



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

Distr.
GENERAL

CAT/C/SR.797
7 December 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 797th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 15 November 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of Benin

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.797/Add.1.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

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

1. At the invitation of the Chairperson, the members of the delegation of Benin took places at the Committee table.
2. The CHAIRPERSON invited the delegation to introduce the second periodic report of Benin (CAT/C/BEN/2).
3. Mr. ANANI CASSA (Benin) recalled the main features of the political and economic context of Benin, saying that since 1990 his country had been strengthening its legal, political and institutional framework in order to consolidate the rule of law, in which fundamental human rights were guaranteed, protected and promoted. Benin was characterized by pluralist democracy and good governance; between 1996 and 2006 it had held three presidential elections, as well as local elections, and had made significant progress in combating corruption. Following on from its 2003-2005 Poverty Reduction Strategy Paper, the country's new economic vision was reflected in its 2006-2011 Strategic Orientations of Development and 2007-2009 Growth Strategy for Poverty Reduction.
4. Article 18 of the Constitution prohibited torture, physical cruelty and/or cruel, inhuman or degrading treatment and set the duration of police custody with the aim of protecting fundamental freedoms and human rights. While a formal definition of torture did not yet exist in Beninese legislation, that gap was bridged by the abundant case law of the Constitutional Court. The entire text of the Convention had been published in Benin's Journal Officiel in September 2006, along with that of other United Nations human rights instruments.
5. During the period under consideration, the Constitutional Court had ruled in principle, in decision DCC No. 02-052 of 31 May 2002, that the victims of violations of fundamental rights had the right to reparation. The Government had continued to provide compensation for victims of acts of torture committed under the former regime of the People's Revolutionary Party of Benin (PRPB).
6. He outlined the legislative, judicial and administrative measures that had been adopted between 1993 and 2006 in order to combat and eliminate torture. Those measures had included establishing a national committee to monitor the implementation of international human rights instruments; training the members of that committee; extending the functions of the Ministry of Justice to encompass human rights by setting up a Human Rights Directorate; and establishing a National Advisory Council on Human Rights as a forum for consultation between public authorities and NGOs.
7. He gave examples of steps that had been taken to provide training and awareness-raising in the area of human rights, torture and the Convention. Those trained had included law

enforcement officials, judges, NGOs and local elected representatives. Work had also been carried out to improve the treatment and conditions of unconvicted and convicted prisoners. Efforts had been made, for example, to ensure that time limits on custody were observed, sanctions being imposed in the event of non-observance. New prisons had been built and others rehabilitated to improve living conditions. Nevertheless, problems remained, but it was hoped that the new prison in Akpro-Misséréké, which had a capacity of 1,000, would alleviate overcrowding and ill-treatment.

8. In order to strengthen those measures, Benin had ratified the Optional Protocol to the Convention in September 2006, initiated the process of establishing the national mechanism for the prevention of torture, and drawn up the draft legislation instituting that mechanism.

9. While the progress made in implementing the Convention between 1993 and 2006 had been significant, it had been hindered by a number of factors, including an ill-informed public; insufficient training of the relevant actors; a poor understanding of legal enactments; delays in legal proceedings; lack of adequate infrastructure; and general ignorance of the law. Steps were being taken to address those problems, such as the creation of new courts and measures to speed up the adoption of the draft criminal code and code of criminal procedure, but many challenges remained. He assured the Committee that his Government would be implementing all the Committee's recommendations and would welcome any technical, financial or practical assistance to address shortcomings in the implementation of the Convention.

10. Mr. CAMARA, Country Rapporteur, acknowledged the challenges faced by Benin as a new democracy. He had been concerned to read, however, that Benin had not yet formally incorporated a specific definition of torture into its legislation, as recommended by the Committee as far back as 2001. In the absence of such a definition, which complied strictly with article 1 of the Convention, it would be impossible to say that Benin had respected its obligations under that instrument. He urged the State party to comply with that requirement. He asked for information on the procedure followed once the Constitutional Court had found a violation of the Constitution. How was that violation punished, and by what body?

11. With regard to paragraph 34 of the periodic report, according to which perpetrators of torture were not prosecuted or sentenced if the acts in question had been ordered by a legitimate authority, or had occurred in self-defence, he drew the State party's attention to article 2 of the Convention, under which such arguments could not be invoked as justification of torture. The relevant provisions of the Criminal Code would therefore appear to violate the Convention.

12. With regard to paragraph 41, according to which victims of acts of torture could bring the matter before the competent courts to obtain civil reparations or have proceedings initiated, he reminded the State party of its obligation under article 12 of the Convention to initiate such proceedings proprio motu.

13. He would appreciate more information on articles 35 and 39 of the Code of Criminal Procedure governing the competence of Beninese criminal courts to deal with offences committed in the national territory.

14. In the context of the regional extradition agreements concluded by the State party, he would like to know how it respected its obligation under article 3 of the Convention not to return a person to another State if there were reasons for believing he would be in danger of being subjected to torture. No exceptions were possible.

15. He asked what the penalty of “loss of civic rights” consisted of; it was applied under article 127 of the draft Criminal Code to government agents or officials who had ordered or committed an act violating a person’s liberty or civic rights, or the Constitution. Did the State party believe that penalty to be adequate for acts of torture, in the light of article 4 of the Convention?

16. Turning to the written replies, he expressed concern at the statement in paragraph 31 that expulsion was decided by the Executive and was an administrative police measure. That was normally a matter for the courts, and raised potential issues of lack of independence from the Government and the possibility of political considerations influencing such decisions. He was also concerned at paragraph 32, according to which refoulement was carried out by the police at the border. In his view, the police were not competent to rule on potential asylum applications, taking into account international law. With reference to paragraph 36, he asked what type of court was responsible for reaching a decision on extradition requests, and expressed concern that such decisions were not appealable (para. 39). Was it not possible to refer such decisions to the Supreme Court? He would appreciate more information on that matter.

17. In connection with asylum applications (para. 41), he had been concerned to read that anyone without a duly constituted claim, of doubtful morality, or who was a known criminal would be expelled immediately. He would like to know how that was compatible with article 3 of the Convention or with the Convention relating to the Status of Refugees.

18. In its reply to question 8, the State party cited articles 553 and 554 of the Code of Criminal Procedure containing rules of jurisdiction governing offences committed abroad. He recommended that the State party should amend those articles in order to ensure that they met the requirements of articles 5 and 7 of the Convention. Moreover, article 556 stipulated that where an offence was committed against a private individual, proceedings could be instituted only at the request of the Public Prosecutor’s Office following a complaint by the injured party. Given that the Public Prosecutor’s Office was linked to the Executive and hence unlikely to be impartial, he asked how that provision could be reconciled with article 13 of the Convention, which required the State party to ensure that persons who alleged that they had been tortured were entitled to have their case promptly and impartially examined by the competent authorities.

19. According to article 15 of the Convention, statements made as a result of torture should not be invoked as evidence in proceedings. The State party cited articles 397 to 401 of the Code of Criminal Procedure in that connection but the articles in question failed to mention the inadmissibility of such evidence. Article 399 stipulated that no statement or report had evidentiary value unless it had been drawn up in accordance with the regulations. One could argue, a contrario, that a statement or report obtained through torture was admissible so long as certain formalities were complied with.

20. Ms. BELMIR, Alternate Country Rapporteur, welcomed the frankness of the State party's report and its written and oral replies. It was normal for a country in transition to encounter some difficulties in building a State based on the rule of law. Many commendable steps had been taken since 1993, including ratification of the Optional Protocol to the Convention and the Rome Statute of the International Criminal Court, adoption of the Plan for the Strengthening of the Legal and Judicial Systems, establishment of the Standing Committee for the Compensation of Victims of Injury Caused by the State, revision of the Criminal Code, steps to improve prison conditions, and legislation to counter child displacement and trafficking and female genital mutilation.

21. In its reply to question 1 of the list of issues, the State party maintained that the case law of the Constitutional Court made up for the lack of a formal definition of torture in domestic law. She did not agree that the case law cited covered all aspects of the Convention's definition of torture. She was therefore pleased to hear that torture was defined as an offence in the final version of the draft criminal code and would like to have further details of the proposed wording.

22. In 2004, the United Nations Human Rights Committee had recommended, in its concluding observations on Benin's initial report to the Committee (CCPR/CO/82/BEN), that the State party should make people more aware of the opportunities they had to bring matters before the Constitutional Court, ensure that the Court's decisions were enforced and contemplate the establishment of a body to follow up the Court's decisions.

23. In response to question 3, the State party had said that no amendments to articles 327 and 328 of the Criminal Code were contemplated. However, it cited article 114, according to which any civil servant or government agent or official who ordered or committed an arbitrary act or one that violated a person's liberty would be liable to loss of civic rights. She asked whether the loss of civil rights was an accessory penalty or the sole penalty imposed.

24. Benin was a party to nine counter-terrorist instruments and claimed that their implementation had no impact on legal or practical human rights guarantees. The Human Rights Committee, however, had expressed concern in its concluding observations that certain provisions of the draft criminal code and code of criminal procedure aimed at combating terrorism might infringe articles 2, 7, 9 and 14 of the International Covenant on Civil and Political Rights.

25. She queried the State party's claim that the provisions of the 1984 Extradition Treaty between Benin, Ghana, Nigeria and Togo were also applicable to other States. Persons faced with extradition or refoulement enjoyed very few safeguards. If criminal charges were brought against them, there was no procedure for filing an appeal. Persons whose identity documents were not in order were immediately expelled, while persons described as "ayant droit" had the right of appeal. As "ayant droit" was a term normally applied to the legatee of a deceased person, she enquired about its meaning in the context of extradition or refoulement.

26. It was unclear whether the Criminal Code or the revised code contained a provision confirming the presumption of innocence, a principle of crucial importance for the entire justice system.

27. In response to question 11, the State party reported that in 2004 several Beninese detainees had been placed at the disposal of the Nigerian courts, at Nigeria's request, to give evidence as witnesses in judicial proceedings against criminal gangs operating in both States. When the Beninese courts, which had received no such request, expressed dissatisfaction, the prisoners were returned to Benin. What steps were being taken to prevent the repetition of such events.

28. The government prosecutor was required, under article 674 of the Code of Criminal Procedure, to make regular visits to places of detention and, under article 675, to ensure the release of any person unlawfully held in detention or custody. She asked whether such decisions were based solely on the prosecutor's assessment or whether they also required a court decision. Could the victim of the act committed by the released person file an appeal?

29. According to NGOs, the phenomenon of "mob justice" was a reaction to the slowness and laxity of the Administration and the judiciary in responding to breaches of the law. The State party did not intend to make mob justice as such an offence in the draft criminal code but to punish such acts as violations of physical integrity. That was not really an adequate response to the problem. It was essential to eradicate the phenomenon of mob justice through awareness-raising and the development of a law-abiding environment.

30. The State party's reply to the question on the use of straitjackets in places of detention did not fully meet the Committee's concerns. It could amount to degrading treatment, especially for a person who had not yet been convicted.

31. The treatment of prisoners on death row needed to be improved. Prisons were still overcrowded, even though efforts had been made to address the problem. Food rations were inadequate and prison buildings were frequently in poor condition. There were no separate wings for women detainees in some prisons.

32. The State party acknowledged that there were not enough judges to deal with the existing caseload. What strategy was the State party developing to deal with the problem, and how did it propose to address allegations of a corrupt and slow-moving judiciary?

33. Only piecemeal action had been taken to date on children's rights and it was essential to develop a general strategy involving, for instance, the establishment of an observatory to monitor issues such as corporal punishment, trafficking, street children and child labour. Moreover, the age of criminal responsibility - 13 years - was far too low.

34. She was disappointed to note that violations of women's rights, such as trafficking and domestic violence, were not covered by the revised criminal code.

35. Acts of terrorism were punishable by the death penalty, although, according to the State party, such penalties were not imposed in practice. She took it that when Benin had ratified the Rome Statute, it had undertaken to abolish capital punishment.

36. A number of NGOs, including Amnesty International, had raised the issue of the impunity agreement that Benin had signed with the United States. She wished to hear the delegation's opinion of the agreement.

37. Mr. GROSSMAN said that the State party had made considerable progress in recent years. He commended the fact that it acknowledged the existence of problems and enlisted the assistance of civil society in fulfilling its international obligations.

38. He asked whether academic establishments were involved in developing and commenting on the curriculum used in human rights training courses for the police and gendarmerie. Did the courses focus on legal norms or did they also cover practical issues, such as sanctions for acts of torture and other forms of ill-treatment?

39. He asked whether any cases of corruption in the police or gendarmerie had been investigated during the period covered by the report and, if so, how many had led to legal proceedings, convictions and sanctions.

40. The Committee had been informed that visitors to prisons were charged a fee and that the prisoners they were visiting also had to pass through toll gates. Moreover, the food brought in by visitors could be confiscated. He would be interested in hearing the delegation's comments on that information. NGOs were reportedly allowed to visit places of detention on occasion but not on a systematic basis. He suggested that regular visits by NGOs might be an effective means of monitoring the prison system and putting an end to the practice of charging fees to visitors and inmates.

41. He asked whether there had been any cases in which articles 309 to 312 of the Criminal Code had been invoked during the period covered by the second periodic report, particularly regarding ill-treatment of children. If so, details should be provided on the number of complaints made, the number of court cases and the outcome of those cases. He also requested statistics on the number of cases of rape and female genital mutilation that had been brought to court. The Committee would be interested to have additional details on the Constitutional Court decision of 20 December 2005 concerning reparation to Ms. N.G., who had been physically abused by police officers. In particular, details should be provided on what compensation she received, whether it covered material and moral damage, and whether criminal charges had been brought against the perpetrators. Details of compensation received and the prosecution of the male nurses involved should also be provided in relation to the case of the 13-year-old girl who had been raped at Zou hospital in April 2005.

42. He asked what had happened to the draft legislation the Council of Ministers had examined in 1997, which aimed to restrict the practice of "vidomegon". It would be useful to learn how many convictions had been brought for trafficking in children and what relevant training the officials concerned had received.

43. Ms. SVEAASS asked whether there was a national human rights institution in the State party. If there was, it would be useful to learn how it functioned and whether it functioned in accordance with the Paris Principles.

44. She wished to know whether health and law enforcement personnel were trained in gender issues and in preventing violence against women and children. She requested statistics on convictions of perpetrators of such violence and of those found to have carried out female genital mutilation. It would be interesting to learn whether the State party provided assistance for reconstructive surgery and psychological assistance to victims of that practice.

45. She asked whether the minimum age limit for enlisting in the armed forces was in line with the relevant international instruments. The delegation should indicate what measures were being taken to tackle child prostitution and trafficking in children. She asked whether the State party took steps to investigate persons suspected of those crimes, what legal sanctions they received and what compensation was available to the victims.

46. Mr. MARIÑO MENÉNDEZ asked how NGOs were appointed to the National Advisory Council on Human Rights and whether there were any rules regulating NGO efforts to implement the Optional Protocol to the Convention. He wished to know whether there was a register of NGOs, and whether some of those organizations were more active or had closer links to the Government than others.

47. He asked why philosophy teachers had been singled out to receive human rights training as opposed to academics in other fields, such as law, medicine and sociology.

48. He asked whether any cases of torture in the State party had been brought before the African Commission on Human and Peoples' Rights, and what links the State party had with that body.

49. Additional information should be provided on the involvement of civil society and non-governmental experts in the consultation process on the draft criminal code and the draft code of criminal procedure. He asked whether the Committee's recommendations would be reflected in those enactments.

50. It would be useful to learn whether the Government had a policy of reaching agreements with European States regarding Beninese migrants who entered Europe illegally.

51. The delegation should indicate whether there had been any convictions concerning trafficking in children, particularly for the purposes of forced labour in third countries. He asked whether domestic legislation on trafficking in children was sufficient to tackle that scourge, and whether the Government was aware that third countries could have jurisdiction over trafficking in children involving the State party.

52. Ms. GAER asked what steps the State party was taking to develop its capacity to collect criminal and criminological data, and whether it was currently receiving any technical assistance in that regard. She requested updated information on the case in which gendarmes in Ouidah had, on 6 September 2006, allegedly beaten two suspected thieves who had been in custody. In particular, she wished to know whether the gendarmes had been reprimanded.

53. Statistics on the prevalence of "mob justice" would be useful. In that connection, she asked whether Dévi Ehoun had been convicted, and if so, what punishment he had received. She enquired what measures were being taken to prevent occurrences of mob justice and whether the State party planned to increase local capacity to that end.

54. She requested clarification on whether detainees could demand access to doctors and lawyers on their own initiative.

55. The CHAIRPERSON, speaking in a personal capacity, welcomed the presence at the meeting of NGOs, which was an indication of a working democracy. He asked why the periodic report had not been submitted earlier. The Committee would appreciate further details on the difficulties that accounted for the non-implementation of its previous concluding observations. He failed to understand why the State party had no criminal code, why it had not incorporated the definition of torture into its legislation, and why it had not prohibited domestic violence and other violence against women. He asked why prison warders had not been convicted for corruption involving making prisoners pay in order to have a place to sleep. He asked why the State party had not enacted legislation on victim and witness protection. It would be useful to know what measures were being taken to eliminate the practice of infanticide, particularly in terms of training and counselling in areas where that was prevalent. He wished to know whether the State party had a system of legal aid, and if so, how it functioned.

The public part of the meeting rose at 12.05 p.m.