



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

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**Written replies from the Government of Benin* to the list of issues
(CAT/C/BEN/Q/2) to be considered during the examination of the
second periodic report of BENIN (CAT/C/BEN/2)**

[11 September 2007]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Articles 1 and 4

Question 1

The Committee notes that there is no formal definition of torture in Beninese legislation. What measures have been taken or are planned in order to incorporate in domestic law a definition of torture that is in keeping with the Convention and to subsequently criminalize the acts so defined?

1. As yet, Beninese law does not give a formal definition of torture. The settled case law of the Constitutional Court bridges this gap by providing a broad definition of torture: “Torture and cruel, inhuman or degrading treatment must be judged not only by its effect on the individual’s physical or mental state, but also its duration, deliberate intent and the circumstances in which it is inflicted.”

(a) “Detention for two weeks in a poorly ventilated, badly lit room stinking of urine and sometimes even of faeces does indeed amount to inhuman and degrading treatment” (DCC 99-011, 9 February 1999);

(b) “Similarly, telling a person in police custody to lie in urine, to roll in piles of refuse or to kneel down and bang their head on the floor”;

(c) “Putting handcuffs on minors even though the degree of resistance they were putting up against four police officers made it unnecessary”;

(d) “Handcuffing a journalist during his arrest; punching or clubbing a person; stripping someone naked and then throwing them into a vehicle”.

2. All these constitute cruel, inhuman and degrading treatment and violate the Constitution.

3. Under article 147 of the Constitution, “duly ratified treaties or agreements acquire upon publication higher authority than laws”.

4. Thus, by virtue of this provision, the full text of the Convention against Torture ratified by Benin on 12 March 1992, was published in the Official Gazette of 5 September 2006.

5. Appropriate measures are nevertheless being taken to incorporate the definition of torture in accordance with article 1 of the Convention, and to define torture as an offence in the final version of the draft criminal code currently before the National Assembly.

Question 2

Please provide detailed information on the measures taken or planned in order to permit the State party to bring its domestic legislation fully into line with the provisions of article 4 of the Convention.

6. Apart from the classic offences of abuse of authority in respect of individuals and the violation of physical integrity, which are defined and punished under articles 186, 198, 295, 302,

304 and 309 to 312 (points 10-15, pp. 11-14, 1998-2001 report), current legislation does not specifically define torture as a criminal offence in line with article 4 of the Convention.

7. The necessary procedures are under way to take account of all the Committee's concerns in the draft criminal code currently before the National Assembly.

Article 2

Question 3

Does Beninese law stipulate that no exceptional circumstances whatsoever, nor any order from a superior officer or a public authority, may be invoked as a justification of torture? What measures have been taken or are planned to that end? What amendments have been proposed to articles 327 and 328 of the Criminal Code?

8. This issue is governed by article 19 of the Constitution, which states:

“Any individual or agent of the State who, in the course of their duty, commits acts of torture or inflicts cruel, inhuman and degrading treatment, whether on their own initiative or under orders, shall be punished in accordance with the law.

“Any individual or agent of the State shall be absolved of the duty of obedience when the order received constitutes a manifest grave violation of human rights and public liberties.”

9. Notwithstanding this provision, there have been no changes of note to articles 327 and 328 of the Criminal Code.

10. On the other hand, in relation to article 114 of the Criminal Code (which states: “Any civil servant or government agent or official who orders or commits an arbitrary act or one that violates a person's liberty or the civic rights of one or more citizens or the Constitution shall be liable to loss of civic rights. If, however, they can prove that they acted on the orders of a superior for purposes within the latter's remit and in respect of which the principle of due obedience applied, they shall not be liable to punishment; the penalty shall in this case be applied solely to the superior who gave the order”), notable amendments have been made, in accordance with the Convention, in the draft criminal code before the National Assembly, including deletion of the second sentence.

11. Thus article 127 of the draft states: “Any civil servant or government agent or official or person of similar standing who orders or commits an arbitrary act or one that violates a person's liberty or the civic rights of one or more citizens or the Constitution shall be liable to loss of civic rights.”

12. Article 128 of the draft criminal code states: “If, following the statutory injunctions, the administrative authority ordering or committing the act or acts mentioned in the preceding article refuses or fails to make reparation for those acts within the set time, that authority shall be liable to 10 to 20 years' imprisonment.”

Question 4

Please provide information on legislative, administrative or other measures taken against terrorism. Please also indicate whether such measures affect any legal or practical human rights guarantees.

13. Concerned at the resurgence of terrorism, Benin has adopted legislative, administrative, political, economic, legal and diplomatic measures to prevent and combat this scourge effectively.

14. Benin is a party to 9 of the 16 universal instruments against terrorism, namely:

(a) Convention on Offences and Certain Other Acts Committed on Board Aircraft, ratified on 30 March 2004;

(b) Convention for the Suppression of Unlawful Seizure of Aircraft, ratified on 13 March 1972;

(c) Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ratified on 19 April 2004;

(d) Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, ratified on 31 July 2003;

(e) International Convention against the Taking of Hostages, ratified on 31 July 2003;

(f) Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, ratified on 19 April 2004;

(g) Convention on the Marking of Plastic Explosives for the Purpose of Detection, ratified on 30 March 2003;

(h) International Convention for the Suppression of Terrorist Bombings, ratified on 31 July 2003;

(i) International Convention for the Suppression of the Financing of Terrorism, ratified on 30 August 2004.

15. Proceedings are under way for the ratification of the other instruments against terrorism. In most cases the ratification procedure has begun.

16. Pursuant to paragraph 6 of Security Council resolution 1373 (2001), on combating terrorism, Benin has submitted to the Counter-Terrorism Committee three reports on the legislative, political, economic and other measures taken in that regard. Its initial report, submitted on 17 April 2002, described the status of ratification of counterterrorism instruments, Benin's legislative framework for combating terrorism, mechanisms for providing early warning by exchange of information, and measures taken to intensify and accelerate the exchange of operational information under cooperation agreements on cross-border crime.

17. The second report on the implementation of universal instruments against terrorism, submitted on April 2005, described the legal and other measures taken to prevent and punish the financing of terrorist acts.
18. The third periodic report, submitted on 15 March 2006, contained additional information requested by the Counter-Terrorism Committee on the bill on the suppression of money-laundering.
19. In addition, in March 2004, Benin submitted to the Chair of the Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities a report on the implementation of Security Council resolutions 1455 (2003) and 1526 (2004).
20. Benin has taken other steps to implement the provisions on violations and on the rules governing jurisdiction in counterterrorism matters.
21. A workshop was organized by the Ministry of Justice, Legislation and Human Rights from 18 to 20 October 2006, with the technical support of the United Nations Office on Drugs and Crime (UNODC), on the incorporation into Beninese law of the universal instruments against terrorism to which Benin is a party. A comparative analysis was made of Benin's draft criminal code and draft code of criminal procedure in the light of the universal instruments against terrorism in order to bring them into line with those instruments.
22. Acts of terrorism are defined and punished under articles 90 to 97 of the draft criminal code.
23. Various other specific offences deriving from the universal instruments against terrorism are also defined, including acts against the safety of air, sea and land transport or of fixed platforms located on the continental shelf, hostage-taking, nuclear terrorism and the financing of terrorism.
24. The measures taken to combat and punish terrorism do not affect legal or practical human rights guarantees.
25. Those provisions of the draft criminal code that relate to the suppression of terrorism include a non-discrimination clause on the need to protect human rights in the context of international cooperation in criminal matters.
26. Under article 21 of the draft amendment implementing the universal instruments against terrorism, "no provision of the present Act shall be interpreted as establishing a duty of extradition or judicial cooperation where there is good reason to believe that the request for extradition or judicial cooperation in respect of an offence under this Act was made in order to prosecute or punish an individual on grounds of race, religion, nationality, ethnic origin or political opinions, or that granting the request would be prejudicial to that individual for any of those reasons".
27. However, terrorist acts are punishable by death.

28. Benin's legal order still lists the death penalty as a punishment. However, Benin is moving towards de facto abolition: there are serious concerns surrounding abolition of the death penalty and the matter is under consideration.

Article 3

Question 5

Please provide information on existing legal guarantees against the expulsion, return ("refoulement") or extradition of a person to a State where there are substantial grounds for believing that the person in question would be in danger of being subjected to torture.

29. This question is governed by the cooperation agreements to which Benin is a party.

30. Article 2 of the Extradition Treaty of 10 December 1984 between Benin, Ghana, Nigeria and Togo, sets forth the conditions for extradition. However, under article 4 of the treaty, "extradition shall not be granted in respect of a crime or offence of a political nature, or if it can be shown that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of their race, religion, nationality or political opinion".

Question 6

Please supply information on the authorities competent to take a decision to expel, return or extradite a person, the training they receive and the information made available to them to guide their decisions. Are the decisions of these authorities subject to appeal? Under what procedures? In the event of an illegal expulsion, return or extradition, what remedies are available to the dependants of the expelled, returned or extradited person?

31. Expulsion is decided by the executive branch. It is an administrative police measure.

32. Refoulement is carried out by the police at the border.

33. Extradition is regulated by the Act of 10 March 1927 and governed by bilateral and multilateral judicial cooperation agreements.

34. Extradition is conducted through diplomatic channels; the decision is taken by the judicial authorities in the Indictments Chamber of the Court of Appeal.

35. The extradition procedure is described in article 7 of the Extradition Treaty of 10 December 1984 between Benin, Ghana, Nigeria and Togo.

"The request for extradition shall be made through the diplomatic channel. It shall be accompanied by the original or a certified copy of an enforceable judgement to convict or an arrest warrant or any other document with the same force issued in accordance with the provisions of the law of the requesting State.

“The circumstances surrounding the actions in respect of which extradition is requested, the time and place those actions were committed, the legal definition and references to the applicable legal provisions shall be indicated as precisely as possible. A copy of the applicable legal provisions shall also be provided, as well as, if possible, a description of the person sought and any information that may help establish their identity and nationality.

“In urgent cases, at the request of the competent authorities of the requesting State, a provisional arrest shall be made pending the arrival of the formal extradition request and the documents mentioned in paragraph 1 of the present article.

“The request for provisional arrest shall be transmitted to the competent authorities of the requested State either by post or telegram or by any other means affording evidence in writing. At the same time, it shall be confirmed through the diplomatic channel.

“... it shall state the offence for which extradition is requested and the time and place the offence was committed, and give as precise a description as possible of the person sought. The requesting authority shall be promptly informed of the action taken on the request ...”.

36. After having been seized of the extradition request the court verifies the definition of the offence and the penalty imposed, and the compatibility of the request with domestic public policy; it also ascertains that the supporting documentation meets the requirements of the Extradition Treaty and verifies the criminal jurisdiction of the requesting State.

37. The decision is communicated by the court registrar to the Public Prosecutor, who initiates legal proceedings.

38. Under article 8 of the Treaty, “The requested State shall communicate to the requesting State its decision on extradition by diplomatic channel”.

39. Such decisions are not appealable. In the event of an illegal expulsion, return or extradition, the dependants of the expelled, returned or extradited person may apply to the Supreme Court or the Constitutional Court, as appropriate.

Question 7

Do appeals lodged by persons whose asylum applications have been rejected suspend the effect of the decision?

40. Foreigners arriving in Benin must report to the immigration services within 48 hours of their entry into the country.

41. Right of residence in Benin is granted to foreigners only following consideration and acceptance of claims by the competent services. Anyone without a duly constituted claim or of doubtful morality or who is a known criminal shall be expelled forthwith.

Article 5

Question 8

Please indicate which provisions of Beninese law govern the courts' handling of acts of torture committed by or against the State party's nationals.

42. Two possibilities may arise.

43. Under article 342 of the Code of Criminal Procedure, the courts in the place where the offence was committed, in the alleged perpetrator's place of residence or in the place where the arrest was made are competent to try offences committed in Benin.

44. Articles 553 to 560 of the Code of Criminal Procedure set forth the rules of jurisdiction in respect of crimes and offences committed abroad.

45. Article 553: "Any citizen of Benin who is outside the Republic and is found guilty of an act considered to be a crime under Beninese law may be tried and sentenced in Beninese courts, if the act is punishable under the laws of the country where it was committed ...".

46. Article 554: "Anyone who, in the territory of the Republic, becomes an accomplice to a crime or offence committed abroad may be tried and sentenced by Beninese courts, if the act is punishable under both Beninese law and the law of the foreign country, on condition that the criminal act or offence has been established in a final judgement by the foreign court."

47. Article 555: "Where an offence is committed against a private individual, proceedings can be instituted only at the request of the Public Prosecutor's Office following a complaint by the injured party or an official complaint to Benin from the country where the offence was committed."

48. All these provisions are contained in the draft code of criminal procedure, articles 580 to 588.

Question 9

Please provide information on the measures taken or planned in order to establish the jurisdiction of the State party over the offences referred to in article 4 of the Convention when the alleged offender is present in territory under its jurisdiction.

49. Offences under article 4 of the Convention are considered to be violations of the physical integrity of the human person as defined and punished under the Criminal Code, and are governed by the jurisdiction rules described above.

50. Provisions are being prepared to define and punish acts of torture in the draft criminal code and the draft code of criminal procedure, along with the corresponding rules of jurisdiction.

Articles 6, 7, 8 and 9

Question 10

Please provide information on the procedures in place or those that are planned to ensure that a person suspected of acts of torture is taken into custody for the time necessary for the conduct of criminal or extradition proceedings. In particular, please describe the existing legal framework and any cases in which it has been invoked, as well as the guarantees provided to the person in custody.

51. Judicial guarantees in respect of prosecution of persons suspected of ordinary law offences, and in respect of detention, proceedings and trial, also apply to persons suspected of torture. These guarantees cover the presumption of innocence, the right to be heard and tried without undue delay, and the duration of police custody. They derive in part from the relevant provisions of the Constitution and in part from those of the Code of Criminal Procedure.

52. Under article 16 of the Constitution, “a person may be arrested or charged only under a law promulgated before the acts of which the person is accused took place. No citizen shall be forced into exile”.

53. Article 17: “Persons accused of criminal acts are presumed innocent until their guilt has been legally established during a public trial in which they have enjoyed all the guarantees necessary for their defence.

“No one shall be sentenced for actions or omissions which, at the time when they were committed, did not constitute an offence under Beninese law. Likewise, no penalty may be imposed that is more severe than that applicable at the time when the offence was committed.”

54. Article 18 prohibits torture, physical cruelty and/or cruel, inhuman or degrading treatment, establishes detainees’ right to be examined by a doctor of their choice and fixes the duration of police custody, and prohibits detention in a prison if the individual is not liable to punishment under current criminal law.

55. Articles 118 to 125 of the Code of Criminal Procedure establish the rules governing pretrial detention.

56. Between 1998 and 2004, the Constitutional Court handed down 23 findings of violations of article 19 of the Constitution. The exercise of the right to a defence was confirmed in several of those decisions.

57. The Constitutional Court has ruled that “a citizen may argue that they have not been able to exercise their right to a defence if they did not participate in a sitting at which their disciplinary sanction was discussed” (DCC 00-056, 10 October 2000).

58. Several decisions have made reference to the right to be tried without undue delay.

59. In the case of Jonas Gbodogbe Zinsou, the Constitutional Court ruled as follows:

“Whereas ... it is established that the Porto-Novo court took nearly nine years (23 December 1991 to 7 November 2000) to investigate the appellant’s case, which seems an unusually long time; that in addition, despite being referred to the Assize Court by decision of the Indictments Chamber on 3 December 2002, Mr. Gbodogbe Zinsou’s case could not be tabled until the 2006 sessions, more than four years later; that the argument that only the so-called ‘criminal court costs’ case was tabled for the 2003 sessions does not relieve the Cotonou Appeal Court of its obligation to render justice without undue delay; that in light of the foregoing the Court finds and rules that the Porto-Novo court and the Cotonou Appeal Court have violated the Constitution” (DCC No. 06-078, 27 July 2006).

60. As a result of the Constitutional Court findings of flagrant human rights violations, failure to observe the legal time limits on custody, torture, decisions, cruel, inhuman or degrading treatment, criminal proceedings were brought against the perpetrators and disciplinary proceedings resulted in disciplinary sanctions including suspension from the duties of criminal investigations officer.

61. Under the extradition cooperation agreement, temporary arrest may be terminated if, 40 days after the arrest, the requested authorities have not received the supporting documentation, including “the original or a certified copy of an enforceable judgement to convict or an arrest warrant or any other document with the same force issued in accordance with the provisions of the law of the requesting State”.

Question 11

Please define more precisely “provision of assistance in order to make available to the judicial authorities of the requesting member State persons in detention or other persons, for the purposes of giving evidence or assisting in the conduct of investigations”.

62. The judicial cooperation agreements Benin has signed with other countries in the subregion impose an obligation to facilitate and intensify the exchange of information. They also authorize the exchange of prisoners to give evidence as witnesses in the requesting State.

63. In this context, at Nigeria’s request, several Beninese detainees were placed at the disposal of the Nigerian courts in 2004, to give evidence as witnesses in judicial proceedings in Nigeria against criminal gangs operating in both States’ territories and along their borders.

64. The Beninese courts, which had received no letter of request, made it known that they were not satisfied and the prisoners were returned to Benin.

Article 10

Question 12

Please provide information on the training given to, or planned for, public officials and officers and medical personnel responsible for monitoring and treating persons who are arrested, taken into police custody, questioned or detained, in order to ensure that they are able to detect the physical and psychological signs of torture.

65. Under article 40 of the Constitution:

“The State has the duty to assure the diffusion and the teaching of the Constitution, of the 1948 Universal Declaration of Human Rights, of the 1981 African Charter on Human and Peoples’ Rights as well as all duly ratified international human rights instruments.

“The State must incorporate human rights into literacy and teaching curricula at all levels in schools and universities and into all training programmes for the Armed Forces, the public security services and similar categories.

“The State must also assure the diffusion and teaching of human rights in the national languages through all mass media, and particularly by radio and television.”

66. In this context, criminal procedure and human rights are included in the training programme for criminal investigation officers (Judicial Police).

67. The Human Rights Department of the Ministry of Justice, Legislation and Human Rights runs information and training seminars for specific groups, on the basics of human rights.

68. Basic training on human rights was provided to philosophy teachers between 2003 and 2005; and as follows:

- (a) Special police units (22-23 March 2005);
- (b) Judges (10-12 May 2005);
- (c) Local councillors from Mono-Couffo, Zou and Collines (31 May-2 June 2005);
- (d) Journalists (December 2005);
- (e) NGOs (13-15 September 2005);
- (f) Philosophy teachers (second batch) (15-17 November 2005);
- (g) Public health officers working with patients (29 November-1 December 2005);
- (h) Trade union officials (15-17 December 2005).

69. Measures are under way to incorporate human rights education into all training programmes.

Question 13

Please also provide information on the results of the training programmes mentioned on page 10 of the 1993-1997 report and on any studies conducted to assess their impact.

70. These training programmes have helped change trainees' behaviour in terms of respect for human rights and the law.

71. There has been a reduction in ill-treatment and torture in police custody.

72. No data is available on studies conducted to assess their impact.

Article 11

Question 14

The Committee notes that the report of the State party describes the legal framework for the systematic monitoring of questioning and of places of detention.

(a) What is the practice observed in Benin regarding the systematic monitoring of questioning and of places of detention under the responsibility of prosecutors?

73. Under article 12 of the Code of Criminal Procedure, the functions of the judicial police are carried out by criminal investigation officers and officials under the direction of the government prosecutor.

74. Under article 13, the judicial police are "supervised by the Public Prosecutor at the Court of Appeal, under the control of the Indictments Chamber".

75. These provisions are included in article 14 of the draft code of criminal procedure.

76. Chapter III of the draft code of criminal procedure, on the provisions for the various types of penitentiary and other detention centres, provides for regular inspections of places of detention.

77. Under article 674, "the government prosecutor shall make regular visits to all prison establishments, remand centres and other places of detention and internment including police and gendarmerie stations. The government prosecutor shall oversee the work of such authorities, rectify or rescind acts or orders that are contrary to the law and take any other necessary measures, including the initiation of criminal or disciplinary proceedings against particular officials".

78. Under article 675, "the government prosecutor shall ensure the release of any person unlawfully placed or held in detention or custody".

(b) *What authority is competent to receive complaints from detainees alleging that they are or have been victims of torture?*

79. The prison authorities, where the acts of torture are committed by other prisoners; the government prosecutor or the investigating magistrate, where the acts of torture are committed by the prison staff.

(c) *Please specify the rules relating to the right of persons in police custody to have access to a lawyer and doctor of their choice, to be informed of their rights and to inform their families of their detention.*

80. These rules are set forth in article 59, paragraphs 3 and 4, of the draft code of criminal procedure, as follows:

“The government prosecutor shall appoint, either proprio motu or at the request of the family of the person in custody, a doctor or other qualified official to examine the detainee at any time during the period fixed under articles 55 and 57.

“The criminal investigation officer shall inform the person in custody of this right and so note in the record.”

81. Articles 55 and 57 deal with the duration of police custody.

82. The provisions of this draft text also require the criminal investigation officer to take all necessary steps to guarantee the right to a defence.

83. Failure to apply the provisions relating to police custody shall entail annulment of proceedings, without prejudice to disciplinary measures against the criminal investigation officer at fault.

(d) *Please provide information on how criminal cases are handled in practical terms, in particular in respect of procedure, police custody, duration of proceedings and administration of sentences.*

84. Criminal cases are handled by criminal investigation officers, the Public Prosecutor's Office, investigating judges and trial courts at the various stages of the proceedings.

85. The preliminary inquiries are conducted by criminal investigation officers under the supervision of the government prosecutor.

86. Criminal investigation officers are responsible for receiving complaints and allegations, establishing the offence under criminal law, gathering evidence and finding the perpetrators, as long as no proceedings have yet been brought (Code of Criminal Procedure, art. 14).

87. The criminal investigation officers decide on custody measures, in accordance with the law, and inform the government prosecutor forthwith.

88. On completion of their procedures they send all their reports in duplicate to the government prosecutor and bring the suspects before the prosecutor.

89. The government prosecutor opens criminal proceedings and decides whether charges should be brought.

90. Depending on the case, the prosecutor may decide to bring the suspect before the correctional court or order an inquiry (Code of Criminal Procedure, art. 69).

91. The examining magistrate makes all the pretrial inquiries that may be considered necessary to establish the facts, in accordance with the law.

92. If the examining magistrate is unable to complete all such inquiries personally, they may address a rogatory commission to the criminal investigation officers.

93. On completion of this procedure, and following submissions from the Public Prosecutor's Office, the examining magistrate may:

(a) Dismiss the case, if there are insufficient grounds or the facts do not constitute a criminal offence;

(b) If the facts constitute a petty offence or misdemeanour, refer the case to the court of first instance. The prosecutor must summon the accused within 30 days to one of the next hearings (draft code of criminal procedure, art. 169);

(c) If the facts constitute a crime, order the government prosecutor to send the case file and a list of evidence to the Public Prosecutor at the Court of Appeal within 15 days (draft code of criminal procedure, art. 170).

94. Under article 168 of the draft code of criminal procedure, the investigating magistrate's terminating orders must be issued within a month of receipt of the submissions from the Public Prosecutor's Office.

95. The trial court pronounces sentence if the facts constitute a criminal offence.

96. The assize court pronounces sentence for crimes and the court of first instance for correctional offences.

97. Proceedings are dispatched without undue delay. "Without undue delay" is defined in Constitutional Court case law (cf. decision No. 06-07 cited above).

(e) What are the "exceptional circumstances" in which the period of custody may be extended from 48 hours to one week, and what procedure is used to define them? What remedies are available to persons detained under this constitutional provision?

98. This point is covered by article 57 of the draft code of criminal procedure.

"Persons against whom there is serious and consistent evidence that might warrant charges being brought may not be held at the disposition of the criminal investigation officers for more than 48 hours.

“At the end of this period, such persons should be brought before the Public Prosecutor, who may decide, if appropriate, to extend the period of custody; custody may in no case exceed eight days.

“The Public Prosecutor may extend the period of custody in the following cases:

- “(a) In general, any crime;
- “(b) Crimes against State security;
- “(c) Crimes and misdemeanours against minors;
- “(d) Trafficking and use of narcotic drugs and psychotropic substances;
- “(e) Wherever the complexity or specialized nature of the inquiry so requires.

“Failure to observe these time limits and formalities may give rise to one of the sanctions provided for under articles 23 and 215 of the current Code of Criminal Procedure.”

99. Article 23 punishes failure on the part of criminal investigation officers to fulfil their obligations under the Code. Sanctions may range from a reprimand to a warning from the Public Prosecutor, and a note in the personnel file.

100. Sanctions under article 215 are imposed by the Indictments Chamber and may lead to suspension from duty of the criminal investigation officer.

101. Detained persons may appeal to the Constitutional Court or to other competent courts.

(f) What rules apply to police custody?

102. The rules are set forth in article 18, paragraph 4, of the Constitution and the articles of the Code of Criminal Procedure mentioned above.

(g) Is incommunicado detention authorized?

103. No it is not. Persons indicted or accused, or in pretrial detention, are held in remand centres (draft code of criminal procedure, art. 667).

104. However, a detainee who utters threats or insults, resorts to violence or commits a disciplinary offence may be isolated in a special cell, in addition to any proceedings that may be brought against them (draft code of criminal procedure, art. 678).

(h) At what point are arrested persons allowed to contact a lawyer? Is the lawyer permitted to be present during questioning?

105. The draft code of criminal procedure provides for the assistance of a lawyer from the start of the preliminary investigation.

106. A duly accredited lawyer may be present at all questioning sessions.

107. The lawyer receives all the orders issued by the investigating magistrate so as to be able to invoke remedies.

(i) *After what period of time are arrested persons entitled to be examined by a doctor of their choice?*

108. At any time during the period of custody (draft code of criminal procedure, art. 59, paras. 3-4).

109. “The criminal investigation officer shall inform the arrested person of this right” (Code of Criminal Procedure, art. 59, para. 4).

(j) *Are the relatives of arrested persons informed of the arrest? When?*

110. Immediately following the arrest.

(k) *Are military personnel permitted by law to arrest persons and detain them?*

111. Military personnel are permitted, under special rules, to arrest and detain military and related personnel in the context of disciplinary proceedings. Where there is a possibility of judicial proceedings, they may be placed under arrest.

(l) *The State party indicates in its report that the phenomenon of mob justice has worsened and that, in response, prosecutors have brought criminal proceedings (1998-2001 report, art. 39). Please indicate what measures have been taken or are planned to prevent the phenomenon. Please also indicate whether, in the proposals to revise the Criminal Code, there are provisions unequivocally making such acts a crime.*

112. Under articles 15 and 17 of the Constitution:

Article 15: “Every individual has the right to life, liberty and security and integrity of person.”

Article 17: “Persons accused of criminal acts are presumed innocent until their guilt has been legally established during a public trial in which they have enjoyed all the guarantees necessary for their defence.”

113. Consequently, the courts do all they can to ensure that those suspected of flagrant crimes or offences enjoy all the safeguards provided under the law and the regulations governing trial.

114. The time taken to come to trial and the decisions handed down following trial, in accordance with the law, do not always please people. Some see justice as too slow, others as too lenient, and it is then that they may decide to take the law into their own hands.

115. Mob justice thus becomes a form of summary justice. Those suspected of wrongdoing are seized at the scene of the crime by individuals who see themselves as upholders of the law though they have no mandate or power.

116. The problem of mob justice first emerged in Benin in the 1990s.

117. Given the extent of the problem, the competent authorities are doing all they can to put a stop to all such acts. Where perpetrators are identified and apprehended they are brought before the courts and punished in accordance with the law, as illustrated by the case of Dévi Ehoun, also known as the “Civil Colonel”, who was prosecuted and tried in the assize court.

118. In addition, all kinds of awareness-raising, information and training meetings are organized for the general public.

119. The draft criminal code does not make mob justice in itself an offence. Such acts are addressed and punished under the provisions on violation of physical integrity.

Articles 12 and 13

Question 15

The State party indicates in its report that the prosecutors attached to courts in whose jurisdiction acts of torture have been committed initiate investigations (1998-2001 report, art. 38). Please provide information on the non-judicial investigations, in particular disciplinary ones, that commonly take place in cases where there is reasonable ground to believe that an act of torture has been committed. Please also provide information on cases where such investigations have been conducted and on their outcome. Who initiated these investigations? Please provide statistics.

120. The Indictments Chamber exercises judicial oversight over the work of civil service and military officials and of criminal investigation officers and senior officers in this context (Code of Criminal Procedure, art. 201).

121. Where a victim complains to the Constitutional Court and the Court finds that an act of torture has been committed, it may seize the Indictments Chamber, as the disciplinary body for the Judicial Police, of acts committed by criminal investigation officers in the course of their duties.

122. A complaint may be brought before the Indictments Chamber by the Public Prosecutor or by the President of the Chamber.

123. It may also raise a complaint of its own motion during consideration of the proceedings before it (Code of Criminal Procedure, art. 202).

124. After having been seized of the complaint, the Indictments Chamber initiates an inquiry, and hears the public prosecutor and the criminal investigation officer under suspicion.

125. The criminal investigation officer should previously have been given sight of their file, which is kept in the prosecutor's office at the Appeal Court.

126. The criminal investigation officer may be assisted by a lawyer (draft code of criminal procedure, art. 203).

127. The Indictments Chamber may, in addition to any disciplinary sanctions that may be imposed by the officer's superiors, address its own comments to the officer or decide that the officer may no longer perform, either temporarily or permanently, the functions of criminal investigation officer, either with the Appeal Court or in the country as a whole (Code of Criminal Procedure, art. 204).

128. Pursuant to these rules, some criminal investigation officers have been suspended from duty and in other cases remarks have been addressed to officers at fault.

129. The investigations were conducted following complaints by victims.

130. No statistics are available.

Question 16

Please provide information on existing guarantees to ensure the impartiality of the administrative and judicial inquiries undertaken when there is reasonable ground to believe that an act of torture has been committed.

131. Guarantees are provided under article 17 of the Constitution (presumption of innocence); and article 203, paragraphs 2 to 3, of the Code of Criminal Procedure (sight of the case file and legal assistance).

Question 17

Please also supply information on the measures taken and those planned to improve conditions of work in the judicial branch and, in particular, on the level of implementation and the results of the Plan for the Strengthening of the Legal and Judicial Systems (2005-2007), specifically with regard to the increase in and training of judicial and penitentiary staff, conditions of work in the judicial branch and interpretation into local languages.

132. Improvements have been made in all jurisdictions. Altogether, 300 people - judges, clerks of the court, and Ministry of Justice officials - have attended in-service training programmes.

133. In-service training for prison staff is also planned, and measures are under way to further increase capacity.

134. Prison directors and head warders have received training in alternatives to prison and to prosecution of minors. Courts have been provided with material resources.

135. An open competition is organized annually to recruit at least 30 judicial trainees.

136. The special regulations governing judges and judiciary staff have been adopted; they provide for bonuses and allowances to shield such officials from material hardship.

Question 18

Please indicate what guarantees exist for the proper career development of judges, which contributes to strengthening their independence from the executive branch.

137. These guarantees are provided under Act No. 2001-35 of 21 February 2003, on the regulations governing the judiciary. Title III of the Act contains provisions on:

- (a) The structure of the judiciary (arts. 36-37), which provides for a 12-step career structure for judges, divided into five grades, and establishes the functions that may be attributed to judges according to their grade;
- (b) Specialization, further training and promotion (arts. 38, 43);
- (c) Remuneration and social benefits (arts. 44-49);
- (d) Performance rating and promotion (arts. 50-56).

138. The independence of the judiciary is established by article 4 of the regulations:

“Judges are independent and shall settle the cases before them in accordance with the law. They should not be subject to any influence, incentive, pressure, threat or undue interference, whether direct or indirect, from any person or for any reason whatsoever.”

139. This independence is also guaranteed by the principle of non-removability of judges under chapter II of the regulations (arts. 23-24).

Article 23: “Judges may not be removed. Consequently, judges may not receive a new appointment, including promotion, without their consent.

“Non-removability is not a personal privilege of the judge. It is intended to guarantee the independence of the judiciary.”

Article 24: “The appointment of a judge is subject (a) to consultation with the judge about the proposed new functions and about the location in which those functions are to be performed; and (b) to the judge’s prior consent.”

Question 19

Please describe the administrative and judicial remedies available to detainees who claim that they have been victims of torture and the guarantees provided to fellow inmates who give testimony to ensure that they are not subjected to any reprisals. Please also describe the procedure. Please indicate whether complainants are transferred to places where they are protected from the alleged torturer. Please provide statistics on the complaints lodged and give examples of decisions handed down.

140. Detainees victims of torture may complain to the Commander of the Penitentiary Squad, the government prosecutor or the examining magistrate in charge of the proceedings, each of whom will proceed in accordance with the law. Judicial proceedings are instituted if the facts are substantiated.

141. The suspected perpetrator may be placed in the punishment cell in the civilian prison.

142. No statistical data are available. Steps are being taken to gather data before consideration of Benin's report.

Article 14

Question 20

What specific measures have been taken by the State party to facilitate compensation of victims? What is the procedure to obtain compensation in the event of torture? What rehabilitation mechanisms are available for victims of torture? Are such compensation and rehabilitation mechanisms available only to nationals, or are they also available to other groups, such as refugees and non-nationals?

143. In addition to the Act of 1990 on compensation for victims of torture during the revolutionary period, referred to in the initial report, other measures have been taken by the State to compensate torture victims. Besides the ordinary remedies available for reparation of harm caused to others, Decree No. 98-23 of 29 January 1998, establishing a standing committee for the compensation of victims of injury caused by the State, was adopted in order to consider and address certain compensation claims.

144. Torture victims have been registered and compensation paid pursuant to these provisions.

145. Public servants have been rehabilitated.

146. In addition, in the cases of Gaston Bagbonon, Laurent Vodounou and Latifou Assani, police officers with the Sûreté Nationale, the Constitutional Court has ruled in principle (DCC No. 021-052 of 31 May 2002) that the victims of violations of fundamental rights have the right to reparation.

147. Such compensation and rehabilitation mechanisms are open to other groups such as refugees and non-nationals by derivation from articles 26 and 39 of the Constitution.

Article 26: “The State shall assure to everyone equality before the law without distinction of origin, race, sex, religion, political opinion or social position.”

Article 39: “Foreigners in the Republic of Benin enjoy the same rights and freedoms as Beninese citizens, subject to the conditions specified by law.”

Article 15

Question 21

The report of the State party indicates that “confessions extracted under torture are null and void” (1998-2001 report, para. 44). “The judge must check the veracity of any claim by the accused that his or her statements were made under torture. If the claim is substantiated, the judge sets aside the police reports and orders a reopening of investigations” (1998-2001 report, para. 45). Please provide information on the means of verification used by the judge and on the legal provisions obliging the judge to reject evidence obtained through torture.

148. These legal provisions derive from articles 397 to 401 of the Code of Criminal Procedure and 415 to 420 of the draft code of criminal procedure, on the taking of evidence, and are without prejudice to judicial proceedings against the perpetrators of substantiated acts of torture.

Article 397: “Except where the law provides otherwise, offences may be established by any form of evidence; judges make decisions in accordance with their personal convictions and may base those decisions only on the evidence produced during the trial and discussed in adversarial proceedings before them.”

Article 398: “Confessions, like all other evidence, shall be evaluated at the court’s discretion.”

Article 399: “No statement or report has evidentiary value unless it has been drawn up in accordance with the regulation and its author was acting in the course of duty and reporting on a matter within their competence and on facts they have personally seen, heard or established.”

Article 400: “Except where otherwise provided by law, any statement or report of an offence has informative value only.

“Where criminal investigation officers or other officials exercising the functions of criminal investigation officers have been granted special legal powers to establish offences by statements or reports, evidence to the contrary may be provided only in writing or by witnesses.”

Article 16

Question 22

The report of the State party describes many situations and practices that it qualifies as inhuman or degrading treatment.

(a) *Is there a definition in Beninese law of cruel, inhuman or degrading treatment or punishment? If so, what criteria apply?*

149. Apart from the Constitutional Court definitions cited above, Beninese law does not yet include a definition of cruel, inhuman or degrading treatment or punishment.

150. The ongoing reform of the Criminal Code will make it possible to fill these lacunae in the domestic legal order.

(b) *What measures have been taken or are planned to stop the practice of having defendants brought to court wearing “civilian prison” jackets?*

151. The Human Rights Committee made some recommendations in this regard following its consideration of Benin’s initial report on the implementation of the International Covenant on Civil and Political Rights.

152. Measures are being taken to address this concern.

(c) *What measures have been taken or are planned to remedy the situations described by the State party in its report (consolidated report, pp. 25 and 28) with respect to prison overcrowding, lack of medical care, corporal punishment and insufficient food?*

153. A new, 1,000-place prison has been built in Akpro-Misséréte in the department of Ouémé for Beninese convicts and detainees of the International Criminal Tribunal for Rwanda.

154. Appropriate measures are being taken to make the prison fully operational. The personnel is already in place.

155. Numbers to be released from the eight prisons have been established.

156. Cooperation agreements have been signed with development partners, including the United Nations Development Programme (UNDP), with a view to improving inmates’ conditions of detention.

157. The State is taking the necessary steps to ensure prisoners receive medical care. The departments of justice and health are cooperating to set up an appropriate structure and provide the medical personnel needed.

158. The Government’s action in this regard is also supported by specialist health NGOs.

159. Mechanisms for partial remission of sentence, including conditional release and presidential pardons, also help to reduce the prison population. A project is under way to build civilian prisons in Abomey and Parakou.
160. Civilian prisons are also to be built in the departments of Couffo and Donga; and the civilian prison in Lokossa is to be extended.
161. Alternative measures to prison have been put in place.
162. Actors in the field of justice have been familiarized with these measures and trained in their use.
163. Steps are being taken to make legal provision for work of general interest.
164. A hot meal is served to all inmates throughout the system every day. Steps are being taken to increase the daily food ration.

Other questions

Question 23

Has the State party adopted a legislative act to prohibit the production of and trade in materials specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment? If so, please provide information on the content and implementation of the act. If not, please indicate whether there are plans to adopt legislation in this field.

165. Benin's legal order does not yet address these concerns. The reform of the Criminal Code will make it possible to correct this situation.

Question 24

Further to the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, what national torture prevention mechanisms have been set up or are planned, and what are the guarantees of their independence?

166. Following ratification, the Government of Benin, by decision of the Council of Ministers on 6 December 2006, authorized the establishment of a national mechanism to prevent torture.
167. Benin participated in the first meeting of States parties to the Optional Protocol on 18 December 2006.
168. In cooperation with the Association pour la Prévention de la Torture (Association for the Prevention of Torture), the Human Rights Department of the Ministry of Justice, Legislation and Human Rights organized a seminar on 17 and 18 July 2007 to launch the process of establishing a national mechanism to prevent torture. At the end of the seminar a road map was drawn up and a follow-up committee established to guide the process to a conclusion.

169. The Committee has held a number of meetings. These have resulted in a preliminary draft bill, which will be put before the National Assembly in accordance with current procedure.

170. The bill provides for all the guarantees of independence required under the Optional Protocol.

171. The current text of the preliminary draft is annexed to this document.

Question 25

The State party recognizes (consolidated report, p. 25) that “it is not unusual for an accused person to be proved innocent and acquitted after he has spent a long time in detention. He has therefore been imprisoned for nothing”. What measures have been taken or are planned, in particular in the Code of Criminal Procedure, to correct this state of affairs? What is the common practice in this situation? What compensation possibilities are made available to the persons affected?

172. Under article 433 of the Code of Criminal Procedure, “if the court finds that the facts in question do not constitute a criminal offence or the facts are not established or the facts cannot be attributed to the accused, the proceedings against the accused shall be withdrawn.

173. Under article 435 of the Code of Criminal Procedure, “in cases covered by article 433, where the civil claimant also brought the criminal action, the court shall rule in the same judgement on the claim for indemnification by the acquitted person against the civil claimant for abuse of the right to bring criminal indemnification proceedings”.

174. Persons acquitted or released in Benin rarely seek damages for abuse of the right to bring criminal indemnification proceedings.

175. In addition to this, the draft code of criminal procedure provides for the award of damages to persons whose innocence is established on judicial review.

176. Thus, under article 544 of the draft code of criminal procedure, “a judicial review decision or ruling that exonerates a convicted person may, at that person’s request, award damages. The right to seek damages shall vest under the same conditions in the person’s spouse, parents, universal beneficiaries or beneficiaries by universal title. A claim for damages shall be receivable at any stage of the judicial review procedure. The damages awarded shall be charged to the Treasury and shall be paid, except where proceedings are brought against the civil claimant, the complainant or the false witness to blame for the conviction. The damages shall be paid as criminal justice charges by the Treasury without prior order”.
