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## **Economic, Social and Cultural Rights in Benin**

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Enfants Solidaires d'Afrique et du Monde (ESAM) to the United Nations  
Committee on Economic, Social and Cultural Rights

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## 1. PRELIMINARY OBSERVATIONS

The Republic of Benin is a constitutional, multiparty democracy with an elected president, a unicameral legislature and separate executive, legislative and judicial branches. In the early 1990s Benin went through a process of political liberalisation and underwent a transition to civilian democratic rule leading to the adoption of a new Constitution in December 1990 and the creation of the Benin's human rights commission. The democratic transition experienced by Benin allowed the country to access major international and regional human rights instruments. In this regard, the Republic of Benin ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 12 March 1992.

During its 28<sup>th</sup> Session (29 April-17 May 2002), the United Nations Committee on Economic, Social and Cultural Rights will review the initial report submitted by Benin on the measures taken to implement the ICESCR. The review and the constructive dialogue conducted by the Committee will therefore look at issues relevant to the implementation of the ICESCR for a ten year period going from March 1992 to April 2002.

Today, Benin is also a Party to a number of other human rights covenants and conventions with related provisions on torture and other cruel, inhuman or degrading treatment or punishment and on economic, social and cultural rights: the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the Convention on the Rights of the Child (CRC).

Benin is also a Party to the Optional Protocol to the ICCPR, which provides for individual complaints procedure. Benin has also signed, but not yet ratified the Optional Protocol to the CEDAW recognizing the Competence of the Committee on the Elimination of Discrimination against Women to receive complaints submitted by or on behalf of individuals or group of individuals, including cases related to women's violations of economic, social and cultural rights.

With regard to labour rights, Benin ratified ILO Conventions No. 29 and 105 on the Elimination of Forced and Compulsory Labour; ILO Conventions No. 100 and 111 on the Elimination of Discrimination in respect of Employment and Occupation; ILO Convention No. 98 on the Right to Organize and Collective Bargaining and ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organize; and finally ILO Conventions No. 138 and No. 182 on the Abolition of Child Labour.

As regard to Benin's regional commitments to the protection of human rights and, more specifically, to the protection of economic, social and cultural rights, it should be noted that Benin is a Party to the Banjul Charter or African Charter on Human and Peoples' Right. The Charter, which entered into force in 1986, contains provisions

regarding civil and political rights as well as economic, social and cultural rights. Benin also ratified the African Charter on the Rights and Welfare of the Child in May 1996.

Finally, on January 16th 2001, Benin ratified the Cotonou Agreement, the cooperation treaty between the European Union (UE) and the African, Caribbean and Pacific (ACP) states replacing the Lomé Convention. Article 9 of the Cotonou Agreement identifies human rights and fundamental freedoms, including respect for fundamental social rights, as an integral part of sustainable development and of the partnership between EU and ACP countries.<sup>1</sup> Moreover Article 9 states that “The Parties refer to their international obligations and commitments concerning respect for human rights [and] undertake to promote and protect all fundamental freedoms and human rights, be they civil and political, or economic, social and cultural”, concluding that “Respect for human rights, [...] shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.”<sup>2</sup> Article 96 of the Agreement provides that if a Party has failed to fulfill its obligation with regard to human rights, the other Party can set in motion a consultation procedure that, in case of negative outcome, might ultimately lead to the undertaking of “appropriate measures in accordance with international law and proportional to the violation”.<sup>3</sup>

On 11 December 1990, the Republic of Benin adopted a Constitution putting emphasis on human rights. In the Preamble, the Constitution makes direct reference to the principles enshrined in the United Nations Charter, in the Universal Declaration of Human Rights as well as in the African Charter on Human and Peoples’ Right, whose provisions make part of the Constitution and national law. Article 147 states that international treaties, once they are regularly ratified and have been published have legal precedence over the national law. Conflicts between the provisions of an international treaty and the Constitution shall be resolved by the Constitutional Court (Art. 146).

Human rights are incorporated in the Constitution under part II on “Rights and Duties of Individuals” (article 7 to article 78). As mentioned in the Preamble, article 7 recognises that the rights encompassed in the African Charter for Human and Peoples Rights make part of Benin’s Constitution and national law. Moreover, the Constitution provides for the right to life and security (Art. 15), the prohibition of torture (Art. 18, 19), the right to health (Art. 8), the right to education (Art. 8, 12, 13, 14), the right to work (Art. 8, 30), the right to strike (Art. 31) and the right to free association (Art. 25).

Finally, in article 139, the Constitution makes provisions for an Economic and Social Council, which has a consultative status with the President of the Republic on economic, social and cultural matters. The Economic and Social Council opinion is mandatory on all projects of law involving economic or social issues.

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<sup>1</sup> The Cotonou Agreement, Article 9, [http://europa.eu.int/comm/development/cotonou/agreement\\_en.htm](http://europa.eu.int/comm/development/cotonou/agreement_en.htm)

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

The initial report submitted by Benin on the implementation of the ICESCR offers a clear picture of the legislative framework and initiatives undertaken by the government with regard to the issue related to the enjoyment of economic, social and cultural rights throughout the country. The report also acknowledges the problems that have arisen following the implementation of structural adjustment programmes, as well as the issue of the informal labour sector whose size, in terms of workers, continues to grow. However, it has to be noted that in general, the report falls short of providing any real evaluation on how the policies and legislation are implemented, as well as on the real situation in terms of individual's enjoyment of economic, social and cultural rights.

## 2. GENERAL OBSERVATIONS

### 2.1. The Socio-Economic Situation in Benin

Benin has a population of approximately 6.1 million people, 46.7 percent of which are under 15 years of age.<sup>4</sup> The share of the urban population has almost doubled during the last 25 years, rising from 21.9 percent in 1975 to 41.5 percent in 1999.<sup>5</sup> Women's fertility rate, reaching an average of 6.1 children per woman, remains one of the highest in the world.<sup>6</sup> Benin therefore suffers from a rapid population growth rate as compared to the growing pace of its national income: at 2.7 percent per year, the population growth far exceeds the average growth in the gross domestic product (GDP), which attains 1.8 percent per year, raising serious concern with regard to any prospect of equitable redistribution of resource among the population.<sup>7</sup>

With a 1999 gross national product (GNP) per capita of approximately 398 US dollars, Benin is one of the poorest countries in Africa and is listed among the 49 World's Least Developed Countries (LDCs).<sup>8</sup> Despite increasing economic growth between 1990 and 1999, significant pockets of poverty have remained in the country.<sup>9</sup> In 1997, the national poverty line was the equivalent of 0,54 US dollars per year per adult in urban areas, as compared with 0,21 US dollars in rural areas, with a country average of 0,29 US dollars.<sup>10</sup> According to the UNDP Human Poverty Index (HPI), which takes into account health, education and standards of living, 45.8 % of the population is affected by poverty.<sup>11</sup>

The economy of Benin relies essentially on the agricultural sector, which employs approximately 43% of the workforce and accounts for 38% of the GDP.<sup>12</sup> Cotton is the main cash crop, as it represents 90% of the country's total export incomes.<sup>13</sup>

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<sup>4</sup> United Nations Development Program (UNDP), Human Development Report 2001, <http://www.undp.org/hdr2001>

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> United Nations Conference on Trade and Development (UNCTAD), <http://www.unctad.org/lcdc/>

<sup>9</sup> International Monetary Fund (IMF), Benin Interim Poverty Reduction Strategy Paper, June 2001

<sup>10</sup> *Ibid.*

<sup>11</sup> *Supra* note 4

<sup>12</sup> *Ibid.*

In 1989, under the pressure of international multilateral institutions (the World Bank and the International Monetary Fund/IMF), the government undertook a vast process of privatization and reorganization of state-owned corporations and private-public enterprises. Consequently, between 1989 and 1999, several reforms and structural adjustment measures have been implemented under the guidance of the World Bank and IMF, including privatization.<sup>14</sup> More than 25 state-owned enterprises, ranging from the agricultural sector to services and industry have, so far, been privatized.<sup>15</sup> Recent privatizations have included the oil parastatal (Sonacop), a cement company (SCO) and a brewery (Sobebra). Approximately 15 other public enterprises are currently, or on the point of, undergoing the same process.<sup>16</sup>

Within the SAPs implementation framework, Benin adopted in 1994 a program known as the Social Dimension of Development (SDD), followed in 1998 by the National Community Development Program (PNDC). These programs, conceived to address poverty by targeting the most vulnerable groups, resulted in modest annual budget savings while debt payment continued to absorb a disproportionately large share of government revenue.<sup>17</sup> After 6 years of SAPs implementation, Benin's debt proportion to its GNP increased by more than 17 percent<sup>18</sup>

In July 2000, the World Bank and the IMF agreed to support a first comprehensive debt reduction package for Benin under the Heavily Indebted Poor Countries Initiative (HIPC).<sup>19</sup> Total relief from all of Benin's creditors was worth around US\$ 460 million.<sup>20</sup> However, Benin's eligibility for debt relief under the HIPC was subject, *inter alia*, to two basic requirements. At a first stage of the initiative, Benin had to prove its track record with regard to its implementation of economic and structural reforms, the so-called Structural Adjustment Programs (SAPs).<sup>21</sup> At a latter stage, the eligibility required the government to produce a Poverty Reduction Strategy Paper (PRSP), a document describing the country's macroeconomic, structural and social policies and the programs aimed at promoting growth and reducing poverty.<sup>22</sup>

So far, Benin has presented an Interim Poverty Reduction Strategy Paper (I-PRSP), a document intended as a road map to prepare the full PRSP. This interim paper contains the government's commitment to poverty reduction through a faster growth within a three-year time framework.<sup>23</sup> As the United Nations Independent Expert on the Effects of Structural Adjustment Policies and Foreign Debt noted, the need to increase social spending is

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<sup>13</sup> The World Bank Group, Privatization in Benin: Country Fact Sheet, 2002

<sup>14</sup> Bénin, <http://www.izf.net/izf/Guide/Benin>

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> Oxfam International, HIPC leaves poor countries heavily in debt, 18 September 2000

<sup>18</sup> *Ibid.*

<sup>19</sup> The World Bank Group ; The HIPC Initiative was launched by the World Bank and the IMF in 1996, and enhanced in 1999, as part of the international effort to deal comprehensively with the debt burdens of the world's poorest countries. The objective of the Initiative is to offer assistance to reduce the external debt of countries facing unsustainable debt obligations after full use of existing debt relief mechanisms.

<sup>20</sup> The World Bank Group; International Monetary Fund (IMF)

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

heavily emphasized, but it remains unclear as to how the macroeconomic aspects relate to the poverty reduction goals.<sup>24</sup> Emphasis is mainly put on the importance of growth for poverty reduction, but there is no explanation of the link between these two factors: the I-PRSP insists on the need for restructuring, downsizing and strict budgetary policies, failing to demonstrate how this will eliminate poverty.<sup>25</sup> The document also fails to integrate major international human rights principles – namely the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights, and a number of ILO conventions.<sup>26</sup> Moreover, citizens' participation in the preparation of the I-PRSP has not been transparent: while civil society groups have been invited to participate in discussions on the social policy-planning component of the I-PRSP, they have been excluded from the discussions on the content of macroeconomic policies.<sup>27</sup>

## **2.2. The Justiciability of Economic, Social and Cultural Rights in Benin**

As mentioned, the democratic transition experienced in the end of the 1980s and in the early 1990s allowed Benin to ratify the major international and regional human rights instruments and to put a stop to widespread human rights violations, including extra-judicial killings, torture and infringements to the freedom of expression and assembly.

In the wake of these developments, a new Constitution was adopted in December 1990, which includes, as mentioned, human rights provisions. On March 30 1990, the transitional government established the Benin Human Rights Commission (CBDH) on the basis of the April 29 1989 law No. 89-004. The CBDH's role is one of promoting and safeguarding human rights in Benin, notably through the consideration of individual or group complaints. The members of the CBDH are selected by professionals and by the NGO community, without government involvement.<sup>28</sup> While the CBDH has a broad mandate and does not suffer from government interference, its activities have been mostly limited to the holding of and participating in seminars, as well as to the supervision and observation of elections.<sup>29</sup> Consequently, the CBDH has not been very active with regard to the consideration of individual complaints, having allegedly undertaken a protection role in only two cases.<sup>30</sup> In this respect, the CBDH brought a complaint before the courts in December 1997 on behalf of a mechanic who had been beaten and wounded by his employer.<sup>31</sup>

One reason behind the lesser role played by the CBDH in the protection of human rights has to be seen in the lead taken by the Constitutional Court in this area. Under the 1990 Constitution, the Constitutional Court shall guarantee fundamental human rights (Art. 114) and statutes on the constitutionality of laws and acts impacting on

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<sup>24</sup> UN DOC E/CN.4/2001/56, 18 January 2001, The Highly Indebted Poor Countries (HIPC) Initiative: a human rights assessment of the Poverty Reduction Strategy Papers (PRSP). Report submitted to the 57<sup>th</sup> Session of the Commission of Human Rights by Mr. Fantu Cheru, independent expert on the effects of structural adjustment policies and foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights.

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> HUMAN RIGHTS WATCH, *Commission Béninoise des Droits de l'Homme : Staffing and Appointment Procedures*, 2001

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> *Ibid.*

fundamental human rights, as well as on human rights violations (Art. 117). The Court is empowered to look at violations of the right to education, the right to health, the right to work, the right to strike, the right of association but also, on the basis of article 7 of the 1990 Constitution, at violations of any right enshrined in the African Charter for Human and Peoples' Rights.

According to national NGOs, abusive dismissals are the most frequent form of cases on economic, social and cultural rights brought before the national judiciary. Moreover, an interesting case reviewed by the Constitutional Court addressed the issue of discrimination in the enjoyment of the right to education.<sup>32</sup> However, in its judgement the court did not conclude to a violation of the Constitution's provision covering the right to education, but to a violation of the constitutional provision on non-discrimination and equality. Finally, in many instances, the Constitutional Court is reviewing the constitutionality of laws and decrees with provisions of the African Charter on Human and Peoples' Rights.<sup>33</sup>

In addition to the fact that until now the justiciability of economic, social and cultural rights has been mostly limited to labour-related issues, poverty constitutes a serious hurdle when access to justice is at stake, bearing serious consequence with regard to the justiciability of human rights before national courts. While legal dispositions guarantee the provision of free legal aid, many indigent persons do not benefit from this guarantee.

Finally, questions arise with regard to the justiciability of the right to adequate housing, the right to food and the right to adequate clothing as part of the right to an adequate standard of living as they are neither enshrined in the Constitution, nor in the African Charter for Human and Peoples' Rights.

### **3. THE SITUATION OF WOMEN**

Article 28 of the Constitution guarantees equality before the law without distinction of origin, race, sex, political opinion or social origin. This article explicitly recognises that men and women are equal under the law and that the government shall protect the family, especially the mother and the child.

However, the current situation in Benin in terms of existing legislation, attitudes, traditional practices and beliefs tends to place women in an inferior position, where they are completely dependent on their husband and their families. Indeed, national legislation is strongly influenced by tradition and customs, particularly with regard to the family, women and children.

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<sup>32</sup> DECISION DCC 01-058, 27 June 2001

<sup>33</sup> DECISION DCC 18-94, 1994 ; DECISION DCC 95-029, 1995 ; DECISION DCC 96-026, 1996 ; DECISION DCC 96-049, 1996



Women are suffering from existing beliefs according to which they should not go to school and that their place is at home, carrying out domestic tasks. Moreover, arguments related to the fact that women, as the child-bearer, cannot take part in the decision-making and cannot be entrusted with responsible position remain frequent. These beliefs are particularly well established in the rural areas, and notably in the northern Bogou region where women themselves are afraid of seeing any changes to their socio-economic status. As a consequence, the low proportion of women in decision-making and responsibility positions in Benin is alarming. For instance, according to the 2001 UNDP Human Development Report, women only represent 10.5 percent of the staff at the ministerial level.<sup>34</sup> Moreover, while women constitute around 52 percent of the population, they only occupy 25 percent of the jobs in the public sector. In the formal private sector around 90 percent of the jobs are occupied by men. Overall women hold only 2.5 percent of the highest decision-making positions.<sup>35</sup> Consequently, as a social group, women are practically isolated from the decision-making levels in the legislature and politics. The lack of opportunity to make decisions in the political, economic, social and cultural spheres has serious consequences for the advancement of women and the full realisation of their economic, social and cultural rights.

Illiteracy and the general lack of education represent a major obstacle for women. Indeed, discrimination against women in Benin is partly built on the educational system. According to 1999 statistics, only 23.6 percent of women are literate as compared to 55.4 percent of men.<sup>36</sup> The combined enrolment ratio of women in primary, secondary and tertiary education reaches 34 percent as compared to 57 for men. It should be noted that women's enrolment tends to decrease in secondary and tertiary education and that in some rural areas many girls do not receive any education at all. Images of women in society and traditional beliefs constitute major obstacles with regard's to girls' access to education. Indeed, parents and the overall community believe that educated girls destroy the foundations and traditions upon which the family and the community rely and that the role of a woman should be confined to the one of wife and mother. As a consequence, women's lack of skills, qualifications and technical training ends up in increasing their dependence on their husband and their families, as well as their vulnerability to poverty. Moreover, this situation often pushes women into the informal sector's activities, in low-paid jobs with no social protection. In this respect, the United Nations Independent Expert on Human Rights and Extreme Poverty, highlighted in her 2002 annual report that women's poverty is very serious in Benin.<sup>37</sup>

Customary laws, under the 1931 *Coutumier du Dahomey* that is still in force, discriminates against women, notably with regard to inheritance rights and the age of marriage. While the enactment of the new Family Code is planned to replace this customary law, for the moment the effects of written legal system on the rights of women are insignificant, especially in rural areas. Moreover, the new Family Code that has yet to be adopted by the National Assembly has been on the legislature's agenda since 1995. Consequently, customary law continues to be implemented. Overall, according to customary law, women have no legal capacity and must be placed under

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<sup>34</sup> *Supra* note 4, p. 228

<sup>35</sup> FAO, *Sharing Power and Decision Making*, at [www.fao.org/docrep](http://www.fao.org/docrep)

<sup>36</sup> *Ibid.*, p. 212

<sup>37</sup> U.N. Doc. E/CN.4/2002/55, para 85

the father, brother or husband's authority. Considered as an object, she can be "transferred" to her husband's heirs.

Concerning the body of law regulating inheritance rights, it is still governed by custom, thus seriously restricting women's access to land. Indeed, the inheritance system in Benin is rooted in patriarchal rule and women cannot inherit land. Such a situation is particularly worrying as up to 70 percent of the Benin's female population lives in rural areas, where they carry out 60 to 80 percent of the agricultural work and provide up to 44 percent of the work necessary to feed their families.<sup>38</sup> Such a situation that deprives women from ownership over land, despite the fact that women carry out the bulk of agricultural work, constitutes a serious hurdle for the socio-economic advancement of women and the full realisation of their rights. As a consequence, landlessness is more acute among women than men.<sup>39</sup> Moreover, even in the cases where women do own a small plot of land, they must work on their husband's land before being able to cultivate their own. In this respect, the United Nations Independent Expert on Human Rights and Extreme Poverty notes that in case of divorce or decease, women are losing all their patrimony if their cannot prove an anterior right of property.<sup>40</sup> This means that in most cases women find themselves either in a situation of total dependence or of grave poverty.

With regard to the body of law regulating marriage, the civil code discriminates against women with regard to the age of marriage, as it is 16 for men and 15 for women. Moreover, customary law (the *Coutumier du Dahomey*) fixes the age of marriage at 14. The tradition demands that when a girl is getting married, the family receive a dowry from the family's fiancé. Marriage of girls represents, therefore, a non-negligible source of income for the family. In some areas, girls of 12 to 15 years old are given in marriage to an older man, which often involves physical force, violence and rape. In this regard, the United Nations Independent Expert on Human Rights and Extreme Poverty highlights that girls from 7-8 onwards are not considered as children any more but as a potential source of income for the family.<sup>41</sup>

Finally, traditional practices such as forced marriage and female genital mutilations (FGM) also seriously affects the physical and psychological health of young girls. While forced marriage is punishable under national law as an offence, this practice continues to take place in certain regions of the country. The United Nations Independent Expert on Human Rights and Extreme Poverty reports that forced marriages remain a practice in Benin where sometimes 25 girls are offered to a king as a sign of families' allegiance. FGM also remain a widespread practice in Benin, especially in the Northern part of the country. In both cases, while national law offers avenues to punish those responsible, the authorities fail to take adequate action in this respect. In this regard, the United Nations Committee on the Rights of the Child expressed its concern regarding the limited efforts of the authorities to

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<sup>38</sup> FAO, *Role of Women in Agriculture*, at [www.fao.org/docrep](http://www.fao.org/docrep)

<sup>39</sup> FAO, *Access to Agricultural Resources and Services*, at [www.fao.org/docrep](http://www.fao.org/docrep)

<sup>40</sup> U.N. Doc. E/CN.4/2002/55, para 93

<sup>41</sup> U.N. Doc. E/CN.4/2002/55, para 85

introduce adequate measures to eradicate the practice of FGM and other harmful traditional practices affecting the health of girls, including early forced marriages.<sup>42</sup>

Overall, women are maintained in a subordinate role and in a lower socio-economic and political status, increasing their dependence on their husband and family, rendering them more vulnerable to poverty and violence perpetrated within the family and the community. Indeed, violence and abuses of women are reported to take place throughout the country and are generally considered as a family matter, the judges and the police being reluctant to intervene in such matters.

#### **4. THE RIGHT TO WORK**

The labour situation in Benin is determined by a high unemployment rate, especially among the youth, as well as by a vast informal sector. The arrival of around 160'000 youths on the labour market each year, along with the lack of any real policy regarding young employment, contributes to aggravating an already worrying situation.

Benin's active population represents around 50 percent of the total population and unemployment among the young is estimated to have reached the toll of 85 percent. Moreover, around 80 percent of the working population is working in the informal sector. Overall, unemployment tends to be higher in urban areas as compared to the rural ones, while the southern part of the country is disproportionately affected by these phenomena.

Among other factors, the economic crisis, linked to the implementation of the Structural Adjustment Programmes (SAPs) are at the origin of this situation. Indeed, the large scale lay-offs following the privatisation or liquidation of public enterprises, along with the lack of private initiatives and adequate training to guarantee reinsertion in the labour market are leading to an explosive situation where around half of the population is unemployed. Government policies have, so far, proven ineffective in redressing this trend. For instance, the current system of "young employment" provides young people with a job for a one-year period. At the end of this non-renewable period, many young people have to seek another job after one year of work. Given the constraints on the labour market and the restriction of demand, most of them are filling the ranks of the unemployed or are ending up working in the informal sector.

##### **4.1. Discrimination**

Article 4 of the 1998 Labour Code prohibits any discrimination on the basis of age, sex, race, ethnicity, or family with regard to decisions related to the hiring, distribution of labour, training, promotion, remuneration, social advantages, working conditions, disciplinary measures or dismissal. Article 208 of the Labour Code guarantees

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<sup>42</sup> U.N. Doc. CRC/C/15/Add. 106, August 1999

equal remuneration for equal work regardless of the origin, sex, age, statute and confession of the workers. Moreover, article 31 of the Labour Code stipulates that disabled persons shall not be discriminated against in labour-related matters. In this respect, article 33 provides for tax exemption for employers hiring disabled persons.

In practice, discrimination is reported to occur, notably against women and disabled persons. Indeed, for equal work, women do not necessarily receive an equal remuneration. Moreover, statistical data (see part 3) show that access to the public sector and to the private formal sector remains difficult for women. As mentioned, the lack of skills and educational background, along with the traditional image of women's role act as informal barriers for women in the labour market (see part 3).

Discrimination against disabled persons is also taking place in the country. In this respect, the Labour Code's incentives provided to companies hiring disabled persons do not bring an adequate answer to this discriminatory practice.

Finally, patronizing and corruption are also reported to facilitate access to work, establishing therefore a de facto discrimination against those who do not, or cannot function according to these practices.

#### **4.2. The Impact of Structural Adjustment Programmes (SAPs): the Liquidation and Privatisation of Public Enterprises**

Massive dismissal of workers following the implementation of privatisation and liquidation policies might represent the principal factor behind today's high unemployment rate in Benin.

The privatisation and liquidation of public enterprises started in 1992 as one of the measures implemented within the framework of Structural Adjustment Programmes (SAPs). Today, the companies *La Béninoise* (brewery) – which has become *SOBEBRA*-, *SONACOP* (oil) and *SONICOG* (corps gras) have been privatised, while the enterprises *OPT* (telecommunications) and *SBEE* (water and electricity) are planned to be privatised in the near future. Dismissals of workers have occurred as part of the policy of privatisation, notably in the case of the *Béninoise*.

On a much greater scale, the liquidation of public companies has also left many workers unemployed. In this respect, the liquidation of the Benin Commercial Bank, the Benin Development Bank, the National Savings of the Agricultural Credit (Caisse Nationale de Crédit Agricole), the National Insurance and Reinsurance Society, the General Alimentation of Benin (l'Alimentation Générale de Bénin) and the SONATRAC have led to massive lay-offs.

The dismissed workers are meant to receive a severance package. However, the modalities and criteria defining the severance packages' delivery are defined by the liquidator of each society and can, therefore, significantly differ. Overall, it is reported that these severance packages are very low and can in no way guarantee, even for a short transition period, an adequate standard of living for the workers and their families. In some instances, as it is the case for the Benin Commercial Bank, the workers are still waiting for their packages.

In terms of reintegration into the labour market, dismissed workers encounter difficulties in finding another job in the formal sector. For those who find one, they are often confronted to precarious working conditions, be it in term of working hours, wages, and social protection as well as in term of their contract, a shift being observed towards contracts of a temporary nature. In this regard, one observes an increased precariousness of working conditions in the formal sector, notably in the private one. Abusive dismissals are also reported to be frequent. For the workers who cannot reintegrate the formal labour market, they end up working in the informal sector as taxi drivers, motorbike-taxi drivers, running small businesses and cultivating small plots of land, or fall into petty criminality. Many cases of suicide are also being reported.

The measures taken by the government to address this situation –such as the “project manioc” and the trainings on entrepreneurship carried out within the programme to advance the private sector- remain, so far, insufficient and with limited impact. To the knowledge of OMCT and E.S.A.M., no concrete measures are being taken to address the precariousness of the working conditions faced by employees in the formal sector.

#### **4.3. The Informal Sector**

As mentioned, around 80 percent of the active population is working in the informal sector. Dismissed workers from public companies that have either been privatised or liquidated, young people and women constitute the bulk of those individuals working in this sector as craftspeople, market vendors, farm workers, butchers, mechanics, motorcycle-taxi drivers, taxi drivers, dressmakers or hairdressers.

Given their low representation in the formal private sector and in the public one, most working women are found in the informal sector, notably on activities such as handicraft, hairdressing, stitching and catering. Indeed, women represent more than 90 percent of the strength in the informal sector (see part 3). In carrying out their activities in the informal sector, women are confronted with entrenched attitudes and images limiting their access to credit. Indeed, most of the time, women need a guarantor to get a loan while their husbands, father or brother are reluctant to see them managing and receiving money.

Overall, workers in the informal sector do not enjoy basic social guarantees and insurances, including health insurance, unemployment insurance, retirement pensions, family allowances, invalidity insurance and insurance for accident at the workplace. Indeed, all this social security framework -whose allowances are reported to fall

short of covering the need of the insured- only benefits workers employed in the formal sector who are subscribing to the Benin Office of Social Security (Office Béninois de Sécurité Sociale – OBSS).

Because of working in the informal sector, these individuals are therefore finding themselves in a very precarious situation with no protection at all and with a very low salary, often inferior to the minimum salary of 25'000 CFA per month. This situation is particularly worrying, as one knows that the minimum salary in Benin is in itself sufficient to cover the basic needs of a worker and his/her family.

#### **4.4. Child Labour**

The 1998 Labour Code prohibits, in its article 166, employment of children under 14 in any company. However, child labour and child exploitation constitute daily realities in Benin and affect children under and above 14. According to a study realised by UNICEF Benin, around 480'000 children are working throughout the country, representing up to 60 percent of the child population.

Many children are working in the agricultural sector -in the fields or plantations-, on construction sites, as domestic servants and as street vendors. For instance, child labour remains a common practice in the cotton industry, one of Benin's main exporting sectors. The fact that children represent a cheap labour force and that Benin's cotton industry, as an exporting sector, need to be competitive at the international level, would explain the alleged government's reluctance to address the issue of child labour in the cotton industry. Hazardous and precarious working conditions are the common lot faced by the children working in the cotton fields and elsewhere.

Ill-treatment of working children, including physical and psychological abuses is reported to be frequent. The children who escape this violence are often recuperated by the Minors' Protection Brigade (Brigade de Protection des Mineurs) and the police stations (commissariat de police) or the Police Brigades (Brigade de Police), which place them in centres for children in difficulty.

Among other factors, poverty, the impact of the economic crisis, the lack of implementation of existing laws and the crisis of the education system lie at the origin of the child labour phenomena in Benin.

#### **4.5. The case of Domestic Workers**

The domestic workers in Benin are mostly composed of children, especially girls in the schooling age. Placed in families for diverse reasons, notably the custom of "vidomegon", these girls are meant to carry out domestic work in exchange of accommodation and remuneration. Very often, these young girls are confronted to a situation of servitude and exploitation. Indeed, the domestic workers are reported to be either not remunerated at all or very poorly remunerated, to be working long hours and to be victims of all sorts of abuses including corporal

punishments, sexual abuses and ill-treatments. The majority of children working as domestic maids, because of their complete isolation from the rest of society, are very vulnerable to all sorts of abuses that are, most of the time, not being reported.

### ***The traditional practice of “vidomegon”***

Under the so-called practice of the “vidomegon”, families place a child, primarily a daughter, in the home of relatives, as a domestic worker. This social and cultural practice, which aims at guaranteeing and reinforcing the solidarity between and among families and between and among generations is experiencing serious drifts today.

Originally, the practice is rooted in political and socio-cultural factors.<sup>43</sup> As a demonstration of political allegiance to the king, families residing under the ruling of the *Aja-Fon* kinship in Southern Benin place young girls under the authority of the king’s wives, where they are assigned to domestic work.<sup>44</sup> These young girls are called “Anagossi”, thus explaining why this custom is known today as the practice of “Anagossi” or “Nangoyi”.<sup>45</sup>

Moreover, in the *Aja-Fon* society, children’s education, far from being a family business, is the concern and the responsibility of the whole community.<sup>46</sup> When a child is considered badly educated, the community takes the lead. In other words, the child is entrusted to an elected community member to carry out this task.<sup>47</sup> In other parts of Benin, the placement of children is related to important stages of life. For instance, when a woman gets married, the community entrusts her with a girl to carry out the domestic work.<sup>48</sup> Consequently, two practices, the one of placing girls as “au pair” with the royal family and the one related to child education by the entire community lie at the origin of the placement of children as domestic workers.<sup>49</sup>

### ***The socio-economic crisis and the drifts observed in the traditional practice***

The socio-economic crisis affecting Benin constitutes one of the main factors explaining the increased placement of children in families.<sup>50</sup> Financial considerations also have a direct impact on the modalities through which children are being placed.

The degradation of living standards, particularly in rural areas, highlights a shift in the mentalities and perceptions of children in Benin’s society. Today, a child is often perceived as a material burden for the family budget, leading to the placement of children in wealthy families that are not necessarily directly related to the family or the community (geographically and culturally).

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<sup>43</sup> E.S.A.M., A.S.I., *Les Enfants Placés au Bénin*, 1998, p. 11

<sup>44</sup> *Ibid.*, pp 8-9

<sup>45</sup> *Ibid.*, p. 10

<sup>46</sup> *Ibid.*, p. 9

<sup>47</sup> *Ibid.*, p. 10

<sup>48</sup> *Ibid.*, p. 10

<sup>49</sup> *Ibid.*, p. 10

<sup>50</sup> *Ibid.* p. 11

The placement of children has therefore become a mercantile activity as well as a mode of children's exploitation, in response to increased poverty, notably in rural areas. Indeed, the placement of children has become today a business-oriented practice.

In the light of the social structures and social control in rural villages, the decision to place a child has to be decided and endorsed by the whole group. A consensus among the communities regarding this practice has therefore been reached, in spite of the abuses that children are facing in their host family. Such endorsement, along with the intensification of the practice, highlights the desperate financial and economic situation that is prevalent in the country's rural areas.<sup>51</sup> Indeed, the parents of these children are mostly rural producers, highlighting the financial constraints and lack of resources as one of the cause behind the placement of children as maids<sup>52</sup>

Girls represent the bulk of placed children (75 percent) and most of them do not attend school after their placement.<sup>53</sup> Most children are being placed in the main urban centres of the country, such as Cotonou, followed by Parakou and Porto-Novo.<sup>54</sup> For instance, around 150'000 children are placed in Cotonou. The length of the placement can go from 6 months up to 6 years or more.<sup>55</sup> Placement of children is generally concluded through a tacit agreement, following negotiations between the parents and the tutor (i.e. the person or family that receives the child). In general, children are not aware of the eventual financial or material clauses surrounding their placement.

### ***The modalities of placement: towards child trafficking***

Besides the increasing number of children being placed due to the financial situation of the families, economic factors also have a direct influence on the modalities of placement. In a context of economic crisis and limited financial resources, children are not placed to further their education with members of the community anymore, but rather to discharge the family from a financial burden. As a consequence, the tutor is not a close relative anymore and the links with the family of placement tend to become looser. Moreover, and following the same trend, intermediaries are also involved in the placement of children.

This recent change regarding the modalities through which children are being placed bears a serious influence both on the destination of children, as well as on the treatments they are subjected to during their transfer and in their host family.

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<sup>51</sup> *Ibid.*, p. 12

<sup>52</sup> *Ibid.*, p. 25

<sup>53</sup> *Ibid.*, p. 24

<sup>54</sup> *Ibid.*, p. 25

<sup>55</sup> *Ibid.*, p. 28



As the direct link between the parents and the tutor is being erased with the involvement of intermediaries, the risk that children will face ill treatment and abuses increases significantly. Indeed, children being placed through intermediaries are often sent to families the parents do not know, eliminating the last barrier preventing the full exploitation of children at their new place of residence. Moreover, the involvement of intermediaries often implies that children are also being placed outside of their home country and end up in Gabon, Ivory-Coast, Cameroon and Nigeria.

### ***Inhuman, cruel and degrading treatment faced by children***

A survey conducted by E.S.A.M. in 1998 highlights that the children placed as domestic workers are confronted to inhuman, cruel and degrading treatments in the hands of their tutors.<sup>56</sup> The survey shows that most of the children are facing corporal punishments, deprivation of meals and long working hours, i.e. 12 to 15 per day.<sup>57</sup> Corporal punishments include beatings with hands and lashes.<sup>58</sup> The most recurrent cases of ill treatment are reported to take place in Cotonou.<sup>59</sup>

Overall, most of the children remain at home to perform the domestic tasks, including the washing, cleaning and cooking. Some of them are also helping their tutors as street vendors sellers, having a given amount to bring back at the end of the day.<sup>60</sup> When children do not return with this sum, they are injured or deprived of food.<sup>61</sup> The E.S.A.M. survey highlights that young girls, by fear of being punished, beg or prostitute themselves to get the amount of money required by their tutor.<sup>62</sup> With regard to food and clothing, many children receive few meals and of low quality, while they wear used clothes. Medical care given to these children is often reduced to a strict minimum, as are the periods of rest.<sup>63</sup> Finally, most of the children interviewed by ESAM report that they do not see their parents anymore.<sup>64</sup>

The involvement of intermediaries also tends to increase the risk of children being subjected to ill treatments during their transfer.

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<sup>56</sup> *Ibid.*, pp. 32-35

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

## 5. THE RIGHT TO FORM AND JOIN TRADE UNIONS AND THE RIGHT TO STRIKE

While the new labour code adopted in 1998 has led to an amelioration with regard to the environment in which trade unions and trade unionists are evolving, some problems remain, notably with regard to the modalities surrounding trade unions' recognition, the right to strike and menaces or concrete measures taken by the employers against trade unionists.

According to the 1998 Benin Labour Code, trade unions have the obligation to deposit their statute with the competent authorities, including the Ministry of the Interior, in order to obtain legal recognition. Trade unions can be fined if they fail to respect this procedure. The ILO Committee of Experts on the Application of Conventions and Recommendations highlighted that this requirement can constitute a severe obstacle to the creation of trade unions.<sup>65</sup>

Moreover, section 2 of the 1998 Labour Code excludes seafarers from its application and stipulates that they are covered by the 1968 Merchant Marine Code. However, this Code does not grant seafarers either the right to organise or the right to strike and provides for sentences of imprisonment for breaches of labour discipline (sections 209, 211 and 215).

Section 8 of the Ordinance No. 69-14 of June 1969 limits the exercise of the right to strike in the private and public services when the interruption of the service would harm the economy and the highest interest of the nation. The International Confederation of Free Trade Unions (ICFTU) reports that the Cotonou district authority used this provision to outlaw various strikes.<sup>66</sup> This ordinance is being applied in parallel of a Bill concerning the exercise of the right to strike that has been enacted in the year 2000. While this Bill clarifies that restrictions on the right to strike would only apply to essential services, calling therefore for the repeal of Ordinance No. 69-14, so far the two legislative peaces continue to cohabit, failing therefore to prevent the application of the most restrictive one. Finally, the 2000 Bill on the right to strike also raises some questions, as it requires trade unions to give the competent authorities advance notice before resorting to strike action, indicating the proposed length, time and date of the strike. The ILO Committee of Experts on the Application of Conventions and Recommendations considered this requirement as restricting the right of workers to organise their administration and activities and to formulate their programmes.<sup>67</sup>

Finally, cases of dismissal, threats of dismissal and use of force are being reported as being used against trade unionists and trade union activities.

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<sup>65</sup> ILO, *Application : International Labour Conventions*, 2001, p. 231

<sup>66</sup> ICFTU, *Annual Survey of Violations of Trade Union Rights*, 2001, p. 13

<sup>67</sup> *Supra* note 65

## 6. THE RIGHT TO ADEQUATE HOUSING, EVICTIONS AND ACCESS TO LAND

The constitution of Benin does not recognise, nor guarantee the right to adequate housing. As this right is not expressly enshrined in the African Charter for Human and Peoples' Rights, the right to adequate housing has no constitutional guarantee in Benin.

In practice, the housing situation in Benin is characterised by an ongoing crisis exemplified by the lack of social housing policies, high prices of land and housing, lack of cheap, accessible and adequate housing and less than 5 percent of the national budget being allocated to housing. While some social housing has been recently constructed by the government, it remains insufficient, is badly located and excludes the most destitute ones.

This lack of government initiatives, along with the economic crisis and massive lay-offs subsequent to the liquidation and privatisation of enterprises implies that many persons and families cannot pay a rent and afford an adequate housing. As a consequence, many people are living in the streets or in slums, while some have gone back from the cities to their villages. Access to basic services such as drinking water and sewage systems remains limited in the slums, while petty criminality is emerging as a coping strategy. According to statistical data provided in the 2001 UNDP Human Development Report, only 23 percent of the population is using proper sanitation facilities, while 63 percent is estimated to use improved water resources.<sup>68</sup>

Concerning evictions, national law requires a 3 months notice. While evictions are not taking place on a large scale, these tend to be more frequent in the South of the country. No alternative housing is provided by the government in case of evictions.

With regard to land issues, they are regulated by customary law (codified in the 1931 *Coutumier du Dahomey*), in parallel with modern law. As it has been underlined in part 3 (the situation of women), the effect of the written modern legal system on land issues remains limited as most of the land plots are regulated today by customary law. The impact of this application on women and their access to land has already been explained under part 3 (the situation of women).

Overall, Benin is characterised by a high concentration of land within the hands of a minority, with problems of access to arable land being more acute in the Southern and central parts of the country. In this respect, landless peasants can be found in the South: these face a very precarious socio-economic situation. Part 3s dealing with the situation of women, also highlighted the existence of landless women, notably due to the implementation of customary law discriminating against them with regard to inheritance rights. On the whole, the authorities are allegedly indifferent to this issue.

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<sup>68</sup> *Supra* note 4

Finally, insecurity with regard to land property is common throughout Benin and can be seen through the high numbers of conflicts surrounding land issues. Indeed, conflicts over land are very frequent and involve communities, families, individuals and the State. In this respect, acquisition of land by the authorities without compensation, provoking conflicts, is being reported, along with the destruction of houses constructed on land whose ownership has eventually been recognised to another person than the builder of the house.

## 7. THE RIGHT TO EDUCATION

The Constitution provides that the State guarantees its citizens equal access to education and children's education by creating conditions conducive to it (Art. 8, 12). The Constitution further states that primary education is mandatory and that the State progressively guarantees free public education (Art. 13).

While the mandatory nature of primary education is guaranteed in the Constitution, this provision is, in fact, not implemented. Moreover, the Constitution, by simply mentioning the fact that the States progressively guarantees free public education, fails to mention that primary education shall also be available free to all. Under the ICESCR, the State's obligation to provide for free primary education is not of a progressive nature, as highlighted in article 2(a) of the Covenant.

Overall, the portion of the national budget allocated to education remains insufficient and tends to diminish overtime. According to statistical data provided by the UNDP 2001 Human Development Report, 3.2 percent of the GNP was allocated, between 1995 to 1997 to education, representing 15.2 percent of the total government expenditure for the same period.<sup>69</sup> On the total amount of public education expenditure for the same period, 59.1 percent has been allocated to primary education, 21.7 to secondary education and 18.1 to tertiary education.

In practice, many children of poor families do not attend school or drop out of school due notably to the formal and informal costs involved in education. The exoneration of primary education fees for girls and then for boys in rural areas, along with a financial compensation to primary education establishments in rural areas, can be seen as a positive step. However, education establishments in rural areas impose other costs for parents, therefore putting other barriers preventing rural children from attending schools. For instance the United Nations Independent Expert on Human Rights and Extreme Poverty highlights that parents, in rural areas, have to contribute to the construction of the school.<sup>70</sup> Finally, even if the school attendance is free from direct informal and formal costs, the rural families bear an indirect cost in letting the children attend school as they see some of their workforce leaving.

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<sup>69</sup> *Ibid.*, p. 172

<sup>70</sup> U.N. Doc. E/CN.4/2002/55

It should also be noted that the State's initiative to exonerate primary education fees in rural areas falls short of addressing the problem of poor children living in urban areas and who are unable to attend school due to high formal and informal costs. As a result, many children start working, despite the law that prohibits child labour under 14. In such cases, it is very rare that children continue to attend school. (see parts 3.2 and 3.3).

Access to primary education is also prevented by factors other than economic and financial ones, in particular for cultural reasons as well as geographic accessibility of public facilities, especially in rural areas. The cultural dimension has, as mentioned under part 3 (the situation of women) an important impact on girls' ability to attend primary education. Indeed, cultural prejudice according to which girls are not good for attending school remains an important barrier, especially in rural areas, preventing girls from attending primary education, not to mention secondary and tertiary levels. Indeed, the education rate for girls is declining sharply as compared to that of boys and there are fewer women than men throughout Benin's education system (see part 3).

With regard to the quality of education, precariousness of education facilities is particularly worrying in rural areas. Moreover, the severe lack of teachers, resulting in hiring unqualified ones or of having classrooms with extensive pupils, also has a direct implication with regard to the quality of education. To this lack of qualified teachers one can also add the frequent strikes in the public sectors that prevent, in the long run, children from receiving quality education, as programmes have to be cut. The frequent strikes also tend to discourage parents from sending their children to school.

## **8. THE RIGHT TO HEALTH**

Article 8 of the Constitution provides that the State guarantees its citizens equal access to health (Art. 8). Despite this constitutional provision on equality with regard to access to health, an important portion of the population cannot access health services.

With regard to the budget, in 1998 1.6 percent of the GDP was allocated to public health, an amount reported to be insufficient and lowering overtime.<sup>71</sup> Today, in terms of policies and priority, the accent is being put on primary health care.

Economic and financial factors are reported to constitute one of the main barriers preventing people from accessing health facilities. The economic reforms involved by the SAPs have tended to aggravate the situation. Indeed, the vast majority of the population cannot go to the doctor and the hospital due to the high costs involved. Consequently, health centres, especially in rural areas, have a very low attendance and people, approximately 39 percent of the population, either go to see traditional healers or resort to auto-medication. In this respect, the

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<sup>71</sup>*Supra* note 4, p. 161

current health chart does not integrate traditional therapists, despite their large audience in the population (around 70 percent). Local NGOs consider that the non-involvement of traditional therapists in the health policy represents a serious lacuna given their impact on the population.

Access to health is also limited due to the lack of facilities and distances to reach them, especially in rural areas. In this respect, the national health chart is divided in 5 different levels, i.e. the village, the town, the circumscription, the department and the national level, showing a willingness to decentralise the health sector, with the quality of health services tending to worsen at the local levels. Indeed, doctors and exercise are concentrated in the cities, abandoning rural areas where unqualified or at least less qualified personnel are working. Overall, it should be noted that the recruiting of doctors and personnel in the public health sector is diminishing. Other concerns with regard to the quality of health services relate notably to the availability of personnel and the lack and decay of material. While an emergency programme to send medical personnel in rural areas with scarce facilities and personnel is being implemented, this initiative is not working efficiently. The United Nations Independent Expert on Human Rights and Extreme Poverty notes that in rural areas people have to cover a minimum of 10 kilometres on dirt roads to reach the hospital or the health care centre where the medicine needed is often unavailable.<sup>72</sup>

Traditional practices, such as early marriages, forced marriages and FGM also affect the health of girls and women (see part 3).

## **9. STREET CHILDREN**

Today, there are more than 500'000 children working or living in the street. This phenomena is closely related, among other, to the practice of "vidomegon", as well as to the effects of the economic crisis that include high levels of poverty, unemployment, lack of social security and poor school attendance at the primary, secondary and tertiary levels.

As mentioned under point 3.2. (the case of domestic workers), many children placed in wealthy families perform such activities as selling material in the streets for their tutors. The failure of the education system, along with many families' necessity to get additional income tends to increase the number of children working and living in the street.

Overall, the progressive instauration by the government of free education for boys and girls in the rural areas has proven to be insufficient to address the increasing number of children ending up living in the streets. Similarly, the

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<sup>72</sup> U.N. Doc. E/CN.4/2002/55, para 82

National Plan for Women and Children, while raising awareness among the population about these phenomena, remains inefficient in bringing an effective and comprehensive answer to this problem.

In terms of violence and other cruel, inhuman and degrading treatment or punishment, street children are confronted to sexual, physical and psychological violence perpetrated by State agents, private individuals, by the children themselves and also by the children's relatives (see for instance point 3.2.).

In order to address the issue of violence against street children, the authorities notably created the Minors' Brigade, the National Centre for Children's Safeguard and educative spaces. These different initiatives have not brought any significant changes to the situation of street children and the violence they face.

## 10. CHILD TRAFFICKING

The Etinero affair, a Nigerian vessel coming from Cotonou and suspected of transporting over 200 children for forced labour in Gabon, put some light on a reality that is taking place on a large scale in Benin: child trafficking. Indeed, around 11'000 children per year are victims of trans-border trafficking. For instance, between 1996 and 2000, Benin border police intercepted over 3'000 children who were being smuggled abroad, this number being only the tip of the iceberg. Indeed, the authorities' complaisance with regard to this issue, notably through the issuance of permits to leave the country, are being reported. Overall, UNICEF reports that some 200'000 young boys and girls are caught up in the trade of children in western Africa. Most of the children who are being trafficked from Benin end up in Ivory Coast, Nigeria and Gabon. From Gabon they are then sent to Equatorial Guinea, Cameroon and to Europe.<sup>73</sup> The age of the trafficked children varies between 7 and 18, most of them being girls (67 percent).<sup>74</sup> The shifts in the practice of "vidomegon" also has a direct influence –in term of the numbers – on child trafficking from Benin to other West African countries (see part 4.5.)

The main causes of this phenomenon are reported to be, notably, the failure of the education system, unemployment and poverty of the parents, the disintegration of the family, an increased need of cheap labour force in the region, the lack of prosecution against the authors, lack of adequate border policy and corruption. The areas that are mostly affected by child trafficking are the ones characterised by environmental degradation and poverty, the ones having few police infrastructure and the ones sharing a border with neighbouring countries.<sup>75</sup>

For instance in the Ouémé department (east of the country), the productivity of the land has been declining overtime and the land gets completely flooded during the whole rainy season and cannot be cultivated. Moreover, the proportion of fish in the rivers, from where the population gets an important portion of its daily food and

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<sup>73</sup> E.S.A.M. AND ASI, *Le trafic des enfants entre le Bénin et le Gabon*, 1999

<sup>74</sup> *Ibid.*

<sup>75</sup> *Ibid.*

income, is decreasing significantly. In addition, the practice of polygamy, where a man can have up to six wives, places a significant financial burden on the family budget. In such a context, children are often seen as additional burden. Similarly, in the Mono region (west of the country), the Ahémé Lake, one of the principal source of income, is drying, while arable land is very limited and has thrown agricultural producers into poverty. The practice of polygamy implies an average of 10 children per family, therefore placing increased financial constraints on them. According to an E.S.A.M. survey, an important number of trafficked children come from these two regions.<sup>76</sup>

The trafficked children are usually handed over by the family to an intermediary who is generally known by the family or by the community or is recruited by a trafficker. These children are trafficked for different purposes, as some of them end up working in plantations or on construction sites, other as domestic workers (mostly girls, see part. 3.2), as prostitutes (mostly girls) or for occult sacrifice (use of young children's organs).

Very often, trafficked children are subjected to violence and ill treatment, including physical and sexual violence and psychological violence by of State agents, traffickers and the relatives. Violence among children themselves is also reported to take place.

So far, the government initiated few projects focussing on the prevention against child trafficking and is expected to establish cooperation agreements with some of the countries receptive of Benin's trafficked children. These agreements should among others, guarantee the repatriation of the children to Benin.

## **11. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS**

The implementation of Structural Adjustment Programmes (SAPs) and the economic crisis that is affecting the country bear serious implications on the populations' enjoyment of economic, social and cultural rights. Being one of the poorest African countries and pertaining to the group of the LDCs, today Benin faces the challenge, under the HIPIC Initiative, of presenting and implementing its Poverty Reduction Strategy Paper (PRSP). The content of Benin's Interim Poverty Reduction Strategy Paper, as well as the procedures surrounding its adoption will have to be significantly changed if the poverty reduction goals are to be attained. Indeed, the interim document is not based upon and does not contains any reference to international human rights, while the civil society has been excluded from the discussion regarding the content of macroeconomic policies. Indeed, poverty eradication without empowerment, participation, equality and non-discrimination is out of reach.

Traditional practices and beliefs, along with a body of customary law compiled in the 1931 *Coutumier du Dahomey*, constitute another important feature affecting the enjoyment of economic, social and cultural rights,

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<sup>76</sup> *Ibid.*



and especially the socio-economic position of women. Indeed, women suffer discrimination in all areas of life due to a number of factors, including the persistence of a traditional male-dominated society. Despite the constitutional guarantee for equality between men and women, women and girls are suffering from existing beliefs that they should not go to school and that their place is at home, performing domestic tasks. Moreover, despite the prospect of adopting a new Family Code that would replace the existing body of customary law, the effect of a written legal system on the rights of women remains, so far, insignificant. Consequently women continue to face discrimination with regard to their inheritance rights and the age of marriage, as well as traditional practices such as forced marriage, polygamy and FGM. As a consequence, women are maintained in a subordinate socio-economic position with no access to productive resources such as land and credit, lack of education and low representation in decision-making positions. Such a situation increases women's dependence on their husband and families and renders them more vulnerable to poverty and violence perpetrated within the family and the community.

While the economic crisis, along with the persistence of traditional practice and customary law poses serious limits to the enjoyment of economic, social and cultural rights throughout the country, access to justice, reparation and compensation for violations of these rights becomes even more important. However, while the Constitution provides protection for most of the economic, social and cultural rights enshrined in the Constitution, the right to adequate housing, the right to food and the right to adequate clothing, as part of the right to an adequate standard of living, do not enjoy constitutional protection in Benin. Moreover, the justiciability of economic, social and cultural rights has been, so far, limited to labour-related issues, while poverty continues to constitute a serious barrier when access to justice is at stake.

With regard to the right to work, Benin's situation is characterised by a high unemployment rate, especially among the young, a growing informal sector, discriminatory practices against women and disabled persons, despite the non-discrimination guarantee enshrined in the labour code. Massive dismissals of workers following the privatisation liquidation of public enterprises might represent the principal factor behind Benin's high unemployment rate, with more than 50 percent of the population being unemployed. Most of these workers have got a very low severance package, while some of them are still waiting to receive one. These privatisation and liquidation policies are accompanied with an increased precariousness of working conditions in the formal sector, along with an increased number of workers (80 percent) and particularly women, ending up in the informal sector's activities, with no social and labour protection. Trade union rights remain limited by the registration procedures, the exclusion of seafarers from trade unions' rights and limitations to the right to strike.

Child labour remains widespread in Benin, as around 480'000 children are working throughout the country, representing up to 60 percent of the child population. Children are working in the agricultural sector, as well as on construction sites, as street vendors or domestic servants. While child labour remains particularly widespread in the exporting cotton industry, the government tends to close its eyes on this practice as the cheap nature of child

labour guarantees the competitiveness of Benin's cotton at the international level. Ill-treatment and hazardous working conditions are common.

The case of domestic workers, or the practice of "vidomegon" is particularly worrying due to the extent of the practice and the conditions of exploitation and servitude of the children. Due to the economic crisis, a traditional practice relying on socio-economic and political roots become a mercantile activity with different purposes, modalities and impacts on the children. Indeed, many of the children being placed as domestic workers in other families, mostly girl child, face all sorts of ill treatments including corporal punishments, deprivation of meals, and long working hours. Some of them are also helping their tutors as ambulant sellers, being obliged to bring back a certain amount of money at the end of the day. As a consequence, from fear of being beaten and punished, many children end up begging in the streets or prostituting themselves.

The practice of the "vidomegon" is also intrinsically related to child trafficking and to the problem of street children. Today, there are more than 500'000 children working and living in the streets, confronted to violence and ill treatments perpetrated by State agents, private individuals and by the children themselves. With regard to child trafficking, numbers indicate that 11'000 children per year are victims of such a practice, while the complaisance of the authorities towards these phenomena is well known. Most of the children who are being trafficked from Benin end up in Ivory Coast, Nigeria and Gabon, from where they are often sent to Equatorial Guinea, Cameroon and Europe, where they end up working in plantations, construction sites, as domestic workers, prostitutes or used for occult sacrifice. Most of the children being trafficked, mainly girl child, come from the most destitute regions of the country. Very often, trafficked children are confronted to ill treatments that include physical, psychological and sexual violence by State agents, traffickers and children's relatives.

Finally, access to adequate housing, land, health and education remains seriously limited. Due to the lack of social housing policies and a flagrant lack of affordable housing, many people end up living in slums or in the streets. While evictions do not occur on a large scale and mostly occur in the southern part of the country, the government does not provide alternative housing in such a case.

With regard to education, while the exoneration of primary education fees for girls and boys in rural areas represents a positive step, informal costs including the construction of schools and the purchase of textbooks act as additional barriers preventing rural children from attending primary education. In urban areas, many children are unable to attend schools due to formal and informal fees. Other problems include the low budget allocated to education, distance from schools and the low quality of education throughout the country.

Finally, in terms of access to health services, an important number of people cannot afford the costs involved with health and resort, therefore either to auto-medication or to traditional therapists. Distance from health centres, low

budget allocation to health and low quality of health services represent other problems that seriously impede the enjoyment of the right to health in Benin.

In this respect, OMCT and E.S.A.M. would recommend to the State party:

- to take all necessary measures, including the enactment of legislation, in order to ensure that all the people of Benin enjoy, without any discrimination, the economic, social and cultural rights specified in the Covenant and that these rights are justiciable before national courts;
- to ensure that national human rights institutions effectively guarantee the defence and protection of human rights, and in doing so that they pay equal attention to economic, social and cultural rights;
- to take remedial action to address the inequality and discrimination against women and girls in Benin both in law and in practice. In particular, the State party should the new Family Code, guaranteeing its conformity with the rights specified in the Covenant, along with traditional chiefs and traditional practitioners in order to address traditional practices such as polygamy, female genital mutilations (FGM), the *lévirat*, forced marriages and early marriages;
- to enact or enforce legislation, as the case may be, prohibiting customary practices such as polygamy, FGM, the *lévirat*, restricted access by women to land, property, housing, credit facilities and the inability to inherit land and to take measures to combat such practices by all means, including national and regional education programs;
- to take immediate measures to address the problem of discrimination against women and the disabled in access to employment and to closely monitor, both in the private and public sectors, the implementation of the relevant provisions of the Labour Code;
- to enact specific legislation and adopt measures necessary to ensure better living conditions for people with disabilities;
- to take effective action to reduce the unemployment rate by, *inter alia*, providing training for young people, and by conducting regular reviews of the minimum wage levels to enable workers to attain an adequate standard of living for themselves and their families;
- to take effective measures to ensure a basic social safety net and proper indemnity for the dismissed workers of privatised or liquidated enterprises;

- to ensure that all workers, including those working in the informal sector, have access to basic social services and are paid decent wages and that labour regulations governing their hours of work and safe conditions of work are scrupulously observed;
- to take effective measures to reinforce existing laws on child labour and to improve its monitoring mechanisms to ensure that those laws are enforced and to protect children from economic exploitation, notably in the cotton industry;
- to take adequate measures in order to address the placement of children as domestic workers and to put an end to the exploitation and ill-treatments they are subjected to;
- to consider repealing the Ordinance No. 69-14 of 1969 on the right to strike, along with the dispositions of the Labour Code whereby trade unions need to be registered with the Ministry of the Interior;
- to take all effective measures, including the enforcement of existing legislation and the adoption of national awareness campaigns, to eliminate all forms of violence against women;
- to address the problem of street children and the violence they are confronted to and reintegrate them into mainstream society;
- to address the problem of child trafficking and the violence children are confronted to and to reintegrate them into mainstream society;
- to adopt a national policy for children, coordinated by a national platform;
- to fully integrate human rights, including economic, social cultural rights, in the formulation of its Poverty Reduction Strategy Paper (PRSP) which is soon to be achieved by Benin;
- to review its current housing policies and, in particular for disadvantaged and marginalized groups in order to guarantee their access to adequate housing;
- to undertake a systematic and comprehensive review of its relevant legislation, administrative policies and procedures to ensure that they comply with the guidelines of the Committee specified in General Comments No. 4 and 7 in relation to forced evictions;

- to guarantee that the privatisation of water services should not threaten the universal and non-discriminatory access to this basic service;
- to guarantee that the poor and the marginalized have access to free and quality health services;
- to address the problem of shortage of hospitals and health centres and the unequal distribution of health facilities in the country, along with the lack of qualified medical personnel in rural areas;
- to take measures in order to guarantee access of all children, and in particular girl child, to primary education, notably through the elimination of informal costs the family have to face;
- to take measures in order to guarantee the equal representation of women in secondary and tertiary education;
- to take measures in order to guarantee the quality and sufficient number of education infrastructures, along with the recruiting of qualified teachers;
- to take its obligations under the Covenant into account in all aspects of its negotiations with international financial institutions, such as the IMF and the World Bank, and to ensure that the economic, social and cultural rights of its population and, in particular, of the most vulnerable groups of society, are duly protected.