

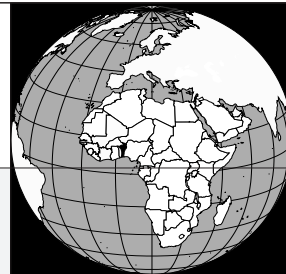


© 2003 Center for Reproductive Rights

www.reproductiverights.org

formerly the Center for Reproductive Law and Policy

2. Bénin



Statistics

GENERAL

Population

- The total population of Benin is approximately 5.7 million.¹
- The average annual population growth rate between 1995 and 2000 was estimated to be 2.8%.²
- Women comprise 51% of the total population.³
- In 1995, 31% of the population lived in urban areas.⁴

Territory

- Benin covers an area of 114,763 square kilometers.⁵

Economy

- In 1997, the estimated per capita gross national product (GNP) was U.S.\$380.⁶
- The average annual growth rate of the gross domestic product (GDP) between 1990 and 1997 was 4.5%.⁷
- Approximately 18% of the population have access to primary health care.⁸
- Between 1990 and 1993, approximately 3% of the national budget was allocated to the health sector. This figure increased to 5.9% in 1996.⁹

Employment

- In 1997, women comprised 48% of the workforce, compared to 47% in 1980.¹⁰
- The distribution of women in the different sectors of the economy was as follows: 64% in agriculture, 31% in services, and 4% in industry.¹¹
- In 1992, the unemployment rate for women was 0.7%, compared to 2.2% for men.¹²

WOMEN'S STATUS

- In 1997, the average life expectancy for women was 57.2 years, compared to 52.4 years for men.¹³
- The adult illiteracy rate was 74% for women and 51% for men.¹⁴
- Fifty percent of married women between the ages of 15 and 49 live in polygamous unions, compared with 33% of men between 20 and 64.¹⁵
- The average age at first marriage for women aged 45 to 49 was 17.9 years, compared with 18.8 years for women aged 20 to 24.¹⁶

FEMALE MINORS AND ADOLESCENTS

- Approximately 48% of the population is under 15 years of age.¹⁷
- In 1995, primary school enrollment for school-aged girls was 44%, compared to 88% for boys. In secondary schools, it was 7% for girls and 17% for boys.¹⁸
- In 1996, the fertility rate of adolescents aged 15 to 19 was estimated at 123 per 1,000.¹⁹
- Adolescents between the ages of 10 and 20 account for 12% of the total fertility rate.²⁰
- The prevalence of female circumcision/female genital mutilation is between 30% and 50%.²¹

MATERNAL HEALTH

- The average total fertility rate (TFR) is estimated at 6.3 children per woman.²² The TFR is estimated at 7 in rural areas, and at 5.2 in urban areas.²³
- Maternal mortality is estimated at over 498 per 100,000 live births.²⁴

- Infant mortality is estimated at 84 per 1,000 live births.²⁵
- Approximately 38% of births are assisted by trained birth attendants.²⁶
- In 1996, the average age at first birth for women between the ages of 25 and 49 was estimated at 19.6 years.²⁷

CONTRACEPTION AND ABORTION

- Contraceptive prevalence for all methods combined (traditional and modern) is estimated at 16.8% and at 3.4% for modern methods.²⁸
- Of those using modern methods, 1% used the birth control pill, 1% used condoms, 0.4% used intrauterine devices, 0.6% used injectables, and 0.3% were sterilized.²⁹
- Among students 79.4% of pregnancies result in abortions. Abortion-related deaths account for 23% of recorded deaths. Hospitals in Cotonou have registered deaths in 17 out of every 1,000 abortions performed.³⁰

HIV/AIDS AND OTHER STIS

- In 1997, the number of HIV-positive adults was estimated at 52,000, or 2.06% of the adult population.³¹
- Among HIV-positive adults, the number of HIV-positive women was estimated at 26,000.³²
- Since the beginning of the epidemic, 16,000 confirmed cases of AIDS have been recorded.³³
- In 1997, there were an estimated 2,400 HIV-positive children and 11,000 orphans due to AIDS.³⁴
- In 1996, 20,944 sexually transmissible infections were reported, compared to 17,670 reported cases in 1995, and 23,017 reported cases in 1994.³⁵

ENDNOTES

1. UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF WORLD POPULATION, at 70 (1998).
2. *Id.*
3. MINISTÈRE DU PLAN, DE LA RESTRUCTURATION ECONOMIQUE ET DE LA PROMOTION DE L'EMPLOI, INSTITUT NATIONAL DE LA STATISTIQUE ET DE L'ANALYSE ECONOMIQUE, BUREAU CENTRAL DE RECENSEMENT, ENQUÊTE DÉMOGRAPHIQUE ET DE SANTÉ – 1996, at 1 (1997)[hereinafter, 1996 DHS].
4. THE STATE OF WORLD POPULATION, *supra* note 1, at 70.
5. 1996 DHS, *supra* note 3, at 1.
6. WORLD BANK, WORLD DEVELOPMENT REPORT, at 190 (1998/99).
7. *Id.*, at 210.
8. THE STATE OF WORLD POPULATION, *supra* note 1, at 70.
9. UNFPA, RAPPORT SUR LE SOUS-PROGRAMME EN SANTÉ REPRODUCTIVE AU BÉNIN, at 3 (1997).
10. WORLD DEVELOPMENT REPORT, *supra* note 6, at 194.
11. UNITED NATIONS, THE WORLD'S WOMEN, at 147 (1995).
12. DEUXIÈME RECENSEMENT GÉNÉRAL DE LA POPULATION ET DE L'HABITAT (1992)[hereinafter, RGPH2].
13. THE STATE OF WORLD POPULATION, *supra* note 1, at 67.
14. WORLD DEVELOPMENT REPORT, *supra* note 6, at 192.
15. 1996 DHS, *supra* note 3, at 75.
16. *Id.*, at 79.
17. *Id.*, at 1.
18. THE STATE OF WORLD POPULATION, *supra* note 1, at 67.
19. 1996 DHS, *supra* note 3, at 35.
20. RAPPORT SUR LE SOUS-PROGRAMME EN SANTÉ REPRODUCTIVE AU BÉNIN, *supra* note 9, at 2.
21. OFFICE OF ASYLUM AFFAIRS, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, UNITED STATES DEPARTMENT OF STATE, FEMALE GENITAL MUTILATION (FGM) IN BENIN, at 1 (September 15, 1997).
22. 1996 DHS, *supra* note 3, at 35.
23. *Id.*, at 37.
24. *Id.*, at 116.
25. THE STATE OF WORLD POPULATION, *supra* note 1, at 67.

26. *Id.*, at 70.

27. 1996 DHS, *supra* note 3, at 41.

28. *Id.*, at 54.

29. *Id.*

30. RAPPORT SUR LE SOUS-PROGRAMME EN SANTÉ REPRODUCTIVE AU BÉNIN, *supra* note 19.

31. UNAIDS, REPORT ON THE GLOBAL HIV/AIDS EPIDEMIC, at 64 (June 1998).

32. *Id.*

33. *Id.*, at 67.

34. *Id.*, at 64.

35. Ministère de la Santé, Annuaire 1996, MSPSCF/PNLS, at 51.

I. Introduction

Benin, a former French colony known as the Republic of Dahomey until 1975, was part of the *Fédération d'Afrique Occidentale Française* from 1904 to 1958.¹ Dahomey was proclaimed a republic on December 4, 1958. It gained independence from French colonial rule on August 1, 1960.² When elections were held that same year, Mr. Hubert Maga of the *Parti Dahoméen de L'Unité* became the country's first president.³

From 1960 to 1972, the country was subject to numerous military coups, and four different constitutions were adopted.⁴ In 1972, the military led by Lieutenant Colonel Mathieu Kerekou seized power; in 1974, President Kerekou declared Dahomey a Marxist-Leninist state,⁵ and a year later the *Parti de la Révolution Populaire du Bénin* (PRPB) became the sole legitimate party.⁶ Until 1990, Kerekou ruled the country, renamed the People's Republic of Benin,⁷ as a socialist military dictatorship.

In 1977, a draft constitution based on Marxist-Leninist principles was adopted.⁸ This instrument decreed the creation of a Revolutionary National Assembly, and paved the way for the 1979 elections, which were won by the PRPB.⁹ Kerekou, the sole candidate, was elected president unanimously in 1980,¹⁰ and was reelected in July 1984.¹¹

In 1989, the PRPB renounced Marxism-Leninism and convened a national reconciliation conference during which a constitutional reform committee was created.¹² In March 1990, the People's Republic of Benin became simply the Republic of Benin, and the 1977 Constitution was replaced by a new constitution that allows for multiple political parties.¹³ In the first free presidential elections in March 1991, then Prime Minister Nicéphore Soglo was elected president.¹⁴ The second free elections, held in 1996, saw Mathieu Kerekou defeat Soglo by a narrow margin and become president for a five-year term;¹⁵ presidential elections will next be held in March of 2001.¹⁶ There are more than 80 officially recognized political parties.¹⁷

The total population of Benin is estimated at 5.7 million,¹⁸ with women accounting for 51%.¹⁹ Approximately 35% of the population practice indigenous beliefs, 35.4% is Christian, and 20% is Muslim.²⁰ There are 42 ethnic groups in Benin, the largest being the Fon (42%), Adja (15.6%), Yoruba (12.1%), Bari-ba, Peulh (6.1%), Yao-Lolopa (3.8%), and Dendi (2.8%).²¹ While the official language of Benin is French, the most common languages in the South are Fon and Yoruba. There are six major languages in the North.²²

The Republic of Benin is composed of six departments. Each department is divided into sub-prefectures. There are 77 sub-prefectures and 566 communes, which are comprised of

villages and neighborhoods.²³ Pursuant to the Constitution, these jurisdictions are governed by councils elected in accordance with the law.²⁴ Despite this modern political infrastructure, there has been a recent resurgence of traditional chiefs whose power does not derive from the law.

II. Setting the Stage: The Legal and Political Framework

To understand the various laws and policies affecting women's reproductive rights in Benin, it is necessary to examine the country's legal and political systems. Without this background, it is difficult to determine the manner in which laws and policies are enacted, interpreted, modified, and challenged. The passage and enforcement of laws often involve specific formal procedures. Policy enactments, however, are not subject to such processes.

A. THE STRUCTURE OF GOVERNMENT

The Constitution of the Republic of Benin (the Constitution) was adopted by national referendum on December 2, 1990.²⁵ It declares Benin a sovereign republic "indivisible, secular, and democratic"²⁶ and establishes three branches of government: executive, legislative, and judicial.

1. Executive Branch

Executive power lies with the President of the Republic (the President), who is elected by popular vote for a five-year term, and may serve a maximum of two terms.²⁷ As Head of State, the President embodies the concept of national unity by preserving Benin's sovereignty and territorial integrity, and by ensuring respect for the Constitution and international agreements.²⁸

The President, in consultation with the National Assembly, appoints the members of the cabinet.²⁹ He presides over the Council of Ministers, which directs national policy.³⁰ The civil service and armed forces are under the command of the President, who is responsible for national defense.³¹ Among the President's other enumerated prerogatives are the power to pardon, and to accredit ambassadors.³² The President, concurrently with members of the National Assembly, has the power to initiate consideration of laws by the National Assembly.³³ The President also has the authority to issue executive orders in areas not under the jurisdiction of the National Assembly.³⁴ If the National Assembly authorizes him, by law, the President may also issue an order concerning a matter normally within the jurisdiction of the legislature but issued by the executive branch.³⁵ In addition, the President may initiate a referendum on any question relating to "the promotion and protection of

human rights, subregional integration, and the organization of public authorities.”³⁶

2. Legislative Branch

The national legislature is a unicameral parliament called the National Assembly³⁷ whose members are known as deputies. Elected every four years by direct universal suffrage, they are free from limits on their tenure in office.³⁸ The National Assembly’s powers include the power to legislate, to authorize declaration of war, and to determine an annual budget.³⁹ The National Assembly has jurisdiction to legislate on most matters, including civil rights, criminal law, and education.⁴⁰ Most laws may be passed by simple majority.⁴¹ Passage of organic laws must meet additional procedural requirements, including approval by the Constitutional Court.⁴²

The President must promulgate laws that are approved by the National Assembly within 15 days of receiving them⁴³ (in case of declared emergency, this period shrinks to five days⁴⁴). Before the 15 days have elapsed, the President may request that the National Assembly reconsider a law and cast another vote. If a simple majority passes the law, and the President still refuses to promulgate it, the National Assembly may submit the proposed law to the Constitutional Court, which may declare it enforceable if it is consistent with the Constitution.⁴⁵

3. Judicial Branch

Benin’s judicial branch of government is highly specialized and interacts with the other branches at several different points of entry. In order to clarify the key roles of various institutions, we will consider, in order: the Constitutional Court, the Supreme Court, the High Court of Justice, the courts of first instance, and finally, certain quasi-judicial bodies of national importance.

The Constitutional Court is the highest authority in matters relating to the Constitution. As such, its mandate is to review the constitutionality of laws, to guarantee fundamental human rights and public liberties, and to monitor the functioning of institutions and the activity of public authorities.⁴⁶ The duties of the Constitutional Court include ruling on the constitutionality of laws prior to their promulgation, and reviewing the procedural rules of the National Assembly and other governmental bodies such as the High Authority of Audiovisual and Communication and the Economic and Social Council.⁴⁷ The Constitutional Court can be called into special service to resolve jurisdictional conflicts between public institutions,⁴⁸ or to monitor elections.⁴⁹ Proposed laws may be challenged in Constitutional Court by the President or by any member of the National Assembly.⁵⁰ Citizens, too, may challenge the constitutionality of laws either directly or during the court proceeding in which a given law is being enforced

against them.⁵¹

The Constitutional Court is composed of seven members, four of whom are appointed by the National Assembly, and three by the President. Members are appointed for five-year terms, and may serve a maximum of two terms,⁵² but cannot be removed while in office. Furthermore, they cannot be prosecuted or arrested without the approval of the President of the Constitutional Court and the President of the Supreme Court—except in cases of flagrant offense;⁵³ in such cases, the President of the Constitutional Court and the President of the Supreme Court must be notified within 48 hours.

The Supreme Court is the highest court of law in administrative and judicial matters, and in the management of the state’s accounts.⁵⁴ It also has jurisdiction over disputes arising during local elections.⁵⁵ Its decisions are not subject to appeal.⁵⁶ Moreover, the government may consult with the Supreme Court on all administrative and jurisdictional matters,⁵⁷ and request it to draft legislation and regulations to be considered by the National Assembly.⁵⁸

The High Court of Justice is competent to judge the President and other members of the executive branch if they are accused of high treason or infractions committed in the exercise of official duties.⁵⁹ It is composed of members of the Constitutional Court other than its president, of six deputies elected by the National Assembly, and the President of the Supreme Court.⁶⁰

The Court of Appeal is located in Cotonou and constitutes the second level of jurisdiction. It hears appeals from the courts of first instance. It is composed of a president, legal advisers, public prosecutors, court clerks, and assistant district attorneys. The Court of Appeal has four chambers: the Assize Court, the Correctional Chamber, the Civil and Commercial Chamber, and the Traditional Chamber.⁶¹

There are courts of first instance in each of the six judicial districts. They include the Traditional Peoples’ Chamber, which can hand down executory judgements in family and personal property matters, and the Traditional Chamber for Property Matters, which can hand down executory judgements in real estate matters.⁶² While customary law courts were abolished in 1964, lay tribunals still exist to fulfill many of their functions.⁶³

The Constitution also provides for the establishment of bodies whose job is to regulate and control: the Economic and Social Council and the High Authority of Audiovisual and Communication. The Economic and Social Council is charged with advising both the legislative and executive branches. Bills on economic or social matters must be submitted to the Economic and Social Council for review.⁶⁴ In addition, the President may consult it on any matter of eco-

conomic, social, cultural, scientific or technical nature.⁶⁵ The Economic and Social Council may, on its own initiative, make recommendations to the National Assembly and the government on economic reform in the national interest.⁶⁶ The High Authority of Audiovisual and Communication is charged with guaranteeing the freedom and protection of the press and other means of mass communication.⁶⁷ It monitors compliance with professional codes of ethics in areas of information as well as equitable access to official sources of information and communication.⁶⁸

B. SOURCES OF LAW

Laws that affect the legal status of women in Benin—including their reproductive rights—derive from a variety of sources, both international and domestic.

1. International Sources of Law

Several international human rights treaties recognize and promote specific reproductive rights. Because they are legally binding on governments, these international instruments impose specific obligations to protect and advance these rights. All international treaties or agreements lawfully ratified by Benin override domestic laws.⁶⁹

In addition to the African Charter on Human and Peoples' Rights, Benin is a party to, *inter alia*: the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social, and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; and the Convention on the Rights of the Child.⁷⁰

2. Domestic Sources of Law

Benin's legal system is based on both French civil law and local customary law. The rights and duties of the individual are prescribed in Articles 7 through 40 of the Constitution.⁷¹ In particular, the Constitution guarantees each individual "the right to life, liberty, security, and integrity of his person."⁷² It ensures "equality before the law to all, without regard to origin, race, sex, religion, political opinion or social position."⁷³ It further specifies that "[m]en and women are equal under the law. The State shall protect the family and particularly the mother and child."⁷⁴ It guarantees the right to education for children, the right to work, and the right to a clean environment.⁷⁵ In addition to the rights enumerated in the Constitution, the African Charter on Human and Peoples' Rights has been explicitly incorporated into the Constitution.⁷⁶

The legal system inherited from the French, particularly that regarding private law, remains largely in place;⁷⁷ the French Civil Code, the Code of Civil Procedure, the Commercial Code, and the Penal Code are essentially still in effect. The Code of Criminal Procedure was enacted in 1967.⁷⁸ The *Coutumier du Dahomey* of 1931, drafted by the French before

World War II, is said to reflect the country's principal customs. It should not be surprising, then, that though the rules of the *Coutumier* do not have the same weight as the articles of the codes,⁷⁹ there are still many instances in which they apply.

III. Examining Reproductive Health and Rights

In Benin, issues of reproductive health and rights are addressed in the context of the country's health and population policies. Thus, an understanding of reproductive rights in Benin must be based on an examination of the documents that set forth these policies.

A. HEALTH LAWS AND POLICIES

1. Objectives of the Health Policy

Benin's Constitution explicitly incorporates rights articulated in the African Charter on Human and Peoples' Rights,⁸⁰ which urges governments to "take the necessary measures to protect the health of their population and to guarantee medical assistance in the event of illness."⁸¹ This mandate, by necessity couched in somewhat abstract terms, took on a more practical form when, on October 26, 1972, Benin adopted a Health Policy aimed at providing adequate medical care to the entire population.⁸² Its primary health care objectives involved giving priority to "preventive medicine over curative medicine" as well as combining "modern medicine with traditional medicine."⁸³

In December 1996, the National Economic Conference formulated health policy objectives for 1997–2001, including:⁸⁴

- Significantly improving national health care coverage (from 50% to more than 80%);
- Encouraging traditional medicine, while at the same time regulating its practice;
- Promoting traditional pharmacopoeia;
- Implementing a social security or private health insurance system to cover family health care;
- Giving priority to both preventive medicine and hygiene;
- Preventing self-medication and illegal drug sales.

Reproductive health objectives for the same period (1997–2001) include the following:⁸⁵

- Increasing the contraceptive prevalence rate from 2% to 10%;
- Treating 100% of high-risk pregnancies screened at maternal health centers;
- Increasing the rate of assisted childbirth from 54% to

80%;

- Increasing the use of postnatal services from 27% to 50%;
- Treating cases of infertility among married couples in referral centers and hospitals;
- Offering reproductive health services to men;
- Increasing the rate of medical examinations for healthy children from birth to 11 months from 40% to 70%, and for children from one to three years from 5% to 15%.

In April 1999, Benin adopted a Family Health Policy tailored to the country's needs and responsive to key recommendations by the International Conference on Population and Development (ICPD).⁸⁶ The policy's primary objectives are: to promote responsible sexual behavior on the part of at least 50% of adolescents and youth; to provide reproductive health services for men; to reduce the maternal mortality rate from 498 per 100,000 live births in 1996 to 200 per 100,000 live births by 2016; and to reduce the infant mortality rate for the same period from 166.5 per 1,000 live births to 90 per 1,000 live births.⁸⁷

Additional objectives with a 2016 deadline include: increasing prenatal consultations from 67% to 90%; raising the assisted childbirth rate from 50% to 80%; effectively treating 80% of high-risk pregnancies and births; increasing the rate of postnatal consultations from 32.3% to 60%; encouraging 50% of mothers to adopt breastfeeding alone for their babies' first four months; reducing early pregnancies from 26% to 15%; encouraging 50% of adolescents and young adults to use reproductive health and family planning services; increasing the prevalence rate for modern contraception from 3% to 40%.⁸⁸

The Family Health Policy is aimed at four beneficiary groups: women, children, youth, and men. Specific objectives for these groups center on the following components: family planning; STIs/HIV/AIDS; harmful traditional practices; infertility; nutrition; and immunization and prevention of infectious diseases. In addition, several related goals are to be implemented through programs involving advocacy, information, education and communication (IEC), administration, training, and research.⁸⁹ These objectives encompass areas such as improving hygiene; protecting the environment; furthering literacy among out-of-school youth and adults; supporting school enrollment for children, particularly girls; enhancing school and university health care; and fostering awareness of population issues.

In May 1994, Benin passed a law outlining the role of the Ministry of Health,⁹⁰ giving it the mandate to implement the government's overall health policy, organize health-related activities, and coordinate and monitor the execution of those

activities.⁹¹ The law also set out the responsibilities of specialized directorates within the Ministry of Health that enforce health care regulations and programs—specifically those related to prevention and treatment of disease—as well as those that promote education, environmental protection, distribution of pharmaceutical products, and provision of reproductive health and family planning services.⁹² Since 1994 these directorates have worked with regional offices to promote national health care policy at the local level.⁹³

On April 9, 1996, the government passed Decree 96-128 creating the Ministry of Health, Social Welfare and the Status of Women. In 1998, this Ministry was divided into two parts—the Ministry of Public Health, and the Ministry of Social Welfare and the Status of Women. Since its inception, this Ministry's goal has been to improve family health,⁹⁴ and to promote community participation in its own development.⁹⁵ The Ministry's primary objectives, based on the National Policy for the Development of the Health Sector (1989) and on the recommendation of the Round Table of January 1995, are the following: to provide basic health care to the entire population; to integrate health-related activities into the existing primary health care system; and to comply with Benin's structural adjustment program while taking the necessary steps to minimize its negative impact.⁹⁶ The strategies required to implement these goals include:⁹⁷

- Increasing the availability of primary health care coverage;
- Instituting structural reform and improvements in program management at all levels;
- Mobilizing additional resources;
- Implementing a cost recovery plan and allocating resources more efficiently;
- Rationalizing the investment budget and the borrowing policy;
- Increasing the availability of essential drugs;
- Ensuring that the government allocates at least 6% of the national budget to the Ministry of Health, Social Welfare and the Status of Women.

2. Infrastructure of Health Services

Benin's Ministry of Health manages and regulates health care⁹⁸ by developing national programs and establishing quality-of-care criteria that effectively implement governmental health policy.⁹⁹ The Regional Directorate of Health, Social Welfare and the Status of Women is responsible for integrating ministry activities at the regional level. It carries out this task through both the execution of general health policy and the management of individual health services and facilities.¹⁰⁰ Finally, the Family Health Directorate supervises family plan-

ning activities, health care for pregnant women, and educational programs on maternal and child nutrition.¹⁰¹

Despite such a well-organized institutional framework, Benin's health care system is not always responsive to the country's population distribution or density.¹⁰² The delivery of health services follows a cumbersome from-the-top-down hierarchy: policy is established and resources mobilized at the national level; monitoring and follow-up take place at the regional level; and implementation is carried out at local and community levels.¹⁰³ To broaden grassroots accessibility to quality health care, the existing service delivery model must be reorganized.¹⁰⁴ There are currently 24 health centers in the 77 urban subregions and districts, and 178 community health complexes in the 517 rural districts in the country.¹⁰⁵ The aim is to divide the delivery system into 36 "health zones," some of which correspond to the boundaries of the subregions while others combine several into a single large zone.¹⁰⁶ A health zone will represent the grouping of multiple regional agencies around one hospital;¹⁰⁷ its objectives will be set at the local level while taking the ministry's overall goals into account.¹⁰⁸

Decentralizing the health care delivery system in this way should facilitate coordination between the system's various components (e.g. the Management Committee, the Zone Bureau, health facilities, and supervisory teams) in both the health zone and the Regional Directorate—and preserve the autonomy of each, particularly in the management of human and financial resources.¹⁰⁹

Until 1995, the public sector had one National Hospital, four regional hospital centers, 84 subregional and urban health centers, 339 rural health centers, 15 freestanding maternal health centers, 46 freestanding clinics, one psychiatric center, two tuberculosis centers, 12 leprosariums, 29 school infirmaries, and 352 village health centers.¹¹⁰ In 1995, the number of medical and paramedical personnel in the public sector was as follows: 315 physicians, 16 dentists, 15 pharmacists, 12 health inspectors, 1139 nurses, 440 midwives, and 241 laboratory technicians.¹¹¹

The private health sector comprises numerous facilities as well: 226 health care and obstetrical offices; 54 humanitarian health centers; 24 clinics; four polyclinics; 166 medical offices; nine dental offices; 133 pharmacies and 249 pharmaceutical storage facilities.¹¹² In 1996, the private sector health care workforce consisted of 417 physicians, eight pharmacists, 223 midwives, 73 laboratory technicians, 1268 nurse's aids, 83 social workers and 462 other personnel such as traditional practitioners and healers.¹¹³

3. Cost of Health Services

Funding for health care comes from three main sources—

the government, foreign aid, and user fees.¹¹⁴ The national budget allocates 5.9% to the health sector¹¹⁵—a level of spending that does not allow the Ministry of Health to meet its responsibilities. Within the framework of the prevailing Structural Adjustment Program (SAP) III, Benin is committed to increase the percentage of government spending on health to 8% of its budget by the end of the program.¹¹⁶ With such a low degree of government funding, the vital role of foreign assistance in financing most programs becomes apparent.

User fees for services vary according to the category to which a patient belongs. Thus, indigents, civil servants, private sector employees, and foreigners are charged different fees for similar services.¹¹⁷ Due to the climate of economic and financial austerity that has prevailed in Benin since the 1980s, in 1988, the government expanded the system of community financing and cost recovery for all categories of public health facilities. The income generated from such financing serves both to replenish drug supplies and to contribute to the operation of health care facilities. Community financing now represents 7% of the health sector's total resources.¹¹⁸

Although public health care services are government-subsidized, they are not necessarily free of charge. The exceptions to this policy are prenatal and postnatal health services, routine vaccinations, and the treatment of certain communicable diseases. In addition, health care for indigents is generally free. Health care fees for civil servants and their spouses and children are set according to the provisions of the General Statute on Permanent Government Employees. Health care for private sector employees is paid for by both employers and the employees themselves, based on individual employment contracts. Finally, foreigners must pay the cost of all health services they receive.

Available health services include: consultations, laboratory tests, minor surgery, major surgery (including gynecological and obstetric interventions, cesarean sections, hysterectomies, and sterilizations), prescription drugs (especially generic drugs), and hospitalization. Patients are allowed to choose between public facilities or private ones where costs are higher, but often so is the quality of service. Due to the public sector's dominance, the private sector has not played a major role in the nation's health care system, and consequently is not well integrated into the system. Recently there has been a push to promote the private sector's role by both regulating and managing it, and by providing incentives in order to expand its coverage to a larger sector of the population.¹¹⁹ The private sector can be divided into four subsectors:¹²⁰

- The for-profit private sector;
- The informal private sector (carrying out parallel, and sometimes unlawful, health care activities);

- The non-profit sector (which funds 25% of the nation's health care costs and 60% of hospital care, especially in the northern part of the country); and
- The “Cooperative Health Clinics” project, which is part of Benin's broader development policy, and which seeks to offset the negative effects of the structural adjustment program.

4. Regulation of Health Care Providers

To practice their profession in Benin, physicians, pharmacists, dentists and midwives must register with a professional order (nurses are required to maintain membership in an association). Professional orders serve several functions that help preserve the autonomy of their respective professions.¹²¹ First, they ensure that their members abide by the principles of morality, integrity and dedication that are essential for the practice of medicine, dentistry, pharmacy and midwifery. Second, they monitor member compliance with the professional duties as specified in the Code of Ethics (see below). And of course these professional orders have an overall mission in common—protecting patients' health and well-being.

The Code of Ethics, established by decree in 1973, presents the general obligations of all health care providers (including penal-system provisions).¹²² In that same year orders were passed that specified codes of professional conduct for physicians, pharmacists, dentists and midwives: Order No. 73-38 created the National Orders of Doctors, Dentists and Midwives; Order No. 73-30 created the National Order of Pharmacists. (Nurses belong to an association which was created by legislation on July 1, 1901.) In addition, the national council of each association has established its own Code of Ethics for its respective profession.

The basic requirements for practicing medicine, pharmacy, dentistry or midwifery are threefold: Beninese citizenship; possession of a State Diploma, or its equivalent, in one's chosen field; and registration with the appropriate national association.¹²³ Health care professionals who have not fulfilled the requirements for joining their national orders are subject to a fine of 25,000 (U.S.\$3980) to 100,000 CFA francs (U.S.\$159.19), determined by and paid to the national order in question. The same penalty applies to any person who practices his or her profession under a pseudonym, or who does not meet the sanctioned criteria of practice.¹²⁴

Physicians, pharmacists, dentists and midwives may not give advice on premises where pharmaceutical devices or products are sold; nor may they receive compensation or kickbacks of any sort on drugs or medical devices prescribed or sold.¹²⁵

Although dentists and midwives may prescribe any drugs necessary to practice their professions, the Ministry of Public Health determines the types of medical examinations and

technologies they may use.¹²⁶ Midwives are authorized to give vaccinations and boosters only upon the advice of a physician, and any treatments they carry out must be prescribed by a physician.¹²⁷

Anyone found practicing medicine, pharmacy or dentistry unlawfully is subject to a fine of 50,000 (U.S.\$79.59) to 500,000 CFA francs (U.S.\$795.94). For repeat offenses, the fine is increased to between 100,000 (U.S.\$159.19) and 1,000,000 CFA francs (U.S.\$1,591.88), or one to six months in prison, or both.¹²⁸ Any person who practices midwifery illegally incurs a fine of 25,000 (U.S.\$3980) to 250,000 CFA francs (U.S.\$397.97). For repeat offenses, the fine is increased to between 50,000 (U.S.\$79.59) and 500,000 CFA francs (U.S.\$795.94), or 15 days to five months in prison, or both.¹²⁹ In addition, the equipment used in these circumstances may be confiscated and the health care facility may be temporarily or permanently closed.¹³⁰ Misrepresentation to one of the orders is considered forgery and is punishable by a fine of 180,000 (U.S.\$286.54) to 4,500,000 CFA francs (U.S.\$7,163.44), or one month to a year in prison, or both.¹³¹

In all circumstances, the overriding duty of health care professionals is to respect human life and to protect the individual. In the event of a violation of the Code of Medical Ethics, the accused must appear before the disciplinary chamber of the national association.

5. Patients' Rights

Just as the law guarantees the quality of health services, it also ensures the safety of patients, and defends their rights. Patients are protected, first of all, by the 1990 Constitution, which proclaims the human person “sacred and inviolable.”¹³² Under Article 8, the government has an absolute obligation to respect and protect the individual and to ensure that all citizens have equal access to health care.¹³³ The codes of medical ethics also include provisions intended to protect patients' rights:

- Chapter II of the Code of Medical Ethics, which describes the physician's duties with respect to patients (Articles 190 to 208);
- Chapter IV of the Code of Pharmaceutical Ethics, which explains the rules with respect to the public (Articles 44 to 47);
- Chapter II of the Code of Dental Ethics, which describes the duties of dentists with respect to patients (Articles 262 to 275);
- Chapter II of the Code of Midwifery Ethics, which explains the duties of midwives with respect to patients (Articles 322 to 334).

In addition, even though the Penal Code does not specifically target members of the medical professions for dereliction of duty with regard to their patients, its general provisions can

be used for this purpose. Finally, the provisions of the Civil Code, in matters of civil liability, are also applicable. These sanctions do not exclude those recommended by the national orders.

B. POPULATION AND FAMILY PLANNING

1. The Population and Family Planning Policy

In April 1996, the government issued a Population Policy Declaration with the aim of improving the national standard of living and quality of life. In this regard, Benin's population policy is one component of its overall economic and social development policy.¹³⁴ To improve the quality of life of Benin's population, policies and programs must focus on several key areas simultaneously: human resources (e.g., education and training); mortality and morbidity; population dynamics; employment; land-use planning and land reform; the environment and habitat; and diet and nutrition.¹³⁵ The Declaration's objectives, to be implemented over a 20-year period from 1996 to 2016, include the following:¹³⁶

- Provide quality education to all citizens;
- Resolve the problems of professional training and employment;
- Raise life expectancy, from 54 years in 1992 to 65 years in 2016;
- Ensure a better geographical distribution of the population;
- Take into account international migrations in development planning;
- Guarantee each individual sufficient nourishment for nutritional well-being;
- Promote a healthy habitat and protect the environment;
- Create conditions favorable to the full participation of women in the development process and to ensure that they reap its benefits;
- Create conditions conducive to developing the potential of adolescents and youth;
- Provide social security for senior citizens;
- Integrate the disabled in development planning;
- Promote responsible fertility.

To achieve this last goal, the government proposes to do the following: reduce the number of early and late pregnancies; prevent unwanted pregnancies; reduce the number of abortions; promote family planning for responsible sexuality; increase the contraceptive prevalence rate from 2% to 40% by the year 2016; end practices such as forced and/or early marriage.¹³⁷

The national agency in charge of developing and implementing population policy is the National Commission on

Human Resources and Population (CNRHP).¹³⁸ CNRHP was established by Decree No. 93-169 of July 9, 1993. Its functions comprise:

- Formulating population policy and programs, and strategies for developing human resources;
- Designing a population and human resource policy that utilizes existing infrastructure;
- Monitoring the implementation of these policies;
- Evaluating the effect that regional and national population programs have on the government's social welfare objectives and formulating appropriate recommendations in this regard;
- Designing sensitization programs for national leaders, executives, decision makers and beneficiary groups about the relationship between population dynamics and socio-economic development and societal effects;
- Promoting, supporting and coordinating research and data collection on population-related issues.¹³⁹

2. Government Delivery of Family Planning Services

Article 26 of the Constitution requires the government to protect the family, especially mother and child.¹⁴⁰ Despite the existence of a 1920 French colonial law that prohibits contraceptive propaganda, Benin supports family planning initiatives. In 1971, the government authorized the creation of a Family Planning Association, and added family planning services to the Public Center for the Protection of Mothers and Children in Cotonou.¹⁴¹

The Family Health Directorate, established by decree in May 1994, administers the government's family planning program.¹⁴² The decree states that: "[the Directorate] is in charge, among other things, of providing proper management of preventive and health care services to pregnant women; coordinating family planning activities...; providing educational programs on mother and child nutrition... at the local level; and coordinating the activities of non-governmental organizations involved... in the area of family health."¹⁴³

Currently the Ministry of Health, with the assistance of the Beninese Association for the Promotion of the Family (ABPF), administers reproductive health and family planning programs,¹⁴⁴ particularly for the prevention of HIV/AIDS and other sexually transmissible infections (STIs).¹⁴⁵ The ABPF has contributed to establishing an STI screening and treatment center in Cotonou for sex workers (prostitutes).¹⁴⁶ Its information, education and communication activities (IEC) disseminate information regarding family planning and sexual and reproductive health programs.¹⁴⁷

Public health centers, public medical and nursing schools, and private facilities offer family planning services.¹⁴⁸ Nevertheless, a relatively small number of couples actually practice

family planning.¹⁴⁹ This is due, in part, to the fact that family planning services are not easily accessible. Only 21% of women live in a town or village where community-based distribution is available. According to the 1996 Demographic and Health Survey (1996 DHS), 41% of women live in a town or village located less than one kilometer from a health facility that offers family planning services. Approximately 62% of women live in a town or village located five kilometers from family planning services. Finally, 38% of women live in a town or village located more than five kilometers away from these services.¹⁵⁰

3. Services Provided by NGOs and the Private Sector

Both private sector organizations and NGOs have provided considerable support to the government in the field of reproductive health. NGOs and other organizations have channeled significant resources into the following areas: integrating family planning services into maternal and child health activities; introducing family life education in schools; promoting integration of population issues into development plans; and contributing to the design and development of population policies. In addition, their activities have been aimed at raising awareness about sexual and reproductive health among adolescents, women and men.

According to the 1996 DHS, women procure modern contraceptive methods more easily from the public sector (44%), than from private sector sources such as private medical facilities (29%), and other private service centers (27%).¹⁵¹ Injectables and IUDs are more readily available in public sector facilities, but the pill, condoms and vaginal methods are more often provided by non-medical private facilities.¹⁵² International organizations also contribute to the availability of contraceptive products in Benin.¹⁵³

C. CONTRACEPTION

1. Prevalence

An analysis of prevalence rates in Benin must be prefaced by distinguishing between three broad categories of contraceptive methods: modern methods (birth control pills, IUDs, injectables, vaginal methods, male condoms, sterilization, and Norplant®); traditional methods (rhythm method, withdrawal); and so-called “folk” methods (ropes around the hips, rings on fingers).¹⁵⁴

Benin's total contraceptive prevalence rate is estimated at 16.8%,¹⁵⁵ but use of modern methods is only about 3.4%.¹⁵⁶ According to the 1996 DHS, approximately 1% of women use the pill, 1% use condoms, 0.4% use an intrauterine device (IUD), 0.6% use injectables, and 0.3% are sterilized.¹⁵⁷ Significantly, these low rates cannot be attributed to a lack of awareness among women of their options: the 1996 DHS estimates that

76.2% of women know of at least one modern method of contraception.¹⁵⁸ The best known methods are: injectables (61%); the pill (60%); the condom (55%); female sterilization (53%); rhythm method (50%); withdrawal (47%); and IUD (25%).¹⁵⁹

Most types of contraceptives used in Benin are not free of charge. The cost of available methods is as follows: Norplant® 600 CFA francs (U.S.\$0.96); injectables 500 CFA francs (U.S.\$0.80); Conceptiol® 15 CFA francs (U.S.\$0.02); Koromex® and Delfen® 200 CFA francs (U.S.\$0.32); and the IUD 400 CFA francs (U.S.\$0.64). By contrast, office visits and services provided by public facilities and the ABPF are free.

2. Legal Status of Contraceptives

In March 1997, in the wake of the Symposium on Eliminating Legal Barriers to Sexual and Reproductive Health in French-speaking Africa, the Ministry of Health, Social Welfare and the Status of Women proposed legislation to repeal the Law of July 31, 1920 that prohibits incitement to abortion and contraceptive propaganda. The National Assembly must now review this draft bill; in the meantime, the 1920 French colonial Law remains in effect.¹⁶⁰ Articles 3 and 4 of this law punish “anyone who, for the purpose of contraceptive propaganda, . . . describes or divulges or offers to reveal or facilitate the use of procedures for preventing pregnancies.”¹⁶¹ Offenders risk one to six months in prison and a fine of 100 (U.S.\$15.92) to 5000 French francs (U.S.\$796.01).¹⁶² In practice, however, this law is not applied. The government tolerates, and even encourages, dissemination of information on contraceptives.¹⁶³ Most contraceptives are legal in Benin, with any given product evaluated on the basis of its appropriateness for each individual. Although the importation of all pharmaceutical products is subject to rigorous regulation in accordance with the professional Code of Ethics, pharmacies are permitted to procure any contraceptive that the Benin government has approved.

3. Regulation of Information on Contraception

Pursuant to the 1920 Law, contraceptive propaganda is theoretically prohibited in Benin. In principle, any person who violates this law is subject to punitive sanctions. Moreover, any type of advertising relating to contraceptives is a violation of the obscenity laws punishable under the Penal Code. In practice, however, the 1920 law is not enforced. On the contrary, the government authorizes and endorses advertising about contraceptive methods.¹⁶⁴ Furthermore, the Ministry of Health and the ABPF actively devote much time and effort to the promotion and distribution of contraceptives at the local level, and the government is in the process of developing initiatives that will involve all the ministries. These will be carried out in cooperation with the Directorate of Social Welfare and

the Ministry of Health's Information, Education and Communication Directorate. Information will be disseminated through advertisements, posters, leaflets and manuals on family planning and sexual and reproductive health.¹⁶⁵

D. ABORTION

1. Prevalence

In most cases, abortions are performed clandestinely and in deplorable conditions harmful to the health of women. Clandestine abortions contribute to maternal mortality rates and cause serious reproductive health problems such as infertility. Of 722 cases of induced abortions identified by the three maternal health facilities in Cotonou, 712 were clandestine abortions. The profile of the women who obtained such abortions was as follows: 19.4% were teens; 26.9% were unmarried; and 57.2% were married. Abortions occur in rural (31.1%) as well as urban (28.4%) and semi-urban (33.1%) areas.¹⁶⁶

2. Legal Status of Abortion

As noted above, the 1920 French Law, which prohibits incitement to abortion, is still in force in Benin. Anyone in violation of this law is subject to sanctions specified in Article 317 of the Penal Code: "Whosoever, by food, drink, medicine, violence or by any other means, procures an abortion of a pregnant woman, whether or not with her consent, will be punished with a prison term of one to five years and a fine of 1,800 (U.S.\$2.97) to 36,000 CFA francs (U.S.\$57.31)."¹⁶⁷ Any person who habitually engages in these activities is subject to five to 10 years imprisonment and a fine of 18,000 (U.S.\$29.37) to 72,000 CFA francs (U.S.\$114.62).¹⁶⁸

A woman who procures her own abortion, or who has consented to the use of the means administered for that purpose, will be punished with a prison term of six months to two years and a fine of 300 (U.S.\$46.36) to 7,200 French francs (U.S.\$1,112.55).¹⁶⁹ Physicians, pharmacists, students in these professions, nurses, midwives, dentists, herbalists, masseuses, truss manufacturers and surgical instrument merchants who provide information about abortion methods are subject to a similar sentence, in addition to a five-year suspension of their professional licenses.¹⁷⁰

3. Requirements for Obtaining a Legal Abortion

The 1973 Code of Medical Ethics prohibits abortion for any reason other than to save the life of the woman. The abortion must be performed by a qualified physician, who in turn must seek the consent of two other physicians, one of whom must be selected from a list of experts appointed by the civil courts. The three physicians must certify in writing that the woman's life can be saved only by performing an abortion. The physicians are not obligated to continue treating the patient if doing so is against their consciences, but in such circumstances they must refer her to a colleague or another facility for further care.

4. Policies Related to Abortion

One of the long-term objectives of the Population Policy Declaration is "to promote responsible fertility."¹⁷¹ To achieve this objective, the government proposes to reduce early and late pregnancies, to prevent unwanted pregnancies and abortions, to promote family planning, and to improve the contraceptive prevalence rate.¹⁷²

5. Penalties for Abortion

The punitive aspect of abortion is specified in Article 317 of the Penal Code. Any person seeking or performing an illegal abortion—including health care providers—is subject to imprisonment and a fine at the discretion of a judge.¹⁷³ These penalties may be increased and may fall under the jurisdiction of the Assize Court.

6. Regulation of Information on Abortion

Although information about abortion is not explicitly regulated, advertising related to family planning typically places special emphasis on its risks and consequences.

E. STERILIZATION

Sterilization is not a widespread contraceptive method in Benin, and there are no specific laws that regulate it. Before undergoing any surgical procedure, patients must be fully informed about the method of sterilization. Sterilization is not provided free of charge, and there are no sanctions against providers who carry out a patient's wishes in this regard.

F. FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION

1. Prevalence

An estimated 30% to 50% of Beninese women have undergone female circumcision/female genital mutilation (FC/FGM).¹⁷⁴ The type of FC/FGM practiced in Benin is excision, which is the partial or total ablation of the clitoris and/or the prepuce of the clitoris, as well as all or part of the labia minora.¹⁷⁵ FC/FGM is practiced mostly in Benin's

northern region (especially the provinces of Atacora and Borgou), certain parts of the central region (the north of the province of Zou), and the coastal province of Ouémé in the South.¹⁷⁶

2. Laws to Prevent FC/FGM

Although there is no specific law against FC/FGM, the Constitution prohibits gender discrimination,¹⁷⁷ as well as torture, mistreatment, cruel, inhuman and degrading treatment.¹⁷⁸ Article 15 of the Constitution, for example, provides that “Every individual has the right to life, liberty and personal integrity.” In addition, the Penal Code condemns intentional assault and battery,¹⁷⁹ and increases the punishment if the victim is a minor under age 15, or if a relative of the victim is responsible for the assault and battery.¹⁸⁰

In April 1998, the Ministry of Health, Social Welfare and the Status of Women submitted a draft bill regarding the prohibition of female circumcision/female genital mutilation to the National Assembly for review.¹⁸¹ In addition, the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, in cooperation with the Ministry of Social Affairs and Health, has conducted a campaign to eradicate FC/FGM.¹⁸² Moreover, this Committee holds seminars and workshops in the villages¹⁸³ aimed at eliminating FC/FGM by the year 2015.¹⁸⁴

3. Policies to Prevent FC/FGM

There are no explicit policies to prevent FC/FGM in Benin.

G. HIV/AIDS AND OTHER STIS

1. Prevalence

According to the most recent UNAIDS report, in 1997, an estimated 52,000 Beninese were HIV positive, representing a prevalence rate of 2.06%.¹⁸⁵ Among HIV-positive adults, an estimated 26,000 were women.¹⁸⁶ In 1997, there were an estimated 2,400 HIV-positive children and 11,000 AIDS orphans.¹⁸⁷ Since the beginning of the epidemic, 16,000 cumulative AIDS cases have been registered.¹⁸⁸

In 1995, the primary means through which the virus was transmitted was sexual contact (in 82% of cases), followed by mother-to-child transmission (5%). By 1997, the mother-to-child transmission of the virus remained at 5% whereas the rate of sexual transmission increased by 12.5% to account for 94.5% of cases. Between 1990 and 1996, HIV prevalence rates among pregnant women increased from 0.5% to 1.67% in urban areas, and from 0.21% to 4.52% in rural areas.¹⁸⁹ In short, what we are seeing is an alarming across-the-board increase in prevalence rates.

2. Laws Related to HIV/AIDS

As yet, there are no laws regarding HIV/AIDS in Benin.

3. Laws Related to other STIs

There are no laws specifically related to the treatment, care, protection or sanctioning of a patient with a sexually transmissible infection.

4. Programs Related to Prevention and Treatment of HIV/AIDS

Patients diagnosed with HIV/AIDS are sent to the National AIDS Prevention Program (PNLS) office for screening at its laboratory. If infection is confirmed, the patient is treated by the PNLS Unit that manages persons living with HIV. This Unit works with all local health facilities to help them refer patients to the PNLS—the short-term objective being to create a national network of AIDS patients.

In addition to studying and tracking each case, the HIV Unit of the PNLS offers material, psychological, social and medical assistance to patients. A key component of the medical treatment involves warding off opportunistic diseases not only by means of conventional drugs, but also with the help of traditional healers (for most patients, the cost of triple combination therapy is prohibitive at 500,000 CFA francs or U.S.\$795.94 per month). Among the PNLS Unit’s other tasks are helping patients become socially re-integrated, defending their rights, and providing them with guidelines and advice for follow-up.

IV. Understanding the Exercise of Reproductive Rights: Women’s Legal Status

Women’s reproductive health and rights cannot be fully evaluated without investigating women’s status within the society in which they live. Not only do laws relating to women’s legal status reflect societal attitudes that affect reproductive rights, but such laws often have a direct impact on women’s ability to exercise those rights.

The legal context of family life, women’s access to education, and the laws and policies affecting their economic status can contribute to the promotion or the restriction of women’s access to reproductive health care and their ability to make voluntary, informed decisions about such care. Laws regarding the age of first marriage can have a significant impact on young women’s reproductive health. Furthermore, rape laws and others related to sexual assault or domestic violence present significant rights issues and can also have direct consequences for women’s health.

A. LEGAL GUARANTEES OF GENDER EQUALITY/NON-DISCRIMINATION

The 1990 Constitution specifically guarantees equality between men and women in Article 26: “The State guarantees equality before the law to all, without regard to origin, race, sex, religion, political opinion or social position. Men and women are equal under the law.”¹⁹⁰

B. RIGHTS WITHIN MARRIAGE

1. Marriage Law

There are two types of marriage in Benin—monogamous and customary. The former is governed by the French Civil Code of 1958, which is still in force; the latter, by the 1931 *Coutumier du Dahomey*.¹⁹¹ Polyandry—which allows a woman to have several husbands—is legal throughout the country in accordance with the *Coutumier du Dahomey*.¹⁹²

Although polygamy is the norm, monogamy is increasingly prevalent in coastal region communities. Three forms of marriage preclude polygamous unions: Christian marriage; civil marriage celebrated by a registrar; and civil indigenous marriage in which the couple specifies and writes into the marriage contract the wish to have a monogamous household.¹⁹³ In all its forms, marriage creates reciprocal rights and duties for the spouses: the obligations of fidelity, support, and cohabitation. Parents must bear the additional obligations of feeding, supporting and raising their children.¹⁹⁴

Marriages governed by Benin’s Civil Code are monogamous and performed by a registrar. In such marriages, both parties can stipulate that their relationship is monogamous and that modern law therefore applies. However, a marriage performed by a registrar in which the spouses do not specify monogamy will be considered customary and polygamous. Disputes regarding civil marriages come under the jurisdiction of contemporary civil law.¹⁹⁵

It can safely be said that all customs in Benin favor men over women.¹⁹⁶ In Benin, the family constitutes the basic structural unit of society, which is essentially patrilineal. For example, in the institution of marriage,¹⁹⁷ men enjoy a more favored status as “polygamy is the rule.”¹⁹⁸ Furthermore, while legal penalties for adultery are not specified for men,¹⁹⁹ if a woman commits adultery, it is considered grounds for divorce.²⁰⁰ The differences in legal age of marriage also reflect a male-dominated culture: men cannot enter into marriage until they are at least 18, while women may be as young as 14.²⁰¹

Customary marriage is essentially an alliance between two families that commit their children to each other,²⁰² most often without the consent of the prospective couple.²⁰³ In fact, Article 68 of the *Coutumier du Dahomey* states that: “Marriage is not made by the interested parties, but by the father or, if none, by

his older brother or, if none, by the head of the family.” This alliance is sealed by a bride-price,²⁰⁴ which varies depending on the ethnic group. According to the *Coutumier du Dahomey*, when the bride-price is paid, it belongs to the woman’s family and not the woman herself.²⁰⁵ Since the marriage is made by the parents, the opinion of the interested parties is nothing more than a minor formality. Significantly, the boy’s consent is required, though increasingly the consent of the girl is sought as well.

In certain regions of Benin, such as the Atlantic region, Ouémé, Zou, and the neighboring villages of Northern Mono, forced marriage is an ancient, but still practiced, custom.²⁰⁶ Marriage-by-exchange is another variation of customary marriage that many ethnic groups in the coastal region practice.²⁰⁷ In some rural areas, husbands are found for female children between the ages of 12 and 15. Even more problematic, husbands are found for newborn girls in certain areas, especially in Northern Atacora. And within some ethnic groups, when the female child reaches seven, she is inducted into her in-law’s family so that she can become integrated.

Again, under customary law, a 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. Thus, between the ages of 12 and 15 or 16, the adolescent girl can be 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, and even rape is used to force her to accept the husband. “The woman owes obedience and faithfulness to her husband”—this expresses the concept of women as objects of alliance between social groups.

Polygamous marriages are subject to the rules of custom regarding both the duty of support and the method of dissolution. Disputes in polygamous marriages are subject to the local traditional courts or to the court with jurisdiction over the status of persons (see the section on the Legislative Branch).²⁰⁸

2. Divorce and Custody Law

The law provides different grounds for divorce for men and women. A man may seek divorce on grounds of adultery or sterility,²⁰⁹ while a woman may do so on grounds of poor treatment (which must exceed what is usually considered admissible by custom), impotence, failure to contribute to household needs, or relations with a sister-in-law.²¹⁰ Both men and women may obtain a divorce on grounds of incurable or repulsive disease, attempted murder, abandonment or insanity²¹¹—though there are still certain regions where a marriage cannot be dissolved under any condition.²¹²

In the past, divorce was pronounced by the village chief surrounded by his council.²¹³ The duties of the spouses are the

same regardless of whether it is a polygamous or monogamous marriage.²¹⁴ In the event of divorce, a first wife or a wife with children is still required to fulfill certain marital obligations, such as the death rituals for her husband, even if the bride-price has been returned.²¹⁵

In civil marriages, there is a distinction between the mandatory causes of divorce (such as adultery) and the optional causes (such as failure to meet matrimonial obligations or inability to maintain conjugal relations).²¹⁶ The consequences of divorce under civil law are dissolution of the marriage, placement of the children, and payment of alimony.²¹⁷ The custody of the children is determined by the marriage contract or, if none, by the rules in effect in the community.²¹⁸ Pursuant to Article 287 of the Civil Code, the court decides which parent (or any other person) will have custody of the children according to the children's best interests.²¹⁹

According to customary law, divorce entails the separation of property and the return of the bride-price.²²⁰ Since the bride-price is intended to ensure stability, customary divorce is rare:²²¹ a woman may not obtain a divorce without the consent of her parents, who must repay the bride-price.²²² If a woman's parents are unable to negotiate with the husband's family, the woman is not released from her marital obligations.²²³ Consequently, if the woman subsequently has children with another man, they are considered legally to belong to the first husband.²²⁴ The court may decide whether or not to require the partial or total return of the bride-price.²²⁵ Certain customs, such as the ones practiced by the Bariba ethnic group, do not require the return of the bride-price if the divorce is the result of a husband's actions.²²⁶

In customary divorce, each spouse normally keeps what belonged to him/her at the time of the marriage. However, sometimes the husband keeps his wife's property.²²⁷ There are no alimony laws as in contemporary civil law, but the court may require that a spouse pay compensation to the victim of a divorce for damages or loss resulting from the divorce.²²⁸ Fathers automatically receive custody of the children,²²⁹ but infants remain with their mothers until weaned.²³⁰

C. ECONOMIC AND SOCIAL RIGHTS

1. Property Rights

Civil law does not admit gender discrimination regarding access to property. In short, women enjoy the same rights as men, as is stated in Article 22 of the Constitution: "[Any] person has the right to own property. No one may be deprived of his property except in the event of public necessity, subject to just compensation." Benin's Constitution and Civil Code make no explicit distinction between men and women with respect to land acquisition and all relevant transactions. These

documents are premised upon the principle that land acquisition is governed by general contract law, in which age of majority, not gender, determines the ability to enter into a contract. Land may be acquired by simple registration, by inheritance according to civil law, or by direct purchase. Ownership and land rights are considered individual rights.²³¹

However, women's rights to property in Benin must still be considered limited. Law 65-25 of August 14, 1965, which governs land ownership, mentions women with respect to only a handful of issues: the forced lien granted married women on their husbands' property for their bride-price; marital rights; compensation for having to pay their husbands' debts; and reuse of disposed property.²³² Moreover, customary law generally does not grant women the right to possess or exercise ownership rights over real property.²³³ For example, in communities where animal husbandry constitutes an important resource, women's ownership rights are restricted not only with regard to agricultural land but also with regard to ownership, control, and inheritance of animals.

Under customary law, while a man may "inherit" a woman (in the form of a levirate marriage), in general a woman cannot inherit assets. In fact, under customary law, the only lawful heirs are male descendants of the deceased.²³⁴ In addition, according to the Civil Code, wives are in the fourth category of eligibility of inheritance,²³⁵ and often courts with jurisdiction over traditional matters give precedence to this legal rule. However, the courts are increasingly attempting to modify the strict application of this law, and sometimes women are granted the right to inherit from their deceased husbands, or the right to be guardians of their children.

Although since 1989 the government has introduced several reforms to improve the security of real property by codifying various rights to own land, all traditions in Benin's rural society are still premised upon the basic principle of patrilineal inheritance. Persons of the female sex are unable to inherit real property; that is, a daughter cannot inherit from her father and a wife cannot inherit from her husband—a rule that is especially true with regard to land.

2. Labor Rights

The right to work is granted to both men and women under the Law of January 27, 1998 and Article 15 of the Constitution, which states that "any person has the right to work under equitable and satisfactory conditions and to receive equal pay for equal work." Likewise, the Labor Code does not discriminate based on gender with regard to employment. Consequently, it protects women and children, in that no employer may consider gender, age or race when making decisions such as hiring, managing and distributing work, promoting, providing benefits, or terminating work contracts.²³⁶ As noted

above, the law requires equal pay for equal work.²³⁷ The Labor Code prohibits forced labor, and this prohibition seems on the whole to be respected.²³⁸

Not only does the Labor Code generally preserve gender equality in employment practices, it also contains special provisions that recognize women-specific issues. These provisions relate to the number of hours which a woman can be required to work, and the types of employment for which she can be hired. Thus, the law recognizes that a woman may suspend her work contract during a pregnancy. Article 170 of the Labor Code stipulates that “any pregnant woman whose condition has been diagnosed by a physician may terminate her work contract without giving notice and without paying the penalty specified in Article 55 above. This termination may under no circumstances lead to the payment of damages...she has the right to six weeks of maternity leave before delivery and eight weeks thereafter.²³⁹ When on leave, she has the right to the full salary she was receiving at the time she stopped working,²⁴⁰ as well as the right to free health care and in-kind benefits.”²⁴¹ If the woman has worked at a job for at least six months, no employer may fire her if she becomes pregnant.²⁴² Finally, a new mother has a right to take breaks for nursing for a period of 15 months after returning to work.²⁴³

Newly adopted provisions of the Labor Code allow the Ministries of Labor and Health to specify the types of work and job categories prohibited to women, pregnant women and adolescents, as well as to set age requirements for these prohibitions.²⁴⁴ The Code enables women to work at night, since it prohibits night work only for workers under age 18.²⁴⁵ In addition, Article 4 of Law No. 86-013 of February 26, 1986 regarding full-time government employees provides that female personnel have leave benefits with full pay for childbirth and nursing until the child reaches 15 months of age. However, these benefits do not apply to home-based workers, domestic employees, independent contractors and women employed in small businesses (i.e., those with only a small number of workers or those employing only family members). Although 89% of Beninese women work, 78% are employed in the informal sector. Only 22% are employed in the formal sector.²⁴⁶

Finally, it should be noted that, although illegal, child labor is common in Benin. The Labor Code provides that “[c]hildren cannot be employed in a company before the age of 14 years.”²⁴⁷

3. Access to Credit

Article 30 of the Constitution grants women the right to participate in economic life.²⁴⁸ Moreover, in the Population Policy Declaration the government proposes “to create conditions favorable to women’s full participation in the development process and the enjoyment of its fruits.” However, in

general, rural Beninese women have very little access to credit.

To remedy this situation, women are increasingly forming credit unions, and their subsequent ability to accumulate savings is evident from *tontines* both in rural and urban areas (50% of women belong to traditional *tontines*).²⁴⁹ Commercial *tontines* are verbal contracts that consist of granting a third party a certain amount of money for a specified period. The women who participate in the *tontines* are trying to gain some autonomy in order to meet their own and their children’s needs.

4. Access to Education

Article 17 of Benin’s Constitution states that “every person has the right to an education” while according to Article 8, the government has an obligation to provide its citizens with equal access to education, culture, information, job training and employment. Article 9 covers similar ground by stipulating that every human being has the right to self-determination in all matters, including intellectual matters. The ideals expressed in these sections of the Constitution are made more concrete by Article 13’s mandate for the government “to provide for the education of young people through mandatory enrollment in public schools and by providing free public education.”

Unfortunately, there is a considerable discrepancy between the language of the Constitution and actual practice. For example, in 1995, 44% of school-age girls were enrolled in primary school, compared to 88% of boys. In secondary schools, the enrollment for girls was 7%, compared with 17% for boys.²⁵⁰ The primary reason for this disparity is that girls and women do not have the same access to education as boys and men. As a result, the female illiteracy rate is 74%, while it is 51% for males.²⁵¹

Images of women in society constitute a major obstacle to girls’ access to education: women are perceived principally in their roles as wives and mothers. In addition, girls are often precluded from attending school because they must work at home with their mothers. The educational system as it now stands actually serves to increase disparities between men and women (as well as between rural and urban areas) and is thereby perpetuating severe societal inequalities. Only 36% of women have completed their primary education.²⁵² Due to this low level of education, more women work in the informal sector of the economy (e.g., hairdressing, sewing, and small businesses) than in the formal sector with its skilled positions.

D. RIGHT TO PHYSICAL INTEGRITY

1. Rape

In Benin, rape is a crime defined in the Penal Code as an act whereby a man has sexual relations with a woman against her will—regardless of whether the lack of consent results from

physical violence or emotional abuse, or from any other means of duress or surprise.²⁵³ In the “Bouvenet” Penal Code, adopted by decree on May 6, 1877 and still in force, the punishment for rape is forced labor. If the victim of the crime is a child under the age of 13, the punishment is the maximum period of forced labor. Furthermore, anyone who commits or attempts to commit indecent assault, regardless of the victim’s gender, is subject to imprisonment. If the victim of indecent assault is a child under the age of 13, the crime is punishable by a period of forced labor.

Beninese law does not recognize marital rape. However, such rape does occur, particularly in cases of forced marriages and the abduction of girls. Cases of incest also occur in some families. Incest is illegal and the perpetrators are subject to criminal penalty.

2. Domestic Violence

Domestic violence, in the form of mental or physical abuse, is common in Benin. Wife beating, in fact, is accepted as a norm. Article 127 of the *Coutumier du Dahomey* is quite explicit: “The woman has no legal power; she is part of the man’s property and his estate.” Women’s inferiority to men is, in essence, codified.

Certain traditional practices constitute forms of mental violence against women. The ancient practice of forced marriage, which is still prevalent, for example, is a form of violence against girls who oppose it. Ceremonies and confinement rituals imposed on widows are also essentially abusive in nature. According to custom, widows must remain in seclusion for two to three months. During this period, they may not comb their hair, wash, wear perfume or leave the house of the deceased in daylight hours. (Violence against women and girls also occurs in the form of female genital mutilation or circumcision, which, as noted elsewhere in these pages, is a common practice in Benin.)

Several articles of the Penal Code deal with violence and assault. According to the Code, in order for assault to be considered a crime or misdemeanor, it must be of a severe nature, either in and of itself, or because of its repercussions. If it is mild, it is considered only a contravention or minor offense. It is up to the given judge to determine the severity of all crimes within his jurisdiction.

The Penal Code also states that “any individual who inflicts injury or blows or commits any other violence or assault, if these sorts of violence result in illness or personal disability lasting more than 20 days, shall be punishable by two to five years in prison and a fine of 4,000 (U.S.\$6.58) to 480,000 CFA francs (U.S.\$789.49).” However, Article 311 also holds “that if this violence and assault have not caused any illness or personal dis-

ability as stipulated in Article 309, the penalty shall be only six days to two years in prison.”

3. Sexual Harassment

There are no laws regarding sexual harassment in Benin.

v. Focusing on the Rights of a Special Group: Female Minors and Adolescents

The reproductive health needs of adolescents are often unrecognized or neglected. Because early pregnancy has disastrous consequences for the health of mothers and children, it is important to study the reproductive lives of adolescents between 15 and 19 years old.

In Benin, teenage girls comprise 17.3% of the population. In addition, nearly half the population (4.9 million inhabitants) is under age 15.²⁵⁴ According to the 1996 DHS, pregnancies occur at a very young age—for the 15 to 19 age group, the fertility rate is 123 per 1000.²⁵⁵ It is thus particularly important to meet the reproductive health needs of this segment of society.

A. REPRODUCTIVE HEALTH OF FEMALE MINORS AND ADOLESCENTS

It is notable that over one quarter of female adolescents (26%) have already begun their reproductive lives: nearly 20% have at least had one child, and 7% are pregnant with a first child.²⁵⁶ Nearly twice as many adolescent girls have begun their reproductive lives in rural areas as in urban areas (33% versus 19%).²⁵⁷ There is also a strong correlation between education and the age at which an adolescent girl begins her reproductive life: as education levels rise, the percentage of adolescent girls who have begun their reproductive lives decreases. Overall, adolescents from age 10 to 20 account for nearly 12% of total fertility in Benin.²⁵⁸

Women in Benin also begin engaging in sexual activity at a relatively young age. Thus, among women between the ages of 25 and 49, 16% had their first sexual relations at 15 years, 60% by age 18, and 95% by age 25.²⁵⁹ 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 24.²⁶⁰

B. FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION OF MINORS AND ADOLESCENTS

In Benin, female circumcision/female genital mutilation (FC/FGM) is performed on young girls, teenagers and women

up to age 30. Studies indicate that between 30% and 50% of Beninese women are subjected to this practice, especially in the northern provinces.²⁶¹ The age at excision varies, depending on the region.²⁶² In some populations, it is between ages five and 10, in others between six and eight, and in still others it varies from 15 to 20 or older.²⁶³ The government is now cooperating with the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children to eliminate this practice by funding locally-produced posters and leaflets for distribution in public health clinics.²⁶⁴

C. MARRIAGE OF FEMALE MINORS AND ADOLESCENTS

The age at first marriage or first sexual relationship has a significant effect on a woman's reproductive behavior, as well as on her reproductive health and her social status. Generally, marriage of a minor results in early pregnancy. Early pregnancy, in turn, contributes significantly to both maternal mortality and school drop-out rate. It also constitutes a major risk factor for the children born to these young mothers.²⁶⁵

In light of these risks, the Beninese legislature has expressly determined a minimum age at first marriage. According to the provisions of the Civil Code, men under the age of 18 and women under the age of 15 may not enter into marriage. In the *Coutumier du Dahomey*, by contrast, girls aged 14 may marry. (And, as noted earlier, in certain ethnic groups, when a girl turns seven she is taken to her in-laws to become integrated into the family.)

In practice, the age at first marriage is usually 15 to 17 in rural areas, and 18 in urban areas.²⁶⁶ It is worth noting the early age at first marriage for girls, especially in rural areas, where it is not uncommon for husbands to be forced on girls aged 12 to 15 and, in some regions, on newborn girls. The 1996 DHS indicates that the median age at first marriage ranged from age 17.9 for women of older generations (45 to 49, at the time of the survey), to 18.8 for women aged 20 to 24 at the time of the survey.²⁶⁷ It thus appears that women today are marrying at a later age than previous generations.

The 1996 DHS also indicates a clear correlation between the level of education and the age at first marriage: regardless of the age group, the higher the education level, the higher the median age at first marriage. More specifically, for women aged 25-49 with no education, the median marriage age is 18.0; for those with primary education, it is 19.3; and for those with secondary or higher education, it is 23.²⁶⁸

D. EDUCATION FOR FEMALE MINORS AND ADOLESCENTS

The main barrier to girls' access to education is cultural. Parents believe that educated girls destroy the foundations of both the

family and society because they no longer respect tradition. Moreover, for parents with a low level of education, female adolescents are an important source of income. Girls often help their mothers in domestic, commercial and other productive activities. In addition, certain constraints linked to the educational system also discourage girls and their parents from pursuing an education: educational content ill-suited to the students' particular cultural background and needs, as well as the high numbers of failing students.

The consequences of these cultural and institutional impediments is apparent in the stark disparity between girls and boys with regard to school attendance. In 1992, for every two boys enrolled in school, there was only one girl. To remedy this situation, the government has adopted a policy aimed at improving the education of children between the ages of five and 14, a policy that has met with some degree of success: primary school enrollment of girls was 33.92% in 1992—in 1996, 42.71%.²⁶⁹ Such results are certainly in keeping with the objectives of Benin's decade of development in favor of the child, which grew out of the World Summit on Children (September 1990): to increase the overall school enrollment rate from 60% to 78%; increase the overall school enrollment 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 and establish the conditions that favor the education of girls; and improve the quality of teaching at the primary school level.²⁷⁰

E. SEXUALITY EDUCATION FOR FEMALE MINORS AND ADOLESCENTS

The Population Policy Declaration calls for special outreach to adolescent girls. Clinics affiliated with the Beninese Association for Family Planning sponsor innovative information, education and communication (IEC) projects such as signs, public notices, educational puppets and posters in schools. In addition, the Beninese Association for Social Marketing, in conjunction with other agencies, now publishes a newsletter entitled *"Amour et Vie."*

Furthermore, sexuality education programs are starting to become available to young people. Little by little, sexuality education is being integrated into the school system through "Education, Population, Environment, and Development" (EPED), a program initiated by the government with the participation of UNFPA, which places professionals in schools to train teachers on these subjects. Out-of-school youth have access to the same information by means of awareness campaigns initiated by the Ministry of Health, NGOs, the media, or from their peers.

Still, legal barriers stand in the way of a comprehensive sex-

uality education policy for adolescents. The 1920 law that prohibits abortion and contraceptive advertising is still in effect. Moreover, the political commitment to sexuality education is weak, as evidenced by an insufficient IEC campaign directed at decision makers, religious and traditional leaders, and custodians of tradition.

F. SEXUAL OFFENSES AGAINST FEMALE MINORS AND ADOLESCENTS

Having ratified the 1989 Convention on the Rights of the Child, Benin has committed itself to ensuring that children have access to information about their social welfare and their physical and mental health. It has also pledged to protect children from all forms of physical and mental abuse, attack, and brutality, including sexual violence.

Without a doubt, statutes exist in Benin to protect girls and young women from such violence. Sexual offenses against minors are punishable by a sentence of up to three years in prison and a substantial fine. Both abduction of a minor and forced marriage constitute a punishable offense. Punishment for the latter is two to five years in prison, plus a fine.²⁷¹ Similarly, the Penal Code provides that “[w]hoever commits the crime of rape will be punished by a period of hard labor” (usually 10 to 20 years).²⁷² If the crime is committed against a child under the age of 13, the perpetrator is sentenced to the maximum period of hard labor. The Penal Code further provides that whoever commits indecent assault, consummated or attempted, with violence, against an individual of either sex will be punished by imprisonment.²⁷³ Article 1382 of the Civil Code also stipulates that “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.”

The problem of protecting female minors and adolescents arises, then, because the government does not adequately enforce the existing laws. Although the *Brigade des Mineurs* handles cases involving sexual violence against minors—even doing so anonymously—the current institutional and legal system does not facilitate implementation of the law, even where it exists.

ENDNOTES

1. DEUXIÈME RECENSEMENT DE LA POPULATION ET DE L'HABITAT (1992)[hereinafter, RGPH2].

2. Jonathan S. Pearlroth, *The Legal System of Benin*, in MODERN LEGAL SYSTEMS CYCLOPEDIA 6.40.3, 6.40.6 (1990).

3. *Id.*

4. *Id.*

5. Jessie Matthews, *Chronology*, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD X (Albert P. Blaustein & Gilbert H. Flanz, eds, 1993).

6. *The Legal System of Benin*, *supra* note 2, 6.40.7.

7. *Chronology*, *supra* note 5.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. Filip Reyntjens, *The Winds of change: Political and Constitutional Evolution in Francophone Africa, 1990-1991*, 35 JOURNAL OF AFRICAN LAW 44, 49 (1991).

13. *Id.*

14. *Chronology*, *supra* note 5.

15. U.S. DEP. OF STATE, BUR. OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, BENIN COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1997 (January 1998).

16. World Factbook page on Benin (last visited 13 February, 1998), <<http://www.odci.gov/cia/publications/nsolo/factbook/bn.htm>>.

17. *Id.*

18. UNITED NATIONS POPULATION FUND (UNFPA), THE STATE OF WORLD POPULATION, at 70 (1997).

19. UNITED NATIONS, THE WORLD'S WOMEN, at 23 (1995).

20. RGPH2, *supra* note 1.

21. *Id.*

22. World Factbook page on Benin, *supra* note 16.

23. MINISTÈRE DU PLAN, DE LA RESTRUCTURATION ÉCONOMIQUE ET DE LA PROMOTION DE L'EMPLOI, INSTITUT NATIONAL DE LA STATISTIQUE ET DE L'ANALYSE ÉCONOMIQUE, BUREAU CENTRAL DU RECENSEMENT, ENQUÊTE DÉMOGRAPHIQUE ET DE SANTÉ, at 1 (1996)[hereinafter, 1996 DHS].

24. Law No. 90-32 of 11 December, 1990, Constitution of the Republic of Benin, TITLE 10, art. 151, translated in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Albert P. Blaustein & Gilbert H. Flanz, eds., 1993)[hereinafter, BENIN CONST.].

25. *Chronology*, *supra* note 5.

26. BENIN CONST., TITLE I, Arts. 1-2.

27. *Id.*, TITLE III, Art. 42.

28. *Id.*, TITLE III, Art. 41.

29. *Id.*, TITLE III, Art. 54.

30. *Id.*, TITLE III, Art. 55.

31. *Id.*, TITLE III, Art. 54.

32. *Id.*, TITLE III, Arts. 60, 61.

33. *Id.*, TITLE III, Art. 57.

34. *Id.*, TITLE IV, Art. 100.

35. *Id.*, TITLE IV, Art. 100, 102.

36. *Id.*, TITLE IV, Art. 58.

37. *Id.*, TITLE IV, Art. 79.

38. *Id.*, TITLE IV, Art. 80.

39. *Id.*, TITLE IV, Arts., 98, 101, 110.

40. *Id.*, TITLE IV, Art. 98.

41. *Id.*, TITLE IV, Art. 97.

42. *Id.*

43. *Id.*, TITLE III, Art. 57.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*, TITLE V, Art. 117.

48. *Id.*

49. *Id.*

50. *Id.*, TITLE V, Art. 121.

51. *Id.*, TITLE V, Art. 122.

52. *Id.*, TITLE V, Art. 115.

53. *Id.*

54. *Id.*, TITLE VI, Art. 131.

55. *Id.*

56. *Id.*

57. *Id.*, TITLE VI, Art. 132.

58. *Id.*

59. *Id.*, TITLE VI, Art. 136.

60. *Id.*, TITLE VI, Art. 135.

61. Law No. 64-28 of 29 December, 1964 relative to the organization of the judiciary in Dahomey.

62. ASSOCIATION DES FEMMES JURISTES DU BENIN, GUIDE JURIDIQUE DE LA FEMME BÉNOISE, at 27.

63. Decision of the Constitutional Court, DCC 96-063 of 26 September, 1996 relative to the Coutumier, Circular AP 128 of 19 March, 1931.

64. BENIN CONST., TITLE VII, Art. 139.
65. *Id.*
66. *Id.*
67. *Id.*, TITLE VIII, Art. 142.
68. *Id.*
69. *Id.*, TITLE IX, Art. 147.
70. *Human Rights International Instruments*, 39 JOURNAL OF AFRICAN LAW 238 (1995).
71. BENIN CONST., TITLE II, Arts. 7-40.
72. *Id.*, TITLE II, Art. 15.
73. *Id.*, TITLE II, Art. 26.
74. *Id.*
75. *Id.*, TITLE II, Arts. 12, 30, 27.
76. *Id.*, TITLE II, Art. 7.
77. THOMAS H. REYNOLDS AND ARTURO A. FLORES: CURRENT SOURCES OF CODES AND LEGISLATION IN JURISDICTIONS OF THE WORLD; BENIN 3 (1993 and 1996 Editions).
78. *Id.*
79. Decision of the Constitutional Court on the Coutumier, Circular AP 128 of March 19 1931, *supra* note 63.
80. BENIN CONST., TITLE II, Art. 7.
81. African Charter on Human and People's Rights, *adopted* 18 June 1981, Art. 16 [Appendix to the BENIN CONST.].
82. INTERNATIONAL PLANNED PARENTHOOD FEDERATION, ELIMINATION DES BARRIÈRES JURIDIQUES À LA SANTÉ SEXUELLE ET REPRODUCTIVE EN AFRIQUE FRANCOPHONE, at 7 (March 1997).
83. Grace d'Almeida Adamon, Symposium sur l'élimination des barrières juridiques à la santé sexuelle et de la reproduction dans les pays d'Afrique francophone, at 16 (March 24-26, 1997) (unpublished document from the files of the CRLP) [hereinafter, IPPF Symposium].
84. MINISTÈRE DE LA SANTÉ, DE LA PROMOTION SOCIALE, ET DE LA CONDITION FÉMININE (MSPSCF), POLITIQUES ET STRATÉGIES NATIONALES DE DÉVELOPPEMENT DU SECTEUR SANTÉ, 1997 - 2000, at 4 (March 1997).
85. *Id.*, at 62.
86. UNITED NATIONS FUND FOR POPULATION ACTIVITIES (UNFPA), REPORT ON THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, A/CONF.171/13 (October 18, 1994).
87. MINISTÈRE DE LA SANTÉ PUBLIQUE, DIRECTION DE LA SANTÉ FAMILIALE, SANTÉ FAMILIALE AU BÉNIN - POLITIQUE, NORMES ET STANDARDS, at 10 (April 1999).
88. *Id.*
89. *Id.*, at 11-12.
90. Decree No. 94-145 of May 26, 1994, 6 *Journal Officiel* [Official Gazette] of the Republic of Benin, at 171 (March 15, 1995) *translated in* 47 INTERNATIONAL DIGEST OF HEALTH LEGISLATION (1996).
91. *Id.*
92. *Id.*
93. *Id.*
94. POLITIQUES ET STRATÉGIES NATIONALES DE DÉVELOPPEMENT DU SECTEUR SANTÉ, *supra* note 84, at 3.
95. *Id.*
96. *Id.*, at 4.
97. *Id.*
98. 47 INTERNATIONAL DIGEST OF HEALTH LEGISLATION (1996).
99. *Id.*
100. Decree No. 94-145 of May 26, 1994 providing the organization, allocation and operation of the Ministry of Health, *supra* note 90.
101. IPPF Symposium, *supra* note 83, at 18.
102. POLITIQUES ET STRATÉGIES NATIONALES DE DÉVELOPPEMENT DU SECTEUR SANTÉ, *supra* note 84, at 15.
103. UNFPA, RAPPORT SUR LE SOUS-PROGRAMME EN SANTÉ REPRODUCTIVE AU BÉNIN, at 4 (1997).
104. POLITIQUES ET STRATÉGIES NATIONALES DE DÉVELOPPEMENT DU SECTEUR SANTÉ, *supra* note 84, at 22.
105. *Id.*
106. *Id.*
107. *Id.*
108. *Id.*
109. *Id.*, at 24.
110. TABLEAU DE BORD SOCIAL, PROFIL SOCIAL ET INDICATEURS DU DÉVELOPPEMENT HUMAIN, TABLEAU No. 3, at 53 (July 1997).
111. *Id.*, TABLEAU No. 49, at 77.
112. *Id.*, TABLEAU No. 47, at 76.
113. *Id.*, TABLEAU No. 62, at 83.
114. POLITIQUES ET STRATÉGIES NATIONALES DE DÉVELOPPEMENT DU SECTEUR SANTÉ, *supra* note 84, at 38.
115. RAPPORT SUR LE SOUS-PROGRAMME EN SANTÉ REPRODUCTIVE AU BÉNIN, *supra* note 103, at 3.
116. POLITIQUES ET STRATÉGIES NATIONALES DE DÉVELOPPEMENT DU SECTEUR SANTÉ, *supra* note 84, at 14.
117. *Id.*
118. *Id.*, at 14.
119. *Id.*, at 26.
120. *Id.*
121. Order No. 73-38 of April 21, 1973 establishing and organizing the National Orders of Physicians, Pharmacists, Dentists and Midwives, TITLE I, Chapter I, Art. 2.
122. 25 INTERNATIONAL DIGEST OF HEALTH LEGISLATION 89 (1974).
123. Order No. 73-38, *supra* note 121, TITLE I, Chapter I, Art. 3.
124. *Id.*, TITLE I, Chapter I, Art. 4.
125. *Id.*, TITLE I, Chapter I, Art. 5.
126. *Id.*, TITLE I, Chapter I, Arts. 9, 11.
127. *Id.*, TITLE I, Chapter I, Art. 13.
128. *Id.*, TITLE I, Chapter I, Art. 17, ¶ 1.
129. *Id.*, TITLE I, Chapter I, Art. 17, ¶ 2.
130. *Id.*, TITLE I, Chapter I, Art. 20.
131. *Id.*
132. BENIN CONST., TITLE II, Art. 8.
133. *Id.*
134. MINISTÈRE DU PLAN, DE LA RESTRUCTURATION ECONOMIQUE ET DE LA PROMOTION DE L'EMPLOI (MPREPE), DÉCLARATION DE POLITIQUE DE POPULATION DE LA RÉPUBLIQUE DU BÉNIN, at 47 (Cotonou, May 2, 1996).
135. *Id.*, at 47.
136. *Id.*, at 49.
137. *Id.*, at 63.
138. *Id.*, at 94.
139. *Id.*
140. BENIN CONST., TITLE II, Art. 26.
141. Bernard Wolf, *Anti-Contraception Laws in Sub-Saharan French-speaking Africa: Sources and Ramifications*, LAW AND POPULATION MONOGRAPH SERIES, No. 15, 21 (1971).
142. Decree no. 94-145 of May 26, 1994, *supra* note 90.
143. *Id.*
144. *Id.*, at 17.
145. *Id.*, at 18.
146. IPPF Symposium, *supra* note 83, at 18.
147. *Id.*
148. UNITED NATIONS, 1 ABORTION POLICIES: A GLOBAL REVIEW 51 (1992).
149. MOUFTAOU AMADOU-SANNI, LES OPINIONS ET COMPORTEMENTS RESPECTIFS DES CONJOINTS EN MATIÈRE DE FÉCONDITÉ ET DE PLANIFICATION FAMILIALE AU SUD-BÉNIN, at 19.
150. 1996 DHS, *supra* note 23, at 180.
151. *Id.*, at 60.
152. *Id.*
153. IPPF Symposium, *supra* note 83, at 18.
154. *Id.*, at 48.
155. *Id.*, at 54.
156. *Id.*
157. *Id.*
158. *Id.*, at 50.
159. *Id.*, at 48.
160. IPPF Symposium, *supra* note 83, at 7.
161. Law No. 1723 of July 31, 1920 prohibiting incitement to abortion and contraceptive propaganda, 278 Bulletin des Lois Repub. Franc. [OFFICIAL GAZETTE OF THE FRENCH REPUBLIC] (1920).
162. *Id.*
163. *Id.*, at 12.
164. UNITED NATIONS FUND FOR POPULATION ACTIVITIES (UNFPA), SURVEY OF CONTRACEPTIVE LAWS: COUNTRY PROFILES, CHECKLISTS, AND SUMMARIES 11-12 (1976).

165. IPPF Symposium, *supra* note 83, at 17.
166. PROF. EUSÈBE ALIHONOU, DEPARTMENT HEAD, CLINIQUE UNIVERSITAIRE DE GYNÉCOLOGIE ET OBSTÉTRIQUE, PMI/PF; LE CONCEPT DE SANTÉ SEXUELLE, DE LA REPRODUCTION FACE AUX LÉGISLATIONS NATIONALES, at 15.
167. PENAL CODE, Art. 317, ¶1.
168. *Id.*, Art. 317, ¶2.
169. *Id.*, Art. 317, ¶3.
170. *Id.*, Art. 317, ¶4.
171. DÉCLARATION DE POLITIQUE DE POPULATION, *supra* note 134, at 47.
172. *Id.*
173. Law of July 31, 1920, *supra* note 161.
174. OFFICE OF ASYLUM AFFAIRS, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, UNITED STATES DEPARTMENT OF STATE, FEMALE GENITAL MUTILATION (FGM) IN BENIN, at 1 (Sept. 15, 1997) [hereinafter, FEMALE GENITAL MUTILATION (FGM) IN BENIN].
175. *Id.*
176. *Id.*
177. BENIN CONST., TITLE II, Art. 15.
178. *Id.*, TITLE II, Art. 18.
179. PENAL CODE, Art. 309.
180. *Id.*, art 312.
181. FEMALE GENITAL MUTILATION (FGM) IN BENIN, *supra* note 174, at 4.
182. AMNESTY INTERNATIONAL, FEMALE GENITAL MUTILATION IN AFRICA: INFORMATION BY COUNTRY, at 1 (1997) [hereinafter, FEMALE GENITAL MUTILATION IN AFRICA: INFORMATION BY COUNTRY].
183. FEMALE GENITAL MUTILATION (FGM) IN BENIN, *supra* note 174, at 3.
184. *Id.*, at 4.
185. UNAIDS, REPORT ON THE GLOBAL HIV/AIDS EPIDEMIC, at 64 (June 1998).
186. *Id.*
187. *Id.*
188. *Id.*, at 67.
189. REVUE LES ECHOS DU PROGRAMME SIDA, VOLET EPIDEMIOLOGIQUE, at 17 (December 1997 and January 1998).
190. BENIN CONST., August 9, 1990.
191. Sikiratou Aguemou, *L'Apport de l'article 124 de la Loi Fondamentale au Statut Matrimonial de la Femme en République de Bénin*, 12 REVUE BÉNINOISE DES SCIENCES JURIDIQUES ET ADMINISTRATIVES 13, 16 (June 1989) [hereinafter, RBSJA].
192. *Coutumier du Dahomey*, Art. 24.
193. *Id.*, Art. 36.
194. GUIDE JURIDIQUE DE LA FEMME BÉNINOISE, *supra* note 62, at 35.
195. *Id.*, at 49.
196. RBSJA, *supra* note 191, at 14.
197. *Id.*, at 15.
198. *Id.*, at 16.
199. *Id.*, at 15.
200. *Id.*, at 18.
201. *Coutumier du Dahomey*, Art. 57.
202. RBSJA, *supra* note 191, at 16.
203. *Id.*
204. *Id.*
205. *Id.*
206. Results of a survey conducted by UNDP (1997).
207. RBSJA, *supra* note 191, at 16.
208. GUIDE JURIDIQUE DE LA FEMME BÉNINOISE, *supra* note 62, at 35.
209. RBSJA, *supra* note 191, at 18.
210. *Id.*
211. *Coutumier du Dahomey*, Art. 149.
212. RBSJA, *supra* note 191, at 18.
213. *Coutumier du Dahomey*, Art. 154.
214. RBSJA, *supra* note 191, at 18.
215. *Id.*
216. CIVIL CODE, Arts. 229–332.
217. RBSJA, *supra* note 191, at 19.
218. *Id.*
219. *Id.*
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.*
224. *Id.*
225. *Id.*
226. *Id.*
227. *Id.*
228. *Id.*
229. *Id.*, at 20.
230. *Id.*
231. *Coutumier du Dahomey*, Art. 222.
232. Law No. 65–25 of August 1965 relative to the Property ownership system in Benin, Art. 32, ¶1.
233. *Id.*, Art. 256.
234. *Coutumier du Dahomey*, Art. 162.
235. Law No. 72–3 January 3, 1972, Rights of the surviving spouse, Art. 765.
236. Law No. 98–004 January 27, 1999 relative to the Labor Code, Art. 4.
237. Labor Code, TITLE V, Chapter I, Art. 208.
238. *Id.*, TITLE I, Art. 3.
239. *Id.*, TITLE IV, Chapter II, Art. 170, ¶2.
240. *Id.*, TITLE IV, Chapter II, Art. 170, ¶4.
241. *Id.*, TITLE IV, Chapter II, Art. 170, ¶5.
242. *Id.*, TITLE IV, Chapter II, Art. 171.
243. *Id.*, TITLE IV, Chapter II, Art. 173.
244. *Id.*, TITLE IV, Chapter II, Art. 168.
245. *Id.*, TITLE IV, Chapter I, Section 2, Art. 153.
246. PROMOTION DE LA FEMME, LIVRE BLANC.
247. LABOR CODE, TITLE IV, Chapter II, Art. 166.
248. BENIN CONST., Art. 30.
249. WORLD BANK, WOMEN IN DEVELOPMENT UNIT (July 1993).
250. THE STATE OF WORLD POPULATION, *supra* note 18, at 67.
251. WORLD BANK, WORLD DEVELOPMENT REPORT, at 192 (1998/99).
252. *Id.*
253. PENAL CODE, Art. 331.
254. 1996 DHS, *supra* note 23, at 11.
255. *Id.*, at 35.
256. *Id.*, at 42.
257. *Id.*, at 43.
258. RAPPORT SUR LE SOUS-PROGRAMME EN SANTÉ REPRODUCTIVE AU BÉNIN, *supra* note 103, at 2.
259. *Id.*, at 82.
260. *Id.*, at 83.
261. Inter-African Committee for the Prevention of Female Genital Mutilation.
262. FEMALE GENITAL MUTILATION (FGM) IN BÉNIN, *supra* note 174, at 1.
263. *Id.*
264. *Id.*, at 2–3.
265. UNICEF, ENFANTS ET FEMMES, AVENIR DU BÉNIN, at 160 (June 1998).
266. INSAE, ENQUÊTE SUR LA FÉCONDITÉ AU BÉNIN (1992).
267. 1996 DHS, *supra* note 23, at 79.
268. *Id.*, at 80.
269. TABLEAU DE BORD SOCIAL, TABLEAU NO. 12, *supra* note 110, at 101.
270. ENFANTS ET FEMMES, AVENIR DU BÉNIN, *supra* note 265, at 125.
271. BOUVENET PENAL CODE, Art. 341, subparagraph 4.
272. *Id.*, art. 332.
273. *Id.*, art. 312.