



April 22, 2002

The Committee on Economic, Social and Cultural Rights

Re: Supplementary information on Benin  
Scheduled for review by the Committee on Economic, Social and  
Cultural Rights on May 2-3, 2002

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Benin, which is scheduled to be reviewed by the Committee on Economic, Social and Cultural Rights during its 28<sup>th</sup> session. The Center for Reproductive Law and Policy (CRLP), an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the International Covenant on Economic, Social and Cultural Rights (ICESCR). This letter highlights several areas of concern related to the status of women's reproductive health and rights in Benin. Specifically, it focuses on discriminatory or inadequate laws and policies related to the reproductive rights of women in Benin. It is based primarily on two previously published documents prepared by CRLP in collaboration with the Association des Femmes Juristes du Bénin (AFJB). Copies of these documents are attached for your reference.

Because reproductive rights are fundamental to women's health and equality, states parties' commitment to ensuring them should receive serious attention. Further, reproductive health and rights receive broad protection under the ICESCR. Article 12(1) of the ICESCR recognizes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."<sup>1</sup> Articles 2(2) and 3 guarantee all persons the rights set forth in the ICESCR without discrimination, specifically as to "sex, social origin or other status."<sup>2</sup> In interpreting the right to health, this Committee, in General Comment 14, has explicitly defined this right to "include the right to control one's health and body, including sexual and reproductive freedoms."<sup>3</sup> The Committee has further asserted that states parties are

required to take “measures to improve child and maternal health, sexual and reproductive health services, including access to family planning... emergency obstetric services and access to information, as well as to resources necessary to act on that information.”<sup>4</sup> General Comment 14 also specifically states that “[t]he realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”<sup>5</sup>

We wish to bring to the Committee’s attention the following issues of concern, which directly affect the reproductive health and lives of women in Benin.

## **1. Women’s Reproductive Health Rights (Articles 10, 12, and 15(1)(b) of the ICESCR)**

Article 12 protects the right of all persons to enjoy the highest attainable standard of physical and mental health. This article is complemented by Article 15(1)(b), which grants all persons the right to benefit from the advances of scientific research and its applications. Under this provision, women are entitled to enjoy advances in research in the reproductive health field. Article 10 grants special protection to pregnant women before and after delivery as well as to adolescents and children. These provisions require governments to make reproductive health, family planning, and safe motherhood services and information accessible to women.

The Committee defines “reproductive health” as “the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning of [one’s] choice as well as the right of access to appropriate health-care services that will, for example, enable women to go safely through pregnancy and childbirth.”<sup>6</sup> According to the Committee, Article 12(2)(c) on the prevention, treatment, and control of disease, “requires the establishment of prevention and education programmes for... sexually transmitted diseases, in particular HIV/AIDS, and those adversely affecting sexual and reproductive health...”<sup>7</sup>

### **A. Access to Reproductive Health Care, Including Family Planning and Safe Motherhood**

Women’s reproductive lives in Benin are characterized by a low rate of contraceptive prevalence, high numbers of induced illegal and clandestine abortions, resulting in an alarming maternal mortality ratio of 880 per 100,000 live births.<sup>8</sup>

The French colonial law of July 31, 1920 prohibiting contraceptive propaganda and incitement to abortion remains in force in Benin. Articles 3 and 4 of this law punish “anyone who, for the purpose of contraceptive propaganda,... describes or divulges or offers to reveal or facilitate the use of procedures for preventing pregnancies.”<sup>9</sup> Offenders risk one to six months in prison and a fine of 100 (USD 13.56) to 5000 French francs (USD 677.84).<sup>10</sup> While the law is not actively enforced, it inhibits the implementation of a comprehensive reproductive health policy, particularly with respect to family planning.

Knowledge of contraceptive methods varies according to age and young women are the least informed. Among married women, those between the ages of 20 and 39 are most knowledgeable of the various contraceptive methods, including modern methods (at least 79% have knowledge of any method, and at least 75% of a modern method). Adolescents between the ages of 15 and 19 have the lowest level of knowledge of contraceptive methods (70% have knowledge of some method and 66% of a modern method).<sup>11</sup> While 16% of Beninese women use some form of contraception, only 3% of

women use a modern method.<sup>12</sup> Among adolescent women between the ages of 15 and 19, 61% have already given birth to at least one child, and among young women aged 20 to 24, this number rises to 89%.<sup>13</sup>

## **B. Access to Safe, Legal and Accessible Abortion Services**

The low prevalence and imperfect use of contraceptive methods lead to an elevated rate of induced abortions.<sup>14</sup> Abortion is criminalized in Article 317 of the Penal Code with significant penalties, which can be increased in the case of aggravating circumstances. While the Penal Code recognizes no exceptions to this prohibition,<sup>15</sup> the Code of Medical Ethics permits physicians to perform an abortion when a woman's life is at risk.<sup>16</sup> The law of July 31, 1920, as mentioned above, imposes additional penalties for "inciting" a woman to have an abortion.

In the majority of cases, abortions in Benin are practiced clandestinely, under deplorable conditions that jeopardize women's health. Among the 722 instances of induced abortion recorded in a study of three maternity facilities in Cotonou, 712 were illegal induced abortions (19.4% were for adolescents, 26.9% were for single women, and 57.2% were for married women). These abortions occurred in rural areas (31.1%), as well as in urban (28.4%) and suburban areas (33.1%).<sup>17</sup> Unsafe abortion is a leading contributor to the high maternal mortality rate and can lead to serious reproductive health consequences, such as infertility.

## **C. HIV/AIDS**

In Benin, early sexual experiences and inadequate reproductive health care services expose adolescents to the risks of HIV infection. According to estimates from the year 2000, 2.45% of all persons aged 15 to 49 are infected with the HIV virus.<sup>18</sup> Young women are more vulnerable to infection than their male counterparts. The HIV prevalence rate among males aged 15-24 was .89%, whereas for females of the same age group, it was 2.24%.<sup>19</sup>

## **2. Family Protection and Assistance (Article 10)**

Article 10 of the ICESCR provides for the protection of the family, the mother, and the child. It provides for the right to enter freely into marriage. In many countries, including Benin, however, the minimum age for marriage is low, and sometimes marriage is entered into without the free consent of one of the two spouses—most often the woman. UNICEF has recognized that the early age at which laws or customs allow girls to marry puts them at a disadvantage when it comes to school enrollment. As a result of the traditional division of family roles, young married women often sacrifice their education for domestic tasks and devote themselves to motherhood.<sup>20</sup>

In Benin, according to the Civil Code, a young man must be only 16 and a young woman only 15 to enter into marriage. Under the *Coutumier du Dahomey* of 1931, which remains in

effect, a young girl may enter into marriage at 14. Not only does the law permit child marriage, but the disparity between the minimum age of marriage for men and women is a form of discrimination against women.

High rates of early marriage are reflected in statistics on adolescent childbearing, which reveal that adolescents between the ages of 10 and 20 account for close to 12% of the total Beninese fertility rate.<sup>21</sup> For many parents, especially in rural areas, the young girl is a source of income through the dowry that she brings. The age of marriage in rural areas is usually between ages 15 and 17, whereas in urban areas it is 18.<sup>22</sup>

### **3. Sexual and Physical Violence Against Women, Particularly Minors (Articles 10(3) and 12)**

Article 10(3) requires states parties to take all appropriate steps to protect children and adolescents. This article, read with Article 12, protects women and adolescents against all forms of physical abuse and violence. Thus, when women, whether they are minors or of majority age, are victims of sexual abuse, domestic violence, or female circumcision/female genital mutilation (FC/FGM), their rights under these provisions are violated.

The Committee has noted that violence against women, both within and outside the family, has serious effects on a woman's physical and mental health.<sup>23</sup> It strongly advises states parties to adopt effective measures to combat violence against women. It also has expressed its view that FC/FGM is a degrading and dangerous practice that is incompatible with women's rights, particularly their right to health.<sup>24</sup>

#### **A. Physical and Sexual Violence**

Domestic violence, both physical and psychological, is prevalent in Benin. While rape is penalized under the Penal Code,<sup>25</sup> there is no concept of marital rape, and thus no existing law is applicable. There is a high incidence of rape in connection with forced marriage and the abduction of young girls and adolescents.

#### **B. Female Circumcision/Female Genital Mutilation (FC/FGM)**

Traditional practices also pose a threat to women's health and lives in Benin. FC/FGM is a reality in Benin, affecting girls as young as 5 and women up to the age of 30. At least 50% of Beninese women undergo the practice.<sup>26</sup>

While general Penal Code provisions relating to assault could potentially be applied to the practice of FC/FGM, the Penal Code in Benin contains no provisions specifically prohibiting the practice. Increased public health campaigns are needed to raise awareness about the harmful consequences of this practice.

#### 4. The Right to Education (Articles 12, 13, 14, and 15)

Articles 13 and 14 protect children's rights to compulsory primary education, free of charge for everyone. Article 15 recognizes the importance of access to information and materials from diverse sources. Article 12, when read together with these articles, establishes the link between education, the right not to be subject to discriminatory treatment based on gender, and the right to health education.

In Benin, there is a significant education gap between women and men. In 2001, the primary school enrollment rate for school-age girls was 57% compared to 98% among boys.<sup>27</sup> For secondary school enrollment, the rate for girls was 11%, in contrast to 26% for boys. The female literacy rate is 26%, whereas it is almost 58% for men.<sup>28</sup> The difference in boys' and girls' enrollment reflects gender inequality, which impedes girls' access to school.

We hope that the Committee will consider addressing the following questions to the government of Benin:

1. What efforts are being made to institute government-sponsored programs to allow women to access comprehensive reproductive health and family planning services, as well as information about these services?
2. What legislation and policies have been adopted to address unsafe abortion in Benin? What efforts have been made to reform the law that criminalizes abortion? Has the government made provisions for post-abortion care?
3. In its report, the government states that a project entitled "Reproductive Health and Family Planning" was implemented in 1992 with a goal "to reduce the proportion of teenage pregnancies by 50% by the year 2000" (para. 315). Given the incidence of early marriage that is a leading factor in teenage pregnancy, what measures is the government taking to counter the practice? What measures has the government undertaken to decrease the educational gap between women and men?
4. FC/FGM continues to be a pervasive practice in Benin. What educational tools has the government provided its communities about the harmful consequences of the practice? Have any public education campaigns been undertaken? What legislation and policies have been adopted to criminalize the practice?

Finally, we have included the following supporting documentation for the Committee's reference:

1. Chapter on Benin in *Women of the World: Laws and Policies Affecting Their Reproductive Lives, Francophone Africa*, authored by CRLP, AFJB and the Groupe de recherche femmes et lois au Sénégal (GREFELS) (1999).

2. Report submitted to the UN Committee on the Rights of the Child, written by CRLP and AFJB, *Reproductive Rights of Young Girls and Adolescents in Benin: A Shadow Report* (1999).

There remains a gap between the provisions contained in the ICESCR and the reality of women's reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive and sexual health and rights of women and the strong concluding observations and recommendations the Committee has issued to governments in the past, stressing the need for governments to take steps to ensure the realization of these rights.

We hope that this information is useful in the Committee's review of the Beninese government's compliance with the ICESCR. If you have any questions, or would like further information, please do not hesitate to contact me.

Very truly yours,

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, at 49, U.N. Doc A/6316 (1966), 999 U.N.T.S. 3 (*entered into force* Jan. 3, 1976) [hereinafter ICESCR].

<sup>2</sup> *Id.*

<sup>3</sup> Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, U.N. Doc. E/C.12/2000/4 (2000), at para. 8.

<sup>4</sup> *Id.* at para. 14.

<sup>5</sup> *Id.* at para. 21.

<sup>6</sup> *Id.* at note 12.

<sup>7</sup> *Id.* at para. 16.

<sup>8</sup> See UNFPA, THE STATE OF WORLD POPULATION 2001 (2001), *available at* <http://www.unfpa.org/swp/2001/english/indicators/indicators1.html> (last visited Jan. 8, 2002) [hereinafter UNFPA, STATE OF WORLD POPULATION].

<sup>9</sup> Law No. 1723 of July 31, 1920 prohibiting incitement to abortion and contraceptive propaganda, 278 Bulletin des Lois Repub. Franc. [OFFICIAL GAZETTE OF THE FRENCH REPUBLIC] (1920) [hereinafter The Law of July 31, 1920].

<sup>10</sup> *See id.*

<sup>11</sup> *See id.*, at 49.

<sup>12</sup> *See* UNFPA, STATE OF WORLD POPULATION, *supra* note 8.

<sup>13</sup> *See* Ministry of Planning, Economic Restructuring and the Promotion of Employment, National Institute of Statistics and Economic Analysis, Central Bureau of the Census, Demographic Health Survey-1996, at 41 (1997) [hereinafter DHS-1996].

<sup>14</sup> *See* UNITED NATIONS POPULATION FUND (UNFPA), REPORT ON THE REPRODUCTIVE HEALTH SUBPROGRAM IN BENIN 12 (1999) [hereinafter UNFPA REPORT].

<sup>15</sup> Penal Code, art. 317.

<sup>16</sup> *See* THE CENTER FOR REPRODUCTIVE LAW AND POLICY (CRLP) & THE GROUPE DE RECHERCHE FEMMES ET LOIS AU SÉNÉGAL (GREFELS), WOMEN OF THE WORLD: LAWS AND POLICIES AFFECTING THEIR REPRODUCTIVE LIVES-FRANCOPHONE AFRICA 34 (1999).

<sup>17</sup> *See* EUSÈBE ALIHONOU, DEPARTMENT HEAD, UNIVERSITY GYNAECOLOGY AND OBSTETRICS CLINIC, PMI/PF, LE CONCEPT DE SANTÉ SEXUELLE, DE LA REPRODUCTION FACE AUX LÉGISLATIONS NATIONALES, [THE CONCEPT OF SEXUAL AND REPRODUCTIVE HEALTH WITH REGARD TO NATIONAL LAWS], at 15.

<sup>18</sup> *See* UNAIDS & WORLD HEALTH ORGANIZATION (WHO), EPIDEMIOLOGICAL FACT SHEET ON HIV/AIDS AND SEXUALLY TRANSMITTED INFECTIONS 2000 UPDATE (2000), *available at* <http://www.unaids.org> (last visited April 18, 2002).

<sup>19</sup> *See* UNFPA, STATE OF WORLD POPULATION, *supra* note 8.

<sup>20</sup> *See* UNICEF, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 611, et seq. (1998).

<sup>21</sup> *See* UNFPA REPORT, *supra* note 14, at 2.

<sup>22</sup> *See* INSAE, Fertility in Benin Survey (1992).

<sup>23</sup> Committee on Economic, Social and Cultural Rights: for example, El Salvador, 05/28/96, E/C.12/Add.4; Dominican Republic, 12/12/97, E/C.12/Add.16; Israel, 04/12/98, E/C.12/1/Add.35.

<sup>24</sup> *Id.*, for example, Nigeria, 05/13/98, E/C.12/Add.23; Gambia, 5/31/94, E/C.12/1994/9; Guinea, 05/28/96, E/C.12/1/Add.5.

<sup>25</sup> Penal Code, art. 331.

<sup>26</sup> *See* CRLP & THE RESEARCH, ACTION, AND INFORMATION NETWORK FOR THE BODILY INTEGRITY OF WOMEN (RAINBO), FEMALE GENITAL MUTILATION: A GUIDE TO LAWS AND POLICIES WORLDWIDE 111 (Anika Rahman & Nahid Toubia eds., 2000).

<sup>27</sup> *See* UNFPA, STATE OF WORLD POPULATION, *supra* note 8.

<sup>28</sup> *See id.*