INTRODUCTION

The purpose of this report is to supplement, or "shadow," the report of the government of Benin to the Committee on the Rights of the Child (hereinafter the Committee) during its 21st session. It has been compiled and written by the Center for Reproductive Law and Policy (CRLP) and the Association of Women Jurists of Benin (AFJB).

Non-governmental organizations such as CRLP and AFJB can play an essential role in supplying the Committee with information that is credible, accurate, and independent concerning the legal status and the real-life situation of young girls and adolescents, as well as the efforts being made by the governments that ratified the Convention on the Rights of the Child (hereinafter Children's Convention). Furthermore, if the Committee's recommendations can be firmly based on the real-life experience of young girls and adolescents in Benin, then NGOs can use them as a means of pressuring their governments to promulgate or implement legal and policy changes.

Discrimination against girls and women is widespread in all societies. Clearly, this discrimination violates numerous human rights and requires urgent action. Nonetheless, this report is primarily concerned with the reproductive health and rights of young girls and adolescents, the laws and policies linked to these rights, and the realities that affect these rights in Benin. Under the terms of Article 1 of the Children's Convention, its provisions apply to any person under 18. Young girls and adolescents face questions about sexuality, sexual equality, and reproductive health on a daily basis. Their reproductive health and rights are therefore an integral part of the Committee's mandate.

"Reproductive rights embrace certain human rights already recognized in national laws, and international human rights documents, and other consensus documents," including the Children's Convention. This principle was articulated during the International Conference on Population and Development held in Cairo in 1994, as well as at the Fourth World Conference on Women held in Beijing in 1995. Cairo's Programme of Action stated that "[c]ountries, with the support of the international community, should protect and promote the rights of adolescents to reproductive health education, information and care." Reproductive rights are fundamental to the health and equality of young girls and adolescents, and it is therefore essential that States Parties' commitment to ensuring them receives serious attention.

This report links various fundamental reproductive and sexual rights issues to the relevant provisions of the Children's Convention. Discussion of each issue is divided into two distinct sections. The first, shaded section deals with the relevant laws and policies of

Benin, linking them to the corresponding provisions of the Children's Convention under discussion. The information in the first section is primarily drawn from the chapter on Benin in the forthcoming report entitled *Women of the World: Laws and Policies Affecting their Reproductive Lives—Francophone Africa.* This work is part of a series of reports covering various regions in the world, and is currently being compiled by CRLP in collaboration with national-level NGOs. The AFJB drafted the chapter on Benin, which was edited by CRLP and the Groupe de recherche femmes et lois au Sénégal (GREFELS). The second section focuses on implementation and enforcement of laws and policies — in other words, on the reality of the lives of young girls and adolescents. AFJB supplied most of the information in this section.

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The Beninese population is very young: approximately 49% is under age 15.[1] Women in Benin tend to have their first pregnancy at an extremely young age: between the ages of 15 and 19, 61% of the women have already given birth to at least one child, and between the ages of 20 and 24, this proportion is 89%.[2] It is worth noting that 23% of women in Benin aged 45 to 49 have given birth to 10 or more children over the course of their lives.[3]

May 1999

A. The Reproductive Health and Rights of Young Girls and Adolescents (Articles 6 and 24 of the Children's Convention)

Introduction

Article 6 states that every child has an inherent right to life and that the States Parties to the Children's Convention ensure to the maximum extent the child's survival and development. In recognizing the child's right to enjoy the highest standard of health, Article 24 broadens the rights set forth in Article 6.

It follows that these provisions impose upon governments the obligation to ensure adolescent girls access to reproductive health services. Without these services, adolescent girls may bear unwanted pregnancies that are likely to involve death or illness due to their physical immaturity and lack of adequate prenatal and maternal health care.

The Committee has stated its deep concern regarding adolescents girls'[4] access to reproductive health services and noted that governments must provide adequate maternal health care and address the issues related to pregnancy and HIV/AIDS among female adolescents.[5]

1. Fertility of Adolescent Girls and Their Access to Reproductive Health Care, Including Family Planning and Safe Motherhood

Laws and Policies

Article 26 of the Constitution obligates the government to protect the family, especially the mother and child.[6] The law also requires the government to ensure the creation of maternity facilities, day care centers, and preschools/kindergartens.[7]

Contraceptive propaganda is prohibited in Benin, in accordance with the law of July 31, 1920. In principle, any person breaking this law would expose himself or herself to criminal punishment. The law also provides that advertising contraception, by any means whatsoever, violates the provisions on obscenity, punishable also under the Penal Code.

The law of July 31, 1920 makes it difficult to administer a good family planning program. It also has a negative impact on the safe motherhood initiative. Because of this law, it is difficult to maintain service standards and norms that ensure adequate and high-quality services.

In spite of this situation, as early as October 26, 1972 the Republic of Benin enacted a health policy intended to meet the health care needs of the whole population.[8] Priority was given to primary health care, to preventive medicine over curative medicine, and to the coexistence of modern medicine with traditional medicine.[9]

In its Declaration on Population Policy of May 1996, Benin proposed "promoting responsible fertility" to reduce early and/or late childbearing, to prevent abortion, to promote family planning as part of the responsible exercise of one's sexuality, to distribute contraceptives, and to progressively suppress such practices as forced or early marriage.[10] The government has stated its objective to increase contraceptive prevalence from 2% to 10% in the area of reproductive health for the period 1997 to 2001.[11]

Additionally, in December 1988 Benin enacted a national policy on Family Health, the principal goal of which is to contribute to improved living conditions for Benin's population. This policy has four general objectives: (i) to reduce the maternal mortality rate of 498 per 100,000 live births in 1996 to 200 per 100,000 by the year 2016; (ii) to reduce the infant-child mortality rate from 166.5 per 1,000 in 1996 to 90 per 1,000 by the year 2016; (iii) to seek to ensure that 50% of the adolescents and youth adopt responsible sexual behavior; and (iv) to obtain men's support for women's reproductive health.[12]

The Ministry of Health is the department that implements government policies in health matters. Decree No. 94-145 of May 26, 1994 details the functions, organization, and method of operation of the Ministry of Health, which is responsible for instituting and organizing activities in the area of health and for coordinating the implementation of these activities.[13] The decree also defines the responsibilities of the specialized departments within the Ministry of Health, including the Family Health Division, which has the primary mission of design, planning, coordination, follow-up, and evaluation of family health activities.[14]

By Decree No. 96-128 of April 9, 1996 concerning the division of government, the Ministry of Health, Social Welfare, and the Status of Women was created.[15] From the beginning, this department's principal mission was to improve the social and health conditions of families.[16] Community participation in development strategies is a key policy basis of the work of this department. In this way, the family becomes the prime target of development.[17] Following the last cabinet changes in May 1998, the Ministry of Health, Social Welfare, and the Status of Women was divided in two, giving birth to the Ministry of Public Health, and to the Ministry of Social Welfare and the Status of Women.

Reality

Fertility in Benin is characterized by a low rate of contraceptive prevalence (16.8%), induced illegal and clandestine abortions, and elevated levels of maternal morbidity and pregnancy at young ages. According to the 1996 Demographic and Health Study (DHS), pregnancies occur at very young ages — between the ages of 15 and 19, the fertility rate is 123 per thousand.[18]

It is notable that over one quarter of adolescents (26%) have already begun their reproductive lives.[19] Close to 20% already have at least one child, and 7% are pregnant with a first child.[20] Nearly half of the adolescents at age 19 (47%) were already mothers and 9% were already expecting a child at the time of the Demographic Health Survey (1996).[21] Adolescents between the ages of 10 and 20 are responsible for nearly 12% of the overall birth rate.[22]

Among women between the ages of 25 and 49, 16% have had their first sexual encounter by age 15, 60% by age 18, and 95% by age 25.[23] First sexual relationships occur at younger ages in rural environments than in cities. In rural areas, the average age for the first sexual encounter is 16.9, compared to 17.5 in urban areas for women between the ages of 20 and 24.[24]

It is also worth noting that knowledge of contraceptive methods varies according to age: among married women, those between the ages of 20 and 39 are most knowledgeable of the methods, including modern ones (at least 79% for knowledge of

any method, and at least 75% for a modern method). The lowest level is for adolescents between the ages of 15 and 19 (70% have knowledge of some method and 66% of a modern method).[25]

In spite of the 1920 French law forbidding contraceptive propaganda, family planning initiatives occur in Benin. The Government tolerates and even encourages the distribution of contraceptives and the diffusion of information on contraception.[26] One of the objectives of the 1996 Declaration on Population Policy is to raise the overall rate of contraceptive use and to promote responsible sexual behavior.[27]

In reality, contraceptive users are not sanctioned. This is because contraceptives are becoming essential to the Beninese population, whose elevated birth rate is holding back the country's development. In early 1971, the Government authorized the creation of the Family Planning Association and a family planning service was integrated in the Public Center for the Protection of Mother and Child in Cotonou.[28]

No contraceptive product is expressly prohibited in Benin. In principle, products are chosen according to personal preference. All imports of pharmaceutical products are subject to rigorous regulations in conformity with the profession's Deontological Code. All pharmacies are authorized to dispense contraceptives authorized for use in Benin.

According to government sources, more women obtain modern contraception from public institutions (44%) than from private medical organizations (29%) and other private service centers (27%).[29] Injectables and IUDs are more readily available in public institutions; however, the pill, contraceptive devices, and vaginal methods are more often provided by private, non-medical groups.[30]

Additionally, international organizations are involved in supplying and distributing contraceptive products for the Beninese market. UNFPA works in partnership with the Ministry of Health. IPPF and USAID also contribute to the services of Benin Family Planning Program (ABPF). Both government and private groups aid in the distribution of contraceptives. For a number of years, the Ministry of Health has been carrying out "Family Wellness," "Reproductive Health," and "Family Planning" projects with the support of the ABPF.

In spite of all these initiatives, adolescent girls do not have adequate access to the family planning services offered. These services are ineffective, due to untrained personnel and lack of an appropriate framework through which young people can exchange information. Access is not dependent on whether or not adolescent girls are already married or pregnant; rather, socio-cultural factors, such as level of education and involvement of the female minor's family in the decision, weigh more heavily. Adolescent girls are not treated well in family planning centers because these centers are for the most part staffed by adult women, who tend to condemn youthful sexual activity.

A study conducted by Dr. Martine Ravonindra Hasina in 1997 on 38,000 adolescents between the ages of 13 and 19 in Cotonou revealed that 81.4% of adolescents do not use family planning services, and that reasons linked to the way the services are organized explained the situation in 46.1% of the cases.

Adolescents in rural and low-income areas particularly lack adequate access to health services, because of inadequate distribution of facilities and lack of funds. The services that exist are inadequate and are primarily aimed at adults.

Adolescents encounter obstacles to information and family planning services on multiple levels:

- Within the family unit, discussion of sexuality is generally considered off limits, and parents and adolescents seldom consider discussing it to ensure accurate information;
- The lack of communication between parents and children drives children to clandestine behavior;
- The law of 1920 is an obstacle to the diffusion of information on contraception;
- The inappropriate treatment, including the accusatory attitude of some service providers;
- Reproductive health services are only open during school hours; and
- Minors are put off by having to deal with adults.

Nevertheless, the situation has somewhat improved in recent years. Adolescent girls are actually beginning to have access to contraception and information on different contraceptive methods through advertising campaigns, magazines, and information bulletins made available to them by NGOs, by the Family Health Department, and through the media. According to DHS, 62% of female adolescents between the ages of 15 and 19 approve of making family planning announcements on the radio and television.[31]

Access to reproductive health services are more readily available to pregnant adolescents because society regards two lives as being at stake: that of the underage mother, whose biological stage of development makes pregnancy more complicated; and that of the unborn child, who will be born under increased risk of death.

Still, pregnant adolescents are victims of discrimination at school. They are marginalized, separated, singled out, and are often driven to drop out. They are not encouraged to remain in school, because they would present a bad example if they did so. Some of these adolescents may resume their schooling after the birth of their child if they are extremely strong willed and have the support of their parents. The post-maternity school drop-out rate, however, is much higher than the rate of those who return to school.

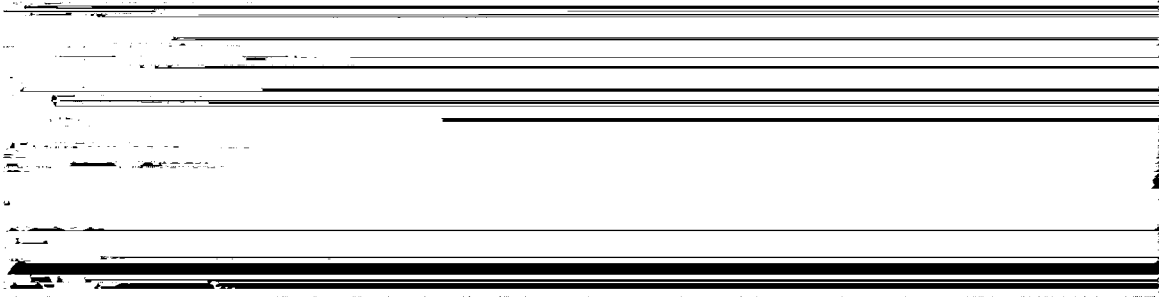
2. Abortion

Laws and Policies

The law of July 31, 1920 prohibits any incitement to abortion and contraceptive propaganda. Any person seeking or practicing illegal abortions (including health care service providers), will be punished by imprisonment and a fine at the judge's discretion. Abortion is criminalized in Article 317 of the Penal Code with significant penalties that can be increased in the case of aggravating circumstances. Abortion comes under the jurisdiction of the Assizes Court. The Penal Code provides that any act intended to interrupt the harmonious development of the fetus is considered a crime of homicide.[32]

The Code of Medical Deontology, enacted in 1973, prohibits abortion for any reason other than to save the woman's life.[33] The procedure must be performed by a qualified doctor. This doctor must seek the opinion of two other doctors, one of whom

must be chosen from the civil courts' list of experts. The three doctors must certify in writing that the life of the mother can only be saved by abortion. The doctors are not required to continue to treat the patient if they have a conscientious objection, but they



With regard to the deplorable health consequences of clandestine abortions, two pieces of legislation initiated by the Ministry of Health, Social Welfare, and the Status of Women were submitted to the National Assembly in April 1998, but no action has yet been taken. One of the bills concerns the abrogation of the law of July 31, 1920; the other condemns incitement to abortion.

Reality

Contraceptive prevalence is low and its use imperfect, which leads to an elevated rate of induced abortions. Seventy-nine point four percent of pregnancies among school-age girls end in abortion.[34]

The law of July 31, 1920 limits the scope of measures available to women to prevent and address unwanted pregnancies, so much so that complications from abortions and infanticides constitute serious public health problems.[35]

In the majority of cases, abortions are practiced clandestinely, under deplorable conditions that disregard the woman's health. Illegal abortions are leading contributors to the growth of the maternal mortality rate and lead to serious reproductive health consequences, such as infertility. Among the 722 instances of induced abortion recorded in three maternity facilities in Cotonou, 712 were illegal induced abortions (19.4% were for adolescents, 26.9% were for single women, and 57.2% were for married women). These cases of abortion came from rural areas (31.1%), as well as from urban (28.4%) and suburban areas (33.1%).[36]

When abortion is illegal, adolescents are fearful of seeking care, even when there are complications. They often self-medicate, taking antibiotics that are not individually prescribed for them, and at inadequate doses. Usually, when they do come in for care, it is too late, and they die from a range of complications.

Although induced abortions are prohibited by the Penal Code, adolescents who resort to illegal abortion are rarely prosecuted.

3. HIV/AIDS and Sexually Transmissible Infections (STIs)

Laws and Policies

There is no law or policy on HIV/AIDS in Benin. There is also no law or policy on treatment, care, protection, or sanctions concerning an STI.

Reality

In Benin, early sexual experiences expose adolescents to the risks of pregnancy and all the related consequences. As of December 31, 1997, 3.6% of the total population of Benin was infected with the HIV virus, at the rate of two women for every one man.[37]

The existence and persistence of the law of July 31, 1920 prohibiting incitement to abortion and contraceptive propaganda makes it difficult to issue a truly comprehensive reproductive health policy, especially in the area of family planning, which is one of the essential components of safe motherhood and the battle against STIs and AIDS.

Generally speaking, the principal means of transmitting the disease in 1985 was through sexual activity (82% of the cases) and transmission from mother to child was 5%; in 1997, the rate of transmission through sexual activity was 94.5% and transmission from mother to child 5%. It is significant that transmission from mother to child remained at 5%, while transmission through sexual activity increased by 12.5%. The seroprevalence measured by the serosurveillance system in place to monitor pregnant women went from 0.5% in 1990 to 1.67% in urban areas, and from 0.21% in 1990 to 4.52% in 1996 in rural areas. [38]

According to the World Health Organization (WHO), the incidence of STIs among Beninese adolescents has been steadily increasing for twenty years. There is an STIs screening center in Cotonou, but adolescent girls do not frequent it. They prefer to treat themselves through self-medication and with recourse to indigenous remedies.

Public campaigns against HIV/AIDS do exist, but they are not specifically aimed at adolescents. Additionally, there are no information centers for young people, nor medical protocols adapted to their needs.

B. The Right to Education (Articles 17, 24 (2)(e), 28 and 29 of the Children's Convention)

Introduction

Article 28 recognizes the child's right to education on the basis of equal opportunity and Article 29 provides that education must include several factors that favor the development of the child's full potential. Article 24(2) guarantees the rights of the child to be informed and to have access to education regarding health issues. Moreover, Article 17 recognizes the importance of the function fulfilled by the media and stipulates that the child should have access to information and materials coming from various sources. Moreover, these Articles link education, the right to be free of discrimination based on sex, and the right to reproductive health.

The Committee has noted that girls make up two-thirds of the world's 100 million children who do not have access to basic education, and that the literacy rate for adolescent girls is much lower that than of adolescent boys.[39] Consequently, the Committee considers education to be an indispensable tool to improve the future prospects of girls, and has recommended that governments adopt and implement laws and policies to reduce barriers to the education of girls.[40] Moreover, the Committee has stated that governments, under the Convention, are obligated to ensure that young girls and adolescents have access to primary education and to sex education.[41] Sex education

programs should be available to young girls and adolescents to enable them to exercise their sexual and reproductive rights, as provided in Article 24.

1 Access to Basic Education Without Discrimination

Laws and Policies

Regarding education, Article 17 of Benin's Constitution recognizes that "every person has a right to education."[42] In Article 13 of the Constitution, "[t]he Government recognizes the duty to provide education to young people through public education and public schools."[43] In Article 8 of the Constitution, the Government recognizes the duty to ensure citizens equal access to education, culture, information, professional training, and work.[44] Also, Article 9 provides that every human being has the right to the full expression of his or her self in all respects, including intellectual expression.[45]

The Government adopted a policy aimed at improving the education of children between the ages of 5 and 14. The main objectives of Benin's decade of development in favor of the child, which grew out of the World Summit on Children (September 1990) are as follows:[46]

- Increase the overall school attendance rate from 60% to 78%;
- Increase the overall school attendance rate for girls to 60%;
- Define a national policy to benefit high-risk children and offer them increased opportunities for reintegration;
- Sensitize parents to the educational needs of girls; establish the conditions that favor the education of girls; and
- Improve the quality of teaching at the primary school level.

Reality

It is worth noting that in Benin the education rate for girls is declining sharply compared to that of boys. Throughout the educational system, there are fewer women than men. In 1995, the primary school enrollment rate for school-age girls was 44% compared to 88% among boys.[47] For secondary school enrollment, it was 7% for girls and 17% for boys. The principal reason for this discrepancy is that girls do not enjoy the same access to education as boys. The female literacy rate is 16%, whereas it is almost 32% for men.

The image of the women in society constitutes a major obstacle to girls' access to education, because women are perceived principally in the roles as wives and mothers. This perception is prevalent throughout all regions of Benin — North, South, East and West. Parents believe that educated girls destroy the foundation of the family and society, and that they do not respect its traditions. Moreover, for parents with a low level of education themselves, their young daughter constitutes a source of income. Socio-economic factors and additional obstacles are added to these socio-cultural biases. Girls and young women represent a significant source of help for their mother in domestic tasks and in her business or agricultural activities.

Certain constraints linked to the educational system also discourages girls and their parents from pursuing an education: educational content that is not suited to the students' cultural background and needs as well as high numbers of failing marks. The

high numbers of failing students raise serious issues regarding the quality of the educational system.

There is a significant difference in primary school enrollment between boys and girls in Benin. In 1992 it was estimated that for every two boys attending school, there was only one girl. Despite these statistics, it is estimated that primary school enrollment of girls in Benin is increasing. In its National Programme of Action in Favor of Women and Children, the government has stated its objective of increasing primary school enrollment of girls from 44% to 50%.

To encourage girls' education in rural areas, the government has eliminated school fees for girls in 1993. Due to this measure, the rise in enrollment rates for girls has been stronger than that for boys. However, this important measure has not been implemented in all rural regions of Benin because of schools' dependence on school fee revenues.

Measures to increase girls' school enrollment must be accompanied by initiatives to remove all obstacles to girls' education. In certain regions, such as the Sud-Borgou, the Zou-Nord and the Mono, these obstacles are more socio-cultural than economic.

The Ministry of Education established the "National Network for the Promotion of Girls' Education" with support from the Ministry of Social Welfare and the Status of Women. This network has initiated consciousness-raising campaigns directed at parents, encouraging them to send their daughters to school and keep them enrolled.

The Ministry of Education has also distributed significant monetary scholarships to recipients of Certificates of Primary Studies, with a specific priority accorded to girls. Posters, radio and television commercials and theater and educational skits have been created to garner support for girls' education.

NGOs working on the issue of girls' education are supported by the Ministry of Social Welfare and the Status of Women. There has also been a collaborative effort of the World Bank, the Benin government and parents for the creation of boarding schools for girls at the secondary school level.

2. Access to Sex Education

Laws and Policies

The law of July 31, 1920 prohibits incitement to abortion and contraceptive propaganda services and constitutes a legal barrier to the enactment of an appropriate policy in the matter of sex education for adolescents. In addition, there is inadequate political commitment to sex education, and the concept of a strategy on information, education, and communication regarding sexuality among the political decision-makers, traditional and religious leaders, and keepers of tradition.

Reality

In spite of the law of 1920, some activities of the Declaration on Population Policy are directed towards adolescent girls and young people. The Benin Association for Family Planning clinics carry out information, education, and communication (IEC) activities aimed at young people, such as ad campaigns, puppet shows, and school posters. Moreover, the Benin Association for Social Marketing has initiated the publication of a bulletin called "Love and Life" in collaboration with other partners.

Additionally, sex education programs are starting to become available to young people. Little by little, sex education is being integrated into the school system through Education, Population, Environment, and Development (EPED), a project initiated by the government with the participation of UNFPA. This project places professionals in the school to provide training on teaching these subjects.

Young people who do not attend school have access to this information by means of sensitivity campaigns initiated by the Public Ministry of Health, NGOs, the media, or from their peers. Sex education campaigns advocate abstinence and safe sex. Parents are also beginning to promote abstinence to their children.

C. Marriage and Young Girls and Adolescents (Article 2 of the Children's Convention)

Introduction

Article 2 guarantees all children the rights set forth in the Convention, without discrimination. Nevertheless, in violation of the Convention, in many countries, the minimum age for entering into marriage is too low and thereby violates the rights of female adolescent girls to education, full development of their personalities and abilities, and when pregnancy occurs, their health.

The young age at which law or custom permits young girls to marry in many cultures discriminates against them in terms of access to schooling, because traditional distribution of family roles dictate that young wives often sacrifice their education to perform domestic duties and bear children.[48] The Committee has also noted that girls of such a young age are not emotionally or physically prepared for marriage.[49] The Committee therefore declared its concern that the marriage of young girls is discriminatory against them and jeopardizes their rights under Articles 6, 17, 24, 28, and 29. Consequently, the Committee has recommended that the minimum age for entering into marriage be raised, and that it be the same for males and females.

1. Minimum Age of Marriage

Laws and Policies

Benin ratified the Convention on Minimum Age for Marriage, but it has not yet been fully translated into applicable national laws. The provisions of the convention are taken into consideration in the proposed Code of Individuals and the Family that has been registered pending before the National Assembly since 1995.

According to the Civil Code, a young man must be at least 16 and a young woman at least 15 in order to contract marriage. Under the *Coutumier du Dahomey* of 1931, which remains in effect, the young girl may enter into marriage at 14.

Forced marriage, which still takes place in Benin, constitutes a punishable offense and carries a sentence of two to five years imprisonment and a fine.

Reality

The timing of the first marriage or the first sexual union represents an important aspect of a woman's reproductive life, with considerable consequences to her reproductive health and social status. Generally, early marriage coincides with early

motherhood. Early pregnancies constitute both a significant risk factor to the young woman's life as well as an obstacle to her education. In addition, such pregnancies are a great risk factor to the children of these adolescents.[50]

Adolescents between the ages of 10 and 20 account for close to 12% of the total Beninese fertility rate. [51] This trend is closely linked to high rates of early marriage. For the parents, especially in rural areas, the young girl is a source of income through the dowry that she brings. The age of marriage in rural areas therefore is usually age 15 to 17, whereas it is 18 in urban areas. [52] A demographic study in 1992 showed that the average age of marriage is 17.7 in rural areas compared to 21.5 in urban areas. The 1996 DHS shows that women from the older generation (between the ages of 45 and 49) had first married at an average of 17.9 years old, whereas women between the ages of 20 and 24 had first married at an average of 18.8 years of age.[53]

In certain Atlantic Provinces (Ganvié, Sô-Tchanhoué), in Ouémé (Porto-Novo, Dangbo, Akpro-Misséréte), in Zou (Savalou), and in the neighboring villages of North Mono, forced marriage is a traditional practice that still occurs.

In some rural areas, husbands were found for female children between the ages of 12 and 15. Even more problematic, husbands were found for newborn baby girls in certain areas, especially in North Atacora. Within certain ethnic groups, when the female child reaches seven, she is inducted into her in-law's family so that she can begin become integrated.

Thus, between the ages of 12 and 15 or 16, the adolescent girl is given over to marriage, generally to an older man and under specific terms. If she is insubordinate or reluctant to marry him, physical force, assault, even rape is used to force her to accept the husband. "The woman owes obedience and faithfulness to her husband"—this expresses the conception of woman as an object of alliance between social groups. Under customary law, the woman has practically no rights; because she is regarded as belonging to the weaker sex, she is always under the authority of a father, a husband, a brother, or a son.

Nevertheless, it should be noted that, compared to their elders, women are marrying later. According to the DHS survey, education level is influencing the age of first marriage. Whatever the age group, the average age of first marriage clearly rises with the level of education. For all the women between the ages of 25 to 49, the average age at first marriage went from 18.0 among uneducated women to 19.3 among those with primary schooling, and reached 23.0 among women with secondary schooling and more.[54]

D. Sexual and Physical Violence Against Young Girls and Adolescents (Articles 19 and 34 of the Children's Convention)

Introduction

Article 19 provides that States Parties to the Convention must take all the appropriate measures to protect the child against any form of abuse and violence. Likewise, under Article 34, States Parties to the Convention pledge to take all appropriate measures to protect the child against all forms of sexual exploitation and violence. When girls are victims of sexual abuse, domestic violence, commercial and sexual exploitation, and female circumcision/female genital mutilation (FC/FGM), their rights under these

provisions are violated. Moreover, these acts contravene the right of young girls and adolescents to health, pursuant to Article 24.

Young girls and adolescents make up the majority of the victims of sexual abuse.[55] Consequently, the Committee has expressed alarm over the prevalence of all forms of sexual violence perpetrated against girls.[56] The Committee considers issues of domestic violence, sexual exploitation, child pornography and violence to fall within the definition of sexual abuse. More specifically, the Committee has emphasized the need to eradicate the practice of FC/FGM and other traditional practices harmful to the health of girls,[57] because these practices contravene their rights to physical integrity, health, and freedom from violence.[58]

1. Sexual Violence

Laws and Policies

In ratifying the Children's Convention, Benin committed itself to ensuring that children have access to information aimed at promoting their social well-being, as well as their physical and mental health, are protected against any form of violence, attack and physical or mental abuse, including sexual violence, etc.

Numerous crimes against the person are subject to punishment of between two months and up to three years of imprisonment and a substantial fine. Abduction of a female minor also constitutes a crime punishable by law.

Rape is a crime punishable by 10 to 20 years hard labor. The Penal Code provides that "whoever commits the crime of rape will be punished by a period of hard labor."[59] If the crime was committed against a child under the age of 13, the guilty party will be sentenced to the maximum period of hard labor. The Penal Code also provides that whoever commits indecent assault, consummated or attempted, with violence, against an individual of either sex will be punished by imprisonment.[60] The Civil Code, in Article 1382, also stipulates "any act committed by a person that causes damage to another person, obligates him or her to pay reparations for damage resulting from the act."

Reality

Domestic violence, both physical and psychological, is prevalent in Benin. The causes of this violence include the refusal of sexual relations, economic problems, and alcoholism.

There is no concept of marital rape under Benin law, and thus no existing law is applicable. There is a high incidence of rape in connection with forced marriage and the abduction of young girls and adolescents.

Incest is also a phenomenon encountered in certain areas of Benin and in certain families. It is prohibited, however, under Benin's Penal Code.

There is an organization in Benin that handles cases involving sexual violence against minors, even handling them anonymously. Still, the government does not adequately enforce the existing laws. The current institutional and legal framework does not facilitate implementation of the law, even where laws exist.

2. Female Circumcision/Female Genital Mutilation (FC/FGM)

Laws and Policies

There is no specific law on FC/FGM in Benin. Nevertheless, several international and national legal instruments recognize the right to physical integrity and forbid assault and battery.

The African Charter on Human and Peoples' Rights provides that "human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."[61]

The 1990 Constitution of the Republic of Benin states as follows: "Every individual has the right to life, liberty, security, and the integrity of his person. . . no one shall be subject to torture, nor to cruel, inhuman or degrading treatment."[62]

The law sanctions all bodily injury caused by voluntary or involuntary violence leading to permanent infirmity, such as mutilation, amputation, deprivation of the use of a limb, etc., and less serious consequences, as well as injuries attributable to negligence.

In principle, FC/FGM could be punished under the Penal Code provision prohibiting voluntary cuts and wounds.[63] Depending on the gravity of the consequences resulting from the procedure, legal action could be brought on the basis of negligent or criminal intent. Increased punishment is provided for when these acts of violence are committed against female minors under age 15[64] and when the guilty parties are the child's mother and father.[65] For lesser offenses, the punishment ranges between two months and five years and a fine of F 4,000 to F 480,000. For more serious crimes, the guilty party may be condemned to criminal imprisonment, from five to 10 years or 20 years and even life imprisonment depending on the circumstances and whether amputation of organs, deterioration of organs, permanent incapacity, death, etc. occurred.

The Ministry of Health, Social Welfare, and the Status of Women, aware of the urgent need to adopt specific legislation to deal with FC/FGM, submitted a draft law to the National Assembly in April 1998, proposing to ban FC/FGM.

Reality

FC/FGM remains a deplorable reality in Benin. Benin ranks 16th in Africa when it comes to prevalence of FC/FGM. According to 1994 estimates, at least 50% of Benin females undergo this practice, particularly in the provinces of the North.[66] FC/FGM is practiced on girls of young age, as well as on adolescents and women up to the age of 30. The age at which it is practiced varies by region. In some regions, it occurs between the ages of five and 10; among others, only between the ages of six and eight; and among others still, the Nagos, it occurs between the ages of 15 and 20, or even later.

Although those responsible for acts of excision could be prosecuted under existing criminal law, the government has not chosen to pursue this course because FC/FGM is a practice that is rooted in the traditions of various ethnic groups. As long as no serious incident is publicized, public opinion is not upset by the continued practice of FC/FGM. Moreover, no one is willing to complain out of fear of reprisals that might occur against the victim. Most of the time, it is the family (father and mother) who are the guilty parties and the procedure is practiced on young girls who are not fully aware of its risks and therefore do not think to complain. Even in the case of death resulting from the procedure, communities do not protest against its practice. The harmful

consequences of FC/FGM are not understood by those who perform it. There is an urgent need to sensitively educate traditional practitioners and their communities.

The Ministry of Social Issues and Health is collaborating with the Inter-African Committee on traditional practices that affect women's' and children's health, which has actively led campaigns to eradicate FC/FGM.[67] To this end, the Inter-African Committee is organizing seminars and workshops in the villages and making locally produced posters and pamphlets available in public health clinics.[68] The ultimate objective is to eliminate FC/FGM here by the year 2015.[69]

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[3] *Id.*
[4] UN Doc. CRC/C/62 at 617; UN Doc. HR/CRC/99/17 (1999); UN Doc. HR/CRC/99/13 (1999).
[5] UNICEF, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD 611, et. Seq. (1998) [hereinafter IMPLEMENTATION HANDBOOK].
[6] Constitution of Benin, Title II, art. 26.
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[18] DHS – 1996, at 36.
[19] *Id.*, p. 42.
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[22] *Id.*, at 43.
[23] *Id.*, at 82.
[24] *Id.*, at 83.
[25] *Id.*, at 49.
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[30] *Id.*
[31] *Id.*, at 69.
[32] Penal Code, art. 317.

[33] The Code of Medical Deontology, instituted by a 1973 Edict.
[34] UNFPA Report, *supra* note 26.
[35] The law of July 31, 1920.
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[43] Const. of Benin, Art. 13.
[44] Const. of Benin, Art. 8.
[45] Const. of Benin, Art. 9.
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[49] *See* UN Doc. HR/CRC/99/17; UN Doc. HR/CRC/99/4 (1999).
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[60] Penal Code, art. 312.
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[63] Penal Code, art. 309, par. 3-4.
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