



## **Shadow Report on the implementation of the African Charter on Human and Peoples' Rights (ACHPR) by Benin**

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## Introduction

The Centre for Human Rights (Centre) takes note of the periodic report submitted by the government of Benin to the African Commission on Human and Peoples' Rights (African Commission) covering the period from 2009-2018. The Republic of Benin submitted the report in fulfillment of its obligations under article 62 of the African Charter on Human and Peoples' Rights (African Charter). This shadow report provides additional/contradictory information to some of the issues covered in the Republic of Benin's state report on the African Charter. This report is divided into two parts. Part A covers the implementation of the rights contained in the African Charter. The Centre would like to call the attention of the Special Rapporteur on Freedom of Expression and Access to Information to Benin's compliance with article 9 of the Charter which provides for freedom of expression and access to information. Part B of this report covers the implementation of the rights contained in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).<sup>1</sup>

### **PART A (Implementation of the rights in the African Charter)**

#### **1. Non-discrimination (Article 2)**

In its report under article 2, the Republic of Benin states that principles of mutual respect between the sexes, learning to live in community, and the rejection and condemnation of violence and gender inequality are taken into account in the various education programmes. Benin also has action plans and good practices to combat racial discrimination, xenophobia, intolerance and gender-based violence.<sup>2</sup> Similarly, in its report under article 3, the State Report notes that 'The same law is applicable to everyone in Benin. No distinction is made between citizens in the enactment and application of legal texts.'<sup>3</sup>

However, the Centre for Human Rights calls the attention of the African Commission to the fact that there is no legislation protecting LGBTIQ+ nationals of Benin against discrimination on the basis of their real or perceived sexual orientation and gender identity. While there is no criminalisation of LGBTIQ+ persons in Benin, the absence of anti-discrimination protections means that members of the LGBTIQ+ community are open to discriminatory conduct in official and private spaces.

Also, the Benin Penal Code does not provide an equal legal age of consent for same-sex sexual acts (which are criminalised if below 21 years) and heterosexual sexual acts (which are criminalised if below 13 years).<sup>4</sup> This difference in the legal age of consent are contrary

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<sup>1</sup> Part B of this report was prepared by the Centre for Human Rights in conjunction with OTUWA Affiliates, Benin and the Solidarity Centre

<sup>2</sup> Page 25 of State Report

<sup>3</sup> Page 25 of State Report

<sup>4</sup> <https://www.refworld.org/docid/56d7f7334.html>.

to the assertion of the State Report that the same law is applicable to everyone in Benin. Clearly, same-sex couples and heterosexual couples are treated differently under the Penal Code.

### **Proposed questions**

- i. What are the measures undertaken by the government of Benin to protect its citizens from violence and discrimination on the basis of their real or perceived sexual orientation and gender identity?
- ii. What are the steps undertaken by the government of Benin to repeal the unequal provisions around age of consent for same-sex and heterosexual couples and provide for an equal provision?

### **Proposed Recommendations**

- i. Adopt national legislative measures to prohibit violence and discrimination against anyone on the basis of their actual or perceived sexual orientation or gender identity to ensure the protection of other human rights of sexual and gender minorities guaranteed under the African Charter and in accordance with Resolution 275 of the African Commission.
- ii. Amend the Penal Code to ensure that there are equal provisions on the age of consent and on prohibiting sexual acts with minors for same-sex couples and heterosexual couples.

## **2. Freedom of expression and Access to Information (article 9)**

The Constitution of Benin guarantees the right of access to information and the right to freedom of expression and the Information and Communication Code gives effect to these rights. However, this right is not entirely respected and there have been instances when these rights were unduly restricted during the reporting period.

### *Access to Information*

The Centre commends Benin for adopting the Information and Communication Code which is aimed at strengthening the access to information regime in the country. The Centre also commends Benin for the Law on the Fight Against Corruption and Other Connected Infractions (2011) and the 2013 Decree on the Conditions of Special Protections for Whistleblowers, Witnesses, Experts and Victims. The law, to some extent, enables whistleblowers to make disclosures anonymously. However, the Centre is concerned that the law does not adequately protect those involved in the protected disclosure such as whistleblowers, witnesses, experts, victims and their relatives. The weak protections could result in the victimization of those who release corruption-related information which is in the public interest.

## *Defamation*

The Centre is also concerned about the criminal sanctions on content imposed by the Information and Communication Code. The financial penalties are sometimes exorbitant and could have a chilling effect on freedom of expression. Fines for defamation cases are up to US\$18 000 and imprisonment of up to three years.

## *Arrests of journalists and criminalisation of false news*

The Centre is concerned with the criminalisation of ‘false news’ under the Digital Code. In 2019, a journalist, Ignace Sossou was arrested and convicted of publishing false information. He was charged with “harassment by means of electronic communication” under the Digital Code.<sup>5</sup> Mr Sossou was sentenced to 18 months’ imprisonment and a fine of CFA Francs 200,000 (US\$ 363.09).<sup>6</sup> The actions of the Beninese government contradict the Commission’s standards on the need for states to protect the practice of journalism from undue legal restrictions and to ensure that restrictions of content align with international human rights standards.<sup>7</sup> Mr Aristide Fassinou Hounkpevi, editor of the online *L’Autre Figaro* newspaper was also arrested for the same charge of “harassment by means of electronic communication” under the Digital Code.<sup>8</sup> Mr Hounkpevi, commented on social media about an envisaged government appointment. Mr Casimir Kpedjo, the editor of *Nouvelle Economie* was arrested for publication of false news. He was accused of violating article 550 of the Digital Code after posting about the country’s economy on social media.<sup>9</sup>

## *Media closures*

The Centre is also concerned about the closure of media outlets by the media regulator, Haute Autorité de l’Audiovisuelle et de la Communication (HAAC) without proper

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<sup>5</sup> See Centre for Collaborative Investigative Journalism: A Goldberg-Zelizer ‘Beninese journalist Ignace Sossou’s story and the suppression of the press in West Africa’ 22 June 2020 <https://ccij.io/beninese-journalist-ignace-sossous-story-and-the-suppression-of-the-press-in-west-africa/> (accessed 12 April 2021).

<sup>6</sup> Mr Sossou reproduces statements by a prosecutor on Twitter and Facebook. The prosecutor made the statements during a workshop on disinformation.

<sup>7</sup> See Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principles 19 and 22.

<sup>8</sup> Amnesty International: ‘The State of the World’s Human Rights’ <https://reliefweb.int/sites/reliefweb.int/files/resources/POL1032022021ENGLISH.PDF> (accessed 12 April 2021).

<sup>9</sup> Committee to Protect Journalists: ‘Journalist Casimir Kpedjo detained, facing false news accusations in Benin’ 30 April 2019 <https://cpj.org/2019/04/journalist-casimir-kpedjo-detained-facing-false-ne/> (accessed 12 April 2021).

procedures for operation of online media.<sup>10</sup> In 2020, HAAC ordered the closure of non-compliant online media outlets to “sanitise the online landscape.”<sup>11</sup> Such measures undermine opportunities for media plurality that have been enhanced by the digital age and also threaten internet and media freedom.

#### *Access to internet*

Furthermore, the Centre is concerned about the Internet shutdown in 2019 during election. The Commission’s Guidelines on Access to Information and Elections in Africa urges States to “refrain from shutting down the internet, or any other form of media, during the electoral process” and only resort to such measures in “exceptional cases’.<sup>12</sup> If such a limitation is effected, it should be authorised by law; serve a legitimate aim; and be necessary and proportional in a democratic society.<sup>13</sup>

#### **Proposed questions**

- i. What are the measures put in place by the government of Benin to ensure that the HAAC does not abuse its powers to punish those who violate the Code?
- ii. What are the steps taken by the government to enhance whistleblower protection?
- iii. What are the measures put in place by the government of Benin to provide digital literacy in Benin?
- iv. What are the plans for Benin to adopt a comprehensive law on access to information in line with the Model Law on Access to Information for Africa?

#### **Proposed Recommendations**

- i. The government of Benin should take steps to guarantee the safety of journalists and other media practitioners from violence, intimidation, threats and any other attacks.
- ii. The government of Benin should take steps to amend article 550 of the Digital Code (Law No. 2017-20 of April 20, 2018) to ensure that media practitioners are not punitively punished for dissemination of information.
- iii. The government of Benin should align the entire Digital Code with international human rights and standards.

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<sup>10</sup> Media Foundation for West Africa: ‘ Benin’s Online Media Come under Repressive Regulatory Audit’ 24 July 2020 <https://www.mfwa.org/country-highlights/benins-online-media-come-under-callous-regulatory-audit/> (accessed 12 April 2021).

<sup>11</sup> Media Foundation for West Africa: ‘Benin’s Online Media Come under Repressive Regulatory Audit 24 July 2020 <https://www.mfwa.org/country-highlights/benins-online-media-come-under-callous-regulatory-audit/> (accessed 12 April 2021).

<sup>12</sup> Guidelines on Access to Information and Elections in Africa.

<sup>13</sup> As above.

- iv. The government of Benin should amend the country's laws on defamation (the Information and Communication Code) which impose prison terms and fines of up to US\$18 000 for defamation cases. This recommendation is in line with Principle 22 of the Declaration of Principles on Freedom of Expression and Access to Information in Africa which calls on "States to review all criminal restrictions of content to ensure that they are justifiable and compatible with international human rights law and standards".<sup>14</sup>
- v. Initiate access to information awareness programmes for the public and public servants.
- vi. As regards whistleblowing, the government should strengthen whistleblowing legislation; establish an independent whistleblower oversight regulatory body and ensure that victimized whistleblowers have access to remedies and are compensated accordingly to curb retaliate against whistleblowers.

## **PART B (Implementation of the Maputo Protocol)**

The first observation is that the state report is not prepared in line with the African Commission's 2009 Guidelines on State Reporting Under the Maputo Protocol. The following issues are subsequently noted with the implementation of women's rights provided by the Maputo Protocol in the country.

### **1. Equality / Non-discrimination (articles 2, 8, 9 and 12)**

Benin's national constitution prohibits the discrimination against women, but makes explicit provision for special measures. Article 26 of the law No. 90-32 of 11 December 1990 providing the Constitution of the Republic of Benin, as amended by Law 2019-40 of November 07, 2019 states: "the state ensures equality before the law regardless of origin, race, gender, religion, political opinion or social position. Men and women are equal in law. However, the law may set out special provisions to improve the representation of the people by women. The state protects the family, especially the mother and child. It provides assistance to people with disabilities as well as the elderly."

Similarly several laws in Benin prohibit discrimination against women. Under the Labour Code, discrimination against women under Article 4 is prohibited: "Subject to the express provisions of this code, or any statutory or regulatory text protecting women and children, as well as provisions relating to the condition of foreigners, no employer may take into account the sex, age, race or ethnic or kinship of workers in making decisions, including with respect to hiring, the conduct and distribution of work, vocational training, advancement, promotion, remuneration and other working conditions, benefits, discipline

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<sup>14</sup> Declaration of Principles on Freedom of Expression and Access to Information in Africa, Principle 22.

or termination of the employment contract.” In terms of Article 126, the law recognises equal pay for work of equal value.

These provisions on non-discrimination while welcome are limited in some respects, including that the grounds on which discrimination is prohibited are a closed list and do not extend to grounds such as sexual orientation, and also do not apply to both direct and indirect discrimination in both public and private spheres. Perhaps most significantly to women workers, the prohibitions on discrimination in the Labour Code do not apply to the informal economy. This is critical, because in Benin, women predominate in the informal economy. The high concentration of women in the informal sector coupled with the occupational segregation in all sectors, was noted by the CEDAW Committee in its 2013 review of Benin.

Although the Labour Code permits texts that protect women and children, this does not appear to envisage a temporary special measures that is designed to to accelerate women’s substantive equality with men. The CEDAW Committee (2013) observed that outside of education, no temporary special measures had been adopted by Benin. Similarly, despite Labour Code provision on equal pay, according to the ITUC, the gender pay gap in Benin exceeds 40%.

According to the US State Department report on Benin (2019) and the CEDAW Committee review of Benin (2013) women in Benin continued to experience discrimination in both public and private sectors, which are attributed to deeply entrenched patriarchal social norms around gender, still entrenched in provisions in the Personal and Family Code that discriminate against women.

A study done by GIZ on strengthening the political participation of women, included a country case study on Benin. Benin is a party to numerous international instruments and despite this, women still have significant low representation in decision-making bodies at the national, local and regional levels. In the 2008 municipal elections, the national average for female candidates was 9.2%. In the 2008- 2013 incumbency period, only one of Benin’s 77 mayors was a woman with the percentage of women elected to municipal councils as low as 4.6%<sup>15</sup>.

The law mandates non-discrimination on the basis of sex during recruitment, work implementation and division, professional training, promotion, remuneration, social benefits, discipline or the termination of a contract. The law also recognizes the principle of equal work for equal pay. The law allows women to work the same night hours as men<sup>16</sup>. However, women are prohibited to enter certain professions, such as hazardous work, metalwork or heavy lifting (Inter-Ministerial Order on the Categories of Work and Workplaces Forbidden to Women, Pregnant Women and Youth).

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<sup>15</sup> Z L et al Strengthening Women’s Political Participation’ (2015) *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH*.

<sup>16</sup> Act No. 98-004 of 27 January 1998 on the Labour Code, articles 4, 126 & 153. <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/49604/65115/F98BEN01.htm>.

Women's participation in the work force in Benin is largely concentrated in the informal sector, and discriminatory distribution of tasks based on gender persists<sup>17</sup>. Socio-cultural perceptions tend to enforce the traditional division of work whereby men occupy higher income-generating activities and women are concerned with house-related and care-giving activities<sup>18</sup>. Discriminatory practices against women in recruitment for directors and/or professionals position have also been reported<sup>19</sup>.

### **Proposed questions**

- i. Has the state consider setting aside resources to help women in their political ambitions and help increase women's participation in political affairs?
- ii. What measures has Benin taken to raise public awareness of the equal rights of women and men, and combat social prejudices that lead to discrimination against women?
- iii. What steps has Benin taken to ensure non-discrimination in all sectors, including the female dominated informal sector?
- iv. What special measures have been adopted in the employment context, designed to ensure substantive equality between men and women?

### **Proposed Recommendations**

- i. That the State should consider requiring every recognised political parties in the State to include women as part of list of candidates they put forward at different elections.
- ii. Ensure equal opportunities at work and urgently address the gender wage gap between women and men.
- iii. Adopt a more comprehensive definition of non-discrimination, that includes both direct and indirect discrimination, and ensure that women working in the informal economy are adequately protected by both types of discrimination.
- iv. Adopt special measures in the employment context, designed to ensure substantive equality between men and women.

## **2. Protection from violence (Articles 3, 4 and 5)**

The Government of Benin developed and reported implementing the National Policy for the Advancement of Women and Gender Equality (2009-2016). The implementation effort of the government in this regard resulted into the establishment of counselling centres for women who are survivors of violence in 49 of Benin's municipalities. Few years after the creation of a policy for the promotion and advancement of gender equality Benin adopted an Act on the Prevention and Punishment of Violence against Women (2012). This Act

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<sup>17</sup> n 17 above

<sup>18</sup> Ministère de la Famille et de la Solidarité Nationale [MFSN] (2009), *Politique Nationale de Promotion du Genre au Bénin*, République du Bénin.

<sup>19</sup> International Labour Organisation (2014), *Maternity and Paternity at Work: Law and Practice across the World*, International Labour Office: Geneva



which covers issues of domestic violence, marital rape, sexual harassment, forced prostitution, forced marriage, honour crimes, female genital mutilation (FGM)<sup>20</sup> and other harmful practices. Further, article 19 of Law No.2003-4 (Right to Health and Reproduction) criminalises all forms of sexual violence experienced by women and young girls.

While these efforts are commendable as they signify government's effort to honour its commitments under the international and regional human rights instruments it has signed and ratified including the African Charter, violence against women remains a pervasive challenge in Benin. In fact, a study in 2013 showed that 75% of women in Benin are victims of violence and more than 44% are sexually abused<sup>21</sup>.

Benin adopted the Act on the Suppression of Sexual Harassment and Protection of Victims in 2006. Under the Act, anyone guilty of sexual harassment is punishable of imprisonment from one to two years and/or a fine of XOF 100 000 to 1 000 000 (Western African CFA franc) (Art. 22). Accomplices are punishable of the same sentence (Art. 22 ). Despite this however, there is high prevalence of violence faced by school going adolescent girls. These include sexual harassment and sexual violence indicating that women are exposed to gender-based violence quite early in their lives, an exposure which only serves to increase risk factors in the women's futures. Waubert de Puiseau & Roessel<sup>22</sup> note that belief systems such as sexism, traditional gender identities and acceptance of rape myth support the persistence of sexual harassment in schools.

Gender-based violence hampers Beninese girls' optimal access to education as it often leads to poor performance. Sexual harassment and sexual violence in schools has long-term socio-economic implications for girls' development at the individual level and economic implications at the community/ societal level.<sup>23</sup> In addition, there is a wide practice of *vidomengon* which is when a poor family gives off their children (mostly girls) to better off families to work as domestic servants. In most of these cases (90-95%) these girls end up being victims of exploitation, slavery and abuse including sexual abuse<sup>24</sup>.

Furthermore, domestic violence is rife among Beninese women however, it is observed that women are reluctant to report these cases and the police treat them as private matters<sup>25</sup>. There is law against rape however, enforcement is weak. The rape culture in Benin and its taboo nature perpetuates violence and protects perpetrators as it places the

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<sup>20</sup> United Nations, Convention on the Elimination of all forms of Discrimination Against Women. Committee on the Elimination of Discrimination Against Women CEDAW/C/BEN/CO/4. 2013. Concluding Observations on the Fourth Periodic Report of Benin. 28 Nov 2018.

<sup>21</sup> USAID (2013) Benin women make strides against violence [https://www.usaid.gov/sites/default/files/success/files/ss\\_bj\\_empower.pdf](https://www.usaid.gov/sites/default/files/success/files/ss_bj_empower.pdf) (accessed 30 March 2021).

<sup>22</sup> WB & RJ Exploring Sexual harassment and related attitude in Beninese high schools (2013) 19:08 *Psychology, crime and Law*, 707- 726

<sup>23</sup> As above, 715

<sup>24</sup> Africa for Women's Rights: Benin <https://www.wikigender.org/wiki/africa-for-womens-rights-benin/> (accessed 30 March 2020).

<sup>25</sup> Atlas of gender and development: How social norms affect gender equality in non-OECD states (2010).

onus on victims who worry about fitting back into the community and how they would be perceived instead of on the perpetrators of violence<sup>26</sup>.

The legislative framework addressing Female Genital Mutilation (FGM) in Benin includes the Act on the Repression of the Practice of Female Genital Mutilation, the Code of the Child (Art. 185) and the Act on the Prevention and Punishment of Violence against Women (Art. 3). These laws are well popularized by Benin's Ministry of Family and National Solidarity through sensitization campaigns, awareness raising and training programmes for relevant actors and stakeholders of the society including public opinion leaders and practitioners of FGM, members of the judiciary, police officers and civil society organizations<sup>27</sup>. Despite these efforts, the World Organisation Against Torture notes that the practice remains largely unreported and that few prosecutions are enforced by the judicial system<sup>28</sup>. FGM is prevalent especially in the Northern regions of the country<sup>29</sup>. There is also evidence that the practice is conducted outside Benin to avoid prosecution<sup>30</sup>.

Women and children in Benin are particularly vulnerable to human trafficking and forced labour, however while the law prohibits trafficking in children, the law does not sanction trafficking in women<sup>31</sup>.

### Proposed questions

- i. How will the state promote coordination for comprehensive prevention, response to the problem of sexual harassment and violence perpetrated against adolescent school going girls?
- ii. How will the State scale up the sensitisation of the gender-related legal instruments to the grassroots?

### Proposed recommendations

- i. The State should take steps to abolish the practice of *vidomengon* which amounts to child labour and against international and regional children's human rights norms, or at the very least expedite the formulation, adoption and implementation of laws/policies to regulate the practice.

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<sup>26</sup> M. Akpo 'When a place to thrive, becomes the place to fear.' *Gender- Based Violence In Schools: A Benin Case Study (2009)* Center for Gender Equity, Academy for Educational Development (AED).

<sup>27</sup> Child Rights International Network [CRIN] 'Benin, Children's Rights References in the Universal Periodic Review' (2008) [www.crin.org/en/library/publications/benin-childrens-rights-references-universal-periodic-review#dd](http://www.crin.org/en/library/publications/benin-childrens-rights-references-universal-periodic-review#dd), (accessed 30 March 2021).

<sup>28</sup>As above.

<sup>29</sup> Women in Law and Development in Africa [WILDAF] 'Situation des Femmes au Bénin' (2013) [www.wildaf-ao.org/index.php/fr/ressources/situation-des-femmes/benin](http://www.wildaf-ao.org/index.php/fr/ressources/situation-des-femmes/benin), (accessed 30 March 2021).

<sup>30</sup> Committee on the Elimination of Discrimination against Women [CEDAW] (2013), *Concluding Observations on the Fourth Periodic Report of Benin*, CEDAW/C/BEN/CO/4, United Nations.

<sup>31</sup> International Covenant on Civil and Political Rights [ICCPR] (2015), *Concluding Observations on the Second Periodic Report of Benin*, CCPR/C/BEN/CO/2, United Nations.

- ii. The State should make efforts to sensitize the public and create awareness in the security apparatuses especially the police on the existence of legal protection against violence of all forms including domestic violence and the importance of enforcing them, and adopt better and effective institutional measures for dealing with cases of gender based violence.

### **3. Health and reproductive rights (Article 14)**

Early in 2019, the Benin Ministry of Health hosted a national dissemination workshop on the results from the ‘Strategic Evaluation on Unwanted Pregnancy, Abortion and Contraception in Benin’. This signalled a major step in advancing sexual and reproductive health and rights of women and girls in Benin. The recommendations that were made at the workshop and in the report aim to reduce the maternal mortality rate by lifting legal restrictions and improving access to comprehensive, reproductive health care, which include safe abortions, post-abortion care, and the provision of contraceptive counselling and methods<sup>32</sup>. National data on unwanted pregnancies and abortion is either scanty or non-existent. However, the Ministry of Health estimates that 15 percent of maternal death are due to unsafe abortions. Also, contraceptive use is low at 7.9 percent for modern methods of contraception and 12.9 percent for all contraceptives<sup>33</sup>. This is said to be due in part to inadequate sexual and reproductive health care information<sup>34</sup>.

In a research conducted by Guttmacher Institute on the unmet sexual and reproductive health services needs and the impact of meeting essential sexual and reproductive health services it was observed that If all needs for contraceptive, maternal and new born, and abortion care for women between 15-49 years of age in Benin are met health incidences such as unintended pregnancies, abortions and unsafe abortions will drop by 84 percent, maternal deaths and new born deaths would have a dramatic decrease of 54 and 80 percent respectively. It was equally found that every \$1 spent on contraceptive services beyond the current level would save \$2.36 in the cost of maternal, new born and abortion care<sup>35</sup>.

There is contradiction between Article 17 of Act No. 2003-04 of 2003 on sexual and reproductive health, which states that the exceptions to the general prohibition of abortion are in cases of rape, incest, threat to health of mother or possible foetal

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<sup>32</sup>Ipas ‘Benin strengthens reproductive health and rights for women and girls’ (2019). Available at <https://www.ipas.org/news/2019/February/benin-strengthens-reproductive-health-and-rights-for-women-and-girls>

<sup>33</sup>As above.

<sup>34</sup> United Nations, Convention on the Elimination of all forms of Discrimination Against Women. Committee on the Elimination of Discrimination Against Women CEDAW/C/BEN/CO/4. 2013. Concluding Observations on the Fourth Periodic Report of Benin. 28 Nov 2018.

<sup>35</sup> Sully et al ‘Adding it up: Investing in sexual and reproductive health (2019) New York: Guttmacher Institute

impairment, and Article 3 of Act No. 2011-26 of 2012 on the prevention and prohibition of violence against women, which lists abortion as one of the forms of violence. This discrepancy which was noted in the 4<sup>th</sup> periodic report of Benin to the CEDAW committee<sup>36</sup> is an evidence that there is gap in appropriate legislations on women's health and rights. It also suggests how health workers may treat women's request for abortion and how society may view women's rights to make autonomous decisions over their own bodies.

### **Proposed questions**

- i. What measures has the State put in place to ensure the provision and increase usage of contraceptives among Beninese women?
- ii. What plans does the State has toward fulfilling its obligation under the Maputo Protocol as concerns the right of women to legal and safe abortions?

### **Proposed recommendations**

- i. Make national legal frameworks on women's sexual and reproductive rights uniform and bring abortion laws into line with international and regional agreements ratified by the government of Benin, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Protocol to the African Charter on Human and Peoples' Rights and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).
- ii. Develop comprehensive sexual education programs and educate the public on sexual and reproductive health issues

## **4. Sexual Harassment at Work**

Benin has the law No. 2011-26 of 09 January 2011 on the prevention and repression of violence against women. This law prohibits all forms of violence against women, protects women from sexual harassment in the workplace. In addition, in 2006, Benin adopted the Act on Suppression of Sexual Harassment and Protection of Victims, which defines sexual harassment as "...repeatedly gives orders, or conveys a message, or makes threats. Imposes constraints, exerts pressure or uses any other means in order to obtain sexual favours...". The Act makes sexual harassment punishable by imprisonment from one to two years and/or a fine of COF 1 000 000, with the maximum penalty applies in cases of aggravating factors such as the perpetrator abused his/her authority or the victim is a minor or vulnerable (art 23). This act applies criminal penalties to perpetrators, accomplices and people who does not report an incident of sexual harassment in any

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<sup>36</sup> United Nations, Convention on the Elimination of all forms of Discrimination Against Women. Committee on the Elimination of Discrimination Against Women CEDAW/C/BEN/CO/4. 2013. Concluding Observations on the Fourth Periodic Report of Benin. 28 Nov 2018.

location. It contains specific provisions designed for the workplace and educational institutions. However, cyber harassment is not covered by the law.

According to unions in Benin as well as the US State Department, there are taboos associated with reporting harassment, coupled with the fear of reprisals for reporting in the form of job loss, and which result in women not reporting.<sup>37</sup>

**Proposed question:**

- i. What measures is Benin taking to ensure that sexual harassment law are applied effectively and that cases of violence against women are investigated?

**Proposed recommendations:**

- i. Benin should ratify and domesticise ILO convention 190 on Violence and Harassment in the workplace. The Convention defines violence and harassment in the world of work as referring to a “range of unacceptable behaviour and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm and includes gender-based violence and harassment.” It goes on to define “gender-based violence and harassment “as “violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment.” According to 2(2) the Convention applies to all sectors, including public, private, formal and informal, urban and rural. Under Article 3, it applies to violence and harassment in the world of work occurring “in the course of, linked with or arising out of work”. This includes public and private spaces where people work; are paid, takes a rest break or a meal, uses sanitary/washing/changing facilities, during work related trips, travel, training, events or social activities, through work related communication, in employer provided accommodation and when commuting to and from work. It also includes cyber harassment and violence within its purview.

**5. Work Prohibited to Women**

While the Benin Labour Code permits women to work the same night hours as men, under Article 168, which is jointly agreed by the Minister for Labour and the Minister of Health, taken after the advice of the National Labour Council, sets out the nature of the work and the categories of enterprises prohibited to women, pregnant women and young men, and the age limit at which the ban applies. Under the Inter-Ministerial Order on the Categories of Work and Workplaces Forbidden to Women, Pregnant Women and Youth, women are prohibited from entering into certain professions, such as hazardous work, metal work or heavy lifting.

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<sup>37</sup> According to the US Department of State 2019 Country Report for Benin, “victims seldom reported harassment due to fear of social stigma and retaliation, however, and prosecutors and police lacked the legal knowledge and skill to pursue such cases”.

The prohibition of women from working in certain professions or occupations is prima-facie discriminatory, and potentially deprives women of meaningful economic opportunity. The ILO has acknowledged that protective legislation frequently perpetuates sex discrimination under the guise of protection and reinforces the subordination of women. Instead of entirely prohibiting classes of work to women, women should be protected on the same basis and with the same standards of protection as men, and adequate health and safety precautions should be binding on both.

#### **Proposed recommendations:**

- i. Repeal provisions in the law prohibiting women from performing certain work or occupations, and in its stead ensure adequate provisions that address the particular health and safety needs of women workers.

#### **6. Current Liberticidal Laws:**

Fundamental rights at work are protected by the Labour Code and the General Status of the Public Service. Only in recent years, certain liberticidal laws passed by the current regime threaten fundamental rights at work, and create insecure work. For example, provisions introduced by Act No. 2017-05 of 29 August 2017 allow the possibility of fixed-term employment contracts being renewed indefinitely under article 13. In this act there is the absence of a limit on the duration of probation periods, which may be renewed or terminated at any time without notice, compensation or indemnification and the capping of the amount of compensation in the event of dismissal or failure to comply with dismissal formalities.

With respect to the right to strike, legislation passed in 2018, the 2018-35 Amending and Supplementing Act No 2001-09 of 2002, restricts the right to strike to a maximum duration of 10 days per year for all employees, except workers who are barred from striking. While this law prohibits anti-union discrimination, it excludes workers such as domestic workers, agricultural workers and migrant workers and those in export-processing zones from relevant legal protections.

#### **Proposed recommendation**

- i. Repeal provisions in laws on fixed term contracts and limitations on the right to strike, which create employment insecurity, and weaken worker rights.

#### **7. Policies and programs to support women in the economy**

There are no policies and programs to support women in the informal economy. Similarly, there is no law on social insurance, health benefit or national pension fund to obtain pension benefits for women working in the informal economy. The only experimentation program in Benin is the ARCH (Insurance for the Strengthening of Human Capital) project,

which is not dedicated to women in the informal economy, but is an experimental program for all citizens. The ICECR Committee (2020) noted that despite the launch of this program in 2016, it remains at the pilot stage, covering only 10,000 households.

**Proposed recommendations:**

- i. Accelerate the roll-out of the universal health insurance component of the Insurance for the Strengthening of Human Capital project in the informal economy, giving priority to the most disadvantaged, particularly women workers.
- ii. Create a social protection floor providing basic income security for all.

**8. Child Labour - the Girl Child**

According to article 166 of the Labour Code, children cannot be employed in any business until the age of 14, however children between the ages of 12 and 14 may perform domestic work and temporary or light seasonal work if it does not interfere with their compulsory schooling. According to local unions, the impact of these laws is that the exploitation of children places commonly called “Vidomègon” in Benin has decreased considerably. However, girls continue to be employees in domestic work and other tasks.

According to the 2019 US State department report on Benin, many rural parents sent their children to relatives to perform domestic chores in return for an education. However, these children frequently landed up in forced labour situations in domestic labour. According to the state department up to 95% of children in vidomegan were young girls. The HRC Committee (2015) similarly expressed concern that is concerned about the misuses of the placement of children vidomégon, and that Benin is at the same time a country of origin, of transit and of destination for trafficking in persons, and in particular women and children.

**Proposed question:**

- i. What steps is Benin taking to raise awareness and protect children against all forms of ill-treatment, and to ensure that the goal child gets an education, and is not exploited and trapped in domestic work?

**Proposed recommendations:**

- i. Benin must adopt, as soon as possible, the bill on trafficking in persons and take additional measures to combat trafficking within the country and at the regional level
- ii. Benin must regulate and monitor the working conditions of girls employed as vidomegons in order to protect them from exploitative child labour
- iii. Benin should ratify the International Labour Organization Domestic Workers Convention (Convention No. 189) of 2011.

**9. Non-Discrimination, Maternity and Paternity Protection**

The Benin Labour Code in Article 170 paragraph 2 stipulates that every pregnant woman is entitled to paid maternity leave with full wages covered for fourteen weeks. 50% of this is paid by the social security system, and 50% by the employer. Under Section 171, the law protects women's job security during this period. The same provisions are provided for by the General Statute of the Public Service. Although there are no provisions for paternity leave under the Labour Code, the Collective Labour Agreement provides for 3 days leave for birth at home which can be taken as paternity leave by fathers. However, there is no legislation or policies that deal with parental leave.

Even though the law No. 2002-07 of June 14, 2004 regarding the Code of Persons and Family of Benin recognizes in Article 406 that the child remains under the authority of his father and mother until his or her maturity or emancipation. In reality, when men and women are employees, family allowances are systematically paid to men. In order for a woman to receive them, a man must make a power of attorney in this sense. In the event that the woman is an employee and the man is not, the man must also give a power of attorney to the woman before the family is perceived.

**Proposed recommendations:**

- i. Implement measures to promote reconciliation of family and work responsibilities of women and men, including the provision of adequate paternity leave for fathers, and to give effect to the principle that child-rearing as the joint responsibility of mothers and fathers. Similarly, provision should be made in the law for family leave, in order to facilitate flexible work environments, which are supportive of men and women's family responsibilities outside of the workplace.
- ii. Discriminatory provisions with respect to benefits such as family allowances, must immediately be prohibited.