

## ARTICLE 19's Submission to the UN Universal Periodic Review of the Republic of Benin

14<sup>th</sup> Session of the Working Group of the Human Rights Council, October-November 2012

### Executive summary

1. ARTICLE 19: Global Campaign for Free Expression is a non-governmental human rights organisation that works globally to promote and protect freedom of expression and information. With this submission, ARTICLE 19 seeks to make a constructive contribution to the preparation process of the second cycle of the UPR of the Republic of Benin (Benin). Given the ARTICLE 19's expertise, this submission focuses on Benin's compliance with its international obligations with respect to freedom of expression.
2. ARTICLE 19 notes that during the first cycle of the UPR in May 2008, there were no recommendations submitted to Benin in the area of freedom of expression. However, Benin accepted the recommendation to urgently amend its **criminal law** to comply with international relevant standards, which can also cover other speech-related offences. This submission examines a failure to implement this recommendation in relation to freedom of expression. Additionally, it highlights a number of instances in which Benin failed to meet its international obligations to promote and protect the right to freedom of expression, in particular incidents of **harassment and attacks** on journalists, **freedom of the media**, incidents of **media censorship**, inadequate laws on **access to information** and the right to **peaceful protest**.

### Criminal defamation

3. ARTICLE 19 notes with concern that the Benin's commitment to bringing its domestic law into compliance with international human rights standards did not extend to the reform of defamation legislation. Under the Law No. 97-010 on the Liberalization of the Audiovisual Landscape and Special Criminal Provisions for Offences Relating to the Press and Audiovisual Communication in Benin (adopted on 20 August 1997), defamation remains a criminal offense. While calling for the repeal of Benin's criminal libel laws in their entirety, ARTICLE 19 notes that particular features of the Press Code exacerbate its corrosive nature. When the media are involved, the burden of proof to provide evidence rests with the accused, and defendants are granted seven days to provide evidence. Within this period, the defendant must notify the attorney general or the plaintiff of the facts he/she intends to prove as true, as well as provide copies of all documents and names and addresses of witnesses. It has been reported that journalists typically have difficulty obtaining the necessary copies, especially if the documents are in the hands of the government, and this is more difficult in a system without proper access to information regime.
4. ARTICLE 19 observes that the current Government has not used the 1997 Press Code as extensively as the previous one, and it is also believed that some judges are reluctant to prosecute in libel cases. Nonetheless, Benin has still seen instances of journalists being imprisoned for libel during the period since the first UPR review. For example, in 2009, as a result of an article he published echoing discontents and stirs about a technical communication advisor to the head of state, the publication manager of the weekly *Le Griot de la Cité* was sentenced to six months of imprisonment for slander of a public official. The manager ultimately served a month in jail. In 2010, a political activist named Andoche Amegnise, who created the newspaper, *Anyone but Boni Yayi in 2011*, was also briefly imprisoned for defaming the head of state.

### Attacks and harassment against journalists and media workers

5. While Benin is known as a country where, in general, journalists can practice the profession without being regularly attacked for their work, there were a record number of such incidents in 2009 and 2010. This trend was particularly pronounced in June and July 2009,

prompting two media groups to bring complaints before the High Authority for Audio-Visual Media and Communications (HAAC), Benin's official media regulator. For example, on 31 July 2009, Sulpice Gbaguidi, a reporter with TV station *Canal 3*, was assaulted by assailants who hurled missiles at his car and caused him severe head injuries. Also, on 21 July 2009, the crew of *ORTB* and *Golfe*, two privately-owned television stations, were attacked by some individuals during a trade union demonstration. Furthermore, on 20 July 2009, angry demonstrators stormed the offices of the private media group *Gazette du Golfe* in protest of a report with which they were not pleased.

6. In 2010, the most serious incident involving a legislator, Epihame Quenum, harassing a cameraman for filming him eating groundnuts. However, the number of reports of attacks against journalists further increased in 2011. Many of these attacks originated from state security officials, including the following incidents:
  - On 24 March 2011, a group of police officers in the capital, Cotonou, violently assaulted Séidou Choubadé, a reporter and columnist for the privately-owned *Le Nokoué* daily newspaper, during an aggressive crackdown on opposition protests against disputed election results. Choubadé, who was carrying a press card, was beaten with clubs and left with face injuries.
  - On 11 March 2011, it was reported that journalist Claude Adigbli, of news the agency Agence Benin-Presse, was assaulted by a plainclothes member of the presidential guard after he approached the President to ask questions at a campaign rally.
  - On 18 February 2011, Moustapha Semiou Bashola, editorial secretary of the daily *Les Scoops du Jour*, was beaten by security guards of the speaker of the National Assembly. Two of the guards later admitted to attacking the journalist after overhearing him criticise the speaker outside a meeting of the ruling majority.
  - On 13 October 2011, François Mensah, journalist at *Canal 3 Bénin* was severely assaulted by firemen in the refectory of their barracks. Mensah who was on duty that day in the barracks was attacked by the firemen as the result of a quarrel he had with the waitress of the refectory where he was to have food.
  - One case of death was recorded on 13 October 2011. It involves Pascal Ahouandjinou, a journalist working for radio *Kpassè* of Ouidah, who was found dead in circumstances that were qualified as a case of murder by the representative of the State in the region. To date, investigations have not led to any result and the murderer is still at large.

### **Freedom of media**

7. Print media: Benin print media outlets are predominately private and have a history of providing thorough reporting and robust scrutiny. At the same time, there are a number of politicised publications that receive direct funding from parties, often as their primary source of funding, and which therefore serve as little more than propaganda for particular politicians. In general, the print press outlets have been reported to be in a dire financial state and unable to secure long-term revenues in support of their activities. This has inevitably affected the quality of press services, with journalists sometimes using the excuse of poor pay rates to fabricate news stories, or to publish truncated news without substantiating evidence or searching for different news sources. There have been also reports that such reliance on political contributions has resulted in poorly paid reporters being susceptible to corruption and bribes (for example in a form of various payments, such as “per diems” and “transportation costs” to ensure positive media coverage or payments to journalists from politicians to write favourable articles about them). This has led to a polarisation of content and a corrosion of impartial reporting among print media.
8. Identifying the funding sources of media houses is not easy, and there is little transparency of media ownership. This causes the public difficulty in assessing the degree of objectivity of news produced, and makes it easier to influence editorial content. Moreover, as a result of the financial situation, self-censorship is a common practice among journalists. Fear of losing business connections or advertising accounts tends to drive self-censorship more than

political or legal risks, although journalists who approach issues relating to defence, security or pending legal cases must exercise caution. Worryingly, government bodies have reportedly been exploiting this situation by using subsidies and advertising contracts to influence media content, with a 2008 report published by the NGO Human Rights, Peace and Development (DHPD-ONG) stating that the government awarded communication contracts to private media for propaganda purposes. In 2010, the government granted a total of 350 million CFA (approximately \$700,000) in financial assistance to the private media. Those stations which have been connected to government contracts have become notably less critical.

9. Electronic media: In addition to the government owned broadcaster, *Office de Radiodiffusion et Télévision du Bénin (ORTB)*, the mainstream terrestrial TV channel and radio operator, there are 4 independent TV stations and about 75 private, commercial or community radios operating in the country. Criticism of the state media in Benin has been growing over the last few years. Of all channels, only the state channel covers approximately 80% of the national territory. The other private commercial channels are reduced to a radius of one hundred kilometres around the towns from which they broadcast and are obliged to submit requests for extension to HAAC if they want to extend their coverage area. This situation is strengthened by the media law which gives more advantages to ORTB to the detriment of private channels. Also, in theory, the state media outlets do not receive preferential legal treatment; however, under the current political regime the state media have acquired advantages that expose them to editorial influence by the government. As a result, opposition political parties claim to have no or very limited access to state media which devote 75% of their publications to the Government's official and political activities. Also, in October 2010, the staff of the ORTB sent a letter to the executive director of ORTB detailing numerous instances in which he had restricted the broadcast of programs involving the opposition and/or were counter to the government's guidelines. Furthermore, while the law states clearly that all journalists should have access to news sources, those working for state media generally enjoy favouritism, as long as they are not covering news that is damaging to the interests of the authorities.
10. There has been some concern about the fact that, in practice, the government has continued to assume the authority for granting new frequencies to applicants. This has led to tension between HAAC and the government, which culminated in January 2008 when HAAC granted new frequencies to the winners of a competition for the installation and operation of private radio and television stations. Three days later, the minister in charge of communications expressed disapproval of the procedures that led to the granting of the new frequencies and asked the Constitutional Court to overturn HAAC's decision, claiming that HAAC could not grant any new frequency without the ministry's technical approval. The Constitutional Court ruled in favour of the government in February 2008, despite the fact that a 1997 law explicitly grants the agency discretion to award frequencies. The administration then dispatched a team of public servants and policeman to cut the power to and seal off the equipment of a newly licensed radio station.
11. Additionally, access to media is particularly problematic in rural areas. For rural residents, radio is the main source of news. Print media still struggle to reach rural populations, due in part to an undeveloped distribution system, low literacy rate and cost. While the internet is entirely unregulated, its access is - due to a lack of infrastructure - not available in most rural areas. While access to internet in the country is increasing, at a rate of 3.13%, the internet cannot yet be considered an effective means for citizens in Benin to access information.

### **Media censorship**

12. ARTICLE 19 is further concerned about a number of recent regulatory decisions of HAAC that might have the effect of silencing the free media in Benin. We are particularly concerned about how politicised the application of these regulatory powers has become, with the perceived interests of the State seemingly conflated with the interests of the

government. For example, on 29 March 2011, the Union of Media Professionals in Benin (UPMB) accused HAAC of jamming the frequency of Radio France International (RFI) just as it was broadcasting a phone-in programme on the disputed presidential election results. The year before, in August 2010, local retransmission of RFI was suspended for half a day after it broadcast a report about a complaint brought before the High Court by opposition parliamentarians against the President. Also, on 4 November 2009, HAAC suspended *Capp FM*, one of the oldest and most respected stations in Benin, for hosting a civil society programme that HAAC considered a threat to national security. The programme, *The Voice of the Watchdog*, was highly critical of the administration of President Yayi Boni. The host, Valdave Emilia Dagnonhoueton, was banned from broadcasting or publishing any material in the country for six months.

13. More generally, ARTICLE 19 believes that HAAC has been both too sensitive in its application of media standards and too ready to resort to heavy-handed measures in response to perceived violations. Examples of such excessive measures include the following incidents:
  - On 8 December 2011, the newspaper *Le Béninois Libéré* was ordered to be closed indefinitely by HAAC for “violating the ethical and professional rules” of journalism. Its articles were seized and its premises sealed, and the paper's manager Aboubacar Takou and its publisher Eric Tchiakpè were both banned until further notice from working as journalists or setting up news organisations. The newspaper was accused of publishing “inflammatory articles and discourteous comments aimed at destroying the republic and damaging relations between Benin and the other members of the Conseil de l'Entente”. The newspaper had derided a meeting of the heads of state of the regional grouping in Cotonou in an article headlined “*Conseil de l'Entente: Watch out for wind!*”. Meanwhile, eight other newspapers were temporarily suspended for between a week and one month for a variety of reasons relating to professional ethics.
  - On 28 March 2011, HAAC published guidelines on the media’s coverage of the country’s parliamentary elections, prohibiting the media from publishing or relaying statements that are “likely to disturb public order, incite violence, or tarnish the image of the country.” The guidelines included about 70 clauses, prompting the Union of Media Professionals in Benin (UPMB) to accuse HAAC of gagging the media in the country.
  - On 10 March 2011, HAAC suspended, for one week, nine newspapers over what they alleged were false and abusive publications, in violation of a February HAAC directive regarding media campaigning during the presidential elections.
  - On 16 June 2010, HAAC banned the media from publishing or broadcasting what it described as “premature” political campaign materials on the country’s 2011 general elections, threatening to close down or withdraw the operating license of any media organisation that violates this directive. The directive further stated that in the case of audiovisual media, only experts and competent professionals could handle political broadcasts and phone-in programmes.
14. HAAC has also reportedly required broadcasters to submit weekly lists of planned programmes and publishers to submit copies of all publications, although the media have rarely complied with these requirements in practice. While HAAC claimed that the information was to be used for administrative purposes, journalists in Benin have complained that the requirements were essentially a form of harassment.
15. ARTICLE 19 is also concerned about incidents of censorship apparently originating from the government itself. For example, on 15 August 2010, unidentified individuals bought thousands of copies of newspapers that published a former Minister of Finance’s declaration on a high-profile corruption case, disrupting the supply of those newspapers in Cotonou. Journalists later alleged that this had been done at the order of the government.
16. While Benin has no laws restricting access to the profession, and the government does not influence admission to journalist schools or professional associations, HAAC has laid out

exhaustive criteria for media professionals to obtain press cards, including according to section 6 HAAC Decision No. 05-154/HAAC, academic degrees, duration in the profession, police record of applicants, etc., which essentially do limit who can work as a journalist. In addition, special accreditation is required to cover certain events (heads of state meetings, national holidays, etc.).

### **Right to peaceful protest**

17. Freedom of assembly is generally respected in Benin and the failure of protest and demonstration organizers to obtain permits and registration are often ignored without consequence. However, a few incidents of police violence over the last few years have prompted concerns about the government's commitment to protect the right to peaceful protest in the country:

- In May 2008, an impromptu protest erupted over a roadblock that remained after a presidential motorcade had passed in Ouidah, near the capital. The presidential guards fired on the crowd, killing two people and injuring at least five others.
- In October 2010, the Ministry of Interior banned all demonstrations calling for information on the whereabouts of Pierre Urbain Dangnivo, a Ministry of Finance official who disappeared in August. These demonstrations and protests had been provoked by suspicions about the possible involvement of government officials. An official inquiry failed to clarify his fate by the end of the year.
- On 21 February 2011, police fired tear gas to disperse opposition protests against incomplete voter rolls for the March 6 presidential polls. Following the display of the provisional voter register three weeks ago, opposition parties complained that up to about a third of eligible voters had been left out
- On 24 March 2011, police fired tear gas to disperse youths in Cotonou, who were protesting the disputed results of the re-election of President Boni Yayi. Police said the youths were blocking the roadways and refused to clear the area.

### **Access to Information**

18. Although the right to free access to information is proclaimed in Law No. 92-021 (Organic law relating to the Higher Audiovisual and Communication Authority), no further regulations detail how such access works in practice. Those seeking information from public bodies and journalists must therefore find their own way to acquire the information they seek, with authorities only releasing carefully screened information. The Benin Penal Code, Section 378, compels civil servants not to divulgate professional secrets. Additionally, Section 43 of the Benin Law on State Employees obliges these agents to follow professional discretion.

### **Recommendations**

In the light of foregoing, ARTICLE 19 calls on the HRC to urge the Government of Benin to:

- Repeal all criminal defamation provisions and replace them with appropriate civil defamation laws;
- Create an enabling environment for the media via tax reductions, advertising regulations, and the provision of media resources; introduce regulation on political funding of media outlets and the full transparency of media ownership; refrain from using subsidies and advertising contracts to influence media content, and from showing favouritism to public media outlets.
- Ensure police show restraint in policing protests and demonstrations;
- Adopt comprehensive freedom of information legislation;
- Strengthen the independence of HAAC *vis-à-vis* the government and other forces.