicial actors. Putting forward ideas, programmes and proposals to reform the judiciary;
- Undertaking a review of law concerning the judiciary, including the adoption of laws on the High Council of Magistrate (organic law n° 2001-35 of 13 February 2003) and on the organisation of justice (law voted in 2001 which entered into force in 2002 providing for two new appeal courts and a first instance court in the main cities of the country);
- Undertaking judicial reform providing for the reinforcement of judicial staff (in 2004, there were 67 magistrates, 65 clerks, 8 justice officers for 7 million inhabitants),<sup>19</sup> improvement of working conditions in the offices of the ministry and in the courts, modernisation of the national judicial framework to get justice closer to the citizens and to reinforce some judicial professions, to improvement of conditions of detention and strengthening confidence between citizens and the judiciary.

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19 Office of the Administration of the Ministry of Justice, Legislation and Human Rights, cited in the document "Integrated Programme of Reinforcing Judiciary and Judicial System in Benin".



## 1.2 Difficulties

### 1.2.1 Application of the principle of separation of powers: governmental interference in the administration of justice

In Article 125, the Constitution of 11 December 1990 states that the judiciary is independent from legislative and executive powers. Executive power should not therefore represent a threat to judicial independence. However, governmental attempts to interfere in the administration of justice has been of increasing concern. The principle of not removing judges is often violated and the injunctions of some members of the government to members of the judiciary are often questioned by the Constitutional Court. This situation shows that the executive power tries to control the judiciary.

#### **Tidjani Hamani Hama case**

This case illustrates governmental interference in the judiciary. In September 2003, Tidjani Hamani Hama, a Nigerian citizen, was prosecuted by Benin justice, charged with theft and conspiracy. Arrested by Benin police while fleeing to Bamako (Republic of Mali), Hamani was heard by a special Board of Investigation located in the President's House of the Republic. The members of the Hamani gang were suspected to have attacked a procession in which one of the daughters of the President of Nigeria was killed. The Hamani case became a bone of contention between the two countries. Nigeria, which claimed the right to judge the suspect, shut its border in order to force Benin to accept its will.

The public prosecutor and his colleagues in charge of the affair expected that the case opened against him would continue before the court. However, the government decided on his extradition without any judicial proceedings. It seemed that, under the Nigerian President's pressure, the Government of Benin finally decided to extradite Hamani. They justified this on the basis of a Memorandum of Agreement on borders signed on 14 August 2003, providing for collaboration between police forces in combating cross-border criminality, on the one hand, and the extradition treaty in force between Benin, Ghana, Nigeria and Togo, on the other hand.

The Constitutional Court, in its decision of the 31 August 2004<sup>20</sup> declared that extradition was contrary to the Constitution and condemned governmental interference in the administration of justice as the act in violation of Article 125§1 of the Constitution.

Moreover, it should be reminded that the agreement signed in 1984 between Benin, Nigeria, Togo and Ghana, stipulates that before extradition, the State which requires it, should give a testimony of a proceeding or a condemnation of the individual in question. After that, an investigation has to be carried out on the territory of the host country of the criminal. It is only in the case of satisfactory conclusions, that the requesting State can formally introduce its request<sup>21</sup>.

And how did the government react after the decision of the Constitutional Courts in order to correct the violation, since the decisions of that jurisdiction cannot be questioned and are mandatory to all the authorities (Article 124 of the Constitution) and in view of the fact that the matter caused a diplomatic crisis between the two countries? They did nothing to solve the problem because while Tidjani Hamani had been subject to extradition proceedings, twelve Benin citizens supposed to be his accomplices were charged and detained at prisons in Cotonou and Porto-Novo, and transferred by force to Nigeria following the order of the Ministry of Justice. These people were transferred in fact without any judicial guarantees, even though they were under investigation in Benin and under the regular jurisdiction of the Benin judicial system.

Such violations committed by the Government of Benin are not reassuring; they may lead to a confusion of attribution of powers and violations of national and international laws.

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20 Decision of the Constitutional Court of 31.08.04.

21 Please see Comments by Mr. Joseph Djogbonou, one of the attorneys of Amani Tidjani in: «Opération mains propres à Cotonou», Afri.com, 23.10.2003, by Habibou Bangré, which was published on [www.afrik.com/article6708.html](http://www.afrik.com/article6708.html).

### 1.2.2 Corruption

Corruption and embezzlement affects all administration sectors in Benin, especially customs offices, the police and justice. Last October, most of the high ranking police officers, whose Director and the magistrates were likely accomplices of Tidjani Hamani, were removed from their functions<sup>22</sup>.

State policy in combating corruption is illustrated by the establishment of several organs and structures for fighting corruption practices by various methods. These organs are the Public Life Moralisation Cell, National Front of Organisations against Corruption (FONAC) and the Observatory of the Fight Against Corruption. They were created in September 2004. However, they are not empowered to take measures against the sources of corruption practices.

## 2. Right to Life (Article 6 ICCPR)

### 2.1 Legal Instruments and Legislation

According to Article 8 of the Constitution, the human being is sacred and inviolable. Thus, the State has the absolute duty to respect and protect individuals. It should provide them with full opportunities by securing for all its citizens equal access to health, professional education and employment. According to Article 15 of the Constitution, every individual has the right to life, freedom, security and *habeas corpus*.

### 2.2 Practice

#### 2.2.1 Extra-judicial executions and arbitrary and illegal injury to life

Since the introduction of a new political and judicial order in 1990, there have been no extra-judicial executions in Benin. However, the lynching of people caught in the act of robbery, still occurs.

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22 Please see *Afrique-Asie, Benin: corruption à tous les étages n° 176, Mai 2004. Le Point au quotidien: Procès frais de justice criminelle: les magistrats retournent en prison, 7.06.2004.*

Such horizontal violations truly show the incapacity of the authorities to avoid the use of violence (obligation contained in Article 2§1 ICCPR) especially to stop the causes of such abuses (obligation contained in Article 2§2 ICCPR) among which was non-assistance from judiciary mechanisms that should help victims. This problem was pointed out by the CAT in 2002, in its Concluding Observations adopted after the consideration of the initial report of Benin<sup>23</sup>. The judgement and the reparation of such public abuses are not guaranteed by justice (obligation provided in Article 2§3 ICCPR).

### 2.2.2 Death penalty

The death penalty is foreseen by Benin's Criminal Code (Article 38§1) especially against those guilty of armed robbery. The last execution took place in 1986 and more recently a death sentence related to a hold-up was handed down in 1990.

Although the death penalty is not frequently used, the situation is far from stand-by or gradual abolition of the death penalty. In fact, on October 1999<sup>24</sup>, the Constitutional Court, upon a request from a citizen who argued that maintaining the death penalty was not in accordance with the spirit of the new Constitution; confirmed the constitutionality of the provision. Since "the Constitution does not expressly nor implicitly forbid the death penalty, a person can be deprived of that right (to life), provided that the deprivation is not arbitrary but authorised by the law".

Moreover, the provision for the death penalty will probably be renewed in the draft Criminal Code which is currently under discussion. The fact that the death penalty has not been suppressed increases the fears of human rights associations, particularly in light of the Hamani extradition to Nigeria. That situation leads one to believe that under the pressure of the Nigerian government, Benin may follow the example of Nigeria, famous for not respecting human rights and guarantees of due process to those awaiting trial.

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23 Concluding observations of the CAT: Benin 01-11-2002 a/57/44 (Concluding observations/Comments), Subjects of concern, 5b.

24 Please see CAT Concluding Observations: Benin 01.11.2002, paras. 30-35.

### **2.2.3 Abduction**

Although the practice of kidnapping is not frequent in Benin, the passivity of the authorities in the case of kidnapping of Pamphile Hessou should be denounced. This territorial officer was kidnapped in 1999 when tensions ran high between Togo and Benin; since then, there has been no information on his whereabouts.

## **2.3 Right to Life and Article 2§2 ICCPR**

Several awareness raising activities organised by the Ministry of Justice have encouraged the right to stop spontaneous popular justice. It is true that the government has worked out a programme to fight popular justice, but it is also true that it is difficult to see what has been done in this respect by official authorities in practical terms.

Benin's Commission on Human Rights, founded at the end of the monopoly regime, benefited from a favourable political context but its lack of professionalism has discredited it. For example, in 1996, the president of the Commission expressed his satisfaction with the presidential election, although the Constitutional Court, in charge of controlling the regularity of the elections, invalidated some votes.

## **3. Prohibition of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment**

### **3.1 Legal instruments and legislation**

#### **3.1.1 Constitutional norms**

According to Article 18 of the Constitution, no one will be submitted to torture, cruel, inhuman or degrading treatment. According to Article 19, individuals or any civil servants found guilty of practicing torture, cruel, inhuman or degrading treatment while exercising his/her functions, on his/her own initiative or following instructions, will be held criminally responsible. Individuals

and civil servants are released from following orders when the order that they receive constitutes a grave and obvious violation of human rights and public freedoms.

### 3.1.2 Norms and legislative problems

According to the Conclusions of the Committee Against Torture, there are problems concerning several norms, legislation and practices in Benin:

- the lack of a definition of torture, in strict conformity with the definition of Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the lack of a specific punishment for torture as a crime, creates a legal gap which does not help to implement the clause to the fullest extent;<sup>25</sup>
- the possibility provided by Article 18 of the Constitution to extend the period of stay in police custody up to eight days, under exceptional circumstances;
- the exemption from any responsibility for people found guilty of offences or crimes while pursuing an order based on law, or ordered by a legitimate authority, or when committed in self-defence, is contrary to the clauses contained in Article 2 paragraph 2 of the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment.
- the fact that the Amnesty law was adopted before the adoption of the clause against torture, leading to impunity for torture.

## 3.2 Practice

Usually, acts of torture are perpetrated by civil servants who are entrusted with the use of legitimate force, including policemen, constables and agents of special units of the Anti-Criminal Brigade (BAC) and the Action Research for Intervention and Dissuasion (RAID). The Ernest LALOU affair, published in newspapers in August 2004, provides an example of such use of violence by the security forces.<sup>26</sup>

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25 Please see CAT Concluding Observations: Benin 01.11.2002.

26 Please see the web-site [www.lematinal.com](http://www.lematinal.com), Article «Tortures et détentions arbitraires des citoyens par les RAID: Maîtres Togbadja et Barei alertent l'opinion publique» of 30 July 2004.

### 3.2.1 Problems related to constabulary and police stations

According to several testimonies and complaints, torture and cruel, inhuman, or degrading punishment or treatment still prevail in Benin, particularly in constabularies or police stations; it occurs in the form of non-motivated violence, systematic beating and excessive use of force against citizens arrested or detained in police custody.

Certain lower ranking officers think that they are obliged to obtain successful results of their efforts by any means. When they arrest a suspect, they use all possible means they can to oblige him to confess. This seems to be more frequent in localities situated far from Cotonou, where police officers have heightened control and feel empowered to use torture. Quite often, they actually disregard both ordinary citizens and judiciary authorities.

Violation of the prescribed stay in police custody is a chief characteristic of such violations. Torture is often practised within the first hours of the custody while other breaches of rights occur throughout the period of detention.

In 1999, the Constitutional Court took four decisions concerning abuse in police custody. Those detentions concerned Benin citizens as well as foreigners - 26 Congolese were arrested and detained following the arrival of the Congolese Minister of Foreign affairs. Arrested by the members of the Inquiry Directorate and Coordination Service of the President's Office, they were detained at the main police station in Cotonou. They were charged with trying to obtain travel documents in order to organise political activities in Benin. The abuses in police custody increased in 2000, when 12 detentions were denounced as unconstitutional. Among the 113 decisions taken by the Constitutional Court in 2001, notwithstanding those concerning electoral issues, 18 were related to abuse in detention and constitutional irregularities.

Although frequent referrals to the Constitutional Court by citizens are good in itself, they are also indicative of abuse of police custody and the practice of physical torture. The Government does not take any action against the instigators and perpetrators of these acts. Thus, abuse and related ill-treatment remain unpunished in Benin.

Furthermore, law enforcement officials do not hesitate to use handcuffs and butts of cigarettes to master their own family members or relatives. For instance, on 19 May 2004, the Constitutional Court condemned as cruel, inhuman and degrading treatment the attitude of a "sub-officer of the

gendarmérie, acting in private, who had handcuffed his spouse (...) and made use of tear gas”.

### 3.2.2 Problems related to the judiciary

The Constitutional Court rarely attempts to follow-up on complaints related to torture and cruel, inhuman or degrading punishment or treatment following abusive police custody. In fact, the Court shields itself behind the absence of evidence and rejects such complaints. Thus, it is very difficult to prove abuse experienced during police custody. Judicial authorities are aware of the consequences of such actions and take measures to eliminate evidence that could be used against them.

The Constitutional Court of Benin does not follow the example of other jurisdictions which grant the right to reparation on the grounds of simple evidence.

In fact, in a number of cases related to the right to life and to the prohibition of torture and other degrading treatment, arbitrary arrests and abductions, the Human Rights Committee stated that the burden of proof is not entirely up to the person who alleged the violation of rights or freedoms.<sup>27</sup>

The rare cases when the Court has condemned the treatment of a prisoner as being inhuman and degrading were when evidence of handcuffing was obvious or when a medical certificate existed. In 2001, only two out of the 22 complaints concerning inhuman and degrading treatment during police custody were condemned by the Constitutional Court.<sup>28</sup>

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27 Please refer to the web-site <http://www.ohchr.org/English/bodies/hrc/procedure.htm>, on 15-09-04 First Optional Protocol to the International Covenant on Civil and Political Rights, Overview of procedure.

28 Please see the Article by René Tingbo; Sébastien Adjavon; DCC 01-031 of 17.05.01: The Court condemned the physical abuse inflicted on Mr. Tingbo, suspected of theft by his employee. See also The Leonard Santos Affair; the Sergeant George Okoya, DCC 01-109 of 19.12.01; The Court blamed the physical abuse on Mr. Santos in the central police station of Cotonou.



### **3.2.3 Street justice, lynching of thieves and supposed “sex stealers”: a persistent and unpunished phenomenon**

The practice of street justice increased in 1990 because of popular mistrust in the judicial system. People arrested while attempting theft were systematically beaten. Sometimes those who were beaten to death were burnt at the end of their ordeal. This situation caused generalised havoc. Innocent people were killed because they were passing by at the wrong moment, or walking at night in certain districts.

Street violence against people accused of being thieves began for two reasons: firstly, there was an increasingly deepening gap between citizens and the justice system. In addition, the incidence of magistrates who embezzled funds did not bring public confidence back to the judicial system. Secondly, there is the influence of the practice in Nigeria where thieves used to be lynched to death.

## **3.3 Prohibition of torture and other cruel, inhuman or degrading treatment or punishment (Article 7 ICCPR)**

According to the Concluding Observations of the Committee against Torture, the lack of appropriate measures giving effect to the prohibition of torture and ill-treatment constitutes a problem for two reasons. The first is the lack of human rights training, in particular training related to the prohibition of torture, in programmes of law enforcement officials, as well as of medical staff, despite positive initiatives carried out by the National Human Rights Commission and the League of Human Rights<sup>29</sup>. The second is the lack of medical and psychological programmes of rehabilitation of victims of torture.<sup>30</sup>

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29 See CAT Concluding Observations: Benin 01.11.2002, paras. 30-35.

30 See CAT Concluding Observations: Benin 01.11.2002, paras 30-35.

## 4. Detention (Articles 9, 10 & 14 ICCPR)

### 4.1 Legislation and legal instruments

#### 4.1.1 Constitutional norms and national legislation

According to Article 18 of the Constitution, no one has the right to prevent a prisoner from being taken care of by his or her own doctor. No one can be kept in detention if he has not violated a criminal law in force. No one should be detained for more than forty-eight hours, without an order from the public prosecutor, and the person in custody should be presented to a magistrate. This duration can be extended only in cases prescribed by law, and cannot be extended beyond eight days.

Decree, n° 73-293 of 15 September 1973, related to the prison system, is the only law in force that regulates the prison system in Benin. It prescribes the rights for prisoners as follows:

Prison administration should ensure care and good treatment of prisoners, by providing to each of them a mat and a sleeping cotton blanket (Article 59), a determined quantity of soap each week for his personal hygiene and a bathroom where prisoners can take their bath everyday (Article 60).

Concerning health facilities, a nurse chosen by the head-doctor in the medical department, should visit the prison every day and give medical care to prisoners in need (Article 63). On their demand, prisoners should be presented to the doctor automatically.

All prisoners have the right to be in touch with people outside. This right is limited by the considerable obligations contained in Article 40 of the above mentioned decree, providing that letters sent from prisons should be given to the prison manager in an open envelope, prior to receiving a stamp of approval and subsequent mailing. Except for correspondence exchanged with the judicial authorities, the decree allows such review of letters received or sent by prisoners (Article 43). According to Article 39, prisoners can write personal letters only on Sundays.

In accordance with the same decree, a person with a visit authorisation card may visit prisoners only on Saturday afternoons, Sundays and on public holidays and, only in exceptional cases, on the other days of the week (Article 35).

Detainees are held separately: those who are held in custody apart from those who have been sentenced (Article 15). Article 17 of the same decree also provides for a separation according to the area of residence (Article 18).

#### **4.1.2 Problems related to norms and legislation**

The Committee against Torture concluded that there are concerns related to the legislation and practice in Benin. For example, the provision (Article 18 of the Constitution) which allows for the extension of the period of detention up to 8 days does not meet international standards.<sup>31</sup>

### **4.2 Practice**

#### **Description by Koukpaki Frejus, Magistrate, President of the court of Abomey<sup>32</sup>**

“Most buildings used as prisons, which were built during the colonial period, have just been repaired for use nowadays. This detention centre remained in a pitiful state and looked like a group of simple houses. At the main prison in Cotonou, the capital of Benin, the concrete roof is already damaged with cracks and water leaks. The centre has only ten toilets for one hundred and sixty nine prisoners. The buildings generally have no windows and the air only enters through small spaces. They are rectangular constructions of about 20 meters long and 10 meters wide. Visitor rooms are usually noisy and situated at the entry of the prison”. Prisons in Benin are confronted with three major problems: overcrowding, lack of hygiene and the increasing number of prisoners who die during detention. These problems were already pointed out by the Committee report in 2002.<sup>33</sup>

#### **4.2.1 Overcrowding in prisons**

Overcrowding in prisons is a general phenomenon and it is common to all prisons in the country. Locked up in inappropriate rooms where it is impossible to live in dignity, prisoners are squeezed in together. Their living space is

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31 See CAT, Concluding Observations: Benin 01.11.2002, op.cit.

32 See CAT Concluding Observations: Benin 01.11.2002, op.cit, 5c.

33 See CAT Concluding Observations: Benin 01.11.2002, op.cit, 5c.

insufficient. Some of the prisons already contain three times more people than their normal holding capacity and they continue to receive new prisoners. The table below is illustrative in this regard.

#### 4.2.2 Conditions of detention

Conditions of detention in prisons in Benin are in violation of the minimum standards. Despite frequent criticism from human rights associations at both the national and international levels and by supervising bodies (including a voluminous report from the African Human Rights Commission on the horrible conditions of detention in prisons in 2001), no progress has been made.<sup>34</sup>

The table below shows some of the recurrent diseases in the Benin prisons and some of the causes of death of prisoners:

Prisoners	Prison	Pathology	Date of death
Koumado Aristide	Cotonou	Acute bronchitis	January 9th 2004
Prodjinotho Charlemagne	Cotonou	General degradation of health	January 19th 2004
Tossou Moise	Cotonou		February 15th 2004
Zamba Edo	Cotonou	Strangulated hernia	February 25th 2004
Whahilo Sehami Houngùè	Cotonou		February 26th 2004
Lantokpodé K Fidèle	Cotonou	A general trauma	March 11th 2004
Degan Alexandre	Cotonou	Pneumonia and malaria	April 17th 2004
Zannou Jean Claude	Parakou	AIDS	December 2003
Worou Tanko	Ouidah	AIDS	December 2003
Komahoue Essou	Lokossa		January 24th 2004
Schougan Salaou	Lokossa		March 10th 2003
Gandonou Marie	Porto Novo	Blood pressure	January 25th 2004
Lawani Rafiou	Porto Novo	A neurological malaria	April 13th 2004
Bodjrenou Lambert	Porto Novo	Uraemia, genital complication	March 10th 2004
Ahidjo saliou	Abomey	Uraemia, genital complication	May 2nd 2004

34 Please see "Report on the conditions of detention in prisons in Africa", 2001.

### **4.2.3 Violence**

According to many testimonies, violent situations exist in prisons in Benin. Very often veteran prisoners mistreat new prisoners. As soon as a new prisoner arrives, he is submitted to questioning by veteran prisoners who force him to describe in detail the reasons of his arrest and prosecution. He is beaten shortly after for having been arrested. Such treatment seems to be inflicted with tolerance by the prison authorities.

## **4.3 Detention and Article 2§2 ICCPR**

Besides the Centre for Childhood and Adolescent Safeguard at Agblanganda, which was alternatively closed and opened for financial reasons, no other social or professional reintegration centres exist to follow up on people released from prison.

The prison chaplains and human rights associations supported by La Fraternité des Prisons (a French NGO) try to find remedies for the deficiencies of the public offices.

## **5. Right to Remedy (Article 2§3 ICCPR)**

### **5.1 Legal instruments and legislation**

The procedures to obtain a remedy in Benin are as follows: a) Appeals to various human rights institutions; b) administrative appeal to the superior echelons of hierarchy or to an administrative judge; a complaint to a first instance court, the appeals court and the Supreme Court, and finally c) request before the Constitutional Court which judges the constitutionality of an act.

Any citizen can refer to the Constitutional Court regarding the constitutional regularity of a law, directly or by way of constitutional exception proceedings on the matters of its jurisdiction. Any jurisdiction must halt examination pending the decision of the Constitutional Court - a decision that should take place within 15 days (Article 122 of the Constitution).

## 5.2 Practice

The relative simplicity of referral conditions enables access to courts. Victims or persons who believe that someone's right has been violated can refer to the court to seek protection under the Constitution or the African Charter of Human and People's Rights. The court can be referred to concerning electoral complaints. In this field, it has given a number of decisions concerning deputies and the presidential election in 1996.

## 5.3 Difficulties

It is right to assume that in Benin, apart from the Constitutional Court which gives a moral satisfaction to victims, the ordinary justice system lacks legitimacy since it fails to effectively protect the rights of citizens. Habitual slowness characterises all public services and endemic corruption mars the judicial system. According to the man in the street, recent prosecution of magistrates and clerks concerning embezzlement of justice fees is symbolic. Hence, the national evil represented by corruption can be fought only through the determination of the authorities.

As far as human rights are concerned, despite the important decisions taken by the Constitutional Court, there remains a long path in the fight against torture, cruel, inhuman and degrading treatment. In spite of the high number of violations, decisions taken by the court are scarce.

There is also a problem regarding the implementation of the decisions taken by the Court, since there is no mechanism established by the executive to carry out those decisions. The Court is powerless to follow up on its own decisions.

# 6. Compensation (Article 2§3 ICCPR)

## 6.1 Norms and legislation

According to the Human Rights Committee, paragraph 3 of Article 2 of the International Covenant on Civil and Political Rights requires that State Parties

undertake to ensure that any person whose rights or freedoms are violated shall have effective compensation, notwithstanding that the violation has been committed by persons acting in an official capacity. Without such compensation, the obligations to provide an efficient and useful remedy, as defined in Article 2§3 and also in Articles 9§5 and 14§6 are not respected. The Committee adds that appropriate compensation includes: restitution, rehabilitation, and satisfactory measures such as public apology, guarantees of the non-repetition of breaking the laws, and the prosecution of the perpetrators of human rights violations.

Laws and regulations in Benin provide to all victims of torture the right to compensation and fair reparation. Victims can base their claims on Articles 2 to 10 of the Code of Criminal Procedure related to the conditions of civil actions. Both civil and public appeals may be heard at the same trial or separately.

## 6.2 Practice

### **The case of Mrs. Adele Favi<sup>35</sup>**

On Wednesday, 6 February 2002 at 8pm, Mrs. Adele Favi, who was on her way home from the market and was crossing a road, was arrested by the presidential security guard. She was violently beaten and kicked while trying to run away and was caught again and savagely beaten and submitted to unmitigated cruelty.

When questioned by the Court, upon complaint by Mrs. Favi, the Director of the President's Staff justified the brutality as follows: "The presidential party was to pass and the "rambling" woman did not execute the order to clear the way, hence the presidential security guard was obliged to use adequate methods, which can be used in such situations".

The court made a principal decision and condemned the guards for inhuman and degrading treatment and acknowledged that there should be compensation. Which institution will implement this decision? Who will punish the overzealous military staff? There is no mechanism to implement the decision of the Constitutional Court and the government has not foreseen anything on this account.

35 Please see decision DCC 02-058 of 4 June 2002, FAVI Adèle, Recueil, 2002, p. 243 available on the web-site <http://www.afrilex.u-bordeaux4.fr/pdf/04jur17mede.pdf>

**The case of King of Dassa<sup>36</sup>**

The King of Dassa (a town situated 200 km away from Cotonou) in his quality of guardian of traditions, gave the order to catch and beat a citizen presumably because the behaviour of that citizen caused misfortune to the region under protection of the King.

The Constitutional Court declared that the King violated fundamental human rights which constituted a violation of the Constitution.

The Constitutional Court fulfilled its mandate by taking such a decision. However, to gain compensation, the victim is required to prosecute the King in an ordinary court, and the procedure is often long and expensive and can end in disappointment. Even if the proceedings were instituted and followed a normal course, there hardly is a judge in Benin who would dare to sentence a king in Benin.

**6.3 Difficulties**

The main problem lies in the absence of a mechanism to implement decisions of the Constitutional Court. Thus, in a situation where violations are obvious, victims seldom obtain reparation.

Observers who expect that the court will be progressive while interpreting constitutional dispositions related to human rights are disappointed. Even if the court, in 2002, recognised the right of the plaintiff before the court to reparation for ill-treatment at the hands of the presidential guards<sup>37</sup>, it did not offer the victim the possibility to prosecute the perpetrators of the violations.

In fact, no text confers to the Court the competence to implement its decisions. However, nothing prevents it from doing that. The fact that the Constitutional Court does not declare the violation of the Constitution and the right for the victim to gain compensation can be considered as a lack of “spirit of progress” on the side of the court's members.

36 Please see *Décision DCC 02-014* of February 19 2002, available on the web-site <http://www.acpuf.org/ben/jsp2002.htm>.

37 *Mrs. Adele Favi affaire*, DCC 02 058, of 04.06.02.



**Part II**  
**VIOLENCE AGAINST WOMEN**



## 1. Introduction

The Constitution of 11 December 1990 was adopted after the “Forces vivantes” National Conference in February 1990 proclaimed the will of the people of Benin to create a State where the rule of law, fundamental rights, public liberties, human dignity and justice are guaranteed, protected and promoted as the prerequisite for the harmonious development of each Benin citizen. Women’s rights are stipulated in several dispositions of the Constitution. Article 26 states in a general way the principle of equality between men and women and the protection of the mother and her children provided by the State. In Article 6, the Constitution provides for the equality of all citizens of Benin, men and women.

Several sources of information<sup>38</sup> indicate that there has been noticeable progress in the situation in terms of respect of human rights and particularly the rights of women in Benin. At present, various governmental organisations and NGOs put pressure on Benin to respect international commitments undertaken by Benin in the sphere of human rights. The implementation of programs of legal aid for prisoners called PAJUDE by the PRI (Penal Reform International) together with the Ministry of Justice, Legislation and Human Rights and three local NGOs - Association des Femmes Juristes du Bénin (AFJB), Centre Africa Obota (CAO) and Fraternité des Prisons (FP)– has reinforced the gathering of information on the state of human rights in the country.

In practical terms, since 1 July 2002, in the prisons of Cotonou, Ouidah, Abomey and Parakou, the Consultative Council on Human Rights has

38 Report of the seminar «The Human Rights and Administration in Justice» organised by UNESCO Chair of Human Rights and Democracy in partnership with the Konrad Adenauer Foundation. Cotonou, 6-8 December 1999; Report of the seminar «The Human Rights and the Keeping of Order» organized by UNESCO Chair of Human Rights and Democracy in partnership with the Konrad Adenauer Foundation. Cotonou, 9-10 October 2000; Report of the seminar "The role of the women in consolidation of democracy and peace", organised by the network of the African Women Ministers and members of Parliament and the UNFPA, September 2003.

Declaration of the population policy in Republic of Benin. National Office of Plan and Prospective; 2 May 1996;

Multisectoral Plan of actions for the implementation of the National Policy for the Women Promotion by the Ministry of the Family, Social protection and Solidarity with the support of UNFPA, 2002.

strengthened its activity in gathering information on the state of human rights. Meanwhile the sociological context of the society does not allow AFJB to gather statistical data on cases of torture and ill-treatment committed against women by official agents. So AFJB has gathered information contained in this report from the following sources: a study by the Ministry of Justice, Legislation and Human Rights regarding the indicators of implementation of human rights in Benin; the quarterly report of the legal assistant of PAJUDE; the report on the visit of three prisons in Benin - Lokossa, Cotonou and Ouidah - by the network of the Association of Human Rights Defenders (RADDH) in March 2003; interviews with some prisoners from the civil prison of Cotonou; interviews with some members of Fraternity of Benin's Prison; interviews with some of the members of the League for the Defence of Human Rights and the interviews with some members of the Ministry of Justice, Legislation and Human Rights.

## **2. The general context**

In Benin society, the human being is considered sacred. This principle is stated in Article 8 part II of the Constitution of Benin of 11 December 1990. However, in reality, violations of human rights do take place. In fact, in 2002 out of the 148 decisions of the Constitutional Courts, 81 concerned the violation of human rights, six out of which concerned the violation of women's rights. And five out of six cases concerned the violation of basic human rights.

Starting from 1990, there has been a certain improvement regarding the respect of human rights and in particular the respect of women's rights in Benin. For instance, in the legal sphere, women are employed in high positions and they are as highly qualified and as perfectly integrated as men. In 1997, there were twenty women-magistrates and six clerks of the courts, among whom two women were chiefs. For many years some women have worked in the position of the attorney general. Also for many years, some very important courts like the ones in Cotonou and Porto-Novo, have been headed by women. Likewise, fifteen women lawyers have passed the bar exams. These women represent their clients without any difficulty before the courts of Benin. Periodically, women have been chosen to serve in a jury for a particular case.

Although there is a noticeable improvement in the situation of women in Benin, there are still problems in this area associated with the non-respect of women's basic rights, the isolation of the majority of women and their inability to take decisions in the family, community as well as at the national level, which would benefit them. On cultural, political and social levels women are often victims of many forms of violations. These violations take place in various ways. They vary from simple physical traumas to severe neurological and psychological depression, caused by verbal nuisance like libel or moral abuses of her own person, her family or her children. Women who show their political commitment are considered to be of questionable morals especially when they succeed. Some false and discriminatory words are used in the mass media in order to discourage women in politics. Psychological violence attempts to maintain a woman in a constant position of subordination or inferiority vis-à-vis men. As a result, women become isolated from the political and social spheres where decisions are being made.

In practical terms, the laws on women's rights voted by the National Assembly have not been implemented. This non-application of the legislative texts necessarily leads to the violations of women's rights.

Nevertheless, some actions are already being taken in order to improve the statute and the situation of women in Benin. The initiatives on that account come from the Legal Expert Women Association and other NGOs which protect human rights. Some revisions and modifications of the Criminal Code and the Code of Criminal Procedure have been undertaken and implemented.

The legal framework for the promotion of women has considerably improved through the following actions:

1. the promulgation of the Personal and Family Code on 24 August 2004. In June 2004, following Benin women's request, some provisions of this Code which discriminated women were put in conformity with the Constitution of Benin,
2. the adoption of the law of 3 March 2003, concerning women's sexual and reproductive health,
3. the adoption of the law of 3 March 2003 concerning the abolition of practices of feminine genital mutilation.

### 3. Institutional and judicial issues

The judicial framework of women's rights is made up of a series of conventions and legislative norms.

#### 3.1 Legal framework for the protection of human rights

##### 3.1.1 Conventions and international treaties ratified by Benin

- The Convention on the consent to marriage, the minimum age of marriage and the record of marriage, adhered to by Benin on 19 October 1965.
- The International Covenant on Civil and Political rights (ICCPR), ratified by Benin on 12 March 1992.
- The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified on 12 March 1992.
- The African Charter on Human and People Rights ratified by Benin on 20 January 1986.
- The ILO Conventions # 100 and #111, ratified, respectively, on 16 May 1960 and 22 May 1961.

##### 3.1.2 Regulations and legislative measures

In Benin, men and women have equal rights (Article 25 of the Constitution and Article 33 of the African Charter on Human and People's Rights). The Constitution, after affirming the principle of equality between men and women, and the equality of all before the law, establishes a particular protection of the state regarding women and children at the social as well as at the family levels: "The State guarantees to every person equality before the law without any distinction of origin, race, sex, religion, political opinion or social position. Men and women are equal in rights. The State protects the family, particularly the mother and the child".

Although Benin's Constitution makes equality of the sexes a Constitutional principle in its Article 26, until recently as far as family life is concerned, it was governed by two laws: the traditional law and the so-called modern law, that is, the French Civil Code.

The traditional law is codified under the title “The Common Law of Dahomey”, which is a text dated 9 March 1931. This is a collection of some traditional rules in Benin, which, in particular, legitimises the concept of “levirate” - widowhood polygamy - and forced marriage. In its paragraph 127, the Code establishes the judicial incapacity of woman, who finds herself reduced to being a part of her husband’s wealth and of his heritage. In 1990, this law was submitted to the Constitutional Court for examination of its constitutionality. Upon examining the law in question, the Constitutional Court declared that the law violated the Constitution of Benin. Despite this decision, the law in question was still referred to by judges, allowing them to use it as a basis for their decision. Since the promulgation of the Personal and Family Code on 24 August 2004, customary law is no longer applied. It is the Personal and Family Code that applies to every relevant judicial case (Article 1030 of the Personal and Family Code).

### **The Personal and Family Code of 24 August 2004**

The adoption of the law of 24 June 2004 on the Personal and Family Code is an important moment in the promotion of women’s civil rights. The adoption of the code allows to fill a judicial gap caused by the outdated common law of 1931 and the Civil Code of 1958, since both of them were adopted prior to the independence of Benin in 1960. The Code has registered a progress in the following spheres:

#### *a) Marriage*

The Personal and Family Code requires marriage to be officially consummated by the municipal magistrate who registers the marriage and who provides the woman with a written proof of the marriage. Polygamy, the unavoidable socio-cultural reality, is no longer imposed on women; only<sup>39</sup> monogamy marriage is now acknowledged by the Personal and Family Code. Even if a woman accepts polygamy, legally speaking the husband can be married only with one wife. So it is not in the woman’s interest to choose a polygamous marriage regime.

However, practice shows that polygamy still prevails in some regions of Benin as traditional and customary behaviour and is considered an important sign of

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39 Please refer to “Ancestral customs and the Rights of the Woman in Benin” - Report, presented by Ms. Grace d’Almeida, barrister, PNUD, March 1997.

the matrimonial link. For example, in the department of Mono/Couffo, polygamy is considered to be a sign of respect and virility of a man. In addition, despite the numerous sensitisations made by the Association of Women Lawyers of Benin (AFJB) and other NGOs, the inhuman, outdated and degrading practices of levirate and forced marriage still exist. Forced marriage mainly exists in the departments of Dangbo, in its So-ava district, Couffo and in Cobli, in the Atacora department.

The three centres of judicial assistance organised by the Association of Women Lawyers of Benin (AFJB) have recorded more than 24 cases of forced marriage in 2004. As for the levirate, it is practised in the hillside areas and in the Couffo department.

The code also protects the patrimony of a woman in a marriage through the imposition of the regime of separation of property. Article 167§3 of the Personal and Family Code states that: “If the act of marriage mentions that there is no contract, then the spouses will be considered to be married under the regime of separation of property, unless the spouses have signed a document with a third party which states that they declared not to have a marriage contract” and the Article 184 reinforces this fact by stipulating that “in case of a default of a marriage contract, the spouses are submitted to the regime of separation of property”.

#### *b) Divorce*

The Personal and Family Code confirms the concept of divorce, legalizing the break-up of marriage before the law and thus protecting the woman against repudiations and other unofficial forms of divorce, by stating: “Divorce may result from the mutual agreement of the spouses and must be pronounced by the tribunal or through a judiciary decision, stating the dissolution of the marriage, upon request of one of the spouses in person or in a written form sent to the civil tribunal of common rights.”

The institution of divorce by mutual agreement allows the woman to express her will freely and allows the judge not to be compelled to pronounce a divorce by default wherever the need for separation is shared by the both spouses.

The Personal and Family Code reinforces the protection of women by enlarging the causes of divorce, which she can present in the case of lack of care, ill-treatment and abandonment of household. Article 234 of the Code states that



“Divorce may be pronounced for one of the following reasons: lack of care, abandonment of the family, ill-treatment, excess, cruelty or unbearable insult making the existence of the marriage impossible”.

#### *c) Filiation*

An innovation is made by the Code concerning the notion of a child born out of wedlock.

Article 328 stipulates that “When a married man or a married woman want to inform his or her spouse about a child born out of wedlock, he/she must do it either in writing or through the bailiff”. Article 325 adds that “the act of acknowledging filiation can only be delivered by a special power of attorney before a civil officer”. Article 328 states that “When filiation is legally established, children born out of wedlock have the same rights as legitimate children, under the conditions established in the line of succession.”

#### *d) Succession*

The regulations concerning succession provide for no discrimination on the basis of the sex of the heirs or their filiation, unless they are the fruits of adultery or children whom the mother has not previously acknowledged.

The widow must be well provided with rights through the succession: she is allowed to participate in determining the lineage, the ascendancy and the collateral relatives. Article 630 of the Code states that “the surviving spouses with whom there has been no previous divorces, will inherit even if there are some relatives”. Article 634 more explicitly states the following: “When there are no descendants, nor relatives able to inherit; inheritance is totally transferred to the surviving spouse.”

### **The nationality code**

The concept of double nationality is accepted in Beninese law. Women acquiring Beninese nationality benefit from double nationality in accordance with all the advantages linked to this concept (for example, equal job opportunities, the possibility to maintain the nationality even after divorce). However, two cases should be distinguished:

- A woman from Benin who marries a foreigner keeps her Beninese nationality if she has not abandoned it in the course of marriage.

- A foreign woman who marries a Beninese citizen acquires the nationality of Benin, but she can refuse it before the marriage.
- A Beninese child is a child born from the father who is a Beninese citizen.
- If the mother is Beninese and her child is born of an unknown father or of a father whose nationality is unknown, the child will have Beninese nationality.
- Finally, the case of a child born from a Beninese mother and from a father of foreign nationality, except in the situation where the father was not born in Benin or he abandoned the nationality of Benin six months before the age of majority.

### **Election laws and the protection of woman's political rights**

*There are the following election laws:*

- The law n° 94-013 of 17 January 1995 on the procedures of Presidential elections and the elections of the members of the National Assembly.
- The law n° 94-030 of 17 January 1995 on the application of the law 94-013 on the procedures of the Presidential elections and the elections of the members of the National Assembly.
- The law n° 98-006 of 9 March 2000 on local community elections and on the election of the Council of Benin.

All these laws grant the same electoral rights for both men and women. These laws are in accordance with the Constitution of 11 December 1990.

### **Legal framework for the protection of economic rights**

The law n° 98-004 of 27 January 1998, the General Collective Convention on Labour of 17 May 1974, the law n° 86-013 of 26 January 1986 on the General Statute of Permanent Civil Servant which establishes the equality of job opportunities, of salaries and of trade union membership. The laws protect pregnant women against illegal dismissal from their jobs.

The law n° 86-014 of 26 September 1986 regarding the Civil and Military Allowance Code of Retirement provides for equal treatment of men and women.

### **Commercial activities**

The Commercial Code does not establish any discrimination between men and women involved in business. However, it is not easy for women to obtain credit because in general banks tend to have a preference to lend credit to men, rather than to women.

### **Women's rights regarding the management of property**

Unmarried women have the right to manage their own private property without the intervention or the agreement of a man. Even after marriage, a woman still has the same right although she might be helped by her husband. But it is difficult for the widow to enjoy the same right. In the case of a widow, a family in law generally controls the heritage left by her deceased husband. Most of the time, the rights of the widow go to the members of her late husband. During the succession procedure, the tribunals try to guarantee the widow her right to property and to assure the guardianship of children who have not yet reached the age of majority. When the husband had been involved in a regime of polygamy, it is not easy to entitle one of the wives to manage the property of her husband. In this case, a brother in law of the widow or the oldest child of the widow manages the properties. The regulations always affirm that women benefit from the same rights as men.

The Personal and Family Code reflects the progress that was achieved in the sphere of women's rights in its Article 203 which states the following: "Each of the spouses manages his own property and enjoys their respective revenue" but "a husband may give his wife the right to exercise his own right" (Article 176 of the Code).

### **Criminal law**

A draft Criminal Code was elaborated in 1995 and transmitted to the National Assembly for examination and adoption.

The regulations about the prohibition of the unacceptable behaviour in Benin were first expressed in the decree dated of 6 May 1877 and they were applicable in West African French speaking counties. This Criminal Code is called the "Bouvenet Code" and is still in force.

Articles 330 - 340 of the "Bouvenet Code" govern the cases of sexual violence on women and children under 15 and adultery. They include, in particular:

- Public affront to modesty.
- Attempt of molestation committed or attempted without violence, constraint or surprise on a child under 15 years of age.
- Rape: any other action of sexual intercourse of any nature exercised through the use of violence, constraint or surprise on another person.
- Any other attempt of molestation committed or attempted with the use of violence, constraint or surprise on someone aged over 15 years.
- Disorderly behaviour and/or procuring.
- Direct or indirect management of a brothel.
- The concept of bigamy: anyone who, holding the status of a married person, is engaged in another marriage before the dissolution of the first one.

### *Rape*

Rape is defined in the Criminal code in Article 331 as “any action by which a man has sexual intercourse with a woman without the consent of the latter or the lack of consent being caused by any other means of constraint or by surprise.”

Article 332 of the same code provides that “anyone who commits the crime of rape will be punished by temporary hard labour. If the crime has been committed on a child, aged over 13, the accused will be sentenced to the maximum penalty of hard work. The sentence will take the form of temporary hard work when it has been committed by :

- An older relative of the victim, a person who exercises a certain authority over the victim like his/her teacher, or the servant hired by his/her teacher, the victim’s hired servant, a public servant or a clergyman.
- Several people who assisted the perpetrator of the crime when the attempt to commit the crime was exercised with violence on a child under 13.

When the guilty party is an older person or when the attempt has been committed by several people or with assistance, the penalty takes the form of hard work for life and whatever the age of the victim may be.

In fact, rape is perpetrated mainly on young girls who refuse to submit to forced marriage. The young girl is kidnapped with the help of her parents and

brought by force to have sexual relations. In practice, the complaints of women who are victims of sexual violence are rare because women prefer to remain anonymous or not to complain because of modesty.

In the few cases where rape has been denounced, procedures ended in disqualification mainly when the victims were under 18. This behaviour may be explained by the desire of the parents to protect their daughters. As a matter of fact, the official publicizing of a case of rape may cause future prejudice and nuisance to the girls. Irrespective of the age of the victim, women cannot bear the publicity of the rape; the decisions rendered by the court stress the absence in tribunal of the victim and the guilty person, mainly when the latter is before the court trial.

#### *Trafficking of women and girls*

Benin is a country of origin, transit and destination of women<sup>40</sup> and particularly child<sup>41</sup> trafficking. Nevertheless, there is no specific provision of law on the trafficking of women. In practice, when a case of trafficking is submitted to the court, the judges refer to a specific article on demand.

#### *Prostitution and procuring*

Prostitution is considered illegal and society has no consideration for the prostitute. No penalties are foreseen concerning prostitution in the Criminal Code but procuring and soliciting are punished.

Article 353 of the Criminal Code defines the procurer and the penalties and fines that will be inflicted on him/her. According to this article, “a procurer will be sentenced from one to three years of imprisonment and inflicted a fine of two hundred and fifty thousands CFA as a maximum penalty, whatever he/she does. A procurer is a person who:

- helps in one way or another, or willingly protects the other’s prostitution or recruitment for prostitution;
- shares in any way the income of someone else’s prostitution or receives the subsidies from a person who used to prostitute him/herself;

40 Please refer to “The protection project: A Human Rights Report on Trafficking of Persons Especially Women And Children” in a Country-by-country report on a contemporary form of slavery, March 2002, p. 61.

41 Please refer to part III of the present report on the State violence against the children.

- lives consciously with a person who habitually prostitutes him/herself;
- is in permanent contact with one or a lot of people prostituting themselves, and is not able to justify the means of his living standards;
- engages, trains or assists, even with his/her will, a person, even an adult for prostitution or forces him/her to prostitution or to debauchery;
- plays in any way the role of mediator between the prostitutes or those who engage them or finance other's prostitution;
- uses threat, pressure, or any other strategies to hinder the prevention, control, assistance and re-education undertaken by the qualified organisations for the prostitutes or for those in danger of prostitution.

Attempts of the offences listed above are punishable by the same penalties as for the offences.

Articles 334 and 335 of “Bouvenet Criminal Code” punish the habitual incitement of a minor or a woman, the keeping of a woman or a minor in a brothel, the use of constraint on a woman or a young girl to engage in prostitution, the managing of a secret prostitution house, the fact of playing the role of a mediator between the people who exercise prostitution and the people who exploit the other's prostitution. It also concerns the sharing of the incomes or the subsidies from someone else's prostitution or living together with a person who exercises prostitution and habitual tolerance of prostitution in a public place.

The person who commits such actions, who prompts, favours or facilitates the offence or who tries to incite, to favour or to facilitate the prostitution or the exploitation of women and girls is sentenced from 6 weeks up to three months of imprisonment and is imposed a fine ranging from 18000 to 1800000 CFA. This law is not applicable in the case when the guilty party is the father or the mother of the prostitute in question.

The same penalties apply when the guilty party is a person who has authority over the victim, is his/her teacher or employer or one of the people mentioned above, a civil servant or a clergy man.

### *Adultery*

In Benin, adultery is punishable according to the status of the accused person. In the country's criminal law, Articles 336, 337, 338 and 339 of the Criminal Code define the conditions of the lawsuits.

Action is taken against a woman and her partner who committed adultery. Both of them receive the same sanction. The husband issues the lawsuit and can withdraw his complaint upon his will.

The woman who is a victim of adultery has the right to file a complaint. Action can be undertaken against her husband only if adultery takes place at home (Article 339).

The sanction provided for the husband who commits adultery ranges from a 36000 to 720000 CFA fine, and the woman who commits adultery is imprisoned for at least three months and up to two years.

The accomplice of the woman who commits adultery is imposed the same sentence of imprisonment, and in addition is to pay the fine from 36000 to 720000 CFA.

#### *Forced marriage and the levirate*

There is no disposition in criminal legislation which represses directly forced marriage and levirate.

## **3.2 Legal framework for women's protection**

### **3.2.1 Female genital mutilation**

Upon examination of Benin's report in May 2002, the Economic, Social and Cultural Committee recommended to Benin to adopt the following measures:

“Benin should: increase its efforts aimed at putting an end to the practice of female genital mutilations by adopting a law, which stipulates that female genital mutilation is a crime; by creating mechanisms aimed at protecting and educating women through educative programmes of the harmful effects of genital mutilation; providing financial assistance to women who mutilate young girls in order to put an end to these activities. The State parties are invited to indicate in their second report, what progress has been achieved in this sphere.”

Law n° 2003-03 of 3 March 2003 regarding the repression of female genital mutilation in the Republic of Benin criminalises the practice of female genital mutilation except if it has been carried out for important medical reasons

(Article 3 paragraph 2 - surgical operations of genital organs carried out on the basis of medical prescriptions) and in conformity with the law. In case of death, the penalties are increased (Article 4-9).

- Anyone who carried out genital mutilation on a female person in whatever form, will be imprisoned from six months to three years and will pay a fine ranging from 100 000 to 200 000 FCFA.
- When the mutilation is practiced on a minor under 15, the perpetrator of the crime will be sentenced for a period ranging from three to five years of imprisonment and fined up to 3 000 000 FCFA.
- When the victim dies as a result of mutilation, the guilty party will be sentenced to hard labour for a period of five to twenty years and imposed a fine ranging from three million to six million CFA.
- Anyone who would have helped, assisted, called the man or the woman who practices the mutilation, who has provided him/her with material or has given him/her some instructions, will be treated as an accomplice and will be condemned to the same penalties as the main perpetrator.
- In case of the repetition of the offence the maximum penalty will be applied immediately.
- Non-reporting is fined from 50 000 to 100 000 FCFA.

There is a problem concerning the interpretation of Article 3 of this law. In fact, according to Article 3, “the surgical operations of genital organs carried out on the basis of a medical prescription are excluded from this category”. The fundamental question is the following: “Is the women’s health effectively medically improved through the practice of genital mutilations carried out on her sex”.

Female genital mutilations are mainly practised in the northern departments and in some localities of hillside departments like Kpataba, but the practice is diminishing mainly after investigations were carried out by Benin’s Commission of Human Rights with the collaboration of the Women Lawyer’s Association of Benin (AJFB) and the assistance of the Ministry of the Family, Social protection and Solidarity (25-29 June 2002) in the Atacora department. The aim was to check information according to which defenders of mutilation had attacked the mayor’s house in some villages of the Atacora department after the organisation of a awareness raising meeting against the



mutilation and following the adoption of law 2003-03 of 3 March 2003 regarding the abolition of the practice of female genital mutilation in Benin.

The causes of the practice of mutilation are socio-cultural. Persons inform a priest about the girls on which the mutilation must be carried out. The victims may be young girls, adult women who may be pregnant who have been psychologically or mystically prepared to undergo the operations.

Non-Islamic regions like Kerou, Natitingou, Tanguieta, Kouande, Toukountouna are more concerned with this practice. According to local customs, the excision procedure takes place at the end of the dry season. It often happens that some parents ask that their daughters be excised.

### 3.2.2 Abortion

National legislation considers abortion an illegal activity, according to the law of 31 July 1920 prohibiting abortion and proclaiming propaganda against contraception.

Law n° 2003-04 of 3 March 2003 has repealed law of 31 July 1920. However, Article 317 of the “Bouvenet Criminal Code” stipulates that “whoever has procured or tried to induce abortion by food, beverages, pills, exercises, violence or any other means on a woman supposed to be pregnant, with or without her consent, will be sentenced to one to five years of imprisonment and a fine ranging from 180 000 to 3 600 000 FCFA. Imprisonment will be ten years when the third party habitually practises abortion. In addition, “any woman who aborts or tries to abort can be sentenced to imprisonment ranging from six months to two years and have imposed a fine ranging from 36 000 to 720 000 CFA (Article 317).

The law described above also fixes the conditions under which contraception and the voluntary interruption of pregnancy may be legally permitted, taking care of those who suffer from HIV/AIDS and STDs (Sexually Transmitted Diseases). Voluntary interruption of pregnancy is authorised only in the following cases and upon a doctor’s prescription:

- when the continuation of the pregnancy jeopardizes the life and the health of the pregnant woman;
- when it is requested by the woman because the pregnancy is a consequence of a rape or an incestuous act;

- in the case when the unborn child is affected by a particularly grave infection at the moment of the diagnosis (Article 17, paragraph 2).

#### **4. Prisons and the conditions of detention**

Although Benin has ratified or adhered to a number of international conventions protecting the rights of prisoners, in practice things look different. Conditions of detention are deplorable.

In Benin, there are eight prisons. There are no special prisons for women. In all prisons, women are separated from men but girls are not separated from adults.

In the civil prison of Cotonou, the Women Lawyer's Association of Benin (AFJB) noted an existing social discrimination in terms of a woman's social rank. As a result, women civil servants are detained in better conditions compared to the conditions in which saleswomen or those who do not have a paid job are held.

Below are statistics given by the Administration Office of the Ministry of Justice, Legislation and Human Rights, as of 16 July 2003.

Women civil servants have their own dormitories and sleep on beds, whereas the others sleep on mats. There are three dormitories and two are given to women civil servant and only one, small one, is given to the other women prisoners who stay in an overcrowded facility.

The so-called "invigilator" is chosen among the women civil servants. She is in charge, the middle woman between the prisoners and the authorities of the prison, and she decides where women prisoners, just arriving to the prison, are kept. She is in charge of carrying out searches on other prisoners when she deems it necessary. She has a board on which she records the latest number of prisoners.

On 8 September 2004, at the Civil Prison of Cotonou there were 101 women in detention, recorded and divided as follows:

- those whose cases are before the judge of instruction: 53

- those who have committed a flagrant offence: 20
- convicted women: 19
- minors: 7
- ill-prisoners: 1 (those who are mentally ill are sent to the Psychiatric Centre Jacko)

It should be mentioned that some women carry out petty trade inside the prison for their own benefit, whereas others do it as part of the applied programme “Training and Generating Income Activity”, initiated by Penal Reform International (PRI) and the NGO “Benin’s Prison Fraternity”.

In terms of disciplinary measures which are applied in prisons, the one which is often applied is the prohibition of going out and the obligation of staying inside the cell for many days or months according to the gravity of the committed fault. For commonplace faults like simple quarrels, the disciplinary punishment consists of cleaning the toilets for a certain number of days.

These different punishments are dictated by those in charge of detainees.

PRISONS	Number of women	Education and training programmes	Activities	Specialised staff	Type of detention	Post-prison follow-up measures
Abomey	36	Legal Assistance Prisoner’s Program	Petty trading	No	Collective	None
Cotonou	78	idem	idem	No	idem	No
Porto-Novo	35	-	idem	No	idem	No
Parakou	05	idem	-	No	idem	No
Natitingou	06	-	-	No	idem	No
Ouidah	04	idem	idem	No	idem	No
Lokossa	19	-	-	No	idem	No

#### 4.1 Overpopulation of prisons

All prisons in Benin are overcrowded. As of 31 December 2002, the prison facilities for 1810 persons have been used by a total of 4336 persons. Thus, in relation to prison capacity, the rate of occupation of the prison facilities is 239.56 %. Prisoners awaiting trial or judgment represent 74.01% of the population of the prisons i.e. 3209 prisoners.

The situation is alarming in the prisons of Abomey and Cotonou. In December 2002, about 4 prisoners shared the place of one prisoner, while in Porto-Novo three prisoners were kept in the place of one. The other prisons are less crowded with an average of two prisoners in the place of one. These figures show that efforts have to be made concerning the respect of prisoner's rights. It also should be mentioned that legal assistance to prisoners is about to be implemented, thanks to the cooperation between Penal Reform International and the Ministry of Justice, Legislations and Human Rights.

According to Article 21 of decree n° 73-293 of 15 September 1973 regarding the penitentiary regime in Benin, "prisoners can be authorised to keep their own clothes whereas the convicted ones must wear the disciplinary clothes of the prisons". This regulation means that the law imposes a distinction between prisoners in terms of clothes. In fact, this distinction is rarely applied. For instance, in the civil prison of Abomey, imprisoned women wear their own clothes in their division. Therefore, it is impossible to make a distinction between the simple detainees and the convicted prisoners. Two justifications have been used to prove this fact: 1) there are more women in preventive detention than convicted women; 2) as of 16 July 2003, out of the 36 women held in this prison, less than half had been judged.

Article 56 of decree n° 73-293 also states that: "The international regulation in the sphere of prison provides for distribution of food to the prisoners". This obligation is limited to only one meal a day in all the prisons in Benin. Detained women are provided with one hot meal a day. Very often they complain about the insufficiency of food and its quality. Nevertheless, fresh water is provided in all prisons except in the prison of Natitingou during the dry season. In fact, the penitentiary administration justifies the situation by saying that the budget, which they are allocated for the operation of the prison, does not allow them to provide a qualitative and quantitative improvement to the served food. The situation would be horrible if the women could not rely on relatives and friends who are allowed to bring them food during visiting

hours. However, women very often feel abandoned because they rarely receive visits from their family (some parents or husbands cannot bear the fact that their wives or daughters have committed an act which required their imprisonment. Some parents think that their child in prison has brought shame to their family name. Husbands and friends are afraid to be considered as accomplices of the prisoners. It is for all these reasons that women in prison are hardly visited. They only have the occasional opportunities to out to buy what they need if they have the financial means. Some associations or personal benefactors give donations to participate in the improvement of their food and their physical care.

Some prison bailiffs accept the existence of ‘true markets’, which are organised inside some prisons in order to sell foodstuffs like rice, tomatoes and local food to other women.

Jurisdictions	Prisoners to be judged	Total number of prisoners	Prison capacity
Prison of Abomey	578	746	200
Prison of Cotonou	1356	1455	400
Prison of Kandi	165	275	150
Prison of Lokossa	215	325	160
Prison of Natitingou	118	249	300
Prison of Ouidah	116	246	150
Prison of Parakou	161	295	200
Prison of Porto-Novo	500	745	250
<b>TOTAL</b>	<b>3209</b>	<b>4336</b>	<b>1810</b>

Source : Statistic of the Ministry of Justice, Legislations and Human Rights

## **4.2 Hygiene in the women's division and women's medical care in prisons**

When a woman is imprisoned, she depends on the administration for all of her needs. Since imprisoned women cannot control their living conditions, medical issues become of paramount importance. The prison has the duty to assure a certain degree of living conditions to women prisoners, which should not jeopardize the health of the prisoners. The prison's officials carry the obligation to guarantee a hygienic place of detention and to guarantee the health of women in detention.

In fact, the prison administration is in charge of the cleanliness of the prisons. On this point, Article 4 paragraph 5 of decree n° 73-293 of 15 September 1973 states that "the bailiff of the prison is in charge of applying the cleaning service", in other words, if the administration itself is not in charge of cleaning the prison, it must monitor that the service in charge of it does it well. However, it is generally the prisoners themselves who take care of it. This fact can be understood because it is work of general interest, since work outside prison is prohibited for them (Article 68 & 69 of decree n° 73-293 of 15 September 1973).

However, the problem is that women carry out this work with bare hands, without any protective gloves, with no hygienic care, even for cleaning the toilets. Women interviewed by the NGOs also complain about the lack of cleaning products. That is why all civil prisons in Benin are in dirty states. In the particular case of the prison of Abomey, the administration made some efforts to keep the prison in a healthier state by covering the ground with cement. It helped to improve the state of the place during the rainy seasons by reducing the mud inside the rooms of the prison.

In addition to the lack of cleanliness of the prisons, there are problems related to the aging premises of the old prisons, for instance, the prison of Abomey, which was opened on 2 February 1952. This prison can no longer receive any prisoners. It cannot even contain the prisoners who are kept there now. The women's division is so small that some of the women detained there are compelled to sleep on bare ground and others - to sleep with their legs folded up.

During the visits of the Women Lawyer's Association of Benin (AFJB), prisoners received some donations from an NGO: mats and blankets. This donation give some prisoners the opportunity to sleep in better conditions.

Prisoners have the right to access medical care right from the beginning of their imprisonment. Articles 62 & 64 of decree n° 73-293 of 15 September 1973 regarding the penitentiary regime, establishes a certain number of prescriptions which provide for the health care of the prisoners.

Unfortunately, all dispositions related to providing medical care for prisoners have been hardly implemented. Imprisoned women, as well as other prisoners, suffer from certain illnesses that the general population does not even know of because of the different living conditions. Most of the prisoners suffer from scabies because of dirty conditions and the presence of mosquitoes. Yet Article 60 of decree n° 73-293 of 15 September 1973 stipulates that “each prisoner has a certain quantity of soap per week for personal washing and for the washing of their clothes.”

In Abomey, and in most other prisons, there is no structure providing medical care for prisoners who are ill. Ill prisoners are sent to Goho hospital, where they can be examined by a physician. Most of the time, when the physician prescribes a treatment, the patient herself has to buy the pills. When she has no money, the penitentiary administration informs the parents of the prisoner so that they can buy the medicine. If the hospital has the medicine in question, the patient is treated free of charge, but this happens only occasionally. Very often there is no nurse at the prison or when there is one, she has no support staff or medicine.

In view of the cost involved and cultural background, ill prisoners very often prefer not to buy medicine but use traditional popular plant and herb medicine, because it is cheaper and they tend to trust more the properties of traditional medicine.

A pregnant female prisoner can give birth to her baby in a maternity unit of a hospital where she is followed by a medical team and soon after the birth of her baby, when the physician or the midwife considers her able to leave the maternity, she returns to her cell with the newborn.

The prisoner can keep her newborn with her in prison until he/she is five years old.





**Part III**

**VIOLENCE AGAINST CHILDREN**



## Introduction

The people of Benin traditionally give great importance to the notion of family, and parents protect their children who are considered a source of happiness and pride.

Nevertheless, nowadays this tradition can be a cause of many violations of the rights of children in Benin. Trafficking of children is one of the most blatant violations of children's rights in Benin. The United Nations, through its international instruments, helps to fight against trafficking at both the national and regional levels. In addition, other types of violence infringing upon the basic rights and freedoms of children exist in Benin. More precisely, children are often in conflict with the law, they are victims of abuse, of torture, neglect or exploitation.

Generally speaking, NGOs in Benin are concerned by these pervasive issues. In fact, it is very difficult to describe the different manifestations of violence against children in Benin. In rural areas, violence against children is quite widespread. Here, the parents are mostly responsible for the violence inflicted on children in so far as : permitting the murder of their children who are not born in a "normal way"; they themselves ask the primary school teachers to beat their children; they ask policemen to inflict corporal punishment on their children who do wrong; they sell their children to child traffickers. All these are generated by traditional beliefs and economic poverty pervasive in the rural areas of Benin. Some of the children who are victims of violence committed by a member of the family or a state officer are not even aware of the fact that what they endure is blameful. Many cases of violence remain unknown because the victims do not denounce them or just because they consider them to be normal.

In general, there seems to be a lack of child protection in current Beninese legislation. Political leaders, actors of the civil society, together with foreign organisations working in Benin share this concern. The preoccupation can be seen by the progressive improvement of the legal tools that are linked to the promotion and the protection of children's rights. The State of Benin has also undertaken the establishment of certain governmental structures in order to facilitate the application of laws, which promote the foundation and the establishment of national bodies, institutions or NGOs with the goal of protecting children's rights.

In the process of elaborating measures in relation to children's right and criminal procedures applicable to children, Benin's legislators are increasingly taken into account the specificity of children in terms of both being liable or for being a victim of a crime. Today, the main legal problems that hinder the efficient improvement of children's rights are the following:

- the existing double standards in the legal system regarding civil law issues, i.e., the coexistence of modern civil rights and traditional legislation regulated by the customary law of Dahomey;
- the existing texts do not effectively provide for the punishment of crimes committed against teenagers;
- the lack of legislative knowledge on the side of the citizens makes them turn to social mechanisms to settle conflicts involving children rather than bringing the issue before justice.

The effective application of law, when the legislation provides for a particular protection of child rights, quite often has to face the reluctance of families to consider the child as a person who holds rights.

The essential challenge for the Beninese society regarding the protection of the rights of the child is to change people's mentality to considering a child as a person who has his/her own rights so that they can benefit from particular protections.

## 1. Definition of a child

Benin's legal framework defines the legal age of the child in terms of the context in which a case is examined. For instance, in civil cases, according to the Civil Code, replaced in August 2004 with the Personal and Family Code, the legal capacity starts at 21; as for political matters, the right to vote is granted starting from 18. In criminal cases, the age of criminal liability is 18, according to Article 1 of decree 69-23 of 10 July 1969 concerning crimes committed by teenagers under 18.

In labour law, Convention n° 138 of International Labour Organisation, ratified by Benin on 6 November 2001, regarding the minimum age to work,

fixes this minimum at 14 years. Under this convention, the State has the possibility to fix another age for light work. In Benin, this age is fixed at 12 years for light work, for which the list must be determined by Benin's authorities (but the list has not been established for the time being). Education in Benin is theoretically compulsory and free of charge between 6 and 11 years of age.

## 2. Protection of the child against torture and other cruel, inhuman or degrading treatment

### 2.1 Legal framework

#### 2.1.1 International rights

Benin has signed the main international conventions on the protection of human rights related to children:

- **UN Convention on the Rights of the Child**, adopted on 20 November 1989 and ratified by Benin on 3 August 1990 (in particular, Article 34 “Protection of the child against any form of violence”, Article 35 “Protection of the child against any form of sexual exploitation and sexual violence”, Article 37 “Prohibition of subjecting a child to torture and other cruel, inhuman or degrading treatment; prohibition to arrest and imprison a child illegally; and Article 40 “Protection of a child in conflict with the law”). This Convention was ratified together with the two optional protocols, which were ratified on 21 November 2001;
- **African Charter on the Rights and Welfare of the Child**, adopted in July 1990 and ratified by Benin in 1996 (Article 15: child labour; Article 16: protection of the child against abuse and torture; Article 17: administration of juvenile justice system; Article 21: protection of the child against dangerous social practices; Article 22: protection of the child in case of armed conflict; Article 27: protection of the child against social exploitation and Article 29: selling, trafficking and abduction of children;
- **Convention n° 182 of ILO** ratified on 6 November 2004 regarding the minimum age of admission of children to labour and regarding the worst forms of child labour.

### 2.1.2 National legislation

- **The Constitution of 11 December 1990**

Articles 18 and 19 of the Constitution raise the principle of the prohibition and punishment of acts of torture, namely those committed by a State agent. While these dispositions do not specifically concern children victims of torture and other cruel, inhuman or degrading treatment, they have a general view that includes children. In 1999, a decision of the Constitutional Court of Benin stipulated that the fact that four agents of the State security police had beaten up two young boys of 12 years, suspected of theft, constituted humiliating and degrading treatment and a violation of Article 18 of Constitution according to which “no one will be subjected to torture, cruel, inhumane or degrading treatment”.<sup>42</sup>

- **Beninese criminal law**

Torture does not constitute a crime in the Beninese criminal system. Articles 18 and 19 of the Constitution are not taken into account by criminal legislation, in opposition to what Article 4 of the Convention Against Torture requires. Even though the Constitution foresees the principle of punishment in case where a State agent has committed an act of torture, the act of torture itself is not defined and has no criminal qualification. Therefore, no accurate penalty is inflicted when a State agent is liable for such an act. This is true with regard to torture against all Beninese citizens, including children.

However, despite the lack of a clear disposition criminalizing torture and other cruel, inhuman or degrading treatment committed against a child by a State agent, there are legal possibilities to punish State agents who inflict violence against children.

Articles 309 to 312 of the Criminal Code prohibit voluntary assault and battery. The penalty for the crime varies depending on the circumstances and increases when the victim is a child under 15<sup>42bis</sup>. Likewise, the rape, sexual

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42 Decision n°DCC99-010 of 4 February 1999. In this decision, the court also states that there was no confirmation of the alleged violence (the young men said that they had been beaten up, that their hair had been moistened with kerosene and they were threatened to be set on fire) by a medical certificate, so the acts of violence were not proven and there could not therefore be a violation of the Constitution.

42bis Initial Report of Benin to the Committee Against Torture, CAT/C/21 Add.3, 27/07/2001, para. 51.

exploitation and prostitution (Article 330 and following of the Criminal Code) are more severely punished when the victim is a minor.

Protection against the ill-treatment, illegal movement and kidnapping of minors are governed by law 61-20 of 5 July 1965, related to the movement of children under 18 years of age from the national territory and ordinance N° 73 – 37 of 17 April 1973 related to trade and kidnapping of minors that has modified the above provisions of the Criminal Code on this account. These texts also protect children against other types of inhuman treatment.

The penalties provided in law against the perpetrators of violence against children or minors are, in general, sufficiently dissuasive. The fact that the victim is a minor, usually constitutes an aggravating circumstance. For all these legal provisions, in reality, State agents (particularly policemen) that commit acts of violence against the children are only rarely denounced because these acts are for the most part kept secret. So even if the legal penalties seem dissuasive, in reality their dissuasive effect is neutralised by the fact that those who commit violence against children clearly know that their acts will not be denounced.

When a child is a victim, the tribunal judges the perpetrator of the violence against the child according to the ordinary procedure (if the perpetrator is an adult). When the infraction committed against the minor harms his dignity, the case is heard "in camera".

## 2.2 The practice of torture

The courts often face cases of violence against children such as ill-treatment, trafficking or other. Unfortunately, in such cases jurisprudence is not fixed, alternating from sentences with remission to firm sentences. But, since the culture of denunciation of violence against children is not developed in the majority of the society (because of illiteracy and ignorance of legal procedure), the acts of torture or ill-treatment against children by State agents are not efficiently punished by justice.

Meanwhile, some situations and testimonies show that children in conflict with law and street children are often severely beaten in police stations and headquarters of gendarmes (mainly in the rural areas) with a big piece of wood (made specifically for the purpose of beating)<sup>43</sup> to discipline them or to make

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43 "Economic, Social and Cultural Rights in Benin", a report submitted by OMCT and ESAM to the UN Committee on Economic, Social and Cultural Rights, May 2002, p. 23.

them confess. According to ESAM, the practice of ill-treatment against children is frequent in police stations in Benin but cases of such mistreatment remain secret and they are not denounced. This can be explained by ignorance of the rights of children and by the very widespread use of corporal punishment. Accurate information on ill-treatment of the children is very rare and does not allow a precise description of the types of ill-treatment inflicted on children nor their gravity.

The practice of corporal punishment is particularly widespread in Benin. Although it is forbidden by law in schools, traditional social behaviour still encourages it inside the family, in schools, in hospitals and police stations and generally speaking in the whole society<sup>44</sup>. It often happens that the parents themselves send their own children to a teacher of primary school or to a policeman to be beaten. The society as a whole is an accomplice to this frequent phenomenon in Benin.

#### **Testimony of a case of corporal punishment inflicted on children in a police station to make them confess**

Simon, a student in the fourth form, alleged that in the previous year he had been a victim of ill-treatment by a police officer. His class was sitting for an examination, when an invigilator surprised a girl with a paper note on which the model answers to the questions were written. The invigilator called the girl up and accused her of cheating. The latter denied this. Then the invigilator called the other students who were seated around the girl; they were six and Simon was one of them. The invigilator escorted them presumably to the authorities of the school.

The students were astonished to see that they were then escorted to the police station in order to find out the origin of the written paper. The police officer tried in vain to learn how the paper had come into the hand of the girl during the exam. But the answers of the children did not seem to him to be truthful. So he started beating the children with a stick on their hands till one of them confessed. Simon who knew nothing of the cheating received some blows and his hands ached for two days.

44 CRC/C/15/Add.106, 24/08/1999, para.19.



Since that time, cases of corporal punishment by State agents have been more and more rare because of the denunciation of the practice through interactive radio programmes. This environment contributes to decreasing the incidence of cases of torture and other ill-treatment on citizens because perpetrators are afraid to see their names on the front page of the newspapers the following day.

### 2.3 The complaints procedure

The complaints procedure concerning torture or ill-treatment by a State agent involves for addressing the Constitutional Court and tribunals. An administrative remedy is also possible by a complaint lodged to the superior authority of the agent who commits the act or to administrative judge<sup>45</sup>.

Concerning cases of violence against children, it is possible to refer the case to a judge for children in the tribunals or to the office of investigation.

In addition, the National Commission of Human Rights can receive and examine complaints from or on behalf of children<sup>46</sup>.

Before children reach 21 years of age, they can only complain through their parents or guardians. In the same way, the legislation in force requires that the hearings of children take place in the presence of their parents.

There are other procedures, such as appealing to the various organisations which defend human rights. A child can also lodge a complaint by calling a free of charge phone number. Any citizen can dial 16 to signal any violation to the Minors' Protection Brigade. Unfortunately, for the moment this number does not work because after changing their offices, the number of the Brigade has not yet been activated.

Once the officers of the Brigade are informed of the case of violation, they start a procedure that may lead to the prosecution of the perpetrator. In its Concluding Observations in 1999, the CRC expressed its dissatisfaction with the fact that there had been insufficient efforts to facilitate children victims to speak out, rather they are traditionally dissuaded from complaining. No improvement has been reported in the five years since the time of the Observations.

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45 CRC/C/15/Add.106, 24/08/1999, para. 8.

46 CRC/C/15/Add.106, 24/08/1999, para. 8.

### **3. The situation of children in conflict with law**

#### **3.1 The minimum age of criminal responsibility**

According to the Benin's criminal law, the minimum age of criminal responsibility is 18 years old. A child under 13 years can be liable as far as the Criminal Code is concerned, but he/she cannot be sentenced, and the minor who is more than 13 years old and under 18 can be judged before a tribunal for minors and can be sent to prison.<sup>47</sup>

#### **3.2 The juvenile justice system**

##### **3.2.1 The minors in conflict with law facing the police**

When a minor is arrested he/she benefits from certain rights foreseen by the Code of Criminal Procedure. Informing a parent is required but can be deferred for twenty four hours maximum, upon a decision of the competent magistrate. Social and medical care are also foreseen. Meanwhile, the intervention of a lawyer is not foreseen in the Code of Criminal Procedure. In addition, at this stage, a minor cannot be handcuffed.

When a minor is accused of breaking the law, police stations are supposed to be both the institution of observation and a friendly place for settling problems. As a rule, here the agents record the case of the breach of law, gather evidence and transmit established minutes to the tribunals or to the Minors Protection Brigade.

However, in practice, police officers often act as substitutes for judicial bodies and take some measures for friendly settlement of conflicts. The friendly settlement, frequently used by Benin police officers, provides for negotiations between the child who broke the law and the plaintiff. The main reason for this practice is to avoid legal action against the child on a minor misdemeanor charge. Whether the negotiations fail or are successful, their result must be transmitted to the public prosecutor who is the only one to decide on legal action.

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47 CRC/C/3/Add.52,4/07/1977, para. 55.

Juvenile delinquents must be sent to the Minors Protection Brigade or must be brought before the public prosecutor as soon as possible. In fact there is no custody for juveniles in Benin and policemen have no right to put a child who has just been arrested into prison. Meanwhile, there have been cases of such imprisonment recently. The Constitutional court has once condemned a police office for having kept a young girl in the police hall for six days. He argued that since he was very busy he failed to transfer her case to the Minors Protection Brigade.

The above-mentioned function of the policeman as a negotiator or as a referee between the minor who has breached the law and the plaintiff is not provided for in any text of criminal procedure and exists only in practice. In the absence of an appropriate legal framework for this work, conditions exist for the violation of children's rights when they confront police agents. In fact, there is a notion that no policeman in Benin has ever respected the child's rights if the child was seen as a lawbreaker.

There is information that cases of ill-treatment of children by policemen exist in rural areas.

#### *The Minors Protection Brigade*

This is a police body created by decree n° 83 – 233 of 29 June 1983, and its competence covers the country. Presently, there is only one unit in Cotonou for the whole of Benin. Sometimes this hinders the procedure, if a minor arrested in the north of the country must be transferred to Cotonou. There is a plan to build regional centres of the Minors Protection Brigade in order to decentralise the activities of this body.

The Minors Protection Brigade is mandated to act whenever children are in moral or physical danger. It carries out actions to prevent youth delinquency. It has progressively become an institution where problems involving children are settled in a friendly way. According to its officers, its role is more of a social nature today.

This Brigade has a reception centre, which currently does not function because of the lack of staff, financial and material means to deal with all the aspects concerning the protection of minors. However, it plays an important role in the fight against trafficking children. The different police stations work hand in hand with the Minors Protection Brigade, especially around Cotonou.

### 3.2.2 Procedures before the judge

In Cotonou, Porto-Novo as well as at Parakou, there are tribunals specialised in the criminal cases of minors. Unfortunately, there are only two judges for minors for the whole country - in Cotonou and Porto-Novo.

The procedure is organised by ordinance 69-23 of 10 July 1969 related to the judicial proceedings for the violations of the law committed by minors who are less than 18 years old. During the first appearance before the judge, the latter can decide on a type of detention. He imposes preventive detention in cases of grave breaches of the law, in cases of repeated offences, if the minor is in danger, or if his/her parent cannot be localised. When a minor who is less than 13 years old breaks the law and must be protected against the dangerous reaction of his victim or his family, he/she is not put in prison but in the National Centre for the Safeguard of the Infancy and Adolescence and then, a few days later, is taken back to his/her parents. According to the Article 34 of the ordinance no. 69-23 of the 10 July 1959, the children's judge can take one of the following decisions when he/she is informed about the preventive detention of a minor:

- Place the child back to with his/her father or mother.
- Place the child with a trustworthy person, to a charity institution, to a foster home, or to an observation centre.
- Temporary detention only if it seems indispensable or if it is impossible to take another measure; in this case the minor will be kept in a special quarter or in a special place. Isolation is ensured at night.

Trials of minors are not held in public and may also be held in the absence of the accused if the latter's psychological state is deemed to be at risk. Any decision taken must care for the interests of the child. For that purpose, the judge is authorised to apply the provisions of the Criminal Code related to extenuating circumstances and also to dispense suspended sentences. Likewise when a minor is preventively arrested and sentenced to a prison sentence, the judge sees to it that the duration of his imprisonment sentence be the same as the duration of the preventive detention so that the prisoner is free as soon as the hearing is completed.

In theory, legal assistance is obligatory in the procedure before the children tribunal<sup>48</sup> (even if this is not the case during arrest). In practice, it is often achieved by a lawyer automatically appointed, but the main drawback is the inefficient defence of the minor.

### **3.3 Sanctions against a minor in conflict with law**

The above mentioned ordinance n°69.23 determines the sanctions against minor delinquents.

They can be subjected to educative measures, placed under watch or under guardianship. This applies to all minors, aged less than 18. In these cases the minor can be placed with parents, another trustworthy person, with a charity institution or at a rest centre.

At any stage of the procedure, the children's judge can take, by a reasoned decision, measures to keep or re-educate the minor in a closed or open centre where educative care can be given to the child and his family<sup>49</sup>.

A distinction is made between a child under 13 years and the children aged between 13 and 18 years. Children aged between 13 and 18 years can be submitted to all the measures enumerated so far and they can also be imprisoned. In this case the maximum duration of the prison sentence will be half of the term for an adult for a similar crime.

When a child aged more than 13 years is liable of a breach and sentenced, he is generally sent to an appropriate centre for his re-education. An example of this type of centre is the National Safeguard Centre of Childhood and Adolescence which takes care of children aged 13 years and older; the other centre is Carrefour d'Ecoute et d'Orientation (Centre of analysis and orientation) of the Archdiocese of Cotonou. Reinsertion and the rehabilitation of minors who were found guilty of breaking the law is generally provided by NGOs rather than by specialised State organisations. The minor or his parent can question the legality of a decision that leads to imprisonment by making an appeal to a superior jurisdiction.

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48 CCPR/C/BEN/2004/1, 16/04/2004 /paragraph 264.

49 CRC/C/3/Add.52, 4/07/1997, paragraph 103.

As for the death penalty and imprisonment for life, no legislative disposition explicitly prohibits the application of either measure with respect to minors. Yet the death sentence has not been applied in the country since the 1980s and no provision for imprisonment for life of children exists in the legislation or has ever been applied. Theoretically speaking, the maximum penalty to which a minor can be sentenced, is twenty years of imprisonment.<sup>50</sup>

### **3.4 Practice: The conditions of detention**

When a minor is sentenced to imprisonment he must be kept in a place of detention for minors foreseen in the prison. Out of the eight prisons existing in Benin, only the prison of Parakou does not have special quarters for minors.

A recent visit carried out by ESAM to the prison of Cotonou shows that the conditions of detention for minors are poor. The problems noticed relate to inadequate living conditions, poor hygienic conditions, lack of games and leisure, and no medical care. Between 20 and 30 minors live in a tiny room. They sleep together on bare ground, apart from the overpopulated adult prison quarters. Minors in preventive detention are kept with others who have already been convicted, and a lot of children have been waiting for their trial for more than six months and even up to one year.

Moreover some adults are present in the minor quarter on the authorisation of the head of the prison.

## **4. The State institutions taking care of the children**

### **4.1 The school system**

The school is the main institution that is in charge of children as far as it concerns their instruction and education. Even if Benin's laws are against corporal punishment, teachers often beat children. Children are often slapped or beaten with a stick of any size to make or keep them quiet.

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50 CRC/C/3/Add.52, para. 99, 4/07/1997.

In some rural areas, some parents think that their lazy children need to be sent to a teacher who will beat them to make them work.

## **4.2 National Centre for Safeguarding Childhood and Adolescence (NCSCA)**

The National Centre for Safeguarding Childhood and Adolescence was created by decree 67-316 /PR/MGM/ of 9 September 1967 (with its two regional offices in Parakou and Aploue). The main purpose of the Centre is to keep minors in conflict with law, those sentenced to a light penalty, or those who are committed to the “*centre de redressement*” in pre-trial detention. The centre is in charge of the re-education and social reinsertion of minors in difficulty.

# **5. Protection against all forms of violence against children**

## **5.1 The placing of children or the phenomenon of “vidomègon”**

“Vidomègon” is the situation of a child placed with a third party in order to make him acquire education or to make him work. In the past it was considered as a sign of solidarity among the members of the same family; today it provides for placing a child with a third party who receives remuneration or retribution.<sup>51</sup>

This is a big problem of current Beninese society because it hides real trafficking of children inside the country. Some people go to the village, promise or give money to parents and take a child who is placed with them free of charge. The child carries out work and the person who receives it must educate him/her. Or the child is placed for money. The amount varies between 20.000 and 120.000 CFA or more. In some cases, the vidomègon is paid for his work

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51 National Coalition for the Rights of Children in Benin, Alternative report of Benin on the implementation on the Convention on the Rights of Children, 1999.

approximately 5000 CFA. The amount is taken by a middleman who uses the money either for his own purposes or sends the money to the parents of vidomègon in the village to feed them. The vidomègon is the place in a family where the child can be loved, exploited or rejected. When the vidomègon is well accepted in a family, he/she can thrive. Quite often some vidomègon learn skills or learn to read in their mother tongue or in French. But most of the time vidomègons are victims of ill-treatment, physical and psychological violence or of sexual abuse, and the trauma follow them all their life long.<sup>52</sup>

As the system proliferates today it has become a new form of slavery, or of selling children.

The cause of this phenomenon is mainly poverty, illiteracy and the neglect of some parents<sup>53</sup>.

A draft law aiming at discouraging the practice of vidomègon was formulated and studied by the Cabinet Council in 1997 but the legislative procedure has been stopped. Today there is no law protecting children, particularly against this phenomenon and punishing the people who abuse the system of placing children. Nowadays, the policy of the Beninese government is to fight against all forms of trafficking of children with which the vidomègon is closely related.

The international intergovernmental organisations as well as NGOs try to fight this phenomenon through awareness raising campaigns. Today, it seems that the people are more reluctant to place their children. But they are eager to entrust their children to traffickers who organise the illicit transfer of children “collected” from villages and cities, abroad.

This phenomenon becomes synonymous with exploitation of children and is closely linked to trafficking of children. It takes a larger dimension, is managed by people who organise themselves into networks and whose illicit activity includes the transfer of children abroad

## 5.2 The trafficking of children

Two recent cases published by the United Nations illustrate the complex phenomenon of trafficking of children in West Africa. In July 2004, 27 children

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52 National Coalition for the Rights of Children in Benin, Alternative report of Benin on the implementation on the Convention on the Rights of the Child, 1999.

53 Idem.



aged between 6 and 12 years old and four of their "managers" were intercepted by the police on the border of Benin. They were transferred to the Ivory Coast and Ghana.

According to the testimony of the children, they left their village with the consent of their parents. In fact, most of the time some poor parents give their children to the ferry man who pretends to take them in order for them to find a brighter future. One of the children even said that a member of his family had negotiated his departure and promised him a job of a seller in a warehouse in the Ivory Coast.

The children came from Benin and Nigeria. After the investigation, they were handed over to their parents. In the other case, Beninese police intercepted eight Togolese children and a ferry woman who brought the children to Benin to make them work. Interpol arrested the woman, and the children were given back to Togolese authorities. According to Beninese authorities, anyone travelling with children will be asked questions.

Already for a number of years, Benin has been a busy centre for trafficking of children in West Africa. According to UNICEF, about 200,000 children have been victims of such traffic in this region. Benin has been the starting point, the destination and the transit zone for the trafficking of children.<sup>54</sup> The victims are generally aged between 7 and 18. Children of 18 years have often been victims for many years. More than two third of the children are girls.

In Benin, there is both internal and external trafficking of children. Children are sold either on false promises or voluntarily<sup>54</sup>.

Trafficking is done in many ways: they use children who are placed (*vidomègon*), kidnapped or brought by their parents.

Trafficking serves many purposes. When children are brought abroad they can be illegally adopted, used for prostitution or sold. When children are sold inside the country they are used for domestic chores or for paid jobs, like farming or construction work<sup>55</sup>.

Children victims are deprived of their childhood. Children who are forced to work are exploited. Those who serve as servants in houses are often victims of

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54 To read the whole article :<http://www.irinnews.org/FrenchReport.asp?ReportID=Afrique-de-l'ouest&select country=Benin>

55 Idem. US Embassy, 2004 Report on the trafficking of persons in Benin.

physical and or sexual abuse<sup>56</sup>. According to a report published by ASAM in 2000, some traditional doctors used the blood or parts of a child's body for their illegal social and religious purposes. These unfortunate children are referred to as "spare parts"<sup>57</sup>.

The main reasons for trafficking are socio-economic. Measures have been taken to facilitate the schooling of children. However, it is the lack of financial means and the fact that the schools are far from villages that encourages the trafficking of children, although some political measures exist today, in particular, in favour of the girls in the rural areas (free schooling guaranteed by the Constitution).<sup>58</sup>

Even if Benin does not meet all of the minimum standards related to the fight against trafficking of persons, legal norms exist to punish the illegal transfer of children abroad:<sup>59</sup>

- Law n° 61-20 of 10 July 1961 on the trafficking of minors (may be too outdated to solve the question of repressing the trafficking of children on a criminal level);
- Ordinance n°94-191 of 24 July 1995, establishing the modalities for delivering authorisations for travelling abroad with children under 18 years. This decree complicates the procedure of taking children out of the country. It even provides for the deposit of a bail representing repatriation fees in case the required authorisation is not granted.

In order to fight against the trafficking of children, the government has doubled the number of the people working in the Minors Protection Brigade, which mainly fights against trafficking of children conducted by specialised illegal organisations. The government has also created a National Commission for the Protection of Children composed of officials from the Government and the police. The main role of this Commission is to see to it that the fight

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56 The Protection Project, A Human Right Report on Trafficking of persons, Especially Women and Children. A country-by-country report on a contemporary form of slavery, March 2002, page 63.

57 ESAM, Anti-slavery, Report on the trafficking of children between Benin and Gabon, April, pages 5,6.

58 Idem, page 8.

59 National Coalition For the Rights of Children in Benin, Alternative report of Benin on the implementation of the Convention related to the Rights of the Children, 1999.

against trafficking is well organised and that all organisations protecting children make their due contribution to this work.<sup>60</sup>

Yet the measures taken by the government of Benin are mostly of a theoretical nature and are limited only to the trafficking of the children abroad. There are still no laws in the legal texts of Benin clearly prohibiting the trafficking of persons and particularly the trafficking of children. This hinders the effective fight against traffickers and leaves some room for their impunity. Now traffickers are judged by the law used to punish prostitution, kidnapping, forced labour and exploitation of children under 14 years. But such texts only condemn the consequences of trafficking and not the phenomenon itself. There is presently a draft bill on the subject in the National Assembly but there are no indications whether or when it will be adopted.

Some international organisations as well as NGOs act to the limit of their competence. UNICEF, for example, integrates fighting against the trafficking inside the country and abroad through giving technical and financial assistance. The International Labour Organisation, in the framework of its program concerning the child labour, work with NGOs by giving them technical support to prepare strategies to ban child labour. ESAM works in the region of Mono to develop activities in the formal education of children and in the training of children's parents.<sup>61</sup>

### 5.3 Ritual infanticide of child witches

In some regions in the north of the Benin, strongly influenced by the weight of ancestral beliefs, a certain category of children are sometimes considered to be "witches".<sup>62</sup> According to this tradition a child witch is :

- A child whose mother dies when giving birth.
- A newborn child who is born bottom first.
- A child whose first teeth emerge from the superior jaw.

All these criteria automatically condemn the child.

60 US Embassy, Report 2004 on the trafficking of persons in Benin.

61 ESAM, Anti-slavery Report on the Trafficking of children between Benin and Gabon, April 2000, p. 22-23.

62 MT.Bouchardi, Les enfants "sorciers", entre traditions et culture des droits humains in "La Vie protestante", Geneve, 25/09/2002, available on the Internet.

Other children qualified as “abnormal”: those who are born prematurely or those who do not cry at their birth are considered as witches. The main justification of ritual infanticide is the preservation of peace of the community founded on the superstition that the “witch” or “abnormal” baby always brings misfortune.

As soon as the child is born in a way considered to make them a witch or abnormal, the head of the family gives the baby to an executioner. The different techniques used to kill newborns are atrocious. The baby is often crashed against a tree before he is buried or is slaughtered. Some child witches or abnormal children are not killed. They are generally abandoned, sold, or given to a family famous for keeping such children. They keep these children not for love but to be used later on as means of exchange as a domestic slave. These children have to survive by begging.

If infanticide is not a crime in Benin, homicide is a crime and can be used to punish those who kill children. Unfortunately, such cases are rarely denounced, mainly because of traditional beliefs, and in the rare cases of denunciation, the legal action against the perpetrators do not take place because it is difficult to establish the necessary evidence.

For the time being the action against this phenomenon is mainly carried out by members of human rights organizations and the members of churches. In 1999, in its Concluding Observations related to the initial report of Benin, the Committee on the Rights of the Child expressed its preoccupation with ritual infanticide and recommended to Benin to force itself to completely apply Article 6 of the Convention (related to the right to life) and to take some measures mainly of a legal nature to guarantee children’s right to life, survival and development. The Committee also recommended to establish some educational and awareness raising programs in order to change the behaviour of society. The Committee noticed that the practices and traditional behaviour always hinder the complete application of Article 12 of the Convention. The Committee recommended to Benin to try to adopt a systematic approach to better sensitise the population to children’s rights and to encourage the respect of the child’s opinions in hospitals or legal proceedings<sup>63</sup>. There are no indications that the situation has improved yet.

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63 MT.Bouchardi, Les enfants “sorciers”, entre traditions et culture des droits humains in “La Vie protestante”, Geneve,25/09/2002,  
[http://www.protestat.ch/ENPG/Vplib.nsf/0\\_7d56af476b386116cb100769a79?OpenDocument](http://www.protestat.ch/ENPG/Vplib.nsf/0_7d56af476b386116cb100769a79?OpenDocument)

**Recommendations  
of the NGO coalition**



## 1. General Recommendations

### **Recommendations related to the legal system and to the criminalisation of torture**

1. Revise the legislation concerning the prohibition of torture and other cruel, inhuman or degrading treatment or punishment so as to bring it in conformity with international standards. More particularly, to inscribe torture as a crime in the Criminal Code in conformity with the definition adopted by the Convention against Torture.
2. Take concrete measures to ensure that every individual arrested in a police station and/or imprisoned is informed of his/her rights in the language he/she understands by posting such rights on the walls of police stations and prisons. Automatically and systematically, people who are arrested should have access to a doctor and to a lawyer.
3. Ensure the effective application of the reinforced program of legal and judicial systems, validated in August 2004.
4. Create an organ to follow the decisions given by the Constitutional Court concerning the violation of human rights.

### **Recommendations related to the fight against impunity and to the right to reparation for victims of torture**

5. Ensure an impartial, immediate, independent and effective investigation for any allegation of torture and other cruel, inhuman or degrading treatment; engage legal action against perpetrators of such acts; ensure adequate and fair indemnity to the victims of torture.
6. Establish programmes of compulsory education and training for State law enforcement agents as well as health officials in the central and peripheral localities in order to prevent violence and prohibit torture and other ill-treatment.
7. Simplify and disseminate the criminal and administrative procedures allowing legal actions against agents of the police and gendarmerie suspected of abusive imprisonment.

8. Continue awareness raising and training of civilians to put an end to lynching of popular justice.
9. Improve the conditions of imprisonment by solving the problems of overcrowding of prisons, the lack of hygiene, food and adequate medical care. According to the testimony received in the prison of Cotonou, some prisoners are often not well fed and depend on the solidarity of their neighbours.
10. Concerning the protection of the women's rights in general, the NGO coalition favourably appreciates the adoption of the Personal and Family Code, law 2003-04 of 3 March 2003 related to the reproduction and sexual health and law 2003-03 of 3 March 2003 on the ban of female genital mutilation which improve the legal framework of women. Meanwhile, the coalition hopes that the rights mentioned in this text will be implemented and recommend a plan of action.
11. The conditions of detention must comply with international standards and in particular article 8 of the Standard Minimum Rules for the Treatment of Prisoners which states that different categories of prisoners must be kept in separated places according to their age and sex.
12. Legislation on the penitentiary regime in Benin must be reformed so as to bring it in line with the international norms to which Benin has adhered. Decree n° 73-293 of 15 September 1973 on the penitentiary regime in Benin, is no longer relevant to the present context.
13. The Government of Benin should plan sustained training and awareness raising for judges, public attorneys or police officers on gender perspectives, specific violence against women, and should mobilise the judicial system in order to enhance protection for women victims of violations of their rights.
14. Put an end to the trafficking of women through elaborating a law repressing this, with special attention to children and especially girls.
15. Define a global policy to protect children by harmonising the different initiatives aiming to stop violations against children, in particular by informing and raising awareness across the whole society (including rural areas) and by training competent people.
16. In order to prevent torture and ill-treatment against children, legislation should be amended, and developed to:



- determine a list of light work that can be performed by a child of 12 years in conformity with Convention 138 of the ILO;
  - define and criminalise acts of torture and ill-treatment by state agents against juveniles, rendering sanctions more severe when the victim is under 18 years;
  - elaborating mechanism to facilitate the lodging of a complaint for juvenile victims of torture and ill-treatment. Elaborating a campaign of information aiming at the protection of children.
17. Develop training and educational programmes for civil society. These programmes must aim to change the behaviour of Beninese society by informing adults about national and international human rights and by teaching them the sense of protection and respect that their children deserve.
18. Organise juvenile justice system and a special criminal procedure in conformity with international standards on the matter (United Nations Guidelines for the Prevention of Juvenile Delinquency – “The Riyadh Guidelines” and United Nations Standard Minimum Rules for the Administration of Juvenile Justice “The Beijing Rules”) and mainly to:
- allow a parent to be informed and for legal assistance to be provided within the first hour of the detention;
  - train judicial staff working with children (policemen and judges);
  - appoint children’s judges in each jurisdiction;
  - ensure that imprisonment is decided as a last resort by privileging alternatives measures; and
  - explicitly forbidding the application of the death penalty to children under 18 years.
19. With regard to conditions of detention for minors, the NGO Coalition recommends that:
- specific quarters for juveniles should be established in all prisons of Benin, and in particular in the prison of Parakou. Effective separation between adults and juveniles should be ensured;

- conditions of detention for minors should be improved (in the prisons as well as in foster homes) by modernising premises, providing medical care and the organisation of education inside establishments; and
  - mechanisms of independent monitoring should be adopted in order to appraise the living conditions of the minors in prison.
20. With regard to the trafficking of children, the NGO coalition acknowledge that the Government of Benin has undertaken some measures these last years to fight the phenomenon and continued work in this field is encouraged namely by:
- creating mechanisms to monitor the placement of children so as to avoid abuse. It is suggested for instance to establish a public agency competent to monitor living conditions;
  - combating the causes that generate trafficking, namely economic poverty, rendering primary schools effectively free of charge for boys and girls in cities and villages;
  - raising awareness amongst the public, mainly parents, on the consequences of trafficking and its abuse (through newspapers and radio programmes);
  - adopting laws that effectively punish traffickers;
  - organising the fight against trafficking of children in partnership with other African governments.

**HUMAN RIGHTS COMMITTEE**

**Eighty-second session**

**CONSIDERATION OF REPORTS  
SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**CCPR/CO/82/BEN**

**Concluding observations  
of the Human Rights Committee  
BENIN**



1. The Human Rights Committee considered the initial report of Benin (CCPR/C/BEN/2004/1/Add.1) at its 2232nd to 2234th meetings on 21 and 22 October 2004 (CCPR/C/SR.2232, 2233 and 2234). It adopted the following concluding observations at its 2248th meeting, held on 2 November 2004 (see CCPR/C/SR.2248).

### **A. Introduction**

2. The Committee welcomes the initial report of Benin. It regrets, however, that the report was submitted more than 10 years late and does not contain sufficient information on the effectiveness of measures taken to implement the Covenant. The Committee commends the sending of a high-level delegation to Geneva as well as the delegation's efforts to answer its questions, both in writing and orally. It welcomes the opening of a dialogue with the State party.

### **B. Positive aspects**

3. The Committee notes with satisfaction that individuals are able to bring matters before the Constitutional Court in a simple procedure, and that the Court has a role to play in protecting fundamental rights.
4. The Committee notes with interest that the trial of judges, registrars and tax collectors charged with misappropriation of court fees has resulted in the imposition of heavy sentences on 63 persons.
5. The Committee welcomes the promulgation on 25 August 2004 of a new Personal and Family Code that seeks to promote equality of the sexes, particularly in the areas of marriage, divorce and parental authority.
6. The Committee commends the adoption of the Act of 3 March 2003, which makes female genital mutilation a punishable offence.

### C. Principal subjects of concern and recommendations

7. The Committee notes with concern that the individual complaint procedure before the Constitutional Court, which is highly important, is largely unknown to the public and that the Court's decisions are not subject to a follow-up procedure (article 2 of the Covenant).

**The State party should make people more aware of the opportunities they have to bring matters before the Constitutional Court, ensure that the Court's decisions are enforced, and contemplate the establishment of a body to follow up the Court's decisions.**

8. The Committee notes with concern that the Beninese Commission on Human Rights is no longer operational and that the State party has not taken the necessary measures, including budgetary measures, to enable the Commission to function effectively. It recalls that an independent national human rights institution having as its mandate the promotion and protection of rights cannot be replaced by non-governmental organizations or by the National Human Rights Advisory Board within the Ministry of Justice (article 2 of the Covenant).

**The State party should set up a national human rights institution, in accordance with the Paris Principles relating to the status and functioning of national institutions for protection and promotion of human rights (General Assembly resolution 48/134).**

9. The Committee is disturbed by reports that domestic violence against women is a common practice (articles 3 and 7 of the Covenant).

**The State party should adopt effective and concrete measures to combat this phenomenon. It should sensitize society as a whole to this matter, ensure that the perpetrators of such violence are criminally prosecuted and provide assistance and protection to victims.**

10. The Committee notes that under the new Personal and Family Code, only monogamous marriage is recognized, and that "custom ceases to have the force of law in all matters covered by the present Code". The Committee is concerned, however, at the possible consequences of polygamous marriages that might nevertheless be concluded under customary law, particularly as regards the protection that would be afforded to women involved in such unions (articles 3 and 23 of the Covenant).

The State party should clearly prohibit the conclusion of new polygamous marriages, in accordance with the Committee's General Comment No. 28 on article 3 of the Covenant. It should provide greater protection to women who, once the new Personal and Family Code has entered into force and out of respect for tradition, may enter into polygamous unions when such unions no longer have any legal standing. The Committee invites the State party to increase its efforts to inform women and make them aware of these issues, including in the remotest parts of the country.

11. The Committee remains concerned at the persistence of female genital mutilation, particularly in certain parts of the country, which constitutes a serious violation of articles 3 and 7 of the Covenant.

**The State party should increase its efforts to combat these practices, especially in communities in which they are extremely common. It should effectively ban such practices by means of more awareness campaigns and the criminal prosecution of perpetrators. The State party should provide more accurate information about the percentage of women and girls affected, as well as their distribution by region and ethnic group, and about any criminal proceedings brought against the perpetrators.**

12. The Committee is concerned that certain provisions of the draft Criminal Code and Code of Criminal Procedure aimed at combating terrorism might infringe some of the rights set out in the Covenant (articles 2, 7, 9 and 14 of the Covenant).

**The State party should seek to ensure that these provisions do not infringe the rights set out in the Covenant, particularly the right to security and freedom of the person, the right to a fair trial and the right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment.**

13. While welcoming the fact that no one sentenced to capital punishment has been executed in Benin in almost 18 years, the Committee notes with concern that capital punishment is not limited to the most serious crimes. It is concerned that some individuals have been on death row for many years, and is disturbed by contradictory reports regarding their conditions of detention (articles 6, 7 and 10 of the Covenant).

The State party should limit the death penalty to the most serious crimes. It should consider abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant. The Committee recommends that the State party commute all existing death sentences into terms of imprisonment, immediately verify the conditions of detention of those on death row and ensure that the United Nations Standard Minimum Rules for the Treatment of Prisoners are respected in all situations.

14. The Committee is concerned at the persistence of vigilante justice. It also notes with concern that infanticides motivated by traditional beliefs are being committed in the country (articles 6, 7 and 24 of the Covenant).

The State party should protect persons from acts committed by individuals that infringe their right to life and physical integrity, and should exercise due diligence with a view to preventing and punishing such acts, investigating them and providing reparations for the resulting harm. The State party should also step up its efforts to increase public awareness and provide detailed information on the extent of these phenomena.

15. The Committee is concerned by allegations that abuse of the system of police custody, torture and cruel, inhuman or degrading treatment are common practice in Benin. It is disturbed by the fact that law enforcement officials who perpetrate such violations appear to enjoy widespread impunity (articles 2, 7 and 9 of the Covenant).

The State party should display greater firmness in preventing abuses of police custody, torture and ill-treatment, and should strengthen the training provided to law enforcement personnel in this area. It should automatically bring disciplinary and criminal proceedings against the perpetrators of violations and, in particular, should enforce Constitutional Court decisions in such cases. The Committee recommends that the State party provide it with detailed information on complaints filed in connection with such acts and on the disciplinary and criminal sanctions imposed during the past three years, and that it conduct an independent investigation of the methods in use in the "Petit Palais".

16. The Committee notes with concern that the most basic rights of persons in police custody are not guaranteed under Beninese law (articles 7, 9 and 14 of the Covenant).



The State party should guarantee the right of persons in police custody to have access to a lawyer in the initial hours of detention, to inform their family members of their detention and to be informed of their rights. Provision should be made for a medical examination at the beginning and at the end of the detention period. Provision should also be made for rapid and effective remedies to allow detainees to challenge the legality of their detention and assert their rights.

17. The Committee, while taking note of the efforts made by the State party to improve conditions of detention, continues to be concerned by the situation in prisons, particularly in the areas of sanitation and access to health care and food. It is concerned at the extreme overcrowding of prisons and at the fact that juveniles are not always held separately from adults (articles 7, 10 and 24 of the Covenant).

The State party must guarantee the right of detainees to be treated humanely and with respect for their dignity, particularly their right to live in hygienic facilities and to have access to health care and adequate food. Detention should be viewed only as a last resort, and provision should be made for alternative measures. As the State party is unable to meet the needs of detainees, it must reduce the prison population as soon as possible. Lastly, special protection should be provided for juveniles, and all juveniles, including girls, should be systematically separated from adults.

18. The Committee notes the efforts made by the State party to bring the system of justice closer to the people but remains concerned at reports of serious dysfunctions in the administration of justice, owing chiefly to the lack of human and material resources, the overcrowding of dockets, the slow pace of proceedings, corruption and the interference of the executive in the judiciary. In this connection, the Committee notes with concern the protests by judges against the outright handing over to the Nigerian authorities of persons and vehicles under court administration and other acts related to the so-called Hamani case (articles 2, 13 and 14 of the Covenant).

**The State party should give greater priority to efforts to address these problems. It should ensure the prompt and effective implementation of the Act of 27 August 2002 on the organization of the judiciary increasing the number of courts and tribunals, strengthen the independence of the justice system by effectively prohibiting any interfer-**

**ence by the executive in the judiciary, and ensure that appeals are dealt with in a reasonable amount of time. It should also provide effective reparation for violations established by the Constitutional Court. The State party should also ensure that the expulsion of individuals is based solely on a decision taken in conformity with the law and that such individuals are given an opportunity to contest their expulsion.**

19. The Committee notes that the conciliation tribunals are useful, but fears that the different mandates of the tribunals and of the ordinary courts have been defined vaguely and are not clear to the public, and that the system of judicial confirmation in the courts does not afford all the guarantees provided for in article 14 of the Covenant

**The State party should endeavour to clarify the respective mandates of the different tribunals and courts and to ensure that the system of judicial confirmation in the courts meets the requirements of article 14 of the Covenant**

20. The Committee is concerned that few people, including minors, are assisted by a lawyer during criminal proceedings, and that such assistance is mandatory only in the Assize Court. It further notes with concern that in the Assize Court a lawyer is appointed only during the final questioning before the actual hearing, a situation that does not guarantee that the right to a defence is respected (article 14 of the Covenant).

**The State party should ensure that lawyers are trained in adequate numbers, facilitate the access of individuals to legal assistance in criminal proceedings and ensure that lawyers are involved in proceedings from the time of arrest onward.**

21. The Committee is of the view that the requirement that pre-trial detainees and convicts must wear jackets indicating their place of detention constitutes degrading treatment, and that the requirement that pre-trial detainees must wear such jackets during their trial may infringe the principle of presumption of innocence (articles 7 and 14 of the Covenant).

**The State party should abolish this measure.**

22. The Committee notes with concern that under the Act of 30 June 1960 and the Act of 20 August 1997 press offences are punishable by up to five years' imprisonment, which is a disproportionate duration in the light of

article 19 of the Covenant.

**The State party should abolish prison sentences for press offences.**

- 23 The Committee notes with concern that public demonstrations have been banned for reasons that appear to have nothing to do with the justifications listed in article 21 of the Covenant.

**The State party should guarantee the right of peaceful assembly and impose only those restrictions that are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. Timely remedies for appealing any ban should be available.**

24. While noting the efforts made by the State party, the Committee expresses its concern at the alarming practice of placing children with a third party as an act of mutual assistance or family or community solidarity (*vidomégons*), which has become a source of trafficking and economic exploitation of children within Benin. It notes with concern that Benin has become a country of transit, origin and destination for international trafficking in children (articles 7, 16 and 24 of the Covenant).

**The State party should increase its efforts to combat trafficking in children and provide the Committee with more detailed information about this phenomenon, in particular an estimate of the number of children involved. It should create mechanisms to monitor the placement of children, increase public awareness and bring criminal proceedings against those engaged in the trafficking in and economic exploitation of children.**

25. The Committee notes the efforts made by the State party to increase public awareness of human rights but is concerned that these efforts have been limited.

**As expressly stipulated in article 40 of the Constitution, the State party should integrate human rights education in the primary, secondary, higher and vocational education curricula and, in particular, in the training programmes of the security forces.**

26. The Committee sets 1 November 2008 as the date for the submission of Benin's second periodic report. It requests that the texts of the State party's

initial report and the present concluding observations be published and widely disseminated in Benin, and that the second periodic report be brought to the attention of the non-governmental organizations operating in the country.

27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 11, 15, and 17. The Committee requests that the State party include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.

**HUMAN RIGHTS COMMITTEE**

**Eighty-first session**

**List of issues to be taken up  
in connection with the consideration  
of the initial report of Benin  
(CCPR/C/BEN/2004/1)**



### **Constitutional and legal framework in which the Covenant is implemented, right to an effective remedy and measures to combat impunity (art. 2)**

1. How in practice is compliance secured with article 147 of the Constitution, according to which treaties have higher authority than laws? Has the Covenant already been invoked before the courts? If possible, please provide examples (CCPR/C/BEN/2004/1, para. 97; HRI/CORE/1/Add.85, para. 58)
2. Please provide more information about the present organization of the judiciary. What are the rules governing the appointment of, or disciplinary proceedings against, judges, and what rules safeguard their independence? What stage has been reached in the trial of the 95 registrars and tax collectors who, according to some reports, have been prosecuted for the misappropriation of court fees?
3. According to some reports, customary-law “conciliation tribunals”, do not always respect guarantees of the right to a fair trial. Please comment and provide more information about the root-and-branch reform of the judicial system, and say whether this includes a new map of judicial districts and the recruitment of new judges (CCPR/C/BEN/2004/1, paras. 50 and 66)
4. Please provide additional information about the membership, terms of reference and action taken to date by the Benin Commission on Human Rights (HRI/CORE/1/Add.85, para. 59)
5. What findings have been reached by the commission which was set up in May 1991 and instructed to compile a list of victims of torture and corporal punishment and to verify the circumstances in which they disappeared (CCPR/C/BEN/2004/1, paras. 65 and 112)? To what extent has the Act of 9 October 1990 granting amnesty for acts committed between 1972 and 1990 prevented prosecution and conviction for these acts (CCPR/C/BEN/2004/1, para. 131)?

### **Equality of men and women (art. 3)**

6. What measures have been taken by the authorities to increase women’s

representation in State institutions, political parties and positions of responsibility in public and private enterprises (CCPR/C/BEN/2004/1, paras. 61 and 81-89)?

7. Please provide more detailed information about violence against women and measures to put a stop to it (para. 76)
8. According to reports, on 23 December 2002 the Constitutional Court ruled nearly 40 articles of the draft Personal and Family Code unconstitutional. Please comment. Please describe the main features of the Code as adopted that relate to equality between men and women in areas such as marriage, divorce, inheritance and parental authority. How does the new code mesh with existing customary law (CCPR/C/BEN/2004/1, para. 77)?
9. According to some reports, 50 per cent of the female population in Benin has undergone female genital mutilation. Please give the gist of the Act of 3 March 2003 banning the practice of female genital mutilation and indicate whether there have yet been any prosecutions. What other steps has Benin taken to eradicate and ban such mutilation?
10. What is State policy with regard to combating HIV/AIDS and preventing early and unwanted pregnancies? What is the content of the legislation on abortion and how is it applied in practice?

### **Derogations (art. 4)**

11. Please provide more information about the implementation of article 4 of the Covenant. Has the State party passed legislation specifically relating to counter-terrorism, the content of which might have an impact on the enjoyment of the rights set forth in the Covenant (CCPR/C/BEN/2004/1, para. 90 et seq.)?

### **Right to life and ban on torture (arts. 6 and 7)**

12. Please give the gist of the revised Criminal Code and Code of Criminal Procedure relating to the ban on torture and on cruel, inhuman or degrading treatment or punishment. When will these drafts be adopted (CCPR/C/BEN/2004/1, para. 111)?



13. What crimes carry the death sentence? In connection with the adoption of the new Criminal Code, what debate has taken place regarding the abolition of the death penalty (CCPR/C/BEN/2004/1, paras. 102-104)?
14. Have any State officials been convicted of torture or ill-treatment? In March 2003, four journalists were reportedly ill-treated by police officers during questioning. Was there any consequent prosecution?
15. According to reports, 11 former Togolese soldiers with refugee status who are accused of fomenting a coup d'état against the Beninese President are currently being held in detention. No judicial proceedings have been initiated, and the men are likely to be extradited to Togo. They are said to be held in deplorable conditions and to have been subjected to torture and ill-treatment. Please comment.

### **Security of person and protection against arbitrary arrest (art. 9)**

16. How does the State party justify the length of pre-trial detention (maximum of eight days) in the light of article 9, paragraph 3, of the Covenant? According to some reports, there have been cases of pre-trial detention lasting for more than a month. Please comment and describe in detail what remedies are available in accordance with article 9, paragraph 4 of the Covenant (CCPR/C/BEN/2004/1, para. 125).
17. Please give a detailed description of the rights of persons held in pre-trial detention. According to some reports, access to a lawyer or a doctor is rare in practice. Please comment.
18. Please give details of the rules governing pre-trial detention, for adults and minors (offences warranting pre-trial detention, maximum duration, remedies available).

### **Treatment of persons deprived of their liberty (art. 10)**

19. Benin acknowledges it cannot meet the needs of the prison population owing to economic and financial problems (CCPR/C/BEN/2004/1, para. 138). Some reports assert that the situation with regard to prison hygiene and prisoners' access to health care and food is extremely worrying. Women are allegedly subject to a more severe regime, in that they are said

to have less freedom of movement and no access to the parallel fruit and vegetable market, and have to share their meals with their young children. Please comment and say what solutions are envisaged.

20. What measures have been taken by the Beninese authorities to reduce overcrowding in prisons and to effect a significant reduction in the number of persons held in pre-trial detention?
21. In Cotonou prison, adult prisoners are said to have free access to the building reserved for minors. Please comment.
22. Some reports speak of the especially deplorable conditions of detention in which prisoners who have been condemned to death are held in Cotonou prison. These persons, who have been in prison for years, are, it is alleged, let out of their cells only twice a year and have no contact with the outside world. Please comment and provide statistics on the number of cases of suicide on death row over the last 10 years.

### **Right to a fair trial (art. 14)**

23. According to some reports, few people, including minors, are assisted by a lawyer in criminal trials before courts of first instance. Please explain how the system of assigned defence counsel and legal aid works in practice.
24. In the opinion of the State party, is the fact that defendants appear at their trials wearing, according to some reports, a jacket indicating their place of detention, not likely to undermine the principle of the presumption of innocence?

### **Freedom of expression (art. 19)**

25. Under the Acts of 30 June 1960 and 20 August 1997, press offences can be punished by prison sentences and forced labour. Please provide details of the applicable legislation and comment on its compatibility with article 19 of the Covenant. Please supply details of cases in which journalists or newspaper editors have been given prison sentences.

**Right of peaceful assembly (art. 21)**

26. Please specify the conditions under which authorization to demonstrate on the public highway may be refused. Are such authorizations frequently refused in practice (CCPR/C/BEN/2004/1, para. 206)? Please comment on the report that a demonstration by the opposition Renaissance du Bénin party was violently broken up by police on 25 April 2002.

**Freedom of association (art. 22)**

27. Please provide additional information about the exercise of trade union freedom in Benin. How is the right to strike regulated (CCPR/C/BEN/2004/1, para. 209 et seq.)?

**Protection of children (art. 24)**

28. According to some reports, Benin is a source, transit and destination country for international trafficking in human beings, mostly children. What measures are being taken by the authorities to prevent and punish such trafficking? What measures has the State party adopted to eliminate child labour and the economic exploitation of children, which are said to be still widespread?

**Participation in public affairs (art. 25)**

29. Please supply more information on the application of article 25 of the Covenant, given the Constitutional Court's ruling on 27 August 2001 that some provisions of the Charter of Political Parties were unconstitutional, and the wording of the Charter as finally adopted.

**Dissemination of the Covenant and Optional Protocol**

30. Please describe the measures taken to disseminate information about the Covenant and the Optional Protocol thereto and about the presentation of reports and their consideration by the Committee, in particular the Committee's concluding observations.









