

# TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

## COMMITTEE AGAINST TORTURE 39<sup>TH</sup> SESSION BENIN, 2<sup>ND</sup> REPORT 15-16 NOVEMBER

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### Information submitted to the Committee

The Republic of Benin appeared before the Committee against Torture (the Committee) to discuss its 2<sup>nd</sup> periodic report on 15-16 November 2007.<sup>1</sup> The report provides the Committee with information regarding Benin's implementation of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention), adding to information submitted in its initial report submitted on November 2001. Benin ratified the Convention on 12 March 1992 following broad Constitutional reforms which led to increased democratization of the country. The current report highlights substantial progress in curtailing abuse and ill treatment of detainees at the hands of State security agents. It describes the tasks of a number of national human rights protection mechanisms, details amendments to the criminal code guaranteeing individual rights, and elaborates on monitoring/investigation procedures. In addition, it pays special attention to treatment of foreign nationals by defining the status of asylum-seekers and refugees, and outlining the legal requirements for extradition. Finally, the report lays out specific actions taken in response to the Committee's previous concluding recommendations, while noting the ongoing difficulties of comprehensive implementation of the Convention in a developing country.

<sup>1</sup> CAT/C/BEN/2, 27 April 2007, available at <http://ohchr.org/english/bodies/cat/cats39.htm>.

The Committee had compiled a list of issues pertaining to specific areas of concern and submitted it to Benin on 9 July 2007.<sup>2</sup> The list included: the absence of a formal definition of torture in legislation; (in)compatibility of domestic legislation with specific Articles of the Convention; legal guarantees against *refoulement*; judicial jurisdiction relating to torture; training provided to public officials/law enforcement; the legal framework for systematic monitoring of interrogation and places of detention; and the prosecution/sentencing of officials guilty of violations. Benin provided a written reply to the list of issues which was made available to the Committee prior to the interactive dialogue.<sup>3</sup>

Four non-governmental organizations (NGOs) submitted a joint alternative report regarding the human rights situation in Benin.<sup>4</sup> This group included the International Federation for Action by Christians against Torture (FIACAT), World Organization against Torture (OMCT), Solidarity for Children in Africa and the World (ESAM), and the Association of Female Jurists of Benin (AFJB). Their joint report is quite extensive and is comprised of four main components. The first segment notes new legislative guarantees against ill treatment, but gives evidence that these rights are regularly compromised in practice. The second section deals specifically with women's issues, drawing attention to domestic violence, forced abortions and female genital mutilation. The third component is concerned with child trafficking, domestic servitude, and persecution of children accused of witchcraft. The report concludes with recommendations for improving protection for these vulnerable groups.

## Themes and Issues

The State delegation was headed by Gustave Anani Cassa, the Minister of Justice and Human Rights of Benin. The delegation also included the Head of the Human Rights Promotion Division, the Ambassador to Switzerland, and another representative from the Permanent Mission of Benin in Geneva.

In his opening remarks, Mr Cassa stated that, as a nation which respects democracy and the rule of law, it is an honor for Benin to appear before the Committee. He emphasized that considerable progress has been made in the promotion of human rights, but urged the Committee to consider the situation in Benin within the framework of its political and economic context. Although he did not elaborate, it was clear that the Minister was referring to Benin's nascent democracy and the troubled political/economic history of its region. He noted significant economic progress in reducing poverty, ratification of numerous international instruments, and a growing contribution from civil society. Mr Cassa then proceeded to give a preliminary oral response to the list of issues, touching upon: the treatment of torture in domestic legislation; training and awareness campaigns; efforts to improve the quality of life for detainees; and sanctions against violators. He also highlighted a number of specific obstacles and assured the Committee that Benin was open to receiving "financial and technical assistance."

The questioning by the Committee was dominated by the two country rapporteurs, Mr Camara (Senegal) and Ms Belmir (Morocco). Other Committee members voiced concerns regarding various topics and raised a number of questions. The delegation's replies were extremely brief, prompting the Chairman to initiate another round of questions and answers. Although additional information was provided in this follow-up, in general the delegation's replies were far from extensive.

## The Convention in domestic legislation

Although he conceded that the formal definition of torture contained within the Convention is not included in domestic legislation, the head of delegation assured the Committee that the prohibition of all forms of torture

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<sup>2</sup> CAT/C/BEN/Q/2, 9 July 2007, available at: <http://ohchr.org/english/bodies/cat/cats39.htm>.

<sup>3</sup> CAT/C/BEN/Q/2/Add.1, 17 September 2007, available at <http://ohchr.org/english/bodies/cat/cats39.htm>.

<sup>4</sup> The alternative report is available at <http://www.ohchr.org/english/bodies/cat/docs/ngos/omctbenin39.pdf>

is sufficiently established in Beninese law. He pointed out that the State has ratified a number of international human rights treaties including ICCPR, ICESCR and CEDAW. He asserted that since 1996 the legal framework for the protection of rights has been greatly strengthened through the creation of a National Advisory Committee to follow up on implementation of international instruments. In addition, the Ministry of Justice has taken concrete measures, including a decree promoting consultation between the Ministry and NGOs, to solidify the legal framework of protection. According to Mr Cassa, decisions of the National Committee, input from NGOs, and previous concluding recommendations of the Committee are all being taken into account in the on-going parliamentary process of amending criminal and procedural code.

Mr Camara recalled that the Committee's previous recommendations explicitly called for the adoption of the formal definition of torture and asked why this had not happened. He insisted that this was an indispensable component and urged the State party to make its inclusion a priority. Ms Belmir added that the lack of a definition limits complaint and investigation procedures and thus greatly hinders legal protection mechanisms. In addition, both rapporteurs requested clarification on the role of the Constitutional Court.

Mr Camara asked what specific follow-up measures are taken once an act has been deemed unconstitutional. Ms Belmir referred to a conclusion of the Human Rights Committee from 2004 which found that decisions of the Court are not properly disseminated or implemented. She also inquired if the draft code being discussed in Parliament contained the presumption of innocence, noting that this was crucial for the entire legal structure. Finally, Committee member Manning wanted to know the extent to which input from civil society, as well as the Committee's recommendations, actually shapes the final version of the code. He explained that his skepticism was based on information that the new draft code is very much similar to the old one.

Regarding the need to adopt a strict legal definition of torture, the delegation merely noted the Committee's concerns and stated that further discussions would be held on the matter. On the issue of decisions handed down by the Constitutional Court, the delegation explained that education programs are provided in accordance with Articles 35 and 39 of the Code of Criminal Procedure, which stipulates the competence of judicial officers. In addition, training programs and awareness campaigns to disseminate the decisions of the Court are held for all public officials, including law enforcement officers. On the question of a legally entrenched "presumption of innocence", the delegation explained that while due process was guaranteed, presumption of innocence was not specifically provided for. In response to the question on NGO participation, the delegation clarified that the National Consultative Committee is the conduit between NGOs and the State regarding legislation. This body is comprised of NGOs who have been approved by the Ministry of Justice and "selected by their peers".

## **Detention**

In his initial remarks on the issue of detention Mr Cassa elaborated on efforts to improve the quality of life for detainees. He asserted that progress had been made in this area, but also explained that overcrowding in prisons was a major obstacle to success. The Minister noted that a new prison, opened in 2007, had somewhat eased the problem, adding that the State was receiving help from UNICEF in addressing this issue. In addition, he pointed to specialized training to insure that police officers respected rights while making arrests and vaguely mentioned new administrative/judicial steps to ensure that the period of preventative detention was within legal limits.

Committee member Belmir inquired whether the procedures regulating the release of unlawfully detained individuals are based on a court decision. She also brought up the systematic use of straight jackets to restrain detainees, asserting that this was degrading for people who have not yet been convicted of a crime. While acknowledging that measures had been taken to address overcrowding, she reiterated that insufficient rations, decaying infrastructure, and the lack of women/juvenile units remain urgent problems. Committee member Grossman brought the delegation's attention to reports that family members are forced to pay tolls to prison officials before being allowed to visit detainees.

Specifically, he wanted to know what measures are being taken to ensure that family members as well as NGOs are given the freedom to visit detainees on a systematic basis.

Mr Grossman also requested statistics on the number of convictions resulting from investigations into the poor treatment of detainees. Finally, Committee member Gaer asked for clarification on the provision of doctors and lawyers to detainees. Noting that the law requires access, he was curious as to whether detainees can ask for medical examinations and legal counsel for themselves, or if this was provided only at the request of a prison official.

From its replies, it was clear that these issues are not necessarily a priority for the State Party. Regarding restraint vests and the collection of tolls before allowing visitations, the delegation only promised to “explore and remedy” these situations. On the issue of NGO access to prisons, the Minister of Justice explained that NGOs are granted access to places of detention based on authorization from the Ministry of Justice. He voiced recognition of a need to regularize the authorization process, but also explained that some NGOs were denied access because they had failed to make their visit before their authorization had expired. He added that in order to provide greater access, a number of groups have recently been granted standing authorization.

### **Investigation of torture and prosecution of perpetrators**

Quite surprisingly, given its centrality to the mandate of the Committee, there was very little reference to actual complaint mechanisms or investigative procedures relating to allegations of torture, either from the delegation or from Committee members. In its written replies the State had indicated that it is the Public Prosecutor of the Court of Appeals who is responsible for initiating criminal investigations into allegations of torture by prison officials. However, in the context of the interactive dialogue, there was no detailed explanation of complaint submission procedures, no conviction statistics, and no specific examples of torture cases where justice had prevailed. In his opening statement, the head of delegation merely alluded to compensation given to victims and the State’s intention to further develop its reparation policy.

Committee member Camara opened the dialogue on this issue by voicing concern at the fact that, although not formally relevant, Beninese legislation contains a loophole allowing judges to informally take evidence obtained under torture into account. The Chairman of the Committee added that this practice undermines the main purpose of making such evidence inadmissible. Mr Camara also insisted that the Convention makes it clear that there are no possible circumstances in which torture is justified. He therefore repudiated a clause in the criminal code which exonerates torture in the case of “self-defence”. The Rapporteur noted that (besides the fact that a claim of self-defence makes little sense when a suspect is already in custody) this exception is a direct contravention of the Convention. He also pointed out that Article 12 of the Convention imposes on States the obligation to initiate investigation proceedings without waiting for a complaint from the victim.

One point raised by Mr Camara and seconded by a number of other Committee members was the perceived linkages between the Public Prosecutor’s Office and the executive branch. He asserted that since the Public Prosecutor is under the control of the executive, the fact that this office is solely responsible for investigating allegations of abuse risks selectivity and politically motivated prosecutions. Other Committee members agreed with his assessment and suggested that a body of a more independent nature should have the authority to initiate investigatory proceedings. Ms Belmir referred the delegation to a concluding recommendation of the Human Rights Committee from 2004 which urged the State to better publicize the possibility for people to refer complaints to the Constitutional Court. Finally, Committee member Marino-Menendez asked whether any individual complaints had been taken to the African Commission for Human Rights regarding torture in Benin.

The delegation provided brief responses to a number of these issues. On the issue of “self-defence” as an exception to the prohibition of torture, Mr Cassa implied that the Committee had misinterpreted this section

of the code and emphasized that self-defence cannot be used to justify acts which violate individual freedom. He evaded the question on evidence obtained under torture by reiterating that judges remove such evidence from the official record. This response does not address the fact that judges may still informally take confessions obtained under torture into account when rendering a verdict. Another member of the delegation assured the Committee that necessary measures would be taken to ensure that a specific complaint is not a prerequisite for investigation when abuse is evident. In the context of accessibility of the Constitutional Court, the delegation stated there were many possible avenues for citizens to take initiative and pledged to continue to ensure opportunities for them to do so. Regarding the need for an independent monitoring body, the delegation merely stated that there are a number of programs underway to strengthen the independence of the judiciary. In conclusion, Mr Cassa claimed that a comprehensive program to address past violations, including amnesty laws and compensation of victims instituted in the 1990s, has gone a long way in achieving national reconciliation.

### **Migration issues**

Both country rapporteurs voiced concerns on a number of issues relating to immigration, extradition, and expulsion. Mr Camara began by making the observation that the State's policy of immediate expulsion of illegal migrants is not compatible with the *rights of residence* protected in the Convention. He urged the State party to "judicialize" the treatment of foreigners by instituting an appeals process that would take the authority to expel away from police officers and place it in the hands of a competent judicial body. Referring to the delegation's statement that extradition procedures were based on regional agreements between ECOWAS<sup>5</sup> states, Mr Camara asked how such agreements ensure that there is no derogation of the prohibition on sending someone to be tortured. He specifically wanted to know what level of courts make decisions on extradition and why, given the mandate of the Constitutional Court, these decisions are not able to be appealed. In addition, the rapporteur asserted that the State's rules on territorial jurisdiction contravene protections granted under the Convention since they do not permit victims who were tortured in a foreign country to seek remedy in Beninese courts.

Ms Belmir followed up on the issue of *refoulement* by seeking clarification on the distinction the State makes between "unidentified" individuals and "rights-holders" in the context of expulsion. She insisted that according to the Convention all individuals present within the State's borders hold the right not to be sent back to face the risk of torture.

The rapporteur also raised the issue of detainees being transferred to Nigeria to give compulsory testimony in criminal cases. She asked what measures could be taken to insure that Beninese nationals are not forced to testify in a foreign country. Finally, Committee member Manning asked whether the State had entered into any bilateral agreements with European countries which receive a high volume of immigrants from Benin.

While the delegation provided answers to many of these questions, there was no substantive response to the fundamental issue of arrest and immediate expulsion of illegal migrants. Mr Cassa elaborated on extradition agreements between members of ECOWAS. He explained that when a member State requests the extradition of an individual sought for a prior offense, an authentication process is initiated which requires supporting documents, an arrest warrant, and a dossier containing relevant facts along with reference to relevant legal provisions and sanctions. The Minister stated that extradition is ordered by the Indictment Chamber of the Appeals Court and that there is no room for appeal. He conceded that this is in contravention of Articles 5 and 7 of the Convention and speculated that in the future, amendments to the Code of Procedure could remedy this. On the issue of handing over nationals to Nigeria for forced testimony, he indicated that this was indeed inappropriate and pointed out that Beninese judges went on strike to protest the practice. In conclusion, the Ambassador (of Benin) to Switzerland told the Committee that negotiations are underway with France and Switzerland with a view to formalizing agreements which would preserve the rights and dignity of illegal Beninese immigrants.

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<sup>5</sup> Economic Community of Western African States.

## Vulnerable groups

Another topic of concern among Committee members was the protection of women and children. The delegation did not initially offer much information on the subject; only noting that the State had ratified the *Convention on the Rights of the Child (CRC)* and the *Convention on Elimination of all forms of Discrimination against Women (CEDAW)*. While noting that fragmentary efforts at implementing these conventions were being made, Ms Belmir underscored that grave problems with child labor, juvenile justice, and domestic violence continue to be major issues. She urged the State to make these issues a priority in redrafting of the Criminal Code.

Committee member Grossman requested statistics regarding prosecution of rape and female genital mutilation. He also asked for specific information relating to the outcome of a case in which a victim of domestic abuse was seeking damages before the court, as well as the rape of a young girl by three male nurses in a hospital. In addition, Mr Grossman noted recent legislation restricting the practice of *vidomegon*<sup>6</sup> and asked what progress had been made in addressing the issue.

Committee member Sveaass inquired about legal sanctions against those found guilty of female genital mutilation, which is illegal, and asked whether victims were given reconstructive operations and psychological counseling. She also wanted to know about measures to prevent the recruitment of child soldiers and child prostitution. Mr Manning asserted that Benin was a transit point for trafficked children. He asked whether the State was aware that, in accordance with *Convention of the Rights of the Child*, third countries have legal jurisdiction to prosecute Beninese nationals involved in child trafficking. Chairman Mavrommatis raised the issue of infanticide or abandonment of disabled children in rural areas and asked whether there was a system of legal aid to care for them.

In response, the delegation provided very sparse information. It welcomed the Committee's suggestion for monitoring the rights of vulnerable groups and affirmed that the Penal Code lists violence against children as an aggravating circumstance which warrants harsher penalties. Regarding female genital mutilation, the delegation stated that the judiciary and police were striving to ensure adequate punishment of perpetrators. Mr Cassa admitted that further legislation was needed to provide compensation and rehabilitation to victims and pledged to work together with other countries in the region to collectively protect "the physical integrity of our sisters". He also stated that there were no statistics available regarding prosecutions of rape, female genital mutilation or conviction of traffickers. Finally, the delegation asserted that there were no child soldiers in Benin and clarified that the age of military service is 18.

## Other issues

Committee members also took up a range of issues tangential to the purview of the Convention. Ms Belmir opened discussion on the issue of vigilante or mob justice by asserting that in order to build the rule of law, the criminal code must explicitly criminalize this phenomenon. Mr Gaer asked about sentences handed down to those found guilty of participating in mob actions and additional measures the State had put in place to curtail extrajudicial behavior. Ms Belmir stated that vigilantism was, in part, a response to a slow moving judicial process and suggested that measures be taken to reduce the caseload of judges.

Ms Belmir observed that the State had been very active in supporting counter-terrorism conventions and referred the delegation to the Human Rights Committee's expression of concern regarding the impact on

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<sup>6</sup> This is the phenomenon of handing a child over to another family which takes financial responsibility for the child. A similar cultural practice is found throughout West Africa and does not necessarily involve a violation of human rights. However, as detailed in the alternate report submitted by the World Organization against Torture, it often leads to abuse, forced servitude and exploitation.

domestic human rights guarantees. She also noted that the death penalty was still applicable to terrorist offenses and called upon the State to officially abolish the practice.

Committee member Grossman expressed interest in obtaining statistics related to corruption. He wanted to know how many cases had been prosecuted and what procedures are followed when investigating corruption in the judiciary or police. The Chairman recounted allegations that prisoners were forced to bribe prison guards for a place to sleep. He predicted that this would end swiftly if there were examples of convictions.

Committee member Sveaass was curious about the nature and scope of human rights training and education programs. She specifically wanted to know about the contribution of the National Institute for Human Rights in providing such training. Mr Grossman welcomed the delegation's statement regarding training for police and national gendarmes. He also asked whether training was given to civil society organizations and public education teachers. Mr Manning inquired as to whether training or advice was offered by the African Commission on Human Rights.

Mr Gaer commented on the obvious dearth of statistical information. He was particularly concerned at the lack of criminal statistics and asked whether any progress was being made in developing the capacity to collect such statistics. Finally, he noted that the State was receiving technical assistance from the United Nations Development Program on this issue and asked if any assistance was being provided on the academic side of developing statistic gathering techniques.

On the issue of mob justice, Mr Cassa admitted that measures to end the practice had been largely ineffective. He called for "in depth consideration" among all relevant actors. The Minister acknowledged shortcomings in the judicial process and stated that the Ministry of Justice had plans to enhance the independence and effectiveness of judges. Mr Cassa then addressed the questions on counter-terrorism, citing the State's commitment to amending provisions in the Criminal Code which contravene human rights standards. He also mentioned that the possibility of abolishing the death penalty was an ongoing debate.

The delegation once again stated that there were no statistics available on prosecution of corrupt officials. It conceded that data collection is an area of concern and explained that court records and administrative documents were currently being transferred to an electronic format.

The Head of the Human Rights Promotion Division of the Ministry of Justice took up the issue of human rights training and NGO participation. She explained that NGOs are involved in follow-up to treaty body recommendations through participation in education/training programmes and consultations with relevant Government bodies. The delegate also stated that the government would provide 2 million francs per annum to NGOs for the promotion of human rights. In addition, the State uses mass media and community-based channels to raise awareness "in a harmonized manner" with NGOs.

## Conclusion and next steps

At the conclusion of the dialogue, the country rapporteur, Ms Belmir, acknowledged the difficulties inherent in a developing country, but asserted that there are many other countries which have found effective solutions to similar challenges. The head of the delegation thanked the Committee for its contribution and stated that he felt the discussion provided many opportunities to "move forward". Finally, Chairman Mavrommatis thanked the delegation for its openness, stating that it had been an "excellent dialogue". The Chairman ended the consideration of Benin with the optimistic proclamation that "more progress is in the pipeline".

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