

TREATY BODY MONITOR

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Information submitted to the Committee

On 30 March 2007, Benin submitted its 2nd periodic report to the Committee on Economic, Social and Cultural Rights (the Committee) in accordance with its obligation under Articles 16 and 17 of the Covenant.¹ Benin ratified the Covenant on 12 March 1992 with no reservations or declarations. The eighty-two-page periodic report begins with an overview of key initiatives, as well as the legal framework adopted to

¹ E/C.12/BEN/2, available at www2.ohchr.org/english/bodies/cescr/cescrs40.htm

implement the provisions of each Article of the Covenant. The report outlines Benin's administrative decentralization; the new *Personal and Family Code* based on the principles of equality and non-discrimination; the 2000 National Policy for the Advancement of Women and the establishment of a National Commission for the Advancement of Women; trends in employment and the high proportion of women and youth working in the informal sector; various State projects enhancing entrepreneurship, as well as technical and vocational training programs; steps to combat child trafficking; the rise of food prices; public housing measures; difficulties tackling endemic malaria, malnutrition, hygiene problems, insufficient access to drinking water and risks linked to HIV/AIDS; and challenges in the education system.

On 24 September 2007, the Committee provided the list of issues and questions² to the State party, which sought clarification on the status of the Covenant in domestic law and on consultations with civil society when preparing the periodic report. In addition, the list requested more information on measures adopted to overcome discriminatory traditions against women, to increase job opportunities, and to improve access to safe drinking water and sanitation. It further asked what progress was made in combating female genital mutilation (FGM) and HIV, and inquired into the impact of poverty reduction initiatives. Benin replied to the list of issues on 17 March 2008. The twenty-two-page document responded to all questions posed.

Two NGOs submitted reports³ to the Committee. Franciscans International focused on the realization of the right to health, education and food. It expressed concern with the working conditions of peasants; the effect of export-oriented agriculture on cereal prices; malnutrition; high maternal mortality rates; access of the population to potable water and sanitation; and charged primary education. The Global Initiative to End All Corporal Punishment of Children expressed concern with the lawfulness of corporal punishment of children in the family environment, and noted that corporal punishment was prohibited in schools by a circular letter but not in law.

Themes and issues

Benin's review, which should have been carried out during the entire day of 5 May, had to be condensed in the afternoon session and one additional hour on 6 May because the delegation did not appear for the morning meeting. The delegation apologized for the misunderstanding, but claimed to have received written notification that the session would take place on 6 May.

Benin's delegation was headed by Mr Honore Akpomey, Director of the Cabinet of the Minister of Justice and Human Rights. The delegation included representatives of the Ministry for Action, Development and Evaluation of Public Action; the Permanent Mission of Benin to the United Nations Office in Geneva, the Ministry of Justice, Legislation and Human Rights; the Service for the Promotion of Human Rights, the Service for the Protection and Defence of Human Rights; and a jurist in service at the 'Direction of Human Rights'.

In his opening statement, the head of the delegation Mr Akpomey assured the Committee that the Government was undertaking efforts to comply with its international obligations. It outlined a number of key initiatives and reforms undertaken, which included: the decentralization of the administration; a 2001-2006 strategic document for the reduction of poverty; a new Personal and Family Code enshrining the principles of gender equality and non-discrimination; the 2000 National Policy for the Advancement of Women; the set up of a National Commission for the Advancement of Women; the adoption of a program of action to reduce unemployment and underemployment; the 2001 law on the right to strike; the 1997 decree setting the various forms of trade union organizations; and the 2003 law delimiting education guidelines. Mr Akpomey acknowledged that despite the progress made, further action was needed.

² E/C.12/BEN/Q/2, available at www2.ohchr.org/english/bodies/cescr/cescrs40.htm

³ Available at www2.ohchr.org/english/bodies/cescr/cescrs40.htm

Despite the irritation of some Committee members regarding Benin's misunderstanding of the date of the review, the interactive dialogue was carried out constructively. It was noteworthy that a number of Committee members expressed dissatisfaction with Benin's written replies to the list of issues, while country rapporteur Mr Kerdoun stressed that to ensure the realization of economic, social and cultural rights in Benin, the Government should focus on access to education, health care, food security and capacity to generate wealth. The main concerns raised by the Committee included discrimination against women, female genital mutilation, poverty, access to education, AIDS, hunger and malnutrition, the impact of privatization on human rights, prison conditions, the rights of disabled persons, and public housing.

Status of the Covenant in domestic law

Committee member and country rapporteur Mr Kerdoun noted that Benin's written replies to the list of issues assured that court rulings referring to economic, social and cultural rights did exist but were not 'immediately available'. He asked when the judicial sector would be modernized in order to provide statistics and examples of judicial decisions referring to the provisions of the Covenant. Committee member Mr Sadi questioned why the Covenant, which was ratified by Benin in 1992, was only published in the official gazette in 2006. Committee member Ms Wilson voiced that he was not satisfied with public awareness raising measures and enquired whether the Government had set up awareness-raising programs to overcome traditions that were harmful and contrary to the provisions of the Covenant.

The delegation acknowledged that the Covenant was only published in the national gazette in 2006, but noted that Benin's Constitution contained a specific provision determining the supremacy of international instruments over national legislation. It further stressed that since 2006 all instruments ratified were published in the official gazette. The delegation said that the Government, in partnership with civil society was, doing its utmost to raise awareness on the provisions of the Covenant.

In its concluding observations, the Committee recommended the State party to assure the direct applicability and the justiciability of the rights enshrined in the Covenant.⁴ It requested that the next periodic report provide information on jurisprudence referring to the rights protected by the Covenant.

Institutional framework

Committee member Mr Dandan noted with disappointment that Benin's national human rights institution, entitled the Benin Commission on Human Rights, was awarded with a 'C' status by the International Coordinating Committee of National Human Rights Institutions, and was classified by the Government as a non-governmental organization. He stated that if the commission was not an independent body it did not function in accordance with the Paris Principles.⁵ Besides the Benin Commission on Human Rights, Committee expert Mr Sadi pointed out the existence of a national commission for monitoring human rights implementation and of a National Advisory Council. He asked the delegation how independent these agencies were and if they coordinated their activities.

The delegation answered that the National Advisory Council had the role of bringing together NGOs and State bodies with the purpose of formulating recommendations to the Government. On the other hand, the national commission for monitoring was a governmental body under the Human Rights Department of the Ministry of Justice charged with drafting the reports that Benin submitted to the different monitoring bodies.

In its concluding observations, the Committee recommended the reinforcement of the legal status of Benin's Commission on Human Rights to guarantee its independence and that it receive an adequate budget.

⁴ E/C.12/BEN/CO/2, available at <http://www2.ohchr.org/english/bodies/cescr/cescrs40.htm>.

⁵ Principles relating to the status and functioning of national institutions for protection and promotion of human rights.

Discrimination and violence against women

Country rapporteur Mr Kerdoun noted with concern the remaining disparities between men and women in Benin. Together with a number of Committee members, he welcomed the enactment of the 2004 Person and Family Code (the Code) establishing a minimum age of marriage and prohibiting polygamy and female genital mutilation (FGM). He noted, however, that women continued to be victims of violence, and that polygamy was still a widespread practice. Mr Kerdoun stressed the need to make these laws widely available in the main languages spoken in Benin, and Mr Mejia questioned how the law was effectively implemented. Mr Mejia asked whether there were penalties applicable in cases of violations of the provisions of the Code, and if so, if any conviction had been handed out. Committee members Mr Sadi and Ms Wilson wondered if the Government had campaigns to overcome customary law allowing polygamy and other harmful practices against women. Finally, Mr Barahona and Mr Dandan stressed that 90% of women worked in the agricultural and informal sectors, which put them in a critical situation if they lost their husbands, became pregnant or sick.

The delegation answered that the Person and Family Code was totally applicable, and therefore did not conflict with customs. It clarified that polygamous marriages could be nullified in court, while stressing the need to raise public awareness on the unlawfulness of FGM. It explained that FGM was often an income generating activity, and that consequently the Government had set up a programme to compensate those who profited from the practice with resources to engage in other activities. Furthermore, the delegation highlighted that these practices were often carried out in neighbouring countries.

Committee member Mr Pillay continued that it appeared that State authorities did not intervene in combating harmful practices against women, thinking it to be a private matter. Mr Barahona further questioned why domestic violence was not categorized as a crime, and Mr Kolosov suggested Benin to strengthen bilateral agreements with neighbouring countries such as Nigeria and Togo in order to mutually combat FGM.

The delegation stated that after the enactment of the 2003 law on FGM the Government and civil society carried out many campaigns to raise public awareness. Trainings of magistrates and of the police were set up, and agreements with bordering countries were tightened in order to develop mutual strategies to repress FGM. Regarding forced marriages, the delegation explained that under the Code, the minimum age of marriage was 18, unless there was a dispensation by the president of the court. Marriage required the consent of both persons in the registry and in the presence of a notary. On polygamy, the delegation stated that many campaigns were developed to raise awareness of its unlawfulness, but the results were still not tangible. It added that those polygamous before the new Code could continue to be so.

In its concluding observations, the Committee reiterated the need to adopt measures to overcome harmful traditions and stereotypical attitudes regarding women's rights and their role in society, and requested that the Government provide an assessment of the impacts of their activities in the next periodic report. Furthermore, it requested the State party to expressly criminalize domestic violence in its national legislation, and set up a system of protection and assistance to victims. On female genital mutilation, it urged the delegation to organize training programmes for judges, prosecutors and police officers aiming at the rigorous application of the law prohibiting FGM, to raise public awareness, and to provide assistance to victims.

Poverty

Committee member Mr Dandan wanted to know to what extent a human rights perspective was included in the Governments poverty reduction strategy and stressed that statistics were extremely important to measure progress. Mr Dandan also sought clarification on the population living under the poverty line and that living in extreme poverty, and asked how the Government intended to reduce poverty when population growth was uncontrolled.

The delegation stated that poverty persisted and that according to an indicator established in 2002 it remained prevalent in rural areas. The Government intended to tackle the problem through a number of initiatives such as the improvement of access of households to credit, the diversification of agriculture, improvements in infrastructure, effective implementation of national policies promoting women's rights, and the better administration of resources.

Committee members wondered if there was a plan to combat hunger and malnutrition, and were concerned with the impact that the rise in food prices could have on poor segments of the population. They wished to know how the Government had established a system to control food prices. The delegation stated that the Government was trying to control food prices and that the trade minister was dealing with the matter.

Committee members Ms Dandan and Mr Sadi asked about the impact on human rights of the privatisation of public services such as water and electricity. Mr Sadi wondered if privatisation contributed to the exasperation and perpetuation of poverty in the country. The delegation answered that, there were no longer total privatisation of public services. The Government would only sell part of the company to private groups, and therefore would maintain certain control over activities.

In its concluding observations the Committee recommended that the next periodic report provide disaggregated data on the realization of the rights enunciated in the Covenant, with particular attention to disfavoured and marginalized groups. It also recommended the allocation of sufficient funds on poverty reduction strategies.

Employment

Committee member Ms Bras Gomes noted with concern that Benin had not ratified a number of ILO conventions, and wondered if the Government had established any timeframe to do so. Mr Zhan specifically asked why Benin had not ratified *ILO Convention No. 103 on Maternity Protection*, while Mr Romero noted that Benin had at least 40 ethnical compositions, and wondered why the Government had not signed the *ILO Convention No. 169* concerning indigenous and tribal peoples. Committee member Mr Martynov noted that unemployment was one of the major challenges faced by the country, and expressed concern that the Government had only set up one vocational training centre. He drew attention to the fact that 85% of the population worked in the informal sector with no social security benefits, and inquired whether the Government intended to use other tools rather than mutual social security associations, which only met the needs of few workers. The delegation stated that the Government was trying to reduce informal work, and added that a National Forum on youth and women's employment had been set up. A further monitoring committee had been set up and an implementation plan was underway. In its concluding observations, the Committee urged the State party to provide data on unemployment disaggregated by gender, urban and rural areas, ethnic groups, and age. It also requested the inclusion of information on the effectiveness of measures adopted to increase employment opportunities. Furthermore, the Committee urged the State party to provide social security to all without distinction, and called for the ratification of ILO Convention n. 102 on the matter.

A number of Committee members expressed concern with allegations of traffic of minors for labour exploitation. Mr Antagana noted that a number of children were withdrawn from labour by public authorities, yet wondered what was done with these children as a follow-up. The delegation explained that traffic of children was closely linked to extreme poverty, and that the Government was working on public awareness. It stated that the number of reported cases had dropped sharply and had virtually disappeared. It further clarified that often the Government brought back children sold abroad, but did not have enough resources to look after them. Left on their own devices, these children would go abroad again after a few years. Note worthy that a different member of the delegation gave a completely different statement on the matter, assuring that children

sold and brought back were not left on their own devices, but taken back to their families and assisted by the Government so that it would not happen again.

Education

Country rapporteur Mr Kerdoun pointed out that as a multilingual country with up to 50 dialects, it was difficult to develop writing skills. He cited the need to grant the highest possible education opportunities to all segments of Benin's society. Ms Wilson wondered what had been accomplished in terms of realization of the principle of compulsory, universal and free primary education,⁶ while Ms Bras Gomes noted with concern that primary education in the country seemed to be compulsory but not free.

The delegation answered that the process of offering free schooling began by focusing on girls in rural areas, and highlighted that since 2007 schooling had become free of charge in both rural and urban areas. In addition, since the beginning of the 2007-2008 school year more than 3000 additional classrooms had been built to reduce overcrowding, and there was an expansion on the number of cafeterias. The gratuity of secondary and university education was presently under review.

Health

Country rapporteur Mr Kerdoun noted that mental and physical health were dependent on access to water, and therefore the critical shortage of water in Benin needed special consideration. Mr Riedel wanted to know what had actually been achieved by the Government in terms of expanding access to drinking water. Mr Mejia further expressed concern with the high rates of people infected with HIV in the country. He noted that units had provided free of charge tests, yet stated that the problem needed to be tackled through public awareness campaigns. Mr Baharona expressed concern with the high child mortality rates in the country, and wondered how effective measures adopted were.

The delegation declared that access to water was a priority for the Government, which had expanded access to water especially in remote rural areas, and stressed the need to repair and expand water treatment centres. It further stated that the Government had adopted a national programme to combat HIV, which included the efforts of a number of ministries and of the private sector.

Prison conditions

Committee member Mr Riedel was not satisfied with the written replies to the list of issues concerning prison conditions. He said the Committee could not assess what measures were actually adopted and what effect they had, specifically regarding overcrowding and the nutrition of detainees. The delegation stated that the Government had not yet found a final solution to the issue, but noted that prisons were not as crowded as they used to be due to the adoption of alternative measures. 10 new prisons were being built as part of the millennium challenge programme, which included a programme on the reform of the justice system. Regarding diet in detention centres, the delegation stated that steps were being taken to provide detainees with two hot meals per day, rather than one. Committee member Mr Kolosov wanted to know if the Government envisaged the possibility of arranging public but independent monitoring of conditions in prison facilities. The delegation stated that the penitentiary already carried out regular inspections in prison facilities, and assured the Committee that state organisms and NGOs controlled the quality of the food provided. In its concluding observations, the Committee recommended that the State party intensify efforts to reduce overcrowding in prisons and guarantee adequate nutrition of detainees.

International Aid

⁶ Paragraph 45 of the Committee's concluding observations on the State party's initial report recommended the adoption of a detailed plan of action for the progressive implementation of the principle of compulsory primary education free of charge for all.

The Committee noted that Benin's international debt represented 44% of its gross domestic product. It wondered what structural reforms were proposed by the Club of Paris⁷ in providing a grace period, and stressed that the reforms should reflect the views of the State and not only of the Club. It further asked to what extent international assistance could help Benin comply with its obligations under the Covenant. Mr Kerdoun wanted to know if international financial organizations such as the World Bank and the International Monetary Fund had obliged Benin to conduct structural reforms, and queried if bilateral aid tended to be more strictly tied in comparison to multilateral donations.

The delegation answered that Benin received both multilateral and bilateral aid. The World Bank and the International Monetary Fund provided aid under certain conditions such as the interruption of technical guidance to farmers, which the Government later realised was a big mistake. It further stated that Japan, Germany, the United States and China had provided generous but very tied bilateral aid. Finally, it stated that Benin had recently benefited from some debt alleviation.

Independence of the judiciary

Committee member Mr Antagana pointed out that several sources indicated that although the Constitution provided for the independence of the judiciary, this was not respected in practice. He wondered if allegations that the Minister of Justice had authority over judges and that a public prosecutor could remove a case from a judge were true. The delegation answered that the appointment of judges made by the Ministry followed the approval by the Superior Council of Magistrates. It explained that the Minister submitted a project of nomination, which had to be approved by Superior Council, and clarified that the Superior Council was not bound to follow the draft presented by the Minister. The head of the delegation further stated that judges could not be removed of a function against their own will, and could seek the a review by the Constitutional Court, the highest court in the country, which could overturn the decisions of the Superior Council.

Birth registration

Committee member Mr Sadi wondered why one quarter of children in Benin were not registered, and Mr Kolosov asked how the Government could calculate the annual growth rate per capita if there wasn't a clear picture of the country's population. The delegation stated that this was due both to illiteracy and to the negligence of parents, but noted that a project was underway to set up registries in villages. It further stated that the Government had set up a program of registration through the Ministry of the Family and now children not declared until the age of 15 could receive birth certificates. It acknowledged the need for public awareness amongst women. In its concluding observations the Committee urged the State party to strengthen measures to guarantee that children were registered at birth, and to provide birth certificates free of charge.

Housing

Committee member Mr Pillay noted that Benin had mentioned the adoption of a national housing policy before the Working Group on the Universal Periodic Review (UPR) mechanism of the Human Rights Council. He wondered if the policy had actually been implemented, and noticed that according to the report the few housing units built had been allocated to State employees. The delegation confirmed that they have a national housing policy aimed at ensuring that all have access to housing, but explained that it was not properly implemented due to a lack of means. It further stated that the Government subsidized material used to build homes, and highlighted that a bill on urban land planning was being discussed before Parliament.

Access to justice

⁷ The Paris Club is an informal group of financial creditors from 19 developed countries that provide financial services such as debt restructuring, debt relief, and debt cancellation to indebted countries and their creditors.

Committee member Mr Romero noted with concern that Benin had more than 50 languages, but French was the sole working language. He wondered if judicial representation was provided. The delegation answered that interpreters were made available and that illiterate people received special assistance.

Persons with disabilities

Country rapporteur and committee member Mr Kerdoun asked if Benin had ratified the *Convention on the Rights of Persons with Disabilities*, and if not, if it intended to do so in a near future. Mr Antagana asked if there was any domestic legislation dealing with the matter. The delegation answered that the Convention had not yet been ratified, but noted that last year the Ministry of Foreign Affairs had engaged in important measures towards accession. It mentioned the adoption of a national policy for the promotion of the rights of people with disabilities and the organization in 2008 of a forum to discuss the matter. Furthermore, the Constitution contained specific provision determining favourable treatment to persons with disabilities and the Ministry of the Family adopted a number of measures to provide them with special treatment.

In its concluding observations the Committee urged the State party to ratify the *United Nations Convention on the Rights of Persons with Disabilities*, as well as its Optional Protocol, and to adopt a specific domestic law on the matter.

Conclusions and next steps

In conclusion, the head of delegation thanked the Committee for the comments and recommendations made. It assured the Committee that the Government would do its utmost to ensure the prevalence of the rule of law and to protect its people. On behalf of the Committee, the chair briefly regretted that there was not time to carry out the review as expected, and noted that the written replies to the list of issues were not satisfactory.

A number of UN treaty bodies made previous concluding recommendations and observations on the same issues addressed by the Committee. The Committee on the Rights of the Child recommended that the State party ensure that birth registration was made accessible to all parents, and to strengthen mechanisms to prevent and monitor internal child trafficking and economic exploitation, in particular in the informal sector. The Committee on the Elimination of Discrimination against Women called on the State party to strengthen efforts towards *de facto* gender equality, to challenge discriminatory harmful customs and traditions regarding the roles and responsibilities of women in the family and society, and to adopt comprehensive measures to combat violence against women and girls. The Human Rights Committee urged the State party to increase efforts to combat trafficking in children, to clearly prohibit and repress polygamous marriage, and to guarantee the right of detainees to adequate food and access to health.

The Committee requested that Benin submit its next periodic report by 30 June 2010.

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