


AFRICAN UNION		UNION AFRICAINE
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## Forty-Fifth Ordinary Session

13 - 27 May 2009, Banjul, The Gambia

### Consideration of Reports Submitted by States Parties under the Terms of Article 62 of the African Charter on Human and Peoples' Rights

#### Concluding Observations and Recommendations on the Second Periodic Report of the Republic of Benin

#### I - Introduction

1. The Republic of Benin (Benin) is a State Party to the African Charter on Human and Peoples' Rights (the African Charter) having ratified same on 20 January 1986.
2. Benin submitted its Initial Periodic Report to the African Commission on Human and Peoples' Rights (the African Commission) in 1992 and the Report was considered in October 1994 at the 16<sup>th</sup> Ordinary Session of the African Commission. The First Periodic Report was submitted in May 2000 and was considered in October 2000 at the 28<sup>th</sup> Ordinary Session.
3. The present Report which covers the period from 2000 to 2008 is the State Party's Second Periodic Report and was submitted to the Secretariat of the African Commission on Human and Peoples' Rights (the Secretariat) on 28 August 2008. It was examined by the African Commission during its 45<sup>th</sup> Ordinary Session held from 13 to 27 May 2009.
4. The Report was introduced to the African Commission by Mr. Hounyeaze Patrice, Head of the Delegation of Republic of Benin, and presented by Zinkpe Marie-Gisele, Director of Human Rights Services of the Ministry of Justice, Benin. The Report highlights the developments that have taken place

in the country in the area of human rights and the measures taken by the country to implement the country's obligations under the African Charter since its last Periodic Report.

5. The present Concluding Observations highlight the positive aspects identified in the Report, outline areas of concerns based on the content of the Report as well as the answers and information given during the presentation of the Report, and provide recommendations on steps to be taken by the Republic of Benin to enhance the enjoyment of human and peoples' rights in the country.

## II – Positive Aspects

The African Commission:

6. Welcomes the presentation of Benin's Second Periodic Report in accordance with Article 62 of the African Charter, and the fact that both the format and presentation of the Report are in conformity with the African Commission's Guidelines on State Reporting.
7. Appreciates the involvement of relevant stakeholders, including government agencies, human rights Non- Governmental Organisations (NGOs), legislators and the public at large, in the preparation of the present Report.
8. Appreciates the quality of the Report and the constructive dialogue it had with the delegation, which comprised of government officials directly involved in the implementation of the African Charter, which allowed for a fuller assessment of the State Party's compliance with its obligations under the African Charter. The African Commission also welcomes the positive reactions by the Delegation to the suggestions and recommendations made during the discussion.
9. Welcomes the additional information and answers to the questions provided by the Delegation of the Republic of Benin during the examination of the Report, and further welcomes the undertaking made by the Delegation to provide as soon as possible, answers to those questions and additional information which was not immediately available, as well as to include such information in its next periodic report to the African Commission.
10. Notes with appreciation, the fact that the Republic of Benin is one of the States Parties that is regularly submitting its Periodic Report in accordance with Article 62 of the African Charter.

11. Further appreciates the measures and efforts taken by the Government to introduce the right to education for all by 2015, in conformity with the Millennium Development Goals.
12. Recognises that since the examination of Benin's 1<sup>st</sup> Periodic Report in 1994, several measures have been taken to enhance the enjoyment of human rights in the country. This includes amongst others, the adoption of legislations, policy measures and judicial and institutional interventions such as: the reform of the administration of justice policies, respect for individual freedoms and reform initiatives, the National Gender Policy and other legal reforms to prevent discrimination against women and children, the introduction of human rights in philosophy training programmes at the general and technical schooling levels and the increase in state subsidies granted to private media houses.
13. Also appreciates the development of a democratic system in Benin by the setting up of decentralised organs and the holding of the 2002 local government and municipal elections, the fourth presidential elections in April 2006, and the Legislative and 2004 local government elections.
14. Welcomes the current efforts by the State Party to ban female genital mutilation and for making the practice a criminal offence; and further welcomes the efforts made by the Government to protect the social and economic rights, by making the same justiceable.
15. Welcomes the efforts made by Benin to incorporate international human rights instruments as well as recommendations of treaty bodies into its domestic law, such as the Persons and Family Code in 2005 and the Code on the Child in 2007.
16. Further notes that Benin has strengthened its institutional framework by the creation of various institutions and structures aimed at ensuring the promotion and respect of human rights, such as the National Commission on the Right of the Child, the Presidential Mediator and the Minors Protection Units (Brigade de protection des mineurs).
17. Welcomes the efforts and commitments by the Government of Benin to combat poverty through the provision of micro-credit facilities. The Commission also welcomes the steps taken to achieve the Millennium Development Goals including efforts to guarantee the right to health and

education; the immunisation programme; efforts to strengthen border controls to prevent the trafficking in children and the activities of the village committee to combat human trafficking and efforts taken to reduce illiteracy.

18. Also welcomes the creation of the Ministry of Youth, Micro-Finance and Women and Youth Employment Affairs.
19. Further welcomes the creation of a National Committee on the Death Penalty to, inter alia, make recommendations on the future of the death penalty in Benin and notes the moratorium on the death penalty.
20. Appreciates the steps taken by Benin to improve the rights of children provided for in Article 26 of the Constitution, through the adoption of various Acts, which among other things reinforce the existing mechanism for the protection of women and children, establish a minimum age for marriage, impose an obligation on the Government of Benin to uphold the right of every child to free and basic education. In particular the African Commission welcomes the provision of the Act prohibiting the imposition of the death penalty on children.
21. Notes the ratification and domestication of all core labour instruments of the International Labour Organisation (ILO) and the establishment of Labour Offices in various districts of Benin for the effective implementation of these labour standards.
22. Further notes the development of the National Workplace Policy on HIV/AIDS, which provides rights-based guidelines to the Government, employers and employees for protecting the right and dignity of workers infected by HIV/AIDS.
23. Appreciates the efforts by the Beninese Government in supporting refugees in its territory.
24. Welcomes the invitation extended by the Delegation of Republic of Benin to the Chairperson of the Follow-up Committee on Robben Island Guidelines and the Special Rapporteur on Prisons and Conditions of Detention in Africa to visit prisons and gather information on the condition of detainees, and to assess the extent of the implementation of the Robben Island Guidelines.

### III - Areas of Concern

While recognising the efforts of the Government of Benin to promote and protect human rights and to create awareness on the principles and provisions of the African Charter, the African Commission remains concerned:

25. That government institutions and the public at large are not sufficiently aware of the African Charter and also the work of the African Commission.
26. That enough has not been done to harness through affirmative action, the potential of Beninese women willing and available to contribute to the social, economic and political development of the country.
27. About the lack of concrete legislation on gender based violence and where this exists about the lack of resolve to apply them.
28. At the high rate of infant and maternal mortality, especially in the villages where women still predominantly give birth at home.
29. About the prison conditions in the country that still remain deplorable. Prisons still suffer from overcrowding and there is lack of trained staff and lack of adequate food. The African Commission is also concerned that Hawkers are allowed to sell food in prison wards, a situation that promotes racketeering and creates fear and complete lack of security in the prisons.
30. About the practice by which some prisoners are selected to serve as guards to their fellow prisoners, a practice that could cause serious human rights abuses and make other prisoners vulnerable to all kinds of danger.
31. About the welfare of women and children who are particularly vulnerable and live in precarious conditions in prisons.
32. That the Benin Human Rights Commission is not working effectively.
33. By reports of police/gendarme brutality.
34. About the several factors that hamper the promotion and protection of human rights, such as the lack of national plan of action for the promotion of human rights, the delay in the disbursement of funds allocated by the State to Departments responsible for human rights as highlighted in Benin's First Periodic Report.

35. About the apparent inadequacies of Benin's criminal justice system and in particular the high number of persons in detention awaiting trial and the extensive and sometimes indefinite period for which they are held without trial.
36. That Benin has not made the declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (the Protocol Establishing the African Court), allowing individuals and NGOs with Observer Status before the African Commission, to institute cases before the African Court.
37. About the welfare and status of older women in Benin who are regarded as witches and the lack of legal protection to this category of people.
38. About the lack of adequate human rights training to judicial officers and auxiliaries engaged in court administration.

#### **IV - Recommendations**

The African Commission recommends that the Government of Benin should:

39. Make efforts to ensure that the provisions of the African Charter as well as the work of the African Commission are well publicised in the Country. In this regard, it encourages the State Party to take steps to translate and make available the African Charter in as many local languages as possible.
40. Take positive steps to create an effective mechanism to guarantee female participation in all levels of government, and also enact legislation to prohibit discriminatory practices against women.
41. Take the necessary steps to establish mechanisms for generating accurate statistical data on gender related issues, such as the level of female participation in all spheres and tiers of government and the number of judgements handed down by the courts regarding FGM.
42. Train judges, magistrates and other officers of the court on human rights protection.
43. Finalise steps to abolish the death penalty.
44. Ensure the enactment into law of the various draft Bills before its National

Assembly touching on human rights, including: the Draft Penal Code and the Draft bill on press freedom.

45. Amend its laws on criminal defamation in line with Principle XII of the African Commission's Declaration of Principles on Freedom of Expression in Africa.
46. Ensure that private broadcasting laws are reviewed to protect journalists from arbitrary arrest and detention.
47. Take appropriate measures to protect older women in the society in particular and older persons in general.
48. Take steps to enact legislation protecting the rights of Persons Living with HIV/AIDS (PLWHA), prohibiting discrimination against them, and ensuring their equality in all spheres of life. The African Commission also recommends that steps should be taken to develop a programme that works in preventing mother-to-child transmission of HIV/AIDS.
49. Take urgent measures so that prisoners are no longer involved with the up keeping of prison discipline.
50. Ensure that :
  - the trafficking of children is punished;
  - allegations of torture and ill-treatment are investigated and perpetrators of such acts be brought to justice.
  - the judicial authority is provided with all logistical support in order to enable it better combat impunity and injustice;
  - no statement obtained under torture or duress be allowed in proceedings and that orders from a superior are not considered as justification of torture;
  - firmness is displayed to prevent abusive detention;
  - prison conditions are consistent with international standards.
51. Inform the African Commission, in its next Periodic Report, of the steps it has taken to address the areas of concern, as well as how it has implemented the recommendations in this Concluding Observations.

**Adopted at the 45<sup>th</sup> Ordinary Session of the African Commission on Human Peoples' Rights held from 13 to 27 May 2009, Banjul, The Gambia**

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