



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

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## Committee against Torture

### List of issues prior to the submission of the fourth periodic report of Benin\*

#### Specific information on the implementation of articles 1–16 of the Convention, including with regard to the Committee’s previous recommendations

##### Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations,<sup>1</sup> the Committee requested the State party to provide information on the follow-up to its recommendations concerning fundamental legal safeguards, in particular the existence of a computerized central registry in all prisons, pretrial detention, monitoring of places of detention, suppression of protests (paras. 11 (e), 21 (c), 25 (a) and (b) and 35, respectively). The Committee regrets that it has received no information from the State party on the implementation of these recommendations, despite a reminder sent by the Committee’s Rapporteur for follow-up to concluding observations on 11 August 2020.

##### Articles 1 and 4

2. Having regard to the Committee’s previous concluding observations<sup>2</sup>, please state whether the State party’s Criminal Code has been amended to bring the criminalization of torture fully into line with articles 1 and 4 of the Convention and whether all acts of torture are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention. Please also state whether the State party has taken steps to ensure that the statute of limitations does not apply to acts of torture and that they are excluded from the scope of amnesties.

##### Article 2<sup>3</sup>

3. Please indicate what measures have been taken to amend the provisions of the Criminal Code to ensure that the order of a superior officer may not be invoked in justification of torture, and thus to comply with the obligation set forth in article 2 (3) of the Convention.

\* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

<sup>1</sup> CAT/C/BEN/CO/3, para. 42.

<sup>2</sup> Ibid., paras. 6 and 7.

<sup>3</sup> The questions raised in relation to article 2 could also touch on other articles of the Convention, in particular article 16. As indicated in paragraph 3 of the Committee’s general comment No. 2 (2008) on implementation of article 2, the obligation to prevent torture is wide in scope. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. Please see also section V of the aforementioned general comment.



4. Having regard to the Committee's previous concluding observations,<sup>4</sup> please explain the measures and procedures in place to ensure that all persons taken into custody, including those detained for offences related to national security and terrorism, are in practice afforded all fundamental legal safeguards from the outset of their deprivation of liberty, including specifically:

- (a) The right to be informed of the reasons for their arrest and the charges against them;
- (b) The entry of their deprivation of liberty in the custody register of their place of detention;
- (c) The option of prompt access to the services of a lawyer, including in rural areas, and of access to legal aid whenever required in the interests of justice;
- (d) The right to inform a relative or other person of their choice of their arrest;
- (e) The right of immediate access to an independent doctor;
- (f) The right to be brought promptly before a judge, at the latest within a period of 48 hours, renewable once only in duly justified exceptional circumstances. In this connection, please state whether the State party has taken specific measures to repeal the legislative provisions on the maximum duration of police custody that permit its extension for up to eight days by the Public Prosecutor;
- (g) The possibility of subjecting public officials to disciplinary or criminal penalties if they fail to respect fundamental legal safeguards. Please provide information on the number of complaints received in this connection and on their outcome.

5. Having regard to the Committee's previous concluding observations,<sup>5</sup> please provide detailed information on the measures taken to guarantee the complete independence of the judiciary and to combat corruption, in particular by embarking on a reform of the National Judicial Council, in order to prevent any interference by the executive branch. Please also indicate what measures have been taken to ensure access to justice for detainees within a reasonable time, throughout the country.

6. In the light of the State party's decision communicated in March 2020 to the Chairperson of the African Commission on Human and Peoples' Rights, informing him that the State party had withdrawn the declaration made in 2016 under article 34 (6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights by which it had accepted the jurisdiction of the Court to receive complaints from individuals and non-governmental organizations, please state whether the State party has any plans to restore the right to submit a complaint.

7. Please describe the measures taken to ensure that the Benin Human Rights Commission has the independence, budget, infrastructure and human resources it needs to fulfil its mandate in full, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).<sup>6</sup> In addition, please state whether the State party has a strategy covering legislative measures to give effect to a mechanism for preventing torture and specify the time lines set in this strategy. Please describe progress towards the adoption of a separate law, the substance of which is to integrate this mechanism into the Benin Human Rights Commission in accordance with the intention expressed by the State party.<sup>7</sup> Please also state whether these measures give the mechanism a preventive mandate that is consistent with the Optional Protocol, and the independence, staff, resources and budget necessary to effectively fulfil its mandate, which must include a programme of regular, unannounced visits to all places of detention in the country, including places of detention in which children are held. Please give details of the measures taken to ensure that civil society organizations have access to places of deprivation of liberty.

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<sup>4</sup> CAT/C/BEN/CO/3, paras. 10 and 11.

<sup>5</sup> Ibid., paras. 16 and 17.

<sup>6</sup> E/C.12/BEN/CO/3, paras. 7 and 8.

<sup>7</sup> CAT/C/BEN/CO/3, para. 30.

8. Having regard to the Committee's previous concluding observations,<sup>8</sup> please provide up-to-date information on legislative or other measures taken during the period under consideration to counter all forms of violence against women, in particular in cases where the public authorities or other entities are alleged to have committed acts or omissions engaging the State party's international responsibility under the Convention. Please also provide up-to-date information on protection and support services for victims of gender-based violence in the State party, including access to a shelter and any medical treatment, psychological counselling or legal aid that they might require.<sup>9</sup> Please provide statistical data, disaggregated by the victims' age and ethnic origin or nationality, on the number of complaints filed, investigations carried out, prosecutions brought and guilty verdicts and sentences handed down in cases of gender-based violence since the consideration of the State party's third periodic report. Please provide information on measures taken by the State party to tighten the prevention of harmful traditional practices, in particular female genital mutilation, ritual infanticide of so-called "witch children"<sup>10</sup> and early and forced marriage, as well as on measures taken to crack down on them.

9. Please provide information on programmes to combat trafficking in persons, including children, and the forced labour of children, and up-to-date data, disaggregated by the victims' age, sex and ethnic origin or nationality, on the number of complaints filed, investigations conducted, prosecutions brought and guilty verdicts and sentences handed down in cases of trafficking in persons, in particular during the period under consideration. Please provide information on the effects of implementing the legislative framework criminalizing trafficking in persons (i.e. the Criminal Code (Act No. 2018-16) of 28 December 2018 and Act No. 2006-04 of 10 April 2006 on conditions for the travel of minors and the suppression of child trafficking), the national plan to combat trafficking in persons and any new law or measure that may have been adopted with a view to preventing, combating or criminalizing trafficking in persons.

### Article 3

10. In light of the Committee's previous concluding observations,<sup>11</sup> please provide information on legislative or other measures taken during the period under consideration to ensure that no one is returned to a country where he or she is at risk of being tortured. Please describe the measures taken to guarantee effective access to the procedure for determining refugee status. Please outline the measures taken to ensure that procedural safeguards against refoulement are in place and that effective remedies are available during removal proceedings, including, in particular, review by an independent judicial body, especially at the appeal stage. Please state whether persons threatened with expulsion, removal or extradition are informed of their rights to request asylum and to appeal against a deportation order. If so, please indicate whether such a remedy has a suspensive effect.

11. Please provide up-to-date information on the number of asylum applications received during the period under consideration, the number of applications granted and the number of persons whose applications were granted because they had been tortured in their country of origin or would risk being tortured if returned there. Please provide data, disaggregated by country of origin, showing the number of persons removed, extradited or expelled since the Committee considered the State party's third periodic report, a list of the countries to which persons have been returned, and information on the number of court decisions overruling or cancelling expulsion, in keeping with the principle of non-refoulement, and on any other relevant measures taken.

12. Please state how many removals, extraditions or expulsions were carried out by the State party during the period under consideration on the basis of diplomatic assurances or the equivalent thereof. Please specify the minimum assurances or guarantees required and explain what has been done to ensure that such assurances or guarantees given are respected.

<sup>8</sup> Ibid., paras. 36 and 37.

<sup>9</sup> CAT/C/BEN/3.

<sup>10</sup> E/C.12/BEN/CO/3, paras. 33 and 34.

<sup>11</sup> CAT/C/BEN/CO/3, paras. 14 and 15.

**Articles 5–9**

13. Having regard to the Committee’s previous concluding observations,<sup>12</sup> please provide information on any new measures adopted with a view to reviewing the validity of the agreement concluded between the State party and the United States of America that prevents the transfer or surrender to the International Criminal Court of American nationals present in the territory of Benin. Please provide information on any extradition treaty concluded with any other State party and indicate whether the offences to which article 4 of the Convention refers are cause for extradition under this treaty. Please indicate what measures the State party has taken to comply with its obligation to extradite or prosecute (*aut dedere aut judicare*). Please clarify whether the State party has concluded any mutual legal assistance treaties or agreements and whether such treaties or agreements have led in practice to the exchange of any evidence in connection with prosecutions concerning torture or ill-treatment. Please provide examples.

**Article 10**

14. Having regard to the Committee’s previous concluding observations,<sup>13</sup> please provide information about the training and awareness-raising programmes that the State party has put in place to ensure that:

(a) Police officers and gendarmes are familiar with the provisions regarding fundamental safeguards and systematically inform persons taken into custody of all their rights, in all places and in all circumstances;

(b) Law enforcement and judicial officers are familiar with the provisions covering the procedures to be followed in the event of sexual or gender-based violence;

(c) Public officials likely to be involved in guarding, questioning or processing persons deprived of their liberty and medical staff employed in prisons have a thorough knowledge of the provisions of the Convention and know that violations will not be tolerated, that they will give rise to an investigation and that perpetrators will be prosecuted. Please provide detailed information about the training in non-coercive investigatory techniques that is given to police officers and other law enforcement officials. Please state whether a methodology for assessing the effectiveness of training and education programmes aimed at reducing the number of cases of torture and ill-treatment has or will be developed, and, if so, explain this methodology;

(d) Judges, prosecutors, forensic doctors and medical staff dealing with persons deprived of their liberty can detect and document the physical and psychological after-effects of torture. Please state whether these programmes include specific training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

**Article 11**

15. Please describe the procedures put in place to ensure compliance with article 11 of the Convention and provide information on any interrogation rules, instructions, methods and practices and custody-related provisions that have been adopted or revised since the consideration of the State party’s third periodic report. Please indicate how often these are revised. Please provide information on the specific measures adopted by the State party to end the practice of arbitrary detention, including of political activists and journalists. Please also provide information on steps taken to end the practice of arresting, detaining and holding persons, and particularly women who have given birth, in certain hospitals and health centres for failure to pay the cost of their treatment.

16. Bearing in mind the Committee’s previous concluding observations,<sup>14</sup> please provide up-to-date information on the measures taken to address concerns about conditions of detention, in particular the unsanitary conditions, insufficient quantity of food and lack of

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<sup>12</sup> Ibid., paras. 12 and 13.

<sup>13</sup> Ibid., paras. 11 (d), 37 (b), 38 and 39.

<sup>14</sup> Ibid., paras. 22 and 23.

health care in civil prisons and detention centres. Please describe the practical measures taken during the period under consideration to reduce overcrowding in prisons and to promote the use of alternatives to imprisonment. Please provide statistical data on the number of persons in pretrial detention and the number of convicted prisoners, disaggregated by age, and the location and occupancy rate of each place of detention. Please explain the measures taken to ensure the separation of pretrial detainees from convicted prisoners and minors from adults, and state in which detention facilities this separation has not yet been achieved. In the light of the Committee's previous concluding observations,<sup>15</sup> please provide information on the measures taken to end lengthy pretrial detention. Please also provide information on the implementation of the Integrated Prison Management System and its impact on monitoring periods of pretrial detention and court hearings in order to ensure that legal time limits are respected as a rule, giving relevant examples.

17. Please describe the measures that have been taken to meet women's particular needs, including those of pregnant women, children who stay with their mothers when they are deprived of liberty and persons with a physical, intellectual or psychosocial disability who are in detention. Please describe what has been done to meet the special needs of minors in institutions for young persons in conflict with criminal law, in particular with regard to the use of alternative measures to pretrial detention and imprisonment, and in respect of education services and the supply of an adequate quantity of food, access to medicine and medical care and protection against violence. Please state whether the State party sees any possibility of raising the age of criminal responsibility, which is currently set at 13 years in article 236 of the Children's Code, to an acceptable level, to make it consistent with international standards.

18. Please provide information on the disciplinary measures applicable in detention centres and state whether any procedure exists to ensure that the measures are lawful. Please also state: (a) the maximum length of solitary confinement in law and in practice; (b) whether a record is kept of disciplinary measures in all places of detention and whether the measures are monitored to check whether they are proportionate; and (c) what living conditions are like in solitary confinement cells. Please state whether this confinement regime is subject to the oversight of a monitoring mechanism or outside body.

19. Please indicate whether the authorities monitor violence among inmates and alleged cases of abuse and violence, including the existence of unwholesome and degrading practices brought to light by sexual misconduct scandals, specify the number of complaints that have been filed or recorded, and indicate whether investigations have been carried out and, if so, the outcome thereof. Describe the preventive measures that have been taken in this respect. Please provide statistical data on deaths in detention, including in police custody, that have occurred during the period under consideration, disaggregated by place of detention, the victim's sex, age, ethnic origin or nationality and the cause of death. In particular, detail the measures that have been taken in response to deaths allegedly due to malnutrition and undernutrition at the Natitingou detention centre. Please describe how the inquiries into these deaths were carried out, the findings thereof and the steps that have been taken to prevent any reoccurrence of similar events. Please state whether the victims' relatives have received compensation in these cases.

20. Please provide information on the number of persons who have been deprived of liberty in psychiatric hospitals and other institutions caring for persons with an intellectual or psychosocial disability. Please indicate what is being done to move away from the institutionalization of persons with a disability and whether other forms of care are used, such as community rehabilitation services and outpatient treatment programmes.

### **Articles 12 and 13**

21. In light of the Committee's previous concluding observations,<sup>16</sup> please provide information on the measures taken to set up an independent, safe complaints mechanism that is accessible to victims of torture and ill-treatment, including those deprived of their liberty,

<sup>15</sup> *Ibid.*, para. 21.

<sup>16</sup> *Ibid.*, paras. 26 and 27.

and that permits rapid consideration of their complaint, as well as on measures to adopt a legislative framework for the protection of victims. Please give details of measures taken to draw up registers of complaints filed by persons detained in prisons. In addition, please provide information on investigations initiated into allegations of torture and ill-treatment, including that committed between 1972 and 1990, the disciplinary and criminal procedures instituted, convictions obtained and criminal or disciplinary sanctions applied during the period under consideration. Please give examples of relevant cases and court decisions.

22. In the light of the Committee's previous concluding observations,<sup>17</sup> please describe the measures taken to open and conduct an investigation into allegations of excessive use of force by defence and security forces during the demonstrations that occurred in 2019. Please clarify whether the State party intends to repeal Act No. 2019-39 of 7 November 2019 providing for an amnesty for criminal acts, offences and misdemeanours committed during the April 2019 parliamentary elections (the Amnesty Act of 2019), which deprives the alleged victims of violence of access to justice and compensation. In addition, please describe the measures taken to counter police brutality and the excessive use of force by members of the security forces, including extrajudicial executions, during demonstrations sparked by restrictions linked to measures taken to control the coronavirus disease (COVID-19) pandemic and violence spawned by the electoral process in April 2021. Please provide information on any inquiries opened, disciplinary and criminal procedures initiated, convictions obtained and disciplinary measures or punishments handed down.

#### **Article 14**

23. Bearing in mind the Committee's previous concluding observations,<sup>18</sup> please provide information about redress, compensation and rehabilitation measures ordered by the courts and actually received by, or provided to, victims of torture or members of their family since the consideration of the State party's third periodic report. This information should include the number of requests for compensation that have been made, the number granted and the amounts ordered and actually provided in each case. In particular, please indicate whether the Standing Committee responsible for the compensation of victims of injury caused by the State that was established by Decree No. 98-23 of 29 January 1998 is operational, and, if so, provide details. Please also provide information on existing programmes to compensate victims of acts of torture and ill-treatment, including programmes for the treatment of trauma and other forms of rehabilitation and on the material, human and budgetary resources allocated to these programmes in order to guarantee their effective functioning.

#### **Article 15**

24. In the light of the Committee's previous concluding observations,<sup>19</sup> please provide information on measures, including legislation, adopted to guarantee effective respect for the principle of inadmissibility of evidence obtained through torture or ill-treatment. Please state whether, during the period under consideration, the courts rejected items of evidence because they had been obtained through torture or ill-treatment.

#### **Article 16**

25. Please detail the measures taken by the State party to finalize and adopt the bill on human rights defenders, in line with international standards, particularly the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Please explain how the State party intends to ensure that civil society and human rights defenders are adequately consulted in the drafting of this bill. In addition, please provide statistics on complaints, investigations, prosecutions, guilty verdicts, sentences handed down and compensation awarded to victims in cases where there were acts or omissions on the part of public authorities or other bodies which engage the international responsibility of the State

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<sup>17</sup> Ibid., paras. 34 and 35.

<sup>18</sup> Ibid., paras. 40 and 41.

<sup>19</sup> Ibid., paras. 8 and 9.

party under the Convention, and describe any legislative or other measures that have been taken to combat:

(a) Crimes motivated by hatred or intolerance of lesbian, gay, bisexual, transgender and intersex persons or their defenders;

(b) Violence suffered by persons with albinism.<sup>20</sup>

26. Please provide information on the steps taken to combat violence against children, including abuse, sexual exploitation, sexual violence and corporal punishment, especially in schools, in particular private and faith-based schools.

27. Please describe the legislative or other measures adopted to criminalize participation in acts of mob justice and provide statistics on the number of cases recorded since 2019.

### **Other issues**

28. Please provide up-to-date information on the measures taken by the State party to address the threat of terrorist acts. Please state whether these measures have detracted from safeguards related to human rights in law and in practice and, if so, in what way. Please describe how the State party ensures these measures' compatibility with all its obligations under international law, in particular under the Convention. Please provide information on the training given to law enforcement officers in this area, the number of persons convicted under counter-terrorism law, the legal safeguards provided and the legal remedies available in law and in practice to persons affected by counter-terrorism measures. Please state whether any complaints of failure to observe international standards in the application of counter-terrorism measures have been filed, and, if so, indicate the outcome thereof.

29. Given that the prohibition of torture is absolute and cannot be derogated from, even within the framework of measures related to states of emergency and other exceptional circumstances, please provide information on any steps taken by the State party during the COVID-19 pandemic to ensure that its policies and actions comply with its obligations under the Convention. In addition, please specify the measures taken in relation to persons deprived of their liberty and in other situations of confinement, such as in homes for the elderly, hospitals, official quarantine centres and institutions for persons with disabilities.

### **General information on other measures and developments relating to the implementation of the Convention in the State party**

30. Please provide detailed information on any other relevant legislative, administrative, judicial or other measures taken since the consideration of the State party's third periodic report to implement the provisions of the Convention or the Committee's recommendations, including any institutional changes that may have occurred or plans or programmes that may have been put in place. Please indicate the resources allocated for this purpose and provide statistical data. Please also provide any other information that the State party considers relevant.

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<sup>20</sup> [E/C.12/BEN/CO/3](#), paras. 15 and 16.