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UPR Submission Benin

To the UPR Secretariat,

The International Trade Union Confederation (ITUC), representing 200 million workers in 163 countries, would like to make a written contribution to the Universal Periodic Review of Benin (4th cycle) during the 42nd session in 2023.

Yours sincerely,



Sharan Burrow
General Secretary
International Trade Union Confederation (ITUC)

Submitting organization

The International Trade Union Confederation (ITUC) represents 200 million workers in 163 countries and territories and has 332 national affiliates. The ITUC's primary mission is the promotion and defense of workers' rights and interests through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. The ITUC is governed by four-yearly world congresses, General Council, and Executive Bureau. The ITUC has close relations with the Global Union Federations and the Trade Union Advisory Committee to the OECD (TUAC). It works closely with the International Labour Organization and other UN Specialized Agencies.

Failure to afford freedom of association and collective bargaining

Right to form and join trade unions

The law in Benin contains provisions imposing numerous barriers to the free exercise of the right to form and join trade unions, including restrictions on the right to establish trade unions without previous authorization; Restrictions on the right to freely determine trade union structure and composition; Restrictions on the right to freely draw up trade union constitutions and rules, to organise activities and formulate programmes and Exclusions from the right to form and join trade unions.

[Restrictions on the right to establish trade unions without previous authorization] The law contains provisions allowing the authorities to drag the registration process of a trade union or to refuse registration on ambiguous grounds. Section 83 of Labour Code requires trade unions to deposit their by-laws (statutes), as well as other detailed information (eg. a list specifying the names, nationality, profession, domicile and quality of the members responsible for their management or their administration) with numerous authorities, including the court of first instance, the Department of the Interior, the Ministry of Labour, and the local administrative authority. There is no recourse to independent body in case of refusal of registration.

[Restrictions on the right to freely draw up trade union constitutions and rules, to organise activities and formulate programmes] Sections 80 and 81 of the Labour Code restrict the right to freely draw up trade union constitutions and rules by requiring that trade union statutes and operating rules focus exclusively on the study and advocacy of the collective and individual rights, as well as the material and moral interests, of the people and professions covered by their statutes. Further, Sections 80 and 81 of the Labour Code require that trade union activities must focus exclusively on the study and advocacy of the collective and individual rights, as well as the material and moral interests, of the people and professions covered by their statutes.

[Exclusions from the right to form and join trade unions] The law in Benin restricts the right to form and join trade unions of several categories of workers, including minor workers of less than 15 years of age (Section 79 of the Labour Code), permanent employees in public administration (Section 2 of the Labour Code) and seafarers (Act No. 2010–11 issuing the Maritime Code). The ILO CFA considers that these categories of workers should be allowed to form or join trade union organizations of their own choosing (2018 ILO CFA Digest, paras 417; 377; 334).

The law should be amended to ensure that trade union registration is not hindered by prior authorization or approval by authorities requires for the establishment of a union (2018 ILO CFA Digest, para 419). Clear grounds should be established on which trade union registration may be refused and recourse to an independent body in the event of administrative refusal to register a trade union should be provided. The law should be amended to ensure that trade unions can freely draw up their constitutions and rules and freely organize their activities and formulate programs. The law should be revised to ensure the right to form and join trade unions to minor workers, permanent employees in public administration and seafarers.

Right to collective bargaining

The right to collective bargaining is recognised by law but strictly regulated and restricted in many aspects. Restrictions include excessive requirements in respect to trade unions' representativity or minimum number of members required to bargaining collectively and absence of recourse to an independent body; restriction of the free and voluntary bargaining by compulsory conciliation and arbitration and power of the authorities to intervene in preparation of collective agreements.

[Excessive requirements in respect to trade unions' representativity or minimum number of members required to bargaining collectively and absence of recourse to an independent body] Article 6 of Decree No. 2006-132 of 29 March 2006 provides that in order to be representative, the enterprise level union must obtain at least 40 per cent of the votes cast at the staff elections. Such high threshold is not conducive to harmonious industrial relations and does not promote collective bargaining in line with Article 4 of Convention No. 98, as it may result in a decrease in the number of workers covered by collective agreements (2018 ILO CFA Digest, para 1376). Further, no recourse to an independent body is established in relation to declarations made by the Minister regarding trade union representativeness.

[Restriction of the free and voluntary bargaining by compulsory conciliation and arbitration and power of the authorities to intervene in preparation of collective agreements] All collective disputes must be referred to the relevant authorities in accordance with Chapter 3 of Part VI of the Labour Code. Further, the authorities have power to intervene in the preparation of collective agreements (Section 122 of the Labour Code). It should be recalled that the ILO CFA repeatedly emphasized the importance of respecting the autonomy of the parties in the collective bargaining process so that the free and voluntary character thereof, established in Article 4 of Convention No. 98, is ensured (2018 ILO CFA Digest, para 1314).

The law should be amended to lower the requirements in respect to trade unions' representativity required to bargain collectively and to ensure recourse to an independent body responsible for declaring trade union representativeness. The law should be revised to ensure that conciliation and arbitration in case of collective bargaining and collective disputes is voluntary for the parties and that the authorities do not have excessive power to intervene in preparation of collective agreements.

Right to strike

The right to strike is recognised by law but restricted in several aspects. Barriers to lawful strike actions include exclusions from the right to strike, forcible requisitioning of workers

strikers who are not engaged in the provision of essential services in the strict sense of the term and prohibition of sympathy strikes.

[Exclusions from the right to strike] Section 2 of the Act No. 2001-09 on the exercise of the right to strike, as amended by Act No. 2018-34, excludes from the right to strike several categories of workers, including military personnel, paramilitary personnel (police, customs, water, forestry, hunting, etc.) and healthcare staff. These exclusions are not in accordance with Article 3 of Convention No. 87 which grants the right of workers' organizations to organize their activities. As observed by ILO CFA in numerous cases, the right to strike may only be restricted in case of workers in armed forces and the police, public servants "exercising authority in the name of the State" and workers in essential services in the strict sense of the term.

[Forcible requisitioning of workers strikers who are not engaged in the provision of essential services in the strict sense of the term] Article 13 of Part IV of Act No. 2001-09 of 21 June 2002 on exercise of the right to strike by Act No. 2018-34 requires that a minimum service be established in public or semi-public establishments, and private establishments relevant to essential services, with respect of any strike "which may cause serious damage to peace, security, justice, the health of the population or the public finances of the State". Article 17 allows for requisitioning of these workers in the event of a strike.

[Restrictions on the duration of the strike] According to new Section 13 of the Act No. 2001-09 of 21 June 2002 as amended by Act No. 2018-34, strikes may not exceed ten days in any one year; seven days in a six-month period; and two days in the same month. Regardless of the duration, the stoppage of work during a day shall be considered as a full day of strike action.. These provisions excessively restrict the duration of the strike. According to ILO CEACR, in its review of Benin's compliance with ILO Convention No. 87, workers and their organizations should be able to call a strike for an indefinite period if they so wish.

[Prohibition of sympathy strikes] Section 2 of the Act No. 2001-09 of 21 June 2002, as amended by Act No. 2018-34, prohibits sympathy strikes. Workers should be able to take such action, provided that the initial strike they are supporting is itself lawful (2012 ILO General Survey, paragraph 125).

The law should be amended to ensure the right to strike to all workers who are not exercising authority in the name of the State or who are not engaged in the provision of essential services in the strict sense of the term, that workers can organize a strike of indefinite duration and that workers are able to call a sympathy strike, in case the initial strike they are supporting is itself lawful.

Failure to eliminate worst forms of child labour

Restrictions on the right to join and form trade unions and to bargain collectively affect trade unions' ability to effectively represent the rights and interests of workers. As a consequence, violations of fundamental labour rights persist in Benin, including continuing presence of worst forms of child labour.

Several international supervisory bodies expressed concern over the continuing situation of vidomégon children exposed to various forms of exploitation in host families as well as

other cases of worst forms of child labour, including sale and trafficking of children, as well as failure to prevent the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour, including for children working in mines and quarries.

[*Worst forms of child labour. Forced labour. Vidomégon children*] The ILO supervisory bodies have repeatedly noted with concern, most recently in 2021, that *vidomégon* children, namely children who are placed in the home of a third party by their parents or by an intermediary in order to provide them with education and work, face various forms of exploitation in host families (2021 ILO CEACR Report, published 2022). The Committee further noted that although section 219 of the Children's Code (Act No. 2015-08 of 8 December 2015) establishes the obligation for the child placed in the family to attend school and prohibits the use of such children as domestic workers, numerous sources continue to report about persistent misuses of the placement of *vidomégon* children, who had become a source of financial and sometimes sexual exploitation. Accordingly, in its 2017 Report the Office of the United Nations High Commissioner for Human Rights noted that 90 per cent of *vidomégon* children do not go to school and that they are employed at markets and in the street trade, in addition to performing unpaid domestic tasks. The 2017 Report further indicated that young *vidomégon* girls, in addition to being exploited economically, were reportedly often victims of prostitution (A/HRC/WG.6/28/BEN/2, paragraph 38). In a similar way, other UN Treaty bodies have expressed deep concern about the persistence of harmful practices in Benin, such as *vidomégon*, and recommended to investigate and prosecute persons responsible for such harmful practices, including the CRC, in its concluding observations of 2018 (CRC/C/OPSC/BEN/CO/1, paragraphs 20(e), 21(e)). Identification of cases of labour exploitation of *vidomégon* children is hampered by the fact that according to the law in Benin labour inspectors cannot access households. The actions of the Government of Benin so far proved insufficient to protect children from all forms of forced labour or commercial sexual exploitation, particularly *vidomégon* children, contrary to Article 1 of the ILO Convention No. 182 which requires all Member States to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

The Government of Benin should take the necessary measures to ensure, as a matter of urgency, that thorough investigations and prosecutions are conducted of persons subjecting children under 18 years of age to forced labour or commercial sexual exploitation, particularly of *vidomégon* children, and take the necessary measures to ensure, as a matter of urgency, that sufficiently effective and dissuasive penalties are imposed in practice. The Government should also ensure access of labour inspectors to households.

[*Sale and trafficking of children*] Children in Benin continue to be exposed to the risk of trafficking for the purposes of sexual and labour exploitation. According to US TIP Report 2021 human trafficking in the country is predominantly internal and involves Beninese children from low-income families. Although human trafficking of children is prohibited in law (eg. Act No. 2006-04 of 10 April 2006 establishing conditions for the movement of young persons and penalties for the trafficking of children in the Republic of Benin and the Children's Code of 2015, sections 200–203 and 212) the Government continues to fail to present full statistical data on the number of investigations, prosecutions, convictions and penal sanctions imposed for trafficking of children, as noted by the ILO CEACR in 2021. Accordingly, the CRC, in its concluding observations of 2018, expressed concern about the

prevalence of cases of trafficking in children from and into neighbouring countries, particularly for domestic servitude and commercial sexual exploitation in cases of girls, and for forced labour in mines, quarries, markets and farms in cases of boys, especially in diamond-mining districts. The CRC further noted that the system in place for identifying child victims of sale and trafficking, is inadequate and inefficient (CRC/C/OPSC/BEN/CO/1, paragraphs 20(f), 32(a)). In this way, situation in Benin is not compliant with the obligation contained in Article 7 (1) of ILO Convention No. 182 which requires the Member States to take all necessary measures to ensure the effective elimination of worst forms of child labour, including child trafficking, including the provision and application of penal and other sanctions.

[*Children working in mines and quarries*] The Government of Benin continues to fail to prevent the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour, including for children working in mines and quarries (2021 ILO CEACR Report, published 2022). The Government of Benin fails to monitor the engagement of children in the worst form of child labour so no comprehensive statistical data is available. There is also no statistical data available on the number of children protected or removed from this hazardous type of work and to indicate the rehabilitation and social integration measures from which they have benefited. Of note, Article 7(2) of ILO Convention No. 182 requires Member States to take effective and time-bound measures to prevent the engagement of children in the worst forms of child labour, providing assistance for the removal of children from such labour and identify and reach out to children at special risk.

The Government of Benin should take effective measures to prevent the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour, including for children working in mines and quarries. The Government should also take effective measures to monitor the engagement of children in the worst form of child labour, including statistical data on the number of children protected or removed from this hazardous type of work and to indicate the rehabilitation and social integration measures from which they have benefited.

Conclusions

The Government of Benin has failed to take the necessary steps in order to bring its laws and practices into compliance with international human rights norms. Therefore, we request that during the UPR in 2023 Benin is called upon to take the following actions:

- Review the national laws including Labour Code, Decree No. 2006-132 and Act No. 2001-09 as amended by Act No. 2018-34, to ensure their full compliance with the relevant international labour standards, including ILO Conventions Nos. 87 and 98, by implementing the observations of the international monitoring bodies, including ILO CEACR;
- Ensure that thorough investigations and prosecutions are conducted of persons subjecting children under 18 years of age to forced labour or commercial sexual exploitation, as well as child trafficking, particularly of vidomégon children, as well as effective sanctions;
- Adopt law enabling labour inspectors to access households, including for the identification of worst forms of child labour, particularly of vidomégon children;

- Ensure implementation in practice of section 219 of the Children's Code (Act No. 2015-08 of 8 December 2015) that establishes the obligation for the child placed in the family to attend school and prohibits the use of such children as domestic workers;
- Take effective measures to prevent the engagement of children in the worst forms of child labour and providing assistance for the removal of children from such labour, including for children working in mines and quarries;
- Take effective measures to monitor the engagement of children in the worst form of child labour, including statistical data on the number of children protected or removed from this hazardous type of work and to indicate the rehabilitation and social integration measures from which they have benefited.