



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

BENIN

1. The Committee against Torture (“the Committee”) considered the second periodic report of Benin (CAT/C/BEN/2) at its 797th and 800th meetings, held on 15 and 16 November 2007 (CAT/C/SR.797 and 800), and adopted, at its 807th meeting on 22 November 2007 (CAT/C/SR.807), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the report of Benin, which follows the Committee’s general guidelines for the preparation of reports, and expresses its appreciation for the opportunity thus afforded to resume its dialogue with the State party. The Committee regrets, however, that the report was submitted with an eight-year delay and that the State party did not make the necessary efforts to implement all the recommendations made by the Committee during the consideration of the initial report of Benin, in 2001 (A/57/44, paras. 30 to 35).

3. The Committee commends the frankness of the report, which acknowledges shortcomings in the State party’s implementation of the Convention. The Committee appreciates the constructive dialogue established with the high-level delegation sent by the State party and notes with satisfaction the replies provided to the questions raised during the dialogue. Lastly, the Committee is gratified that national non-governmental organizations were present during the consideration of the report.

Positive aspects

4. The Committee welcomes the State party's efforts to reform its legal and institutional system. In particular, the Committee notes with satisfaction the following positive developments:

(a) The ratification by the State party, on 20 September 2006, of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention");

(b) The ratification by the State party, on 22 January 2002, of the Rome Statute of the International Criminal Court;

(c) The ratification by the State party, on 31 January 2005, of the two Optional Protocols to the Convention on the Rights of the Child;

(d) Recent efforts to strengthen the national legal framework, including:

(i) The publication of the full text of the Convention in the Official Journal on 5 September 2007;

(ii) The adoption on 30 January 2006 of Act No. 2006-04 on conditions for the displacement of minors and the suppression of child trafficking in Benin;

(iii) The adoption on 3 March 2003 of Act No. 2003-07 on the suppression of female genital mutilation in Benin.

5. The Committee commends the implementation of the 2005-2007 Plan for the Strengthening of the Legal and Judicial Systems (2005-2007) and the State party's efforts to improve conditions of detention with the support of the United Nations Development Programme.

B. Subjects of concern and recommendations

Definition of torture

6. Notwithstanding the Constitutional provisions prohibiting torture, the Committee regrets the absence of a definition of torture and of torture as a specific offence in the State party's criminal legislation, despite the Committee's recommendation to that effect during the consideration of the initial report of Benin in 2001. The Committee takes note, however, of the undertaking given by the delegation to include the definition of torture and characterize it as an offence in the draft Criminal Code (arts. 1 and 4).

The State party should take urgent measures to review its criminal legislation so as to include a definition of torture that covers all the elements contained in article 1 of the Convention, as well as provisions criminalizing acts of torture and appropriate penalties which take into account the grave nature of such acts.

Absolute prohibition of torture

7. The Committee is concerned that there is no clear provision in the State party's criminal legislation to ensure that the absolute prohibition against torture is non-derogable (arts. 2 and 15).

The State party should incorporate the principle of absolute prohibition of torture into its criminal legislation, which should provide that an order from a superior officer may not be invoked as a justification of torture, and prohibit the use of confessions obtained through torture.

Obligation to investigate and right to complain

8. The Committee is concerned about the existing provisions of the Code of Criminal Procedure on legal proceedings whereby such proceedings may be instituted only at the request of the Public Prosecutor's Office, following a complaint by the victim, which is clearly contrary to article 12 of the Convention (art. 12).

The State party should consider abrogating the system of discretionary prosecution in order to comply with article 12 of the Convention and to remove all doubt regarding the obligation of the competent authorities to institute, systematically and on their own initiative, without a prior complaint from the victim, objective and impartial inquiries wherever there is reasonable ground to believe that an act of torture has been committed.

9. The Committee regrets that persons suspected of having committed acts of torture have reportedly been protected by Act No. 90-028 of 9 October 1990 granting amnesty for acts, other than those covered by ordinary law, committed between 26 October 1972 and the date of promulgation of the Act, and deplores the resulting impunity (art. 12).

The State party should ensure that all allegations of acts of torture and ill-treatment are investigated, including those committed between 1972 and 1990, set up a truth commission to shed light on the allegations, and consider abrogating the Amnesty Act of 1990 with a view to prosecuting and punishing the authors of those acts.

10. The Committee is concerned at the lack of appropriate legislation and of any effective, independent mechanism to enable victims of torture and ill-treatment to complain and have their case examined promptly and impartially. The Committee also deplores the lack of victim and witness protection legislation and mechanisms (arts. 13 and 14).

The State party should establish a fully independent complaints mechanism for victims of torture and ensure that measures are adopted to afford adequate protection to all persons who report acts of torture or ill-treatment. The State party should also enhance the capacity of the standing committee for the compensation of victims of injury caused by the State, established by Decree No. 98-23 of 29 January 1998.

Non-refoulement

11. The Committee is concerned at the lack of a legislative framework regulating expulsion, refoulement and extradition. In addition, the Committee is particularly concerned at the fact that the State party's current expulsion, refoulement and extradition procedures and practices may expose individuals to the risk of torture (arts. 3 and 8).

The State party should adopt a legislative framework regulating expulsion, refoulement and extradition in fulfilment of its obligation under article 3 of the Convention. The State party should also take urgent measures to bring current expulsion, refoulement and extradition procedures and practices fully into line with article 3 of the Convention, in particular:

(a) Article 21 of the draft Criminal Code should be amended to include the "danger of being subjected to torture" as one of the grounds for the refusal of extradition, as required by article 3 of the Convention;

(b) The expulsion, refoulement and extradition of individuals, including undocumented individuals, should be decided by a court after careful assessment of the risk of torture in each case and should be subject to appeal with suspensive effect;

(c) The terms of judicial cooperation agreements signed with neighbouring countries should be revised so as to ensure that the transfer of detainees to another signatory State is carried out under a judicial procedure and in strict compliance with article 3 of the Convention.

Fundamental safeguards

12. The Committee notes with concern that the existing provisions of the Code of Criminal Procedure do not specifically provide for the right of access to a lawyer for persons held in police custody. Of equal concern to the Committee is the fact that a medical examination, which is carried out by a doctor designated by the public prosecutor, is permitted only by decision of the latter or at the request of the detainee. Lastly, the Committee regrets that defendants rarely request legal assistance (arts. 2 and 11).

The State party should reform the provisions of its Code of Criminal Procedure relating to police custody so as to ensure that persons held in custody are effectively protected from physical and mental harm. In particular, the draft Code of Criminal Procedure should guarantee the right to consult a lawyer and a doctor of one's choice and to contact family members, and should also include the principle of presumption of innocence and the obligation to inform all arrested persons of their right to receive legal assistance.

Administration of justice

13. The Committee notes with concern that the information received reveals flaws in the State party's justice administration system. There are allegations of widespread corruption among

judges and police and gendarmerie officers. The Committee is also concerned about the current provisions of the Code of Criminal Procedure empowering the public prosecutor to remove a judge from a case, which jeopardizes the independence of the judiciary (arts. 2 and 12).

The State party should take the necessary steps to remedy the shortcomings in the administration of justice, for instance by allocating adequate resources and continuing its efforts to combat corruption. It should also take steps to address the insufficient number of judges and consider reviewing the country's map of judicial districts. The State party should take effective measures to make the judiciary fully independent, in accordance with the related international standards.

14. The Committee regrets that, under Beninese criminal law, a minor aged over 13 may be sentenced to deprivation of liberty.

The State party should take the necessary measures to raise the age of criminal responsibility to an internationally acceptable level.

Universal jurisdiction

15. The Committee is concerned about the existing provisions of the Code of Criminal Procedure which do not enable the State party to establish and exercise its jurisdiction over acts of torture in accordance with the provisions of the Convention (arts. 6 and 8).

The State party should take the necessary measures to establish and exercise its jurisdiction over acts of torture when the alleged author of the offence is in Benin, either to extradite or to prosecute him or her, in accordance with the provisions of the Convention.

16. The Committee is concerned about information regarding the existence of an agreement between Benin and the United States of America whereby United States nationals in the territory of Benin cannot be transferred to the International Criminal Court to be tried for war crimes or crimes against humanity (art. 9).

The State party should take appropriate measures to review the terms of this agreement which prevents the transfer of United States nationals in the territory of Benin to the International Criminal Court, in accordance with the provisions of the Convention.

Systematic review of detention facilities and living conditions in prisons

17. The Committee regrets that, according to information received, some non-governmental organizations (NGOs) do not have systematic access to detention centres. The Committee takes note, however, of the undertaking given by the delegation to remedy the situation by granting NGOs permanent access to detention facilities. While welcoming the bill on the establishment of a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, the Committee regrets that no systematic inspection mechanism is currently operational in Benin (art. 11).

The State party should take appropriate measures to grant all NGOs permanent access to detention facilities, pursuant to the undertaking given by the delegation on this subject. The State party should also take the necessary steps to adopt the bill on the national prevention mechanism and to accelerate the process of its establishment.

18. While taking note of the efforts made by the State party to improve prison conditions, the Committee remains deeply concerned about living conditions in detention facilities. The Committee has received reports of overcrowding, corruption of prison officials by detainees, lack of hygiene and adequate food, prevalence of disease and lack of adequate health care. The Committee has also received reports that minors are not kept completely separate from adults and that accused persons are not kept separate from convicted persons (arts. 11 and 16).

Without waiting for the national prevention mechanism to be established, the State party should take urgent measures to bring conditions in detention centres into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The State party should allocate all the material, human and budgetary resources necessary for this purpose and give priority to:

- (a) Reducing overcrowding and the high number of prisoners in pretrial detention;**
- (b) Improving food and health care provision for detainees;**
- (c) Reorganizing prisons so that accused persons are detained separately from convicted persons and improving conditions of detention of minors, ensuring that they are detained separately from adults in all circumstances;**
- (d) Appropriate measures to put a definitive end to alleged corruption and ransom demands in prisons;**
- (e) Strengthening judicial supervision of conditions of detention.**

19. The Committee expresses concern at the deplorable conditions of detention of convicted prisoners on death row, which amount to cruel, inhuman or degrading treatment (art. 16).

The State party should take all necessary measures to improve the conditions of detention of prisoners on death row in order to guarantee their basic needs and rights. The State party should take urgent measures to establish a moratorium on executions and to commute death sentences. The Committee also wishes to be informed of the status of the bill on the abolition of the death penalty.

National Human Rights Commission

20. The Committee regrets that the Benin Human Rights Commission is no longer operational (arts. 11 and 13).

The State party should take steps to operationalize the Benin Human Rights Commission and make it conform to the Paris Principles.

Violence perpetrated by law enforcement officials

21. The Committee expresses its concern at allegations of beatings by law enforcement officials of the State party and regrets the lack of information on the extent of this practice (arts. 12 and 16).

The State party should send a clear message to law enforcement officials that violence and ill-treatment are unacceptable. It should, moreover, take the necessary steps to end this practice and to ensure that prompt, impartial and effective investigations are conducted into allegations of ill-treatment by law enforcement officials and that those responsible are prosecuted and punished with appropriate penalties.

Torture and cruel, inhuman or degrading treatment of children

22. While taking note of the State party's legislative efforts, in particular to eradicate ill-treatment of children, the Committee remains concerned about reports of trafficking, exploitation, prostitution, female genital mutilation, rape and killing of newborn babies. The Committee regrets the lack of statistical data on reports of violence against children and related convictions (arts. 1, 2, 12 and 16).

The State party should take effective measures to combat and eradicate torture and cruel, inhuman or degrading treatment by adopting a holistic approach to the problem. The State party should take all necessary measures to ensure strict implementation of the relevant legislation by prosecuting and punishing those responsible for such acts. The State party should consider setting up an observatory on the rights of the child, resume consideration of the bill on "vidomegons" and strengthen the system of care for child victims of violence.

23. While noting that the State party's legislation prohibits corporal punishment in schools (Circular No. 100/MEN/CAB of 1962), the Committee remains concerned about the absence of legislation prohibiting such punishment in the family and in institutions other than schools. The Committee is also concerned at the frequent use of this practice in education in Benin (art. 16).

The State party should extend legislation prohibiting corporal punishment to the family and to institutions other than schools. The State party should ensure that legislation prohibiting corporal punishment is strictly enforced and awareness-raising and educational campaigns should be conducted to that effect.

Violence against women

24. The Committee acknowledges the State party's efforts to strengthen the legal framework relating to violence against women and trafficking in women and regrets that the draft Criminal Code does not include a specific offence of domestic violence and trafficking in women. The Committee notes with concern reports of widespread violence against women, particularly trafficking, rape and violence in the family, and regrets the low number of complaints and convictions (arts. 2, 4, 12, 14 and 16).

The State party should adopt all appropriate measures to prevent, combat and punish violence against women, for instance by incorporating into the draft Criminal Code the offences of family violence, marital rape and trafficking in women and by promptly adopting the bill on the prevention, control and repression of violence against women in Benin. The State party should also set up a rehabilitation and support system for victims.

Mob justice

25. The Committee is concerned at reports that the phenomenon of mob justice persists (art. 16).

The State party should strengthen its efforts to eliminate the problem of mob justice. The Committee invites the State party to undertake a thorough review of the obstacles to the eradication of the phenomenon and to consider more effective approaches.

Training on the prohibition of torture

26. While acknowledging the State party's significant efforts in providing human rights training to State officials, the Committee regrets, however, the lack of information regarding specific training on the prohibition of torture and cruel, inhuman or degrading treatment and punishment (art. 10).

The State party should strengthen human rights training programmes for law enforcement officials so as to incorporate the prohibition of torture and cruel, inhuman or degrading treatment and punishment. Such training should also be provided to medical staff.

27. The Committee reiterates the recommendation it made during the consideration of the report of Benin in 2001 that the State party should make the declarations provided for in articles 21 and 22 of the Convention.

28. The Committee encourages the State party to involve NGOs and academic experts in the review of national legislation, including the draft Criminal Code and the draft Code of Criminal Procedure, with a view to bringing them into line with the provisions of the Convention. The State party should take the necessary steps to adopt these draft Codes forthwith.

29. The State party, with the support of academic institutions, should establish effective mechanisms to collect data and develop criminal and criminology statistics and all statistics relevant to monitoring the national implementation of the Convention. The State party should thus provide in its next periodic report the following data, which will facilitate the Committee's assessment of the implementation of obligations under the Convention:

(a) Statistics on the reception capacity and population of each prison in Benin, including data disaggregated by gender and age group (adults/children), and the number of pretrial detainees;

(b) Statistics on violence in detention centres and police and gendarmerie stations;

- (c) Statistics on complaints of alleged torture and action taken;
- (d) Statistics on corruption among law enforcement officials and penalties imposed;
- (e) Statistics on cases of extradition, expulsion or refoulement, including information on the handing over of detainees under subregional agreements;
- (f) Statistics on violence against women and children and outcomes of proceedings instituted.

30. The Committee welcomes the assurances provided by the delegation that information would be submitted regarding the questions that remained unanswered, including information on the situation of the 13-year-old girl raped by three male nurses in April 2005, on the proceedings initiated and penalties imposed.

31. The State party is encouraged to disseminate widely the reports submitted by Benin to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

32. The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting, approved recently by the international human rights treaty monitoring bodies (HRI/GEN/2/Rev.4).

33. The Committee takes note of the undertaking given by the State party's delegation to implement the Committee's recommendations and requests the State party to provide, within one year, information on action taken in response to the Committee's recommendations on the necessary review of the draft Criminal Code and the draft Code of Criminal procedure and on the recommendations contained in paragraphs 11 and 18 above.

34. Having concluded that during the consideration of the State party's report sufficient information was presented to make up for the delay in submitting its second report, the Committee requests the State party to submit its next periodic report, which will be considered as its third periodic report, by 30 December 2011.
