



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Report submitted by Benin under article 29 (1) of
the Convention, due in 2019**

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Introduction

1. The Republic of Benin safeguards human rights, the bedrock of democracy and the prerequisite for the true, harmonious development of any human being, without discrimination on the grounds of sex, race, religion, origin or political opinion.
2. Our State has ratified and incorporated into its domestic legislation a substantial number of international human rights instruments, including the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 20 December 2006. It was ratified by Benin on 2 November 2017.
3. This report is being submitted to the Committee on Enforced Disappearances in accordance with article 29 (1) providing that States parties must submit a report on the measures that they have taken to give effect to their obligations under the Convention within two years of its entry into force for the country concerned.
4. It has been drawn up through an inclusive process of national consultation, during which State bodies and civil society actors, coordinated by the Directorate for Human Rights and Children's Affairs of the Ministry of Justice and Legislation, helped to gather information.
5. The form and content of the report comply with the guidelines adopted by the Committee at its second session, held from 26 to 30 March 2012. It is supplemented and accompanied by a common core document which was forwarded to the Committee on the Elimination of Racial Discrimination in 2018.
6. The document has been approved by the Interministerial Committee for Monitoring the Implementation of International Human Rights Instruments. The process received technical and financial assistance from the United Nations Development Programme (UNDP) through the Project to Support Improved Access to Justice and Accountability, phase II.
7. This report, covering the period 2017–2020, describes all the measures taken to implement the Convention's provisions. It is subdivided into two parts, namely:
 - General information about the legislative and institutional framework and programmes
 - Information related to the articles of the Convention.

Part One. General information

8. The general information concerns the legislative and institutional framework and the programmes for implementing the Convention during the period covered by the report.

Section I. Legal framework for promoting and protecting human rights

9. Benin has ratified a number of conventions and is continually strengthening its legal arsenal with a view to promoting and protecting human rights.
10. It has ratified the following conventions, among others:

At the international level

- International Convention for the Protection of All Persons from Enforced Disappearance
- Maritime Labour Convention
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
- Convention on the Rights of Persons with Disabilities
- Optional Protocol to the Convention on the Rights of Persons with Disabilities

- Amendment to article 43 (2) of the Convention on the Rights of the Child
- Convention on the Prevention and Punishment of the Crime of Genocide
- International Convention against Apartheid in Sports
- International Convention for the Suppression of Acts of Terrorism
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption
- The four Geneva Conventions of 1949 and their Additional Protocols of 1977
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol thereto
- Convention on the Rights of the Child and the three protocols thereto
- Convention relating to the Status of Refugees
- Convention relating to the Status of Stateless Persons
- International Convention against the Taking of Hostages
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents
- Rome Statute of the International Criminal Court
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
- Protocol against the Smuggling of Migrants by Land, Sea and Air
- United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

At the regional level

- African Charter on Human and Peoples' Rights
- African Charter on the Rights and Welfare of the Child
- African Union Non-Aggression and Common Defence Pact
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
- African Union Convention on Cross-Border Cooperation
- African Union Convention for the Elimination of Mercenarism in Africa
- Protocol on Non-Aggression of the Economic Community of West African States
- Protocol to the Organization of African Unity Convention on the Prevention and Combating of Terrorism
- Protocol on the Statute of the African Court of Justice and Human Rights
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights

At the national level

11. A number of laws and regulations have been adopted in order to incorporate the various instruments which have been ratified into Beninese positive law.

Acts

- Act No. 2019-40 of 7 November 2019 revising Act No. 90-32 of 11 December 1990 establishing the Constitution of the Republic of Benin
- Act No. 2011-20 of 12 October 2011 on combating corruption and related offences in the Republic of Benin
- Act No. 2011-26 of 9 January 2012 on the prevention and punishment of violence against women and girls in the Republic of Benin
- Act No. 2012-21 of 27 August 2012 on combating the financing of terrorism in the Republic of Benin
- Act No. 2012-21 of 27 August 2012 establishing the Code of Criminal Procedure in the Republic of Benin, as amended and supplemented by Act No. 2018-14 of 2 July 2018 and Act No. 2012-36 of 15 February 2013 on the establishment of the Benin Human Rights Commission
- Act No. 2014-22 of 30 September 2014 on digital broadcasting in the Republic of Benin
- Act No. 2014-14 of 9 July 2014 on electronic communications and postal services in the Republic of Benin
- Act No. 2015-08 of 8 December 2015 establishing the Children's Code of the Republic of Benin
- Act No. 2015-07 of 20 March 2015 establishing the Information and Communication Code of the Republic of Benin
- Act No. 2016-16 of 28 July 2016 amending and supplementing Act No. 2008-07 of 28 February 2011 establishing the Code of Civil, Commercial, Social, Administrative and Accounting Procedure of the Republic of Benin
- Act No. 2016-15 of 28 July 2016 amending and supplementing Act No. 2001-37 of 10 June 2002 establishing the organization of the judiciary in the Republic of Benin
- Act No. 2017-41 of 29 December 2017 establishing the National Police of the Republic of Benin
- Act No. 2017-06 of 29 September 2017 establishing protection and promotion of the rights of persons with disabilities in the Republic of Benin
- Act No. 2018-048 of 28 December 2018 establishing the Criminal Code of the Republic of Benin
- Act No. 2017-20 of 20 April 2018 establishing the Digital Code of the Republic of Benin

Regulations

- Decree No. 2011-029 of 31 January 2011 establishing the list of hazardous types of work prohibited to children in the Republic of Benin
- Decree No. 2012-416 of 6 November 2012 on the standards applicable to children's shelters in the Republic of Benin
- Decree No. 2012-28 of 13 August 2012 on the creation, composition, powers and operation of integrated departmental coordination centres for the care of victims and survivors of gender-based violence
- Decree No. 2014-315 of 6 May 2014 on the modalities of application of Act No. 2012-36 of 15 February 2013 on the establishment of the Benin Human Rights Commission
- Decree No. 2018-541 of 28 November 2018 appointing the members of the Benin Human Rights Commission
- Decree No. 2016-13 of 25 November 2016 on the powers, organization and operation of the Central Authority for International Adoption

Section II. Institutional framework for promoting and protecting human rights

12. The institutional framework comprises State and non-State bodies which strive to improve conditions for the enjoyment of human and peoples' rights.

State bodies

- Benin Human Rights Commission
- Ombudsperson
- Office of the High Commissioner for the Prevention of Corruption in Benin, which has replaced the National Anti-Corruption Authority
- National Advisory Council on Human Rights
- Directorate of Human Rights and Children's Affairs
- Central Office for the Protection of Minors, the Family and the Repression of Human Trafficking
- Benin Prison Agency
- National Committee for Monitoring the Implementation of International Human Rights Instruments
- National Committee for the Protection of Children
- National Committee for the Rights of the Child
- National Steering Committee to Combat Child Labour
- National Commission for the Implementation of Children's Rights
- Personal Data Protection Agency
- National Agency for Population Identification

Non-State bodies

- Women in Law and Development in Africa (WILDAF-Benin)
- Réseau pour l'Intégration des Femmes des ONG et Associations Africaines (Network of African NGOs and Associations for the Integration of Women) (RIFONGA-Benin)
- Association des Femmes Juristes du Bénin (Association of Women Jurists of Benin) (AFJB)
- Association des Femmes Avocates du Bénin (Association of Women Lawyers of Benin) (AFAB)
- Fédération des Associations des Personnes Handicapées (Federation of Associations of Disabled Persons) (FAPH-Benin)
- Fondation Regard d'Amour (FRA)
- Fondation Djibril Zakari SAMBAOU pour les droits de l'homme et la paix (Fondation Djibril Zakari SAMBAOU for human rights and peace)
- Social Watch Benin (SW-B)
- Changement Social Bénin (Social Change Benin) (CSB)
- Amnesty International Benin (AIB)
- Prisonniers Sans Frontières (Prisoners without Borders) (PRSF)
- Franciscans International Benin (FI-B)

- Comité de Liaison des Organisations Sociales de Défense des Droits de l'Enfant (Liaison Committee of Social Organizations for the Defence of Children's Rights) (CLOSE)
- ACAT Benin
- Association de Lutte Contre le Racisme, l'Ethnocentrisme et le Régionalisme (Association to Combat Racism, Ethnocentrism and Regionalism)

Section III. Programmes

13. Benin has also introduced a number of national policies and programmes to strengthen human rights, namely:

- Growth and Poverty Reduction Strategy Papers (GPRSP), third cycle (2011–2014), fourth cycle (2015–2018)
- Growth Programme for Sustainable Development
- Government Action Programme (2016–2021)
- National Child Protection Policy and Strategy (2008–2012)
- National Child Protection Policy (October 2014)
- National Social Protection Policy and Strategy (2004–2013)
- National Development Plan (2016–2025)
- National Gender Promotion Policy (2009–2025)
- National Plan to Combat Child Trafficking (2008–2012)
- National Family Action Plan (2009–2016)
- National Action Plan for elimination of the worst forms of child labour in Benin (2012–2015)
- National Policy on the Development of the Justice Sector
- National Plan on Good Practices to Combat Racial Discrimination (October 2014).

Part Two. Information related to articles of the Convention

14. Information is provided on each article of the Convention.

Article 1. Prohibition on derogation from the provisions of the Convention

15. Beninese legislation contains no provisions which derogate from the prohibition of enforced disappearances, the purpose of the Convention. What is more, all the exceptional circumstances mentioned (state of war or threat of war, internal political instability or any other public emergency) are covered by the substantive and formal conditions referred to in article 101 of Act No. 90-32 of 11 December 1990 establishing the Constitution of the Republic of Benin, as amended by Act No. 2019-40 of 7 November 2019, which is worded:

“A declaration of war shall be authorized by the National Assembly. When, as a result of exceptional circumstances, the National Assembly is to all intents and purposes unable to sit, the decision to declare war shall be taken in the Council of Ministers by the President of the Republic, who shall immediately inform the nation thereof.

A state of siege and a state of emergency shall be decreed in the Council of Ministers after obtaining the opinion of the National Assembly.

Extension of a state of siege or state of emergency beyond 15 days may be authorized only by the National Assembly.

When the National Assembly is not called upon to take a decision, no state of siege or state of emergency may be decreed without its authorization, in the 60 days following the date of the entry into force of the previous state of siege or state of emergency.”

16. It must be emphasized that Benin enjoys political stability and is not experiencing any exceptional circumstances that might lead to non-compliance with the prohibition on derogation from the provisions of the Convention.

Article 2. Definition of enforced disappearance

17. Article 465, last paragraph, of the Criminal Code reflects the definition of enforced disappearance from the Convention. This definition is couched in these terms: “Enforced disappearance of persons is considered to be the arrest, detention or abduction of persons by a State or political organization, or with the authorization, support or acquiescence of a State or political organization, followed by a refusal to acknowledge the deprivation of liberty of these persons or by concealment of their fate or whereabouts, for the purpose of placing them outside the protection of the law for a prolonged period of time.”

Article 3. Appropriate measures to investigate or prosecute those responsible for acts amounting to enforced disappearance

18. The Code of Criminal Procedure empowers the criminal police, acting under the effective supervision of the public prosecutor and in accordance with the established distinctions, to record offences against criminal law, to gather evidence and to search for the perpetrators, until such time as a judicial investigation is opened.

19. It performs the tasks assigned to it by the investigative courts and carries out their orders once a judicial investigation has been opened.

Article 4. Criminalization of enforced disappearance in national legislation

20. Act No. 2018-048 of 28 December 2018 establishing the Criminal Code of the Republic of Benin criminalizes enforced disappearance, as defined in article 465 in fine.

Article 5. The widespread or systematic practice of enforced disappearance deemed to be a crime against humanity in domestic law

21. The provisions of article 464 of the Criminal Code qualify the enforced disappearance of persons as a crime against humanity. The perpetrators of this criminal offence are punished by life imprisonment in accordance with the provisions of article 467 (1) of the Code.

22. Enforced disappearance does not constitute a separate offence in Beninese law.

Article 6. Criminal responsibility of a superior in the event of enforced disappearance

23. Article 19 of the Constitution states that “Any person or agent of the State who is guilty of an act of torture, abuse, or cruel, inhuman or degrading treatment in exercise of or while performing his or her duties, either on his or her own initiative, or acting on orders, shall be punished in accordance with the law. Any person or agent of the State shall be relieved of the duty to obey orders when the order received is a serious and clear violation of human rights or public freedoms.”

24. Articles 15 and 16 of the Criminal Code define the principle of criminal responsibility in these terms:

- Article 15: “A person may be held criminally responsible only for his or her own actions.”
- Article 16: “Ignorance of criminal law, motive, mistake as to the identity of the victim or the purpose of the offence and pardon by the victim shall have no effect upon the existence of responsibility. However, the court may take them into account when determining the penalty.”

Article 7. Penalties for enforced disappearance

25. Enforced disappearance is qualified as a crime against humanity by the Criminal Code and is punished by life imprisonment (article 467). The Criminal Code makes no provision for aggravating or mitigating circumstances when the constituent elements of the offence exist.

Article 8. Statute of limitations and remedy in the event of enforced disappearance

26. Enforced disappearance, which is qualified as a crime against humanity, is not subject to the statute of limitations in Beninese positive law.

27. Please see article 464 et seq. of the Criminal Code and article 8 (3) of the Code of Criminal Procedure.

Article 9. Competence of national courts to exercise jurisdiction over the offence of enforced disappearance and judicial cooperation in the matter

28. The measures taken by Benin to establish its jurisdiction in the cases referred to in article 9 (1) of the Convention are set forth in the Criminal Code (articles 10 to 14).

29. Under article 10, criminal law applies to offences committed in the territory of the Republic of Benin.

30. The offence is deemed to have been committed in the territory of the Republic of Benin if any of its constituent elements took place in that territory.

31. Article 11 provides that, for the purposes of applying the Code, the territory of the Republic of Benin includes its maritime areas and airspace.

32. Under article 12, criminal law applies to offences committed on or against ships flying the Beninese flag, regardless of their location. It alone applies to offences committed on or against naval vessels, regardless of their location.

33. Article 13 specifies that criminal law applies to offences committed on or against aircraft registered in Benin, regardless of their location. It alone applies to offences committed on or against Beninese military aircraft, regardless of their location.

34. Article 14 provides that criminal law applies to anyone present in the territory of Benin who is guilty of being an accomplice to an offence or crime committed abroad, when the offence or crime is punished by both Beninese law and the foreign law and when the crime or offence has been established by a final decision of the foreign court.

35. Article 639 of the Code of Criminal Procedure is worded:

“Any citizen of Benin who is guilty of an act outside the territory of the Republic which is qualified as an offence by Beninese law may be prosecuted and tried by Beninese courts.

National laws and courts shall have jurisdiction when the victim of a crime committed abroad, or his or her survivors, possess Beninese nationality.

In such a case, the competent court shall be that of the place of residence of the victim or of his or her survivors.”

36. Beninese courts also have jurisdiction to hear cases concerning offences referred to in the international treaties and conventions to which Benin is a party, in accordance with the binding rules on jurisdiction established by those treaties and conventions.

37. The measures taken by Benin to establish its jurisdiction in the cases referred to in article 9 (2) of the Convention are set forth in the Criminal Code.

38. Article 640 states that “Any person present in the territory of the Republic who is guilty of being an accomplice to an offence or crime committed abroad may be prosecuted and tried, if the act is punished by both the foreign law and Beninese law, provided that the commission of the act qualified as an offence or crime has been established by a final decision of the foreign court.”

39. Similarly, article 644 (2) and (3) of the Code stipulates that “Any alien arrested in the Republic of Benin who, outside the territory of the Republic, is guilty of being the perpetrator of or an accomplice to an offence or crime punished by national law may be prosecuted and tried in the Republic of Benin.”

40. It then goes on to state that “The perpetrators of or accomplices to offences committed outside the territory of the Republic may be prosecuted and tried by the Beninese courts either when Beninese law applies under the provisions of the Criminal Code or another legislative text, or when an international convention confers competence on Beninese courts to exercise jurisdiction over the offence.”

Article 10. Procedural safeguards for a person who is suspected of having committed an offence of enforced disappearance

41. Beninese legislation provides the same procedural guarantees as the Convention in the Criminal Code and Code of Criminal Procedure.

42. At the institutional level:

- (1) The establishment of “liberty and detention” courts;
- (2) The introduction of a two-stage procedure in criminal cases;
- (3) The independence and impartiality of criminal courts.

43. At the procedural level:

- (1) Stronger defence rights (right to a lawyer at the outset of a preliminary investigation, right to a doctor of one’s choice, time limit for police custody);
- (2) The unequivocal assertion of the presumption of innocence;
- (3) Stronger protection of the inviolability of the home;
- (4) Obligatory assistance in criminal cases (article 125 of the Code of Criminal Procedure);
- (5) Time limits for the investigation of a case;
- (6) Greater restrictions on investigatory measures and sentencing for crimes committed by minors under the age of 18;
- (7) Initiation of criminal proceedings against legal persons.

44. These safeguards are embodied in the following articles of the Constitution:

- Article 16: “No one may be arrested or charged except by virtue of a law promulgated prior to the charges against him or her. No one may be forced into exile.”
- Article 18: “No one shall be subjected to torture, abuse or cruel, inhuman or degrading treatment. No one has the right to prevent a detainee or defendant from being examined by a doctor of his or her choice.”

45. In the event of police custody or detention abroad, the judicial authorities rely on the provisions of the Vienna Convention on Consular Relations.

Article 11. Extradition and guarantees of a fair trial

46. Under article 26 of the Constitution, the State ensures all persons equality before the law, regardless of origin, race, sex, religion, political opinion or social status. Men and women are equal before the law. The State protects the family, in particular mothers and children. It ensures the well-being of persons with disabilities and older persons.

47. The general principles of criminal procedure constitute guarantees of a fair trial in cases of enforced disappearance. These principles require that:

“Criminal proceedings must be fair and impartial. Criminal proceedings must be adversarial. They must preserve the balance of parties’ rights.

Criminal procedure must guarantee the separation of the prosecution and the trial court. Criminal procedure must guarantee the equality of the persons on trial before the law.

Persons in similar circumstances who are prosecuted for the same offences must be tried in accordance with the same rules, unless the law provides otherwise.

Every authority in charge of proceedings at various levels has a duty to inform the parties of their rights. It shall guarantee this throughout the proceedings.

Any suspect or defendant shall be deemed innocent until proven guilty. Violations of the presumption of innocence shall be prevented, remedied and punished in accordance with the conditions laid down by law.

Any suspect or defendant has the right to be informed of the charges against him or her and to be assisted by defence counsel, to be examined by a doctor of his or her choice and to contact and be visited by a member of his or her family.

Any coercive measures to which this person may be subject shall be decided by or taken under the effective control of a judicial authority. They must be strictly limited to what is necessary for the proceedings, must be proportionate to the seriousness of the alleged offence and must not violate personal dignity.

A final decision must be taken within a reasonable period of time on the offence with which this person is charged.” (Please see the general principles contained in the preamble to the Code of Criminal Procedure.)

Article 12. Consideration of complaints and protection of complainants, witnesses, persons with a legitimate interest and defence counsel of victims of enforced disappearance

48. Persons in respect of whom there is no plausible reason to suspect that they have committed or attempted to commit an offence and who may be able to provide evidence relevant to the proceedings may, upon authorization of the public prosecutor or an investigating judge, declare as their place of residence the address of the police station.

49. The address of these persons is then entered in a numbered, initialled register opened for this purpose (article 120 of the Code of Criminal Procedure).

50. When proceedings relate to an offence or crime punishable by at least 5 years’ imprisonment and the hearing of a person referred to in article 120 is likely seriously to jeopardize the life or physical integrity of this person, members of his or her family, or his or her relatives, the president of the court of first instance, in response to an application from the public prosecutor, may, by a reasoned decision, authorize the taking of evidence from this person without his or her identity being disclosed in the case file (article 121).

51. No appeal may be lodged against this decision, save under the provisions of article 122 (3) to (5).

52. The decision of the president of the court of first instance not to disclose the identity of the person shall be appended to the record of evidence taken from the witness, which is not signed by the person concerned. The identity and address of the person are entered on another record which is signed by the person concerned and placed in a file separate from the case file which also includes the application referred to in the previous paragraph.
53. The person's identity and address are entered in a numbered, initialled register opened for this purpose by the court of first instance (article 121 of the Code of Criminal Procedure).
54. The identity and address of a witness who is entitled to the protection of the provisions of articles 120 and 121 may not be disclosed under any circumstances.
55. The disclosure of the identity or address of a witness who is entitled to the protection of the provisions of articles 120 and 121 is punished by 3 to 5 years' imprisonment and a fine of between 100,000 and 500,000 francs.
56. The provisions of article 120 do not apply if, having regard to the circumstances in which the offence was committed, or the person of the witness, knowledge of the identity of the person is essential in order to exercise defence rights.
57. The accused may appeal to the president of the Indictments Chamber against proceedings held in accordance with article 120, within 15 days of the date on which he or she has been informed of the contents of a hearing conducted subject to the conditions of that article.
58. The president of the Indictments Chamber rules by a reasoned decision, which is not open to appeal, having considered the documents in the case file and those in the file mentioned in article 120. If he or she deems the challenge to be justified, he or she orders the setting aside of the hearing. He or she may also order the disclosure of the witness's identity, provided that the witness explicitly consents to the removal of his or her anonymity (article 122 of the Code of Criminal Procedure).
59. There are traditional judicial and non-judicial mechanisms.
60. The Constitutional Court may be asked to rule on the constitutionality of laws either directly or through the procedure for raising an objection that proceedings in a particular court case are unconstitutional. The latter court must stay proceedings until the Constitutional Court has delivered its decision, which it must do within 30 days.
61. If the competent authorities refuse to initiate investigations into a case, the complainant may turn to the Benin Human Rights Commission or the Constitutional Court.
62. Part III, chapter 1, section VI of the Code of Criminal Procedure, entitled "Witness protection", protects complainants, their representatives, witnesses and any other persons participating in the investigation against any form of intimidation or ill-treatment through article 120 et seq. In addition, criminal police units may open investigations into cases of enforced disappearance. However, it would be advisable to boost their technical and logistical capacity to contend with the growing threat of terrorism and abduction. Under article 144.8 of the Code of Criminal Procedure, the liberties and detention judge may place the accused under court supervision and order him or her "to abstain from receiving or meeting certain persons specifically named by the liberties and detention judge, or to have any dealings whatsoever with them".

Article 13. Conditions governing extradition in the event of enforced disappearance

63. In the absence of treaties, the conditions, procedure and effects of extradition are determined by the provisions of the Code of Criminal Procedure. Under article 736 (3) of the Code, extradition may take place in respect of offences subject to universal jurisdiction under the international conventions which have been ratified by Benin.
64. The extradition agreements concluded between Benin and other States do not explicitly refer to acts related to enforced disappearance. These agreements cover a wide range of offences.

65. No obstacles are encountered in the implementation of the agreements.
66. To date there have been no examples of cooperation where the Convention has served as a basis for extradition.
67. During the period covered by the report, Benin has not received or made any requests for the extradition of a person suspected of having committed acts related to enforced disappearance.
68. Enforced disappearance is not qualified as a political offence in domestic legislation.
69. During the period covered by this report, there were no binding treaties between Benin and other States that explicitly stated that enforced disappearance was a basis for extradition.
70. The provisions of chapter II of the Code of Criminal Procedure, entitled “Extradition upon the request of a foreign Government”, give the President of the Republic the prerogative to order by decree extradition to foreign States at the request of their Government. Article 735 et seq. set forth the conditions for extradition and the relevant human rights safeguards.

Articles 14 and 15. Mutual legal assistance and judicial cooperation

71. As far as mutual legal assistance and judicial cooperation are concerned, the original requests for assistance from the International Criminal Court, and a certified copy thereof, are sent to the competent authorities in accordance with article 87 of the Statute, along with all the supporting documentation.
72. These documents are forwarded to the public prosecutor at the court of first instance in Cotonou, who takes all the appropriate follow-up action.
73. In urgent cases, these documents may be sent directly, by any means, to this law officer. They are then duly forwarded in the manner described in the previous paragraphs (article 772 of the Code of Criminal Procedure).
74. The mutual assistance requested is provided either by the public prosecutor at the court of first instance of Cotonou, or by the most senior investigating judge of that court, who act throughout the national territory, possibly accompanied by the Prosecutor of the International Criminal Court or his or her representative, or by any other person mentioned in the Court’s request.
75. The reports drawn up in pursuance of these requests are sent to the International Criminal Court by the competent authorities under article 87 of the Statute.
76. In urgent cases, certified copies of reports may be sent directly, by any means, to the International Criminal Court. The reports are then duly forwarded in the manner described in the previous paragraphs.
77. The execution in Beninese territory of the measures of assistance referred to in article 93 (1) (k) of the Statute is ordered by the public prosecutor at the court of first instance of Cotonou, at the expense of the Treasury and in accordance with the methods set forth in the Code of Civil Procedure. The maximum time limit for these precautionary measures is two years, which may be extended on the same conditions, before the expiry of this time limit, at the request of the International Criminal Court.
78. In accordance with article 87 of the Statute, the public prosecutor at the court of first instance of Cotonou informs the competent authorities of any difficulty in implementing these measures, with a view to holding the consultations provided for in articles 93 (3) and 97 of the Statute (article 773 of the Code of Criminal Procedure).
79. Moreover, as far as mutual legal assistance and judicial cooperation are concerned, the original requests for assistance from the International Criminal Court and a certified copy thereof are sent to the competent authorities in accordance with article 87 of the Statute, along with all the supporting documentation.
80. These documents are forwarded to the public prosecutor at the court of first instance in Cotonou, who takes all the appropriate follow-up action.

81. In urgent cases, these documents may be sent directly, by any means, to this law officer. They are then duly forwarded in the manner described in the previous paragraphs (article 772 of the Code of Criminal Procedure).

Article 16. Prohibition of extradition and expulsion when the safety of the person to be extradited cannot be guaranteed

82. Benin is party to a number of conventions which prohibit the expulsion or extradition of a person to a State if there are grounds for believing that there is a risk of serious harm to his or her life and physical integrity. These conventions include the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Economic Community of West African States Convention on Extradition.

83. Extradition practice in Benin complies with the provisions of these conventions.

84. No legislation or practice has been adopted to call into question this prohibition on extraditing a person if there are grounds for believing that there is a risk that his or her rights will be violated.

85. Article 732 of the Code of Criminal Procedure specifies the authority which decides on the extradition, expulsion or return of a person. It is worded:

“The President of the Republic may, by decree, order the extradition to foreign States which so request of any alien present in its national territory who is being prosecuted or who has received a custodial sentence in the requesting State on the conditions set forth in sections I and II of this part.

He may also, in the same manner, authorize the communication to the foreign authorities of evidence or documents in the possession of the Beninese authorities in response to a request submitted through the diplomatic channel and, if the originals are forwarded, subject to their prompt return.

Even when a person has been imprisoned for debt, a request that a detainee appear before a foreign court as a witness may be granted only subject to the express condition that he or she be returned promptly to the Republic of Benin, the whole process being at the expense of the requesting State.”

86. Extradition operations are conducted professionally and in accordance with the provisions of the following articles of the Code of Criminal Procedure:

Article 743: “Save where otherwise provided by international conventions, any request for extradition shall be submitted through the diplomatic channel.

The following shall be appended to the request, as appropriate:

- A copy of the judgment or sentencing decision, even when delivered ex parte;
- A procedural document ordering or giving full effect to the referral of the accused before a criminal court;
- An arrest warrant or any other equivalent document drawn up by the competent foreign authority. This warrant or other document must state the offence for which it has been issued and the date on which the offence was committed.

The original or a certified copy of the judgment, sentencing decision, or equivalent procedural document shall be produced.

At the same time, the requesting State shall append a copy of the text applicable to the offences charged and the facts.

In the event of a judgment or warrant in absentia, in addition to the documents referred to in this article, the requesting State must supply proof that the person whose extradition is requested has been informed of the course of proceedings and that he or she has sufficient legal means to organize his or her defence.”

87. Officers who are called upon to take part in extradition operations receive training in international human rights law and international humanitarian law.

Article 17. Detention conditions in the event of enforced disappearance

88. Deprivation of liberty is also subject to the restrictions laid down by the Constitution and the Code of Criminal Procedure. Articles 16 and 18 of the Constitution provide that:

Article 16: “No one may be arrested or charged except by virtue of a law promulgated prior to the charges against him or her. No one may be forced into exile.”

Article 18: “No one shall be subjected to torture, abuse or cruel, inhuman or degrading treatment.

No one has the right to prevent a detainee or defendant from being examined by a doctor of his or her choice.

No one may be held in a prison save under an existing criminal law.

No one may be detained for longer than 48 hours except by decision of the judge before whom he or she must be brought. This period of time may be extended only in the exceptional cases provided for by law and may not exceed eight days.”

89. These legal provisions are complied with in practice.

90. In accordance with article 796 (1) of the Code of Criminal Procedure, defendants or accused persons who have been remanded in custody are detained in a remand prison. There is therefore no secret detention in Benin.

91. Article 46 also stipulates:

“The judge of liberties and detention is responsible for the management of the detention and judicial supervision of accused persons whose cases are being investigated by the office of the investigating judge. In this capacity, he or she may order or extend remand in custody. He or she may also rule on requests for provisional release.

However, in the event of an offence which is discovered while it is being committed, the public prosecutor shall issue a committal warrant and take the steps provided for by law.”

92. Under article 59 of the Code of Criminal Procedure:

“The criminal police officer must inform any person held in custody of his or her rights to:

- Consult a lawyer
- Be examined by a doctor of his or her choice
- Inform and be visited by a member of his or her family.

However, remand in custody is prohibited when an offence has been committed through the press or audiovisual communication media.

For the purposes of remand in custody, the public prosecutor shall keep a numbered, initialled register which must be produced whenever the State Prosecutor’s Office so requests.

All the measures taken during remand in custody must be entered in the register.”

93. Criminal police officers usually abide by these statutory requirements. However, efforts must still be made to ensure strict compliance with them.

94. Steps are also taken to inform consular authorities if an alien is detained.

95. Benin has a national human rights institution responsible, inter alia, for inspecting prisons and all other places of detention. This institution’s terms of reference include the prevention of torture.

96. Prisons are monitored by several administrative and judicial mechanisms and by non-governmental organizations. There is a supervisory commission in every prison.

97. The Code of Criminal Procedure provides for safeguards making it possible to decide on the lawfulness of detention. For example, article 147 of the Code provides that:

“In less serious cases, when the maximum penalty specified by law is less than two years’ imprisonment, an accused person domiciled in the Republic of Benin may be detained for no more than 45 days after he or she has first appeared before the investigating judge, or public prosecutor in the event of an offence which is discovered while it is being committed, if the person has not already been convicted of an ordinary offence.

In all other cases, remand in custody may not exceed six months while the investigating judge remains seized of the case.

If it appears necessary to keep the person in detention, the investigating judge shall refer the matter to the liberties and detention judge, who, in response to a reasoned request from the public prosecutor and having obtained the observations of the accused or his or her counsel, may order longer detention on special grounds related to procedural aspects.

The liberties and detention judge must take the decision within the time limits laid down in this article.

In the absence of any such order, the accused person shall be released immediately by the president of the liberties and detention chamber and may not again be placed under a detention order for the same charge. The investigating judge in charge of the case must be informed promptly by the prison governor that the committal order has been lifted.

No extension for longer than six months may be ordered. It may be renewed once for ordinary offences. It may be extended for six months and renewed three times for serious offences, except in cases of murder and similar crimes, sexual assault and economic crimes.

The judicial authorities shall bring the accused before a trial court within a period of:

- Five years in cases concerning serious crimes;
- Three years in cases concerning ordinary offences.

In cases concerning economic crimes, the accused may be prosecuted without an arrest warrant if he or she either offers to consign immediately half of the funds allegedly gained through the crime or demonstrates ownership of sufficient assets or real estate to serve as a guarantee, which he or she assigns by a notarial act.”

98. Efforts are made to comply with the provisions of this article. Nevertheless, a lack of resources prevents its strict application.

99. The last paragraph of this article is generally observed.

100. In the event of a breach of the legal provisions restricting detention, appeals may be filed with the Supreme Court, the Constitutional Court, the Benin Human Rights Commission, etc.

Article 18. Access to information and the protection of persons with a legitimate interest in the event of enforced disappearance

101. Access to information is guaranteed by article 8 of Act No. 90-032 of 11 December 1990 establishing the Constitution of the Republic of Benin, which is worded: “The human person is sacred and inviolable. The State has an absolute obligation to respect and protect the human person and to guarantee each person’s full development. To this effect, it provides its citizens with equal access to health, education, culture, information, vocational training and employment.”

102. The Code of Criminal Procedure guarantees the right of any person to obtain access to information.

103. There is no restriction of the exercise of this right by any person possessing a legitimate interest to have access to information.

Article 19. Collection and use of information regarding enforced disappearance

104. The Code of Criminal Procedure has provided for the establishment of an automated national database of genetic and medical information. Articles 824 and 825 stipulate:

Article 824: “The purpose of the automated national database of genetic profiles under the supervision of a member of the national legal service is to provide a central record of genetic fingerprints obtained from biological traces and of the genetic profile of persons convicted of any of the offences referred to in article 825 of this Code, with a view to facilitating the identification of and search for the perpetrators of these crimes.

The genetic profile of persons in respect of whom there is strong or corroborated evidence that make it likely that he or she has committed any of the offences referred to in article 825 below shall also be stored in this database by a decision of a criminal police officer acting either *ex officio* or at the request of the public prosecutor or investigating judge.

The case file shall record this decision. This genetic profile shall be deleted on the instruction of the public prosecutor acting either *ex officio* or at the request of the person concerned when storage appears no longer necessary for the purposes of the database. When so requested by the person concerned, the public prosecutor shall inform him or her of the action taken on his or her request; if deletion has not been ordered, the person concerned may refer the matter to the investigating judge, whose decision may be challenged in the Indictments Chamber.

Criminal police officers may also, *ex officio* or at the request of the public prosecutor or investigating judge, order the comparison of the genetic profile of any person in respect of whom there are one or more plausible reasons to suspect that he or she has committed an offence with the material in the database. This genetic profile may not, however, be preserved therein.

The database for which this article makes provision shall also contain genetic fingerprinting obtained from biological traces found during investigations into the causes of death or the investigation of a disappearance as well as the genetic profile which matches or may match that of deceased or missing persons.

The genetic profiles stored in this database may be obtained solely from non-coding sequences of deoxyribonucleic acid (DNA), with the exception of the sequence corresponding to the sex-specific marker.”

Article 825: “The national database of genetic profiles shall provide a central record of genetic fingerprinting with regard to the following offences:

1. Sexual offences;
2. Crimes against humanity, voluntary taking of human life, torture, barbaric acts, assault, threat of assault, drug trafficking, human trafficking, procuring, jeopardizing of minors in the manner referred to in the Criminal Code or specific laws;
3. Murder, assassination or money-laundering;
4. Offences involving the possession or manufacture of weapons and ordnance.”

105. The national genetic profiling centre is not yet in operation.

106. Benin has adopted and implemented Act No. 2017-20 of 20 April 2018 establishing the Digital Code of the Republic of Benin, which introduces separate legal rules for the processing of personal data.

Article 20. Restriction of the right to information of persons deprived of their liberty in the event of enforced disappearance

107. No text restricts the access to information of persons deprived of their liberty.

Article 21. Release of a person deprived of his or her liberty

108. The start of detention and the release of any person deprived of his or her liberty are officially recorded.

109. Court decisions, release orders, release warrants and Ministry of Justice decisions granting conditional release permit the release of any persons held in detention.

110. In practice, a person may be released at the hearing or as soon as the prison governor receives the release order. The prison governor issues a release certificate and the person signs the prison register.

Article 22. Obligation to prevent and sanction obstruction of the right of judicial appeal to determine the lawfulness of deprivation of liberty

111. Articles 3 (3) and 17 of the Constitution provide guarantees that a person deprived of liberty and any other person with a legitimate interest may file a judicial appeal. Book III of the Code of Criminal Procedure, entitled “Extraordinary appeals”, provides for the possibility of lodging an appeal.

112. The general principles of criminal procedure are respected at all stages of the process.

113. Sanctions include dismissal from the criminal police, removal from a post, fines and prosecution.

114. Failure by criminal police officers or senior criminal police officers to meet their obligations under the Code when performing their duties may give rise to a warning from the public prosecutor in their area, or a reprimand entered in the file supervised by the Principal State Prosecutor, without prejudice to the measures provided for in article 246 of the Code.

115. Any refusal by a criminal police officer to respond to a request from a judicial authority gives rise to a fine ranging from 50,000 to 500,000 francs.

116. This fine is imposed at the request of the public prosecutor by the president of the court or the judge to whom he or she has delegated this power.

117. When a sanction is handed down, the public prosecutor informs the Treasury authorities and the superior of the officer concerned.

Article 63: “Every criminal police officer must enter in the record of the questioning of any person held in custody the length of the questioning undergone by the person and the rest periods between questioning, the date and time the person is taken into custody, as well as the date and time the person is either released or brought before the competent judge, or held at the disposal of that judge, on pain of the sanctions provided for in the Criminal Code.

This entry must be signed by the detainee in person and if he or she refuses, or is unable to do so, this shall be noted. The entry must state the reasons for custody.

Remand in custody shall begin as soon as the suspect no longer has freedom of movement.

The public prosecutor shall appoint ex officio, or in response to a request from a member of the family of the person held in custody, a doctor or any other qualified

official who shall examine the person at any time within the time limits set by articles 55 and 57 of this Code.

The criminal police officer shall inform the person in custody of this right. This shall be noted in the record.”

Article 64: “Failure to comply with the measures governing remand in custody shall entail the cancellation of the record, without prejudice to the sanctions for which provision is made in articles 24 and 246 of this Code.”

Article 246 (1): “The Indictments Chamber may, without prejudice to the disciplinary measures which may be imposed on a criminal police officer or senior criminal police officer by his or her superiors, admonish that person, or decide that he or she may be relieved temporarily or definitively of his or her duties as a criminal police officer or senior criminal police officer, either in the area served by the appeal court or throughout the territory.”

Article 247: “If the Indictments Chamber considers that the criminal police officer or senior criminal police officer has committed a criminal offence, it shall also order the forwarding of the file to the public prosecutor for the appropriate action.”

Article 23. Prevention of enforced disappearance

118. State officials who are called upon to take part in extradition operations receive training in international human rights law and international humanitarian law.

119. Capacity-building takes place periodically. The various training courses are often run by members of the judiciary, university professors and senior army officers.

120. The different refresher courses are provided for the largest possible number of officers who are required to abide by the provisions governing remand in custody or have dealings with persons deprived of their liberty.

121. Article 19 of the Constitution provides that: “Any person or agent of the State who is guilty of an act of torture, abuse, or cruel, inhuman or degrading treatment in exercise of or while performing his or her duties, either on his or her own initiative, or acting on orders, shall be punished in accordance with the law. Any person or agent of the State shall be relieved of the duty to obey orders when the order received is a serious and clear violation of human rights or public freedoms.”

122. This article of the Constitution is included in the armed forces’ training programmes by means of a document entitled “Disciplinary regulations of the Beninese Armed Forces”, article 7 of which provides that: “A subordinate must faithfully carry out the orders which he or she receives. However, he or she may not carry out acts that are manifestly illegal or contrary to the rules of the law of armed conflict and international conventions.”

Article 24. Victims’ right to reparation

123. Articles 206, 208 and 209 of the Code of Criminal Procedure and the Code of Civil, Administrative, Social, Commercial and Accounting Procedure establish procedures for obtaining reparation for damage sustained from human rights violations. These procedures may also be used in the context of enforced disappearance.

124. The setting up of associations is governed by the Act of 1901 and there is no obstacle to their establishment.

Article 25. The protection of children in the event of enforced disappearance

125. Act No. 2015-08 of 8 December 2015 establishing the Children’s Code in the Republic of Benin guides the protection of the rights of the child in Benin. Article 8 (1) provides that “the child’s best interest shall be the principal consideration in any decisions

concerning the child, regardless of whether they are taken by public or private welfare institutions, courts, administrative authorities or legislative bodies". The Code's principles apply to children who are victims or whose parents are subjected to enforced disappearance.

126. Article 62 et seq. of this text set forth the conditions governing adoption and make provision for the setting up of a central adoption authority.

Conclusion

127. There have not been any cases of enforced disappearance in Benin during the period under consideration. The Constitution and numerous laws and regulations make it possible to combat acts of enforced disappearance. The Government makes strenuous efforts to offer all population groups the best possible protection.

128. However, some challenges still remain to be met, especially with regard to training and awareness-raising measures to familiarize law enforcement officials with the Convention and ensure its effective application.

129. Benin stands willing to cooperate with the Committee on Enforced Disappearances in order to implement all recommendations aimed at improving the human rights situation in the country.
