



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

Distr.
GENERAL

CAT/C/BEN/2
27 April 2007

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

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

Second periodic reports due in 1997

Addendum

BENIN*

[13 April 2005]

* For the initial report submitted by the Government of Benin, see CAT/C/217/Add.3; for its consideration, see CAT/C/SR.489 and 492.

The annexes to the present report submitted by the Government of Benin may be consulted in the secretariat files.

CONTENTS

<i>Chapter</i>	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 6	5
I. LEGAL FRAMEWORK FOR THE APPLICATION OF THE CONVENTION	7 - 57	5
A. Definition of torture and Benin's position on the application of the Convention (art. 1)	7	5
B. Bodies responsible for the application of the Convention (art. 3)	8 - 24	5
1. The Human Rights Directorate	9 - 10	6
(a) Promoting and disseminating human rights	10	6
(b) Protecting and defending human rights	11	7
2. The National Advisory Council on Human Rights	12 - 13	7
3. The effectiveness of measures taken by the bodies responsible for the application of the Convention	14 - 24	7
C. Protection of aliens (art. 3)	25 - 29	11
D. The obligation to make acts of torture a criminal offence (art. 4)	30 - 41	12
E. Benin's jurisdiction over acts of torture (art. 5)	42 - 43	14
F. Custody (art. 6)	44	14
G. Equality of procedural safeguards (art. 7)	45 - 46	14
H. Rules governing extradition (art. 8)	47 - 49	14
I. Mutual judicial assistance (art. 9)	50 - 53	14
J. Education and information regarding the prohibition against torture (art. 10)	54 - 57	15
1. The National Gendarmerie	55 - 56	15
2. The army	57	16

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
II. ASSESSMENT OF THE IMPLEMENTATION OF THE CONVENTION	58 - 95	16
A. Treatment of persons who have been arrested, detained or imprisoned (art. 11)	58 - 64	16
B. Obligation to conduct a prompt and impartial investigation (art. 12)	65 - 66	17
C. Right to submit a complaint against any perpetrator of acts of torture and the State party's obligation towards the complainant (art. 13)	67 - 70	17
D. Rules governing redress (art. 14)	71 - 72	17
E. Conditions governing the validity of evidence (art. 15)	73 - 74	17
F. Other forms of cruel, inhuman or degrading treatment (art. 16)	75 - 95	18
III. ACTION TAKEN ON THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS (A/57/44, paras. 30 to 35)	96 - 113	20
A. Earnests of a new response to torture and other cruel, inhuman or degrading treatment	96 - 112	20
1. Signs of a new approach to torture	97 - 104	20
(a) Absence of a definition of torture	97 - 99	20
(b) Mob justice	100	20
(c) The crucial question of prison conditions	101	21
(d) Dissemination of human rights notions	102	21
(e) Failure to respect the time limit for police custody	103	21
(f) Failure to provide post-trauma assistance	104	21
2. Promised responses to violations related to torture	105 - 112	21
(a) Solutions to overcrowding in prisons and the ill-treatment of inmates	105 - 107	21
(b) Respect for human rights	108 - 110	21

CONTENTS (*continued*)

	<i>Paragraphs</i>	<i>Page</i>
(c) Compensation for victims of torture	111	22
(d) The provisions of the Criminal Code concerning torture	112	22
B. Developments in Benin since the Committee made its recommendations	113	22
Annex: List of documents		24

Introduction

A new democratization context favouring the application of the Convention

1. During the period covered by this report, Benin experienced a number of developments in the area of democratization, which led to substantial improvements compared with the abuses and violations of a few years earlier.
2. This new context reflects the Beninese people's choice to establish a State governed by the rule of law, in which human rights are respected.
3. This report covers the period following the Active Forces of the Nation Conference, held in February 1990, which furthered democracy through fundamental opposition to "any political regime founded on arbitrariness, dictatorship, injustice, corruption, misappropriation of public funds, regionalism, nepotism, confiscation of power and personal power".
4. The Republic of Benin has been a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "the Convention") since 12 March 1992, that is, over a year after the Constitution, the basic law which laid the foundations of a State governed by the rule of law, was adopted on 11 December 1990.
5. Since then, complaints denouncing massive human rights violations during the revolutionary period and demands for trials and reparations have been made by non-governmental organizations (NGOs), associations and other civil society bodies.
6. As confirmation of its good faith, the Beninese Government has adopted a number of measures to guarantee the individual freedoms and fundamental rights enshrined in various international human rights instruments.

I. LEGAL FRAMEWORK FOR THE APPLICATION OF THE CONVENTION

A. Definition of torture and Benin's position on the application of the Convention (art. 1)

7. Benin has not yet formally incorporated a specific definition of torture into its legislation. Nevertheless, a number of criminal offences resembling the definition of torture in article 1 of the Convention are contained in the existing Criminal Code. They include inter alia the offences of assault and battery, violence, trespass to the person, indecent assault, rape and generally all forms of aggression and physical assault committed by certain categories of officials or police officers in the exercise of their duties.

B. Bodies responsible for the application of the Convention (art. 3)

8. An examination of the situation in Benin shows that, pursuant to article 2 of the Convention, new legislative, administrative and judicial measures have been taken to prevent acts of torture. They include:

- (a) Decree No. 96-433 of 4 October 1996, establishing a national committee to monitor the implementation of international human rights instruments;
- (b) Training courses for the members of this committee organized by the Ministry of Justice with the support of the United Nations Development Programme (UNDP) and other experts;
- (c) Extension of the functions of the Ministry of Justice to encompass human rights and the setting up of the Human Rights Directorate (Direction des droits de l'homme - DDH) (See in this connection Decree No. 97-30 of 29 January 1997.).

1. The Human Rights Directorate

9. The Human Rights Directorate (DDH) is responsible for both promoting and protecting human rights.

(a) Promoting and disseminating human rights

10. The Directorate's tasks are:

- (a) To provide education, training and awareness-raising in respect of human rights;
- (b) To implement and coordinate Beninese human rights policy throughout the national territory;
- (c) To supervise the drafting of periodic reports on the implementation of international human rights instruments and to submit them to the international institutions concerned;
- (d) To organize seminars and mount awareness-raising and information campaigns throughout the country on human rights issues;
- (e) To supply the population with appropriate documentation concerning human rights and democracy;
- (f) To carry out schemes to promote and protect the human rights principles contained in the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and other instruments containing provisions on the promotion and protection of human rights;
- (g) To mobilize intellectual and institutional capacities for the implementation of national human rights policy;
- (h) To cooperate with associations and NGOs working for the defence of human rights in the national territory or abroad;
- (i) To suggest further steps to promote human rights.

(b) Protecting and defending human rights

11. The Directorate's tasks are:

(a) To make Benin's domestic legislation more consistent with the provisions of international instruments;

(b) To draw up action plans to assist vulnerable social groups with a view to promoting and protecting their rights more effectively;

(c) To visit detention centres with the Prison Administration Directorate in order to assess the conditions of detention and prisoners' living conditions and to prevent any unlawful or arbitrary detentions;

(d) To protect and defend human rights and to follow up all complaints of human rights violations;

(e) To work to protect and defend the rights and freedoms of citizens, persons deprived of liberty, foreigners and refugees;

(f) To ensure compliance with the principle of non-discrimination in respect of the most vulnerable strata of society;

(g) To promote and guarantee all rights accorded to women and children under the various international human rights instruments.

2. The National Advisory Council on Human Rights

12. Decree No. 97-503 of 16 October 1997 likewise set up a National Advisory Council on Human Rights as a forum for consultation between public authorities and NGOs to promote consolidation of the rule of law in daily life.

13. The Council consists of representatives of ministerial departments and NGOs working in the human rights field. It holds two sessions a year to study the state of and ways and means of improving the implementation of international instruments. The Council plays a mainly advisory role, as is made clear in article 3 of the decree.

3. The effectiveness of measures taken by the bodies responsible for the application of the Convention

14. The absence of a formal definition of torture pursuant to article 1 of the Convention does not have much bearing on convictions and punishment, where appropriate, in respect of acts treated as torture in the Beninese legal system.

15. Numerous decisions of the Constitutional Court have helped to clarify the nature of acts which may be defined as torture or inhuman or degrading treatment. Moreover, the Court has

accepted the principle of redress for victims' injuries and, hence, of the individual responsibility of the perpetrators or the State. In some cases, the officials responsible for such acts have been subjected to disciplinary proceedings leading to penalties.

16. Mention may be made, by way of an example, of Constitutional Court Decision DCC 00-036 of 28 June 2000 in the *Rock Assogba* case, in which the Constitutional Court held that "police custody exceeding the duration prescribed in article 18, paragraph 4, of the Constitution is arbitrary, improper and constitutes a violation of the basic law".

17. In addition, the Court also found a breach of article 18 of the Constitution in cases where a medical certificate produced by an individual showed that he or she had been physically abused. Excerpts from DCC 00-036 may be quoted by way of example:

"Whereas the applicant states that, in the night of 5 to 6 March 1999, at about 2 a.m., at the instigation of Mr. Jacques AKOUETE, who accused him of having helped his wife to leave the matrimonial home, police officers burst into his bedroom; he further states that, after fruitless investigations, he was taken to the police station at Sainte Rita, where he was held from 6 to 8 March 1999, having been locked in a cell and beaten; he considers that he therefore suffered inhuman and humiliating treatment, as proved by a medical certificate placed in the file; he submits on the basis of the foregoing that he was subjected to arbitrary detention and that articles 16, 17 and 18 of the Constitution were violated.

Whereas it is clear from the Court's investigations and from his transfer to the police station at Sainte Rita that Mr. Rock ASSOGBA was arrested in his home at 2 o'clock in the morning, as noted in police register entry No. 1888; his arrest and detention were therefore arbitrary and improper under article 20 of the Constitution and article 6 of the African Charter on Human and Peoples' Rights;

Whereas it also emerges from an examination of the medical certificate and photograph produced by Mr. Rock ASSOGBA that he was subjected to physical abuse; it therefore follows that article 18, first sentence, of the Constitution was violated;

DECIDES

Article 1: the police custody of Mr. Rock ASSOGBA was arbitrary and improper and violated the Constitution.

Article 2: The physical abuse inflicted upon Mr. Rock ASSOGBA at the Sainte Rita police station by Superintendent Honoré SEVO and Inspector Comlan ASSOGBA, alias Vincent, constituted a violation of the Constitution."

18. Following this high court decision, the matter was referred to the Indictments Chamber of the Cotonou Court of Appeal, the authority responsible for supervising the activities of police officers, which issued several decisions in this connection:

(a) Judgement No. 190/2001, file No. 063/PG/2001

“The Indictments Chamber:

For these reasons,

Having regard to articles 201 et seq.; 176, 177 and 193 of the Code of Criminal Procedure;

Makes the following observations to Police Inspector Comlan ASSOGBA, alias Vincent:

Custody begins as soon as you detain an individual on police premises, and the pertinent instructions must be scrupulously respected;

Orders that this decision be notified to the superiors of Inspector Comlan ASSOGBA, alias Vincent, to be placed in his file;

Further transmits the file to the State prosecutor for appropriate steps to be taken with regard to the physical abuse allegedly inflicted upon Rock ASSOGBA by Inspector Comlan ASSOGBA, alias Vincent;

Orders that this judgement be enforced by the State prosecutor of the Cotonou Court of Appeal;

Reserves judgement on the award of costs.”

(b) Judgement No. 191/2001; file No. 064/PG/2001

“The Indictments Chamber:

For these reasons,

Having regard to articles 201 et seq.; 176, 177 and 193 of the Code of Criminal Procedure;

Makes the following observations to Police Superintendent Honoré SEVO:

As the person in charge of a police unit, in your capacity as supervisor of the work of your colleagues, you must be constantly mindful of respect for the principles governing police custody;

Further transmits the file to the State prosecutor for appropriate steps to be taken with regard to the physical abuse allegedly inflicted upon Rock ASSOGBA by Honoré SEVO;

Orders that this judgement be enforced by the State prosecutor of the Cotonou Court of Appeal;

Reserves judgement on the award of costs.”

19. A perusal of these decisions shows that protracted police custody constitutes a violation of human rights. Articles 50 and 51 of the Code of Criminal Procedure lay down the time limits and precise procedures applicable to police custody.

20. In this connection, article 18, fourth sentence, of the Constitution states:

“No one may be detained for longer than 48 hours save by decision of a judge before whom he must be brought. This time limit may be extended only in circumstances exceptionally provided for by law and may not exceed a period of eight days.”

21. Nevertheless, violations of this provision of the Constitution have been noted and brought to the attention of the Constitutional Court.

22. For example, in Constitutional Court Decision DCC 00-14 of 9 February 2000 concerning the *Luc Michel Ablo* case, the Constitutional Court found that: “the fact of handcuffing a citizen when his appearance is ensured constitutes degrading treatment”.

23. In its reasons, the Court states that:

“Whereas Mr. Luc Michel ABLO states that after a dispute concerning land between him and the purchaser Ms. Vivianne GBEGAN, Police Inspector Latifou CHITOU detained him on the premises of the police headquarters and central police station in Cotonou from 28 to 29 April 1999; that he was handcuffed before being taken to the central police station in Cotonou; that he seeks redress;

Whereas Police Inspector Latifou CHITOU explains that, in response to a complaint from Ms. Viviane GBEGAN, Mr. Michel Luc ABLO was detained at the police headquarters and central police station in Cotonou from 7 p.m. on 28 April to 4 p.m. on 29 April 1999;

Whereas (...) investigations have not established that the complainant has been a victim of torture, physical abuse or other forms of vexatious treatment prohibited by article 19, first sentence, of the Constitution; the fact of handcuffing him when his appearance was ensured constituted degrading treatment; it must be adjudged and declared that the treatment to which Mr. Michel Luc ABLO was subjected was contrary to the Constitution;

DECIDES

Article 1: The detention of Mr. Michel Luc ABLO on the premises of the police headquarters and central police station in Cotonou from 7 p.m. on 28 April 1999 until 4 p.m. on 29 April 1999 was not contrary to the Constitution.

Article 2: The handcuffing of Mr. Michel Luc ABLO constituted a violation of the Constitution.”

24. Like the other bodies responsible for monitoring and implementing the provisions of the Convention and as in the above-mentioned cases, the Indictments Chamber to which file No. 62/PG/2001 had been referred, issued a similar decision in Judgement No. 184/2001:

“The Indictments Chamber:

For these reasons,

Having regard to articles 201 et seq., 176, 177 and 193 of the Code of Criminal Procedure:

Makes the following observations to Police Superintendent Djibril TAHIRI:

It is not sufficient to allocate duties; you must ensure that those duties are carried out properly in accordance with the texts in force, especially with regard to strict compliance with the time limits for police custody;

Orders that these observations be entered in the administrative file of the police officer concerned;

Orders that this judgement be enforced by the State prosecutor of the Cotonou Court of Appeal;

Reserves judgement on the award of costs.”

C. Protection of aliens (art. 3)

25. It should be noted that, in accordance with article 3 of the Convention, the Constitution affords aliens in Benin the same protection as nationals. Many aliens reside in the country, including Congolese, Central African, Chadian and Togolese refugees. Under the laws of the country, they enjoy freedom of movement and receive assistance from the Office of the United Nations High Commissioner for Refugees (UNHCR).

26. Furthermore, article 39 of the Constitution of 11 December 1990 provides that: “Aliens in the territory of the Republic of Benin shall enjoy the same rights and freedoms as Beninese citizens, as provided by law. They must comply with the Constitution, laws and regulations of the Republic.”

27. Article 2 of the African Charter on Human and Peoples’ Rights, which forms an integral part of the Beninese Constitution, provides in this connection:

“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.”

28. Similarly, article 12, paragraphs 3 and 4, of the Charter recognize that “ [e]very individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions” and that “[a] non-national legally admitted in a territory of a State party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law”.

29. Attention should be drawn to the fact that, in accordance with the provisions of these instruments, no cases of the forced expulsion of aliens occurred in Benin in the period 1998 to 2001.

D. The obligation to make acts of torture a criminal offence (art. 4)

30. Pursuant to article 4 of the Convention, any citizen who has been the victim of torture may refer the matter to the competent courts with a view to initiating legal proceedings.

31. In this connection, it should be explained that Benin has not yet incorporated provisions concerning mob justice into its Criminal Code. Nevertheless, given the upsurge in this crime, the public prosecutors are taking steps to prevent and punish it. When mob justice occurs, investigations are undertaken and once the ringleaders are found and arrested, they must answer for their acts before the competent courts on a range of charges related to causing bodily harm, such as malicious wounding, manslaughter and murder.

32. Some provisions of the Criminal Code likewise concern punishment for a variety of offences connected with duress.

(a) Under the terms of article 186, “Any civil servant or public official, government or police administrator, agent or officer, judicial marshal or police commandant or deputy commandant, who, without just cause, uses violence or causes violence to be used against persons in the performance of his duties, or while on duty, shall be punished according to the nature and extent of the violence used, and shall be liable to the penalty prescribed in article 198.”

(b) Under the terms of article 198, “Apart from cases where the law specifically regulates the penalties applicable to crimes or offences committed by civil servants or public officials, those of the latter who have been involved in other crimes or offences which fell within their surveillance or prevention remit, shall be punished as follows:

“In the case of a misdemeanour, they shall always be liable to the maximum penalty prescribed for the offence.

In the case of serious indictable offences, the penalties shall be as follows:

- Imprisonment, if the penalty in the case of any other perpetrator would be banishment or loss of civil rights;
- A period of forced labour, if the penalty in the case of any other perpetrator would be imprisonment or detention;

- Forced labour for life, if the penalty in the case of any other perpetrator would be deportation or a period of forced labour.

With the exception of the above-mentioned cases, aggravated penalties shall not normally be applied.”

33. Several other articles of the Criminal Code, namely articles 295, 302, 304 and 309 to 312, establish penalties for “torturers” in proportion to the seriousness of the acts of which they are accused.

34. On the other hand, anyone who is guilty of an offence or crime may not be prosecuted or sentenced if the homicide, injuries or beatings were ordered in accordance with the law or by a legitimate authority, or occurred in self-defence (Criminal Code, arts. 327 and 328).

35. Attention should, however, be drawn to the fact that article 19 of the Constitution provides that: “[a]ny individual or State employee found guilty of acts of torture, maltreatment or cruel, inhuman or degrading treatment or punishment in the exercise of his duties, or while on duty, whether on his own initiative or under orders, shall be punished in accordance with the law”.

36. Moreover, under the terms of the same article, “[a]ny individual or State employee shall be released from the duty of obedience when the order received constitutes a serious and manifest violation of respect for human rights and public freedoms”.

37. It should be noted that some violations of article 4 of the Convention have been committed by State employees, particularly by police officers and gendarmes in police custody contexts, but the courts, once seized, imposed penalties therefor. Some Constitutional Court decisions are worth mentioning in this connection:

(a) Decision DCC 01-016 of 1 March 2001 on the wrongful detention of Joseph Zounmenou: “The detention of a citizen for longer than the prescribed period, which does not rest on any provision of criminal law, is contrary to the Constitution.”

(b) Decision DCC 99-011 of 9 February 1999 on the police custody of Jacques Ahinon: “When a citizen has been held in the custody of the gendarmerie for more than 48 hours without being brought before a judge, his detention is contrary to article 18 of the Constitution.”

38. What determines whether treatment is cruel, inhuman or degrading is not only its effect on the individual’s physical or mental state, but also its duration, deliberate intent and the circumstances in which it is inflicted.

39. Hence, 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.

40. In the absence of a formal definition, these clarifications by the Constitutional Court are of enormous help in arriving at a more precise notion of what constitutes an “act of torture”.

41. The victims can then bring the matter before any of the competent courts in order to obtain civil reparations, or have proceedings initiated by the public prosecutor in pursuance of articles 186, 295, 302, 304, or 309 to 312 of the Criminal Code.

E. Benin's jurisdiction over acts of torture (art. 5)

42. Article 5 of the Convention makes it incumbent upon each State party to take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4. According to the wording of this article, such jurisdiction must extend to any person resident in Benin.

43. Articles 35 and 39 of the Code of Criminal Procedure govern the competence of Beninese criminal courts to deal with offences committed in the national territory.

F. Custody (art. 6)

44. Article 6 of the Convention provides that "Any State party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State"

G. Equality of procedural safeguards (art. 7)

45. As article 39 of the Constitution of 11 December 1990 grants aliens the same rights and freedoms as nationals, any alien who is alleged to have committed acts of torture of the kind referred to in article 4 of the Convention may be tried before the Beninese courts.

46. Fortunately, Benin has not yet had to try any foreign torturers under the provisions of article 7 of the Convention.

H. Rules governing extradition (art. 8)

47. Benin has concluded agreements with other States parties (Togo, Ghana and Nigeria) to facilitate the extradition of persons liable to criminal penalties. These treaties, which are still in force, contain provisions on extradition procedures.

48. One such is the Extradition Convention A/P.1/8/94 between the Governments of the member States of the Economic Community of West African States (ECOWAS), signed in Abuja, Nigeria, on 6 August 1994.

49. These agreements concern crimes and offences classified in the Criminal Code, with the exception of political crimes.

I. Mutual judicial assistance (art. 9)

50. In accordance with article 9 of the Convention, treaties on mutual judicial assistance exist between various States parties. These treaties concern regular exchanges of information on the organization of the judiciary, legislation and case law.

51. For example, Convention A/P.1/7/92 on mutual legal assistance in criminal matters, to which Benin and the Governments of the other ECOWAS member States are party, provides the legal framework for promoting cooperation in the investigation and prosecution of crimes.

52. Article 2 of the above-mentioned Convention lists eight areas in which it applies:

- (a) Gathering of evidence and taking of witnesses' statements;
- (b) 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;
- (c) Handing over of judicial documents;
- (d) Searches and seizures;
- (e) Seizure and confiscation of the fruits of criminal activities;
- (f) Examination of objects and premises;
- (g) Provision of information and exhibits;
- (h) Provision of original or certified copies of the pertinent files and documents, including bank statements, accounting records or registers concerning the operation of an enterprise and its commercial activities.

53. The following three cases do not come within the scope of the Convention's application:

- (a) The arrest or detention of a person with a view to his or her extradition;
- (b) The enforcement in the requested member State of criminal sentences imposed in the requesting member State, save when authorized by the law of the requested member State;
- (c) The transfer of prisoners for the enforcement of a sentence.

J. Education and information regarding the prohibition against torture (art. 10)

54. In the area of education and information regarding the prohibition against torture pursuant to article 10 of the Convention, in addition to the provisions mentioned in the initial report, the Beninese Government adopted regulations in 1997 to redefine the functions of the National Gendarmerie and the Ministry of National Defence.

1. The National Gendarmerie

55. In order to strengthen the capacities of the gendarmerie, trainee gendarmes attended a series of training courses and lectures lasting a month and a half in July and August 1997 in order to learn how to treat prisoners, war victims and others. They were taught that the use of torture is prohibited. These training sessions were organized by the national representative of the UNHCR. In addition, since 1997, human rights and criminal procedure have been included in the curriculum of courses for trainee police officers.

56. Since that year, the Human Rights Directorate has systematically organized initial or further human rights training for members of the gendarmerie, the police force and the army. This type of activity has gradually been extended to all socio-occupational groups, including all medical personnel.

2. The army

57. Since the restoration of democracy, the Beninese army has gone back to performing its republican duties. It is called upon to assist the police and gendarmerie. It is also present in some war-torn countries where it plays an active part in peacekeeping operations. Additional training in international humanitarian law is provided for this purpose (in keeping with the four Geneva Conventions of 1949).

II. ASSESSMENT OF THE IMPLEMENTATION OF THE CONVENTION

A. Treatment of persons who have been arrested, detained or imprisoned (art. 11)

58. A few examples will be given of compliance with article 11 of the Convention governing the treatment of persons who have been detained or imprisoned in States parties.

59. It should be emphasized that, in the Beninese legal system, the conditions of custody of persons subjected to arrest, detention or imprisonment are reviewed by the public prosecutors attached to courts and the State prosecutor attached to the Court of Appeal.

60. Review functions are also exercised by the President of the Indictments Chamber during his regular visits to the prisons within his jurisdiction (article 199 of the Code of Criminal Procedure).

61. The Code of Criminal Procedure contains specific instructions regarding custody and interrogation procedures.

62. Unfortunately, some police officers who are responsible for informing prosecutors that a person has been placed in custody do not always do so. This failure gives rise to some abuses, such as custody for longer than the statutory period, or violence against persons held in custody in police stations or gendarmerie premises.

63. Many victims of such abuses have brought cases before the Constitutional Court which has often found in their favour by declaring their custody, or the treatment inflicted on them during their detention, to be unconstitutional (see paragraphs 19 to 23 above).

64. Furthermore, new prisons have been built, some existing prisons have been renovated and the sanitary conditions improved in others. This is true, for example, of the civilian prison of Lokossa, which was opened in 1997. In this context, mention should be made of Order No. 265/MJLDH/DC/SG/DAP of 7 October 1997 establishing a multisectoral committee for the improvement of sanitary conditions in prisons.

B. Obligation to conduct a prompt and impartial investigation (art. 12)

65. Generally in Benin, the prosecutors attached to courts in areas where acts of torture have taken place open judicial inquiries. Some of these inquiries have led to the dismissal of police officers.

66. Following the upsurge of mob justice, steps have been taken, in accordance with the law, to arrest the instigators such as Dévi Ehoun. When this crime occurs, the public prosecutor conducts an inquiry with a view to prosecuting the culprits.

C. Right to submit a complaint against any perpetrator of acts of torture and the State party's obligation towards the complainant (art. 13)

67. In accordance with article 13 of the Convention, article 120 of the Constitution of the Republic of Benin provides that: "The Constitutional Court must rule within a period of fifteen days after it has been informed of the text of a bill or of a complaint concerning the violation of human rights and of public liberties."

68. Similarly, article 122 provides that: "Any citizen may complain to the Constitutional Court about the constitutionality of laws either directly or by the procedure for raising a plea of unconstitutionality in a court case concerning him."

69. On the basis of these articles, any person residing in the territory of the Republic of Benin who considers that his or her rights have been violated may refer the matter to the Constitutional Court. Further legal provisions exist to protect the complainant and witnesses against any ill-treatment or intimidation.

70. After the Constitutional Court has issued a decision, the respondents must not intimidate or inflict violence on the complainants.

D. Rules governing redress (art. 14)

71. Pursuant to article 14 of the Convention concerning legal arrangements for obtaining redress for effective violations of the Convention and proven cases of torture, legal provision is made (in articles 1382 and 1383 of the Civil Code) for securing redress for personal injury and compensation for victims of torture. In practice, however, citizens are unaware of their rights and content themselves with a Constitutional Court judgement which is confined to a conviction.

72. 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 that some compensation claims might be examined and met.

E. Conditions governing the validity of evidence (art. 15)

73. As for conditions governing the validity of evidence, in accordance with article 15 of the Convention, confessions extracted under torture are null and void. The practice is always to dismiss such confessions in court hearings.

74. Similarly, 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 report and orders a reopening of investigations.

F. Other forms of cruel, inhuman or degrading treatment (art. 16)

75. Article 16 strengthens the prohibition of cruel, inhuman or degrading treatment or punishment. However, as far as conditions of detention are concerned, most prison buildings are dilapidated and overcrowded. This state of affairs affects hygiene and conditions of detention and is sometimes the cause of various diseases.

76. This situation is due, on the one hand, to the low intake capacity of prisons, some of which date back to the colonial era and, on the other, to the shortage of judges. The latter aspect slows down judicial proceedings, for judges are often overwhelmed with a huge number of cases.

77. Successive inquiries have shown that, in most prisons, very few inmates are actually serving a sentence. The number of persons held in pretrial detention exceeds that of convicted prisoners.

78. Although it is no longer a common practice, some cases of physical abuse have been recorded in certain prisons. It is not therefore unusual for prisoners to complain of being “given a drubbing” when they make a complaint or do something wrong.

79. Detainees are unanimous in criticizing prison food. The State allows them only one meal a day. From time to time, NGOs or charities come to their assistance by offering them food and other basic essentials.

80. The other reality in prisons is the shortage of medicines to treat prisoners who fall ill. Here again, they have to fend for themselves when supplies from charitable organizations run short. Prisoners have no means of buying the medicines prescribed for them.

81. Detention facilities in police stations and gendarmerie premises are inadequate. The cells are too small for the number of people held there every day, and detention conditions are not always tolerable.

82. Article 17 of the Constitution provides that “[a]ny person accused of an unlawful act shall be presumed innocent until his guilt has been legally established in a public hearing during which he has been provided with all requisite guarantees of due process”.

83. This article also provides that “[n]o one shall be convicted for acts or omissions which, at the time they were committed, did not constitute an offence under the national law. Likewise, the penalty imposed may not be more severe than the one applicable at the time the offence was committed”.

84. Most accused are brought into court wearing a “civilian prison” jacket. This practice constitutes degrading treatment, since the accused has not yet been formally convicted. The fact of exposing him to the public gaze in such clothing is an insult to his dignity.

85. Moreover, 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.

86. Similarly, it may happen that, after a long period of detention for “theft”, the court sentences the accused to a term of imprisonment which matches the duration of detention, but which is not in proportion to the offence.

87. Such actions, which undermine the victims’ mental, material and physical well-being, constitute inhuman or degrading treatment.

88. The Constitutional Court has found in favour of the complainants in several cases involving deprivation of the right of defence, as the following decisions show:

(a) Decision DCC 00-024 of 10 March 2000, in which the Court drew attention to the fact that “the decision to give a citizen a deferred sentence without his cause having first been heard breaches the provisions of article 7.1 of the African Charter on Human and Peoples’ Rights”;

(b) Decision DCC 00-056 of 10 October 2000, in which the Court ruled that “a citizen may rely on the argument that he has not been able to exercise his right of defence if he did not participate in a sitting at which his disciplinary sanction was discussed”.

89. The African Charter on Human and Peoples’ Rights, which forms an integral part of the Constitution, provides in article 7, paragraph 1 (d), that “[e]very individual shall have the right to have his cause heard. This comprises ... the right to be tried within a reasonable time by an impartial court or tribunal”.

90. Violations of this provision of the Constitution have been brought to the notice of the Constitutional Court.

(a) In Decision DCC 00-041 of 29 June 2000, the Court held that: “proceedings which are still pending before the courts after four years are to be regarded as entailing an abnormally long delay from the standpoint of article 7, paragraph 1 (d), of the African Charter on Human and Peoples’ Rights”;

(b) In Decision DCC 01-008 of 11 January 2001, the Court stated that: “if an applicant’s right to have his cause heard within a reasonable time has not been respected by the competent courts, the Constitution has been violated”.

91. Article 25 of the Constitution provides that: “The State shall recognize and guarantee, under conditions fixed by law, the freedom to come and go, the freedom of association, of assembly, of procession and of demonstration.”

92. Article 10 of the African Charter on Human and Peoples’ Rights provides as follows:

“1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.”

93. The Constitutional Court has censured several instances of violation of the above-mentioned provisions.

94. For example, in Decision DCC 00-003 of 20 January 2000 the Court found that: “The purpose of the constitutional principles of freedom to come and go, freedom of association, of assembly, of procession and of demonstration, is to secure to the individual the enjoyment of fundamental freedoms and to protect him against all arbitrariness.” Thus, “[w]hen an administrative authority, in the instant case the sub-prefect, has not substantiated his decision to prohibit one of these freedoms, the Constitution has been violated”.

95. In addition, in Decision DCC 01-038 of 13 June 2001, the Court held that: “[i]mpeding the exercise of trade-union activities constitutes a violation of the Constitution”.

III. ACTION TAKEN ON THE COMMITTEE’S CONCLUSIONS AND RECOMMENDATIONS (A/57/44, paras. 30 to 35)

A. Earnests of a new response to torture and other cruel, inhuman or degrading treatment

96. It should be noted that the recommendations made by the Committee against Torture (hereinafter “the Committee”) when it considered the initial report have not yet been fully implemented by the Beninese Government.

1. Signs of a new approach to torture

(a) Absence of a definition of torture

97. It should be noted that, to date, the Beninese Government has not adopted a definition of torture in accordance with the Committee’s recommendations.

98. However, in view of the upsurge in various acts of torture and the many complaints referred to the Constitutional Court, the latter supplied the following clarification in its Decision DCC 99-011 of 4 February 1999:

“What determines whether treatment is cruel, inhuman or degrading is not only its effect on the individual’s physical or mental state, but also its duration, deliberate intent and the circumstances in which it is inflicted.”

99. Moreover, Benin is a party to the Convention and accepts its provisions defining torture.

(b) Mob justice

100. Regrettably, several cases of mob justice were recorded during the period covered by this report. They resulted in many people receiving serious injuries.

(c) The crucial question of prison conditions

101. Detention conditions are still extremely difficult. Overcrowding and the lack of medical and health facilities in prisons are serious threats to inmates' health. Prison food is totally inadequate; diseases related to malnutrition are frequent. Relatives are forced to bring prisoners food in order to supplement prison meals. Hygiene conditions leave much to be desired. Prisoners do not receive enough to eat or enough medication.

(d) Dissemination of human rights notions

102. A knowledge of human rights does not yet figure prominently in the various training programmes for civilian and military personnel who are responsible for law enforcement, or for medical staff. While it is true that considerable efforts are being made to arrange courses for these people, regrettably violations of the rules on length of custody are still being reported. Nevertheless, regular meetings are held to remind police officers of the provisions of articles 50 and 51 of the Code of Criminal Procedure.

(e) Failure to respect the time limit for police custody

103. The time limit for police custody is exceeded in many cases and it seems that nothing is yet being done to enforce the law and the Convention.

(f) Failure to provide post-trauma assistance

104. There is as yet no programme for the medical and psychological rehabilitation of victims of torture.

2. Promised responses to violations related to torture

(a) Solutions to overcrowding in prisons and the ill-treatment of inmates

105. According to the Ministry of Justice, the country's eight civilian prisons hold three times as many prisoners as they should. The Natitingou prison in Atacora is the only one which is not full to capacity. Funding difficulties are delaying completion of the civilian prison in Akpro-Missérété, in the department of Ouémé, which is designed to hold 1,000 persons.

106. Prisoners are allowed visits from relatives, their lawyers and other people.

107. Considerable efforts have been made to improve prisoners' health. Four fifths of doctors' fees and hospital charges are defrayed for sick prisoners who are taken to the national hospital centre and other hospitals in the country.

(b) Respect for human rights

108. Women's and children's sections exist in most prisons in Benin.

109. However, persons in pretrial detention are held in the same premises as convicts, apart from those who have received a death sentence.

110. The Government authorizes human rights defenders, NGOs and other agencies to visit prisons.

(c) Compensation for victims of torture

111. The Government has continued to pay compensation to persons who were subjected to torture under the military regime. Some have received compensation for the property they lost under that regime. Nevertheless, it is alleged that the police detained and beat journalists during that period.

(d) The provisions of the Criminal Code concerning torture

112. The Criminal Code has not yet been brought into line with the Convention, since articles 327 and 328 of the Code, which remain in force, exonerate anyone who is guilty of offences and crimes when they were ordered in accordance with the law, or by a legitimate authority, or occurred in self-defence.

B. Developments in Benin since the Committee made its recommendations

113. The situation in Benin is as follows with regard to the recommendations made by the Committee when it considered the initial report (A/57/44, para. 35, subparas. (a)-(j)):

(a) Benin has not yet adopted a definition of torture as such, or provided for appropriate penalties. However, the current state of its case law makes it possible to identify an interpretation of the notion of torture as defined by the Convention;

(b) Acts which may be regarded as torture or cruel, inhuman or degrading treatment and which are brought to the attention of the public authorities are prosecuted;

(c) As for the elimination of mob justice, the prosecution of the instigators, and in particular the arrest of Dévi Ehoun, have resulted in a substantial decline in the frequency of lynchings. When the culprits are arrested, they are brought to trial in accordance with the law;

(d) Specific human rights instruction has not yet been systematically included in the training of law enforcement officials and medical personnel. Nevertheless, substantial and praiseworthy efforts have been made to raise the awareness of these persons through a wide range of courses;

(e) The Government has introduced and implemented a prison rehabilitation programme (Kandi, Natitingou, Lokossa and Abomey) and is building a new prison in Akpro-Misséréte, but an upsurge in organized crime and the slowness of procedures mean that prisons are not emptying and this is having a severe impact on prisoners' living conditions;

(f) Considerable efforts are being made, to assist prisoners, particularly by NGOs and charitable organizations;

(g) Benin remains open to any form of collaboration designed to secure respect for the Convention;

(h) The declarations provided for in articles 21 and 22 of the Convention have yet to be made;

(i) A fast-track approval process in respect of the Criminal Code and the Code of Criminal Procedure has been introduced;

(j) Serious steps have been taken to make up for lost time in submitting periodic reports and to ensure that Benin complies with the reporting frequency stipulated in article 19 of the Convention.

ANNEX

List of documents

1. Decree No. 2004-394 of 13 July 2004 on the responsibilities, structure and functioning of the Ministry of the Interior, Security and Territorial Administration.
2. Decree No. 2005-246 of 6 May 2005 on the establishment, responsibilities and functioning of the Ministry of National Defence.
3. Decree No. 2004-304 of 25 May 2005 on the establishment of the National Committee to monitor the implementation of international human rights instruments.
4. Order No. 164/MJLDH/DC/SG/DDH of 27 July 1998 on the appointment of members of the National Committee to monitor the implementation of international human rights instruments.
5. Decree No. 95-383 of 22 November 1995 on the responsibilities, structure and functioning of the National Gendarmerie.
6. Order No. 265/MJLDH/DC/SG/DAP of 7 October 1997 on the establishment of the Technical Committee to monitor rodent extermination, disinfection and deodorization operations in the civilian prisons of Porto-Novo, Cotonou and Ouidah.
7. Order No. 290/MJLDH/DC/SG/DAP of 18 November 1997 on the establishment of a food management committee in every civilian prison in Benin.
8. Constitutional Court Decisions DCC 95-038, 95-047, 96-005, 96-006, 96-035 and 96-015.
9. Decree No. 97-503 of 16 October 1997 on the establishment of the National Advisory Council on Human Rights.
10. Express communiqué of the Human Rights League on the illegal attempt to extradite Togolese refugees.
