



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

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Summary record of the first part (public)* of the 800th meeting

Held at the Palais Wilson, Geneva, on Friday, 16 November 2007, at 3 p.m.

Chairperson: Mr. Mavrommatis

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.800/Add.1.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Second periodic report of Benin (continued) (HRI/CORE/1/Add.85; CAT/C/BEN/2; CAT/C/BEN/Q/2 and Add.1) (continued)

1. *At the invitation of the Chairperson the delegation of Benin resumed places at the Committee table.*
2. **Ms. Zinkpe** (Benin) said that the necessary provisions would be made to incorporate the definition of torture given in article 1 of the Convention into domestic legislation and that amendments were currently being made to the draft criminal code and the draft code of criminal procedure before the parliament.
3. Whenever the Constitutional Court found an act, and in particular acts of torture or cruel, inhuman or degrading treatment, to be in breach of the Constitution victims could seek redress in the relevant court. The Public Prosecutor's Office could also initiate criminal proceedings. If judicial police officers committed such acts, they were subject to disciplinary measures summary discharge – irrespective of any criminal penalties.
4. Under articles 127 and 128 of the draft criminal code, persons could no longer be absolved of criminal liability for infringements of individual freedom by claiming self-defence or performance of an order from legitimate authority. Such acts were punishable by “deprivation of civil rights”, whereby offenders were stripped of their civil rights. The fact that the loss of civil rights was the only penalty for such offences was undeniably a failing that would have to be addressed.
5. The Committee had noted that domestic legislation was not fully compliant with article 12 of the Convention, which required the competent authorities to proceed to an investigation, whether or not the victim had made a complaint. The delegation did not deny the shortcomings and assured the Committee that the necessary measures would be taken to remedy the situation.
6. Clarification of articles 35 and 39 of the Code of Criminal Procedure had been requested. The articles determined that the competent prosecutors and examining magistrates were those whose jurisdiction covered the place where the offence occurred, the suspect's place of residence or the place of arrest. Article 39 also provided that the Public Prosecutor could remove a judge from a case and assign another judge whose jurisdiction did not cover the case.
7. The rules applied by Benin to extradition were those of the Convention on Extradition of the Economic Community of West African States, which prohibited the extradition of persons who risked being subjected to torture or other cruel, inhuman or degrading treatment or punishment in the requesting State or who would not receive the minimum guarantees in criminal proceedings, as contained in article 7 of the African Charter on Human and People's Rights. Extradition to a third State was governed by articles 20 and 21 of the Convention on Extradition, under which a State could extradite a person surrendered to it to a third State only with the consent of the requested State, which could request that the following documents were produced: the original or an authenticated copy of the enforceable conviction or warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the requesting State; a statement of the offences for which extradition was requested and a copy of the relevant law and any information which would help to establish the identity, nationality and whereabouts of the person claimed. The extradition decision was handed down by the

Indictment Division of the Court of Appeal and was not subject to appeal. It was enforced by Government decree.

8. The Committee had observed that the rules of jurisdiction governing offences committed abroad, which were set forth in articles 553, 554 and 555 of the Code of Criminal Procedure, did not comply with articles 5 and 7 of the Convention against Torture. Those articles certainly did not entirely reflect article 5 of the Convention as they did not establish the Beninese courts' jurisdiction over offences committed on board an aircraft or a ship registered in Benin or offences committed against Beninese nationals. Furthermore, article 555 required amendment to dispense with the requirement for the victim to lodge a complaint before the Public Prosecutor's Office could institute proceedings. Similarly, the Public Prosecutor's Office should not have a monopoly on instituting criminal proceedings. The current amendment to the draft code of criminal procedure would be able to address those shortcomings.

9. Where it was established that a confession had been obtained under torture, the confession was declared inadmissible by the judge, who could ask for an investigation to be opened with a view to prosecuting the alleged perpetrator of the acts of torture.

10. The Committee had asked about the measures taken by Benin to ensure that its counter-terrorism strategy was compatible with guarantees on human rights. Benin undertook to make the necessary amendments to any provisions of the current Criminal Code that might interfere with those guarantees.

11. The principle of presumption of innocence was guaranteed by article 17 of the Constitution and duly applied in practice. It was, however, not expressly set forth in the draft criminal code or the draft code of criminal procedure. That shortcoming could be addressed.

12. With regard to the Beninese detainees who had been handed over to the Nigerian authorities in 2004 to give evidence at a trial, the Committee had expressed concern that Beninese nationals could be handed over to foreign authorities without a court ruling. It had already been mentioned that, following the Beninese courts' objection to such interference by the executive branch in an area of their jurisdiction, those concerned had been returned to Benin.

13. Whenever a person was being unlawfully detained, during the investigation stage the Prosecutor could request the competent investigating judge to withdraw the detention order. At the trial stage, the Prosecutor would request an acquittal. If the detention was not found to be unlawful, the victim could pursue the usual remedies.

14. The "mob justice" problem persisted despite the Government's awareness-raising measures. Detailed debate could be held with all those concerned to identify other means of eradicating the problem. In that connection, the Committee had asked whether Colonel Dévi had been convicted. He had been prosecuted for several offences and tried by the assize court, which had acquitted him. Further proceedings against him were ongoing.

15. Requiring detainees, including those awaiting trial, to wear a jacket with the words "civilian prison" was indeed degrading treatment. A new set of rules would be drawn up to abolish that practice.

16. No statistics were available on the number of cases of torture or cruel, inhuman or degrading treatment brought to court. The Beninese Government appreciated the need to collect reliable data and hoped that the current process of computerizing the services of the Ministry of Justice and the courts would make that possible. In addition, the Ministry's Intranet was due to come into operation in the near future.

17. The Government was giving every attention to the sluggishness and corruption that affected the judicial system. A plan coordinated by the Inspector-General of the Judicial Services, under the supervision of the Minister of Justice had been approved in January 2007 for consolidating the independence and accountability of the judiciary. The plan was designed to combat corruption and enhance the accountability of those working in the judicial system.

18. The remedies available through the administrative courts, such as proceedings *ultra vires* or a full appeal, were guaranteed in Beninese legislation. Appeals were currently being dealt with by the Administrative Chamber of the Supreme Court pending the inauguration of the new courts established by the Act of 27 August 2001 concerning the organization of the judiciary, which defined the jurisdiction of courts of first instance and relevant appeal courts.

19. Although measures had been taken to improve the protection of children's rights, Benin was aware of the need for additional measures. It would consider the Committee's suggestion to establish a children's rights watchdog carefully.

20. The abolition of the death penalty was one of the concerns of the Beninese Government. The issue had been debated in the National Advisory Council on Human Rights, which had recommended that a multidisciplinary committee be set up to draft a document on the abolition of the death penalty. In February 2007, at the World Congress against the Death Penalty in Paris the Minister of Justice had undertaken to bring domestic legislation into line with the international instruments to which Benin was party.

21. Civil society's contribution to promoting human rights was made, *inter alia*, through the National Advisory Council on Human Rights, which was the link between Government agencies and non-governmental organizations. To be represented on the Council, NGOs must be approved by the Ministry of Justice and, for that purpose, submit a file containing, among other things, the report on their activities and proof of their registration with the Ministry of the Interior. They chose their own representatives, who could be elected as vice-president or to the Council's permanent secretariat. The NGOs participated in the follow-up to the recommendations of treaty bodies and the implementation of international human rights instruments.

22. Civil society organizations were participating in human rights education programmes. The Ministry of Education had asked that philosophy teachers be given appropriate training so that human rights could be taught from the lycée onwards. History teachers were also to receive training.

23. Civil society organizations were also involved in drafting laws. For example, the draft law establishing a national preventive mechanism had been drawn up in conjunction with NGOs campaigning against torture in Benin.

24. A question had been asked as to whether any cases of corruption in the police force and the gendarmerie had been investigated. Investigations had been conducted and some had led to criminal or disciplinary proceedings, but no statistics were available.

25. With regard to the efforts to eradicate corruption and extortion in prisons, the forthcoming establishment of the national mechanism for the prevention of torture should go a long way towards ending such practices. The visits provided for under the mechanism would make it possible to establish the facts and make relevant recommendations to the authorities. The Association for the Prevention of Torture had offered to help train the mechanism's members. NGOs already had access to places of detention owing to standing visitation rights.

26. The Commission for Human Rights had ceased operation as it was no longer compliant with the Paris Principles. There was an institute for human rights and democracy

that was providing training and various NGOs worked in the field, complementing the work of the Ministry of Justice's Human Rights Directorate to protect and promote human rights. The State was planning to provide financial support to NGOs that defended human rights.

27. With regard to genital mutilation of women and girls, the State, following an awareness-raising policy, was now concentrating on punishing such acts. The necessary provisions to ensure that the victims were given psychological assistance and access to reconstructive surgery would only be introduced later.

28. There were no child soldiers in Benin; the legal age for joining the army or performing military service was 18.

29. The African Commission on Human and Peoples' Rights had examined several complaints concerning the Beninese Government in 2002. In two cases, it had made recommendations to the Government.

30. It had been asked whether Benin was able to conclude cooperation agreements to manage migratory flows. Benin was currently negotiating a cooperation agreement with Switzerland and France on the readmission of undocumented persons which would define the legal framework for any repatriation and prevent abuse.

31. The right to have access to a lawyer and the right to be examined by a doctor were exercised on the initiative of the judicial police officer, the judge or at the request of the suspects themselves or their families. The law made provision for legal aid, but defendants rarely applied for it.

32. The late submission of reports to the Committee was caused by a lack of human and financial resources. The Association for the Prevention of Torture had offered to participate in drafting future reports to help the State fulfil its reporting obligations. Any other support that would help improve Benin's capacity to meet its international commitments would be welcomed.

33. **The Chairperson** thanked the delegation for its replies, although he expressed regret that they had not been better supported by practical examples. He invited the Committee members to ask further questions.

34. **Mr. Camara**, Country Rapporteur, said that he believed article 39 of the Code of Criminal Procedure — under which the Public Prosecutor could remove a case from an examining magistrate and assign it to a magistrate without jurisdiction in that area — to be in breach of the principle of the independence of the judiciary and the principle of the separation of powers and he called upon the State party to remedy the problem during its current reform of domestic legislation.

35. He asked what the State party had done to respond to extradition requests from countries with which it did not have an extradition treaty, and whether it had adopted any domestic law on extradition besides the Act of 10 March 1927 that had been inherited from the French legal system. He would like to know whether that act was applied in practice. He further asked the delegation to explain whether, where no treaty was in place, the State party considered the Convention as a legal basis for extradition as article 8 of the Convention provided and, if so, whether it encouraged the domestic courts to refer to that international instrument.

36. What legal documents could the judge invoke in order to find confessions obtained under torture inadmissible? Furthermore, referring to a remark made by the delegation, he recalled that the Public Prosecutor, not the judge, should be responsible for requesting an investigation with a view to initiating criminal proceedings against an alleged perpetrator of acts of torture. Having read in paragraph 89 of the written replies of Benin to the list of issues that the Prosecutor initiated criminal proceedings and decided whether to bring

charges, he pointed out that torture must be prosecuted and called upon the State party to include that obligation in its domestic legislation.

37. The State party should also guarantee the full independence of the judiciary by ensuring that judges were not obliged to justify decisions before disciplinary authorities and that only a higher court had the jurisdiction to review the same case.

38. Lastly, he asked what the situation was with the right of NGOs to visit places of detention, as it was clear that not all of them had been permitted to visit prisons.

39. **Ms. Belmir**, Alternate Country Rapporteur, invited the State party to include in its domestic law as broad a definition of torture as possible, prohibiting corporal punishment and encompassing rape, abuse and other ill-treatment to which not only women, but all groups of society fell victim.

40. She further asked the State party to review article 39 of its Code of Criminal Procedure, as a clear distinction should be made between the powers of the investigating judge and those of the Public Prosecutor, since any confusion thereof would be detrimental to the independence of the judiciary. She requested further information on the killings and disappearances linked to political repression that had been reported by NGOs, and called upon the State party to prosecute the alleged offenders.

41. When drafting its legislation on trafficking in human beings, the State party was encouraged to take as an example both the United Nations Convention against Transnational Organized Crime, which aimed to prevent, suppress and punish trafficking in persons, in particular women and children, and its Trafficking Protocol.

42. Noting that, according to information in the possession of the Committee, detainees were apparently obliged to pay prison wardens in order to obtain a place to sleep or a hot meal and were dying in detention through lack of treatment, she asked who was responsible for drawing up prison regulations. In addition, she called upon the State party to take the necessary measures to combat the phenomenon of infanticide, by means, in particular of public education programmes. Other harmful practices such as sororate and levirate marriages or State agents' ill-treatment of street children, detained children or child-trafficking victims should be addressed by the State party.

43. Lastly, she asked what had been done to enforce convictions handed down to certain members of the judiciary and the court officials during anti-corruption trials.

44. **Mr. Kovalev** asked whether the State party had the jurisdiction to try acts of torture committed on board ships flying the country's flag of convenience or aircraft registered in Benin.

45. **Mr. Grossman** asked whether the complaint concerning the rape in April 2005 of a 13-year-old child in the Zou Province Hospital had led to a conviction, in particular as the head doctor had tried to hush up the case despite a confession from the staff member concerned, and whether the bill on "vidomegons" had been adopted and, if not, why. He also asked how many individuals had been convicted of genital mutilation of women or young girls. He also enquired when the 2 million CFA francs promised to the victims of rape would be allocated to relevant NGOs and how the authorities intended to work with NGOs, as they had undertaken to do, when drafting new human rights legislation.

46. He also asked how the State party intended to reduce the number of "mob justice" incidents and, for example, whether it intended to establish a committee to examine the issue and involve various sectors of the population. Referring to the poor conditions prevalent in prisons and the extortion of money from detainees by their wardens in return for certain services and noting that the Association for the Prevention of Torture supported the training of prison wardens, he asked what form that support took and whether the State

believed it to be sufficient. If not, the Committee could draw up a relevant recommendation calling upon the international community to give greater support to such work.

47. **Mr. Mariño Menéndez**, noting the importance accorded to extradition treaties between the State party and Switzerland and between the State party and France, which had been made an integral part of development cooperation policy with Europe, asked whether it would not be helpful to turn to other tasks, such as preventing migration flows by offering training programmes to those who left in the hope of finding a better life abroad, in order to give them the necessary skills to find local employment.

48. He asked what conditions the Ministry of the Interior imposed on NGO registration and, in particular, whether NGOs were obliged to prove their financial independence. He also enquired whether the State party applied the Convention Governing the Specific Aspects of Refugee Problems in Africa of the Organization of African Unity and, in particular, whether it could grant asylum to whole groups if there was armed conflict or a humanitarian crisis in a neighbouring country rather than examine asylum applications on a case-by-case basis.

49. **The Chairperson**, speaking as a member of the Committee, expressed his regret that the State party had been so late in submitting its reports and that its core document (HRI/CORE/1/Add.85), which dated from 10 years previously, was now out of date. He therefore encouraged the State party to draw up another core document, in accordance with the new guidelines, and to ensure that its subsequent report would also take into account the new reporting guidelines.

50. He would also appreciate further information on violence against women, both in the home and in other situations. Lastly, if the State party wished to stop confessions being extracted by torture, it should shift the burden of proof to the Public Prosecutor's Office.

51. **Mr. Anani Cass** (Benin) said that the Government would take into account the Committee's remarks in adopting its domestic legislative reforms, in particular with regard to the definition of torture and the independence of the judiciary. It would endeavour to establish a mechanism to guarantee follow-up to the Constitutional Court's decisions in cases of torture, ensuring that all victims of torture were compensated.

52. It was unsurprising that not all NGOs that had asked to visit places of detention had been treated equally, as problems had arisen which the Ministry had to be able to remedy only once it had been made aware of them. In future, all NGOs making a request would be granted standing visiting rights.

53. The 1990 National Conference of Active Forces had duly taken into account the issue of impunity for the perpetrators of acts of torture or cruel, inhuman or degrading treatment committed during the revolutionary period and had, *inter alia*, led to the establishment of a standing committee for the compensation of victims of injury caused by the State. The Beninese delegation intended to contact the committee in order to identify which victims had not yet been compensated.

54. With regard to the case mentioned by a Committee member of a 13-year-old who had reportedly been raped in a health facility in the Zou region, he had prevailed on the director of public prosecutions to take the necessary measures to investigate the case thoroughly. As to female genital mutilation, it should first be emphasized that the Public Prosecutor's Office and the judicial police were working to process all the cases before them. He acknowledged that there was no specific law on female genital mutilation. Nevertheless, Benin undertook to adopt the necessary measures to compensate for the injury caused to the victims. Any recommendation by the Committee on the issue would be duly taken into account by the Beninese authorities.

55. **Mr. Hameou** (Benin) said that cooperation agreements on immigration were currently being concluded with France and Switzerland, the main countries to which Beninese nationals emigrated. The aim of the agreements was to ensure that nationals who had entered Switzerland illegally could be repatriated safely and in a dignified manner.

56. **Mr. Alia** (Benin) explained that relations were constantly improving between the authorities and human rights NGOs, and that the Government had taken measures to provide annual financial support to them. The duties and operation of the Beninese Commission for Human Rights complied with the Paris Principles.

57. **Ms. Zinpke** (Benin) said that the definition of the offence of torture in Beninese law could be broadened to include violence against women and acts of domestic violence. As to extradition, the delegation took note of the deficiencies of Beninese legislation in that respect, which was still governed, except where a specific agreement was in place, by an act dating from the colonial period (the Act of 10 March 1927) and undertook to request that the necessary measures be taken to remedy the situation. On establishing a national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, she noted that the first draft of a law had already been prepared and was pending approval by the National Commission on Legislation and Codification before being submitted to the National Assembly for its first reading. Lastly, as regarded the jurisdiction of Beninese courts to try acts of torture committed on board ships registered in Benin, she acknowledged legal loopholes in Beninese legislation in the matter, but assured the Committee members that the issue would be given every attention when the Convention against Torture was incorporated into domestic legislation.

58. **Mr. Anani Cassa** (Benin) indicated that the 95 judges, court officers and other judicial officials who had set up an ingenious system for misappropriating official travel expenses intended for judicial investigations had been sentenced to between six months' suspended prison sentence and five years' imprisonment. The Court of Cassation was still examining the case, and the Beninese Government was waiting for its verdict before disciplining, where necessary, those concerned.

59. The Chairperson thanked the delegation and invited Committee members who wished to obtain additional information to take the floor.

60. **Ms. Belmir**, Alternate Country Rapporteur, thanked the delegation and suggested that the State party take inspiration from the experiences of other, for example Latin American countries, to definitively turn the page of the revolutionary period. It was of the utmost importance that, before adopting amnesty laws, the State party ensured that acts of torture and cruel and inhuman treatment committed during the revolutionary period had been fully investigated. In that connection, it would be helpful for an investigation service to be established within the National Advisory Council on Human Rights.

61. **The Chairperson** expressed his appreciation for the standard of the dialogue with the high-level delegation sent by Benin. He said that he was convinced that, thanks to technical cooperation, the country would continue to make progress in implementing the Convention against Torture. The Committee's concluding observations on the second periodic report of Benin would be transmitted to the Beninese Government at the end of the current session.

62. *The delegation of Benin withdrew.*

The public part of the meeting rose at 4.45 p.m.