



Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Subcommittee on Prevention of Torture

Replies of the Republic of Benin to the recommendations and requests for information made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its report on its first periodic visit to Benin (CAT/OP/BEN/1) * , ** , ***

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1.The Government of Benin welcomes the dialogue established with the Subcommittee since its visit of 17–26 May 2008 through the ensuing recommendations and requests for information. This cooperation will help improve the conditions of detention of persons deprived of their liberty and strengthen the legal and institutional framework.

I.Recommendations

A.National preventive mechanism

2.The authorities of Benin take due note of all the relevant recommendations by the Subcommittee regarding, among other matters:

The membership of the national preventive mechanism, which should also include practising legal or medical professionals

The incompatibility of membership of the national preventive mechanism with any other function that could affect its independence or impartiality

The autonomous management by the national preventive mechanism of its budget and its financial reporting to the accounting chamber of the Supreme Court

The modalities of work of the national preventive mechanism, which need to be more clearly defined in the relevant draft legislation

The recommendations that the national preventive mechanism should make to the authorities regarding the treatment, including the conditions, of persons deprived of their liberty

The direct contact to be maintained with the Subcommittee to facilitate the exchange of information and thus follow up on the recommendations made

B.Legal and institutional framework

3.The State party accepts the three recommendations made by the Subcommittee. In October 2009, non-governmental organizations (NGOs), academic experts and members of the judiciary were incorporated in the review of the Code of Criminal Procedure, which

aims to bring the Code into line with the provisions of the Convention and other international human rights instruments to which Benin is party. The Criminal Code is to undergo the same kind of review.

4. Provision has also been made to ensure access to legal assistance for persons without sufficient resources.

C. Recommendations on deprivation of liberty by the police and gendarmerie and all other recommendations of the Subcommittee

5. Benin welcomes the recommendations on deprivation of liberty by the police and gendarmerie and all other recommendations of the Subcommittee. A working meeting will be held, however, with the agencies involved to examine measures for their implementation.

II. Replies to requests for information

A. National preventive mechanism

1. Steps taken to foster public debate at this later stage about the adoption of the legislation on the national preventive mechanism and its implementation

6. The draft legislation endorsed by the National Commission on Legislation and Codification that was submitted to the Secretariat-General of the Government for referral to the next stages in the procedure (examination by the Supreme Court and the National Assembly) has not advanced any further.

7. To overcome this difficulty, the Chairperson of the Law Commission of the National Assembly, in consultations with the Committee on the Prevention of Torture in Africa of the African Commission on Human and Peoples' Rights during a promotional visit to Benin, suggested that:

The reform of the Code of Criminal Procedure takes into account the issues associated with visits by independent bodies to places of deprivation of liberty.

8. In October 2009, a seminar organized by the Law Commission attended by members of the justice system (magistrates, lawyers, staff of the Ministry of Justice, Legislation and Human Rights, parliamentarians and other stakeholders) provided the opportunity for a review of the Code of Criminal Procedure, with most of the recommendations made by the treaty bodies being incorporated into that instrument.

9. As regards the national preventive mechanism, the Code of Criminal Procedure provides for visits to detention centres by bodies set up under the international conventions to which Benin is party.

10. It is stated that an implementing decree will establish the powers and functions of those bodies.

11. Once the legislation on the Code of Criminal Procedure is adopted, a decree will be passed incorporating the recommendations of the Subcommittee in that text. Extensive consultations will also be held prior to the drafting of that decree.

12. The Subcommittee will be informed of all amendments to the legislation.

B. Legal and institutional framework

1. Offences provided for in articles 114 (onwards), 119 and 186 of the Criminal Code

13. Statistics on the number of complaints and sanctions imposed in accordance with these provisions are not available.

2. Further information for 2006–2008 about the mandate of the Inspectorate-General of the Police, the Technical Inspectorate, the Inspectorate-General of the Security Forces and the Police Department, the number of complaints received per year and the number of complaints pursued per year, for which offences

14. This information is not available.

15. The information requested from the police has not yet been received.

16. The information will be forwarded as soon as possible.

3. Statistical information on the activities for the past three years of the Department for Civil and Criminal Cases of the Ministry of Justice with regard to its mandate to receive complaints of ill-treatment by security forces and abuse of the system of police custody, as well as more detail on the outcome of such complaints

17. No complaints were received by the Department for Civil and Criminal Cases during the period in question. No statistics are available.

4. Copies of any inspection reports of visits undertaken by those bodies whose responsibilities

include prison monitoring

18. Some reports are annexed to the present document.

5. Further information for the last three years on visits undertaken and recommendations made by the Department for Civil and Criminal Cases to improve the treatment of persons deprived of their liberty, including conditions

19. This information is not available.

6. Copies of the mission reports of prison oversight commissions and information on any follow-up as a result of these prison visits

20. The Prison Oversight Commission makes regular prison visits.

21. The mission reports are not available.

7. Information as to the resources earmarked for the preventive work of the Human Rights Department of the Ministry of Justice in 2007 and 2008, and copies of all reports on visits undertaken since 2006

22. Resources allocated to human rights:

2007

Work of the National Advisory Council on Human Rights: 30 million CFA francs

Work of the National Monitoring Committee for the implementation of international human rights instruments: 49.5 million CFA francs

2008

Work of the Human Rights Department: 13,968,000 CFA francs

Subprogramme to improve human rights promotion: 80.6 million CFA francs

National Advisory Council on Human Rights: 20,727,000 CFA francs

National Monitoring Committee for the implementation of international human rights instruments: 33 million CFA francs

23. The authorities welcome the recommendation to mandate the Human Rights Department to carry out unannounced visits (visit report in annex).

8. Copies of any visit reports produced by the Inspectorate-General of Justice Services, any recommendations made and information about any action taken following these visits

24. The inspection reports of the Inspectorate-General of Ministries are presented to the Minister of Justice and Legislation, in accordance with article 28 of Decree No. 2006-627 of 4 December 2006 on the restructuring of the inspection and control bodies of public administration of the Republic of Benin. Copies of the reports are sent to the heads of areas concerned, pursuant to article 36 of Decree No. 2006-699 of 11 December 2006.

25. Since 2005 the recommendations made following visits to civilian prisons in Benin by the Inspectorate-General of Justice Services (renamed the Inspectorate-General of Ministries under Decree No. 2006-699 of 11 December 2006 which outlines the general framework for the powers, organization and workings of such entities) refer mainly to the following identified problems:

Dysfunctional prison management

Staff shortages

Lack of vehicles for transporting detainees

Prison overcrowding caused by the slow pace of legal proceedings, among other factors

The poor conditions in which detained persons are held (dilapidated, cramped or insanitary facilities, poor ventilation)

Insufficient or poor-quality food

The absence of an infirmary

The absence of nursing or other medical staff

Lack of pharmaceutical supplies and medical equipment

Lack of health care for detained persons

Limited access to drinking water or insufficient water outlets

The absence of watchtowers to ensure effective surveillance of inmates

The absence or small amount of petty cash provided

26. Most of the recommendations made by the Inspectorate-General of Ministries regarding the above-mentioned problems have been gradually implemented upon the orders of the Minister of Justice through the relevant central departments and services of the Ministry of Justice.

27. It should be noted, however, that prison overcrowding is a recurring problem.

28. It should be stressed that the recommendations made following civilian prison inspections are taken on board in the activities of the public investment programme "improvement of the conditions of detention of detained persons" carried out by the Prison Administration and Social Welfare Department of the Ministry of Justice.

9. Copies of any reports on visits undertaken by other departments of the Ministry of Justice which are mandated to visit places of detention (including, for example, the Legal Protection Department for Children and Youth) for the past three years, any recommendations made and any actions taken following these visits

29. See document in annex.

10. Information about the content of the offence provided for in article 120 of the Criminal Code, and confirmation of whether it could apply, for example, if a detained person asks to be brought before a judge and the request is not met promptly by prison authorities

30. Article 120 refers to: attempts on a person's liberty; refusal to act upon a complaint that evidences illegal or arbitrary detention; the reception of prisoners without the corresponding committal warrant, detention order or court ruling; refusal to produce a detainee; and refusal to release prison records.

11. Further information on the Human Rights Department's mandate to investigate human rights complaints, details on the complaints investigated, statistical information on the results or outcome of such complaints and, in particular, any complaint which resulted from a visit to a place of detention

31. The Human Rights Department, in the exercise of its powers to protect human rights, enforces respect for human rights among the authorities responsible for issuing detention orders and the authorities in charge of detention centres.

32. Accordingly, the Department investigates complaints of illegal detention and poor detention conditions. Recommendations are also made to the authorities to end violations.

33. It is planned to set up toll-free telephone numbers in Mono-Couffio which citizens can call to report human rights violations.

12. Further information on the complaints mandate of the Inspectorate-General of Justice Services, the type of complaints it has investigated since 2005, and statistical information on the results or outcome of such complaints

34. The complaints that individuals file with the Inspectorate-General of Ministries (formerly Inspectorate-General of Justice Services) consist of requests for intercession, complaints about the behaviour of a judge or clerks, files going missing, etc.

35. Complaints are investigated and, if they are found to be justified, proceedings are instigated or the individual is informed of his or her rights.

36. Statistics on the complaints and petitions handled since 2005 have been kept using the indicators established for the comprehensive system for the production, analysis and management of statistics (SIPAGeS) of the Ministry of Justice.

13. More generally, information on the practicalities of accessing the various complaints mechanisms described, and the ways in which the authorities ensure that persons deprived of their liberty are informed of their rights under the various complaints mechanisms

37. The Inspectorate-General of Ministries receives and processes complaints and petitions filed by individuals or referred to it by the Ministry of Justice when they are addressed to the Minister of Justice.

38. Complaints and petitions made by detained persons are forwarded either to the Minister of Justice or directly to the Inspectorate-General of Ministries by the corresponding prison governor. The Inspectorate-General of Ministries summons the individuals concerned to a hearing. The summons of a detained person is addressed to the Public Prosecutor by telephone. The Public Prosecutor then arranges for the detainee's removal from prison and placement at the orders of the Inspectorate-General of

Ministries.

39. The mechanism for examining complaints and petitions consists of hearing the complainants and individuals and then those under suspicion or implicated.

40. This frequently results in the removal of obstacles to judicial proceedings (justice system officials) cited in complaints and petitions, sometimes involving further investigation of the evidence.

41. Cases of corruption or unethical behaviour are reported to the Minister of Justice who, as appropriate, initiates disciplinary proceedings against the officials concerned.

42. The Inspectorate-General of Ministries receives and processes complaints and petitions regarding interference with the course of justice.

43. The mechanism for examining complaints aims to remove any identified obstacles and facilitate the conclusion of legal proceedings.

44. N.B.: Complaints of human rights violations are examined by the Human Rights Department of the Ministry of Justice instead.

14. More information on the practice of prosecutors in monitoring the legality of detention and in receiving complaints

45. The legality of detention and reception of complaints is monitored through the proper maintenance of the various registers and detention orders.

46. No statistics are available.

15. Information about the number of complaints lodged per year for the last three years before the Constitutional Court, relating to the treatment of persons deprived of their liberty, as well as the results or outcomes of such complaints

47. This information will be provided at a later date.

16. The reports of the President of the Indictments Chamber on its three-monthly visits to prisons since 2005

48. Owing to insufficient means, the Indictments Chamber has not made any visits during the period in question.

17. Further information and concrete examples of investigations and sanctions imposed on officers at fault pursuant to articles 183, 200 and 201 of the Code of Criminal Procedure and related procedures before the Indictments Chamber for the years 2005–2008

49. Regarding monitoring of the activities of Judicial Police officers, several cases have been brought before the Indictments Chamber and concluded with the imposition of sanctions on the officers involved. The sanctions often consist of a warning, with or without the incident being noted in the officer's file.

50. The following hearings were held:

(a) Hearing of 19 October 2009

Case No. 071/PG/09 against one Judicial Police officer: warning issued and a note made in the officer's file.

(b) Hearing of 26 October 2009

Case No. 091/PG/09 against two Judicial Police officers: both were retired from service, annulling the basis for proceedings.

(c) Hearing of 7 December 2009

Case No. 099/PG/09 against two Judicial Police officers: found guilty of illegal detention.

(d) Hearing of 14 December 2009

Case No. 075/PG/04 against three Judicial Police officers: one was retired from service and the other two were found guilty of illegal detention and received warnings without a note being made in their files.

Case No. 146/PG/05 against two Judicial Police officers: charge of illegal detention dismissed.

(e) Hearing of 21 December 2009

Case No. 070/PG/04 against one Judicial Police officer: found guilty of illegal detention and given a warning, but without a note being made in his file.

(f)Hearing of 11 January 2010

Case No. 004/PG/02 against one Judicial Police officer: found guilty of illegal detention and given a warning without a note being made in his file.

Case No. 079/PG/03 against one Judicial Police officer: found guilty of illegal detention.

Case No. 007/PG/04 against two Judicial Police officers: one found guilty of illegal detention; charges against the other were dismissed.

Case No. 029/PG/04 against three Judicial Police officers: declared guilty of physical abuse and inhuman and degrading treatment.

Case No. 110/PG/04 against one Judicial Police officer: charged with inhuman and degrading treatment.

Case No. 023/PG/05 against one Judicial Police officer: charged with illegal detention and given a warning.

Case No. 148/PG/05 against four Judicial Police officers: one was retired from service, annulling grounds for proceedings; another was found guilty of illegal detention and given a warning without a note being made in his file.

Case No. 083/PG/03 against two Judicial Police officers: one was retired from service; the other two were found guilty of illegal detention and given a warning without a note being made in their file.

Case No. 073/PG/04 against two Judicial Police officers: found guilty of illegal detention.

Case No. 028/PG/05 against four Judicial Police officers: two are in the Congo, one retired from service and the fourth died.

Case No. 075/PG/04 against three Judicial Police officers: found guilty of illegal detention.

18.Further information and concrete examples of investigations and sanctions imposed on officers pursuant to article 551 of the Code of Criminal Procedure for the years 2005–2008

51.Information and statistics on these matters are not available.

19.Information on how Benin intends to ensure that access to a lawyer is guaranteed to all persons who are deprived of their liberty, including those who cannot afford to retain a lawyer, in light of the draft Code of Criminal Procedure, which provides for the assistance of a lawyer from the start of the preliminary investigation

52.This issue has been taken into account in the reform of the Code of Criminal Procedure.

20.Confirmation that the right for detainees to be informed by the investigating judge of their right to a lawyer during the first hearing before the judge is indeed notified to all detainees

53.Confirmed by the investigating judges.

C.Gendarmeries and police stations

54.The Subcommittee requests:

1.Information on how the authorities intend to increase the number of qualified lawyers and what training will be offered to lawyers regarding the specificities of police and gendarmerie work, in light of the draft Code of Criminal Procedure which provides for the assistance of a lawyer from the start of the preliminary investigation

55.Competitive examinations to obtain the Certificate of Aptitude for Exercising the Legal Profession (CAPA) are held periodically. Lawyers also receive continuous professional development training in specific subjects and procedures, as do other members of the legal system.

2.That it be kept informed about any development with regard to its recommendation that statistics be compiled and maintained on an ongoing basis concerning investigations, prosecutions or disciplinary action and be broken down so as to permit precise oversight of proceedings and outcomes in cases involving alleged ill-treatment by the police and the gendarmerie

56.No new developments to report.

57.Benin welcomes the recommendation.

3.More information on the authorities' proposal to provide petty cash boxes in places where persons are deprived of their liberty, with regard to the provision of food to persons in initial custody

58.No new developments to report.

4.Clarification as to which services conducted the investigations into the allegations of ill-treatment at Dantokpa police station and at the Gendarmerie of Bohicon and confirmation that they were independent from the police and gendarmerie stations which were investigated

59.The Human Rights Department was instructed to conduct the investigation into the Gendarmerie Unit of Bohicon and reported on the recommendations on guaranteeing access to water for the persons held in custody by the unit.

5.Information about the outcomes of the work of the commission established to review the various challenges in Benin with regard to treating persons deprived of their liberty in a more humane manner and propose urgent adequate solutions to address them

60.No information on this matter is available yet.

D.Prisons

61.The Subcommittee requests:

1.Information on whether and how an individual's financial situation might be taken into account in the setting of bail, the number of persons granted bail in 2007, and the number of persons who, despite being granted bail, were unable to be released because they were unable to pay the amount

62.An individual's financial situation is not taken into account in the setting of bail.

63.Bail guarantees:

(a)The appearance of the accused at all stages of the proceedings and for enforcement of the judgement;

(b)Payments, in the following order:

Costs incurred by a civil claimant

Costs incurred by the prosecution service

Fines

Reparation and damages

2.Confirmation that the procedure reported by some remand prisoners at Abomey Prison (that, instead of being taken to appear in court for a prolongation, they were asked to sign a document requesting release) is not in conformity with the law

64.This procedure does not exist.

3.More precise information on the budgetary per capita allowance for daily food provision and the plans to increase it

65.The allowance for daily food provision per detained person is 250 CFA francs.

66.Detained persons currently receive two hot meals a day.

67.The annual budget has been increased from 500 million CFA francs to 800 million CFA francs.

4.Further information as to whether the budgetary per capita allocation for prisoners' food includes funds to pay food providers and, if so, what proportion of the allocation goes to the food providers. It also wishes to receive information as to the procurement contracts granted to outside providers of food, in particular with regard to quality control of the food provided and any inspections which the Ministry of Justice conducts of the outside providers

68.The allocation for prisoners' food consists of funds to pay food suppliers.

69.Quality control of the meals is carried out upstream and is one of the contracting conditions.

70.Downstream, members of the Prison Oversight Commission monitor food quality.

71.The Inspectorate-General of Legal Services and the Human Rights Department of the Ministry of Justice also check food quality by sampling meals during their prison visits.

5.Copies of any reports on visits conducted pursuant to article 62 of Decree No. 73-293

concerning the last three years and recommendations

72. Documents not available.

6. Further information on the death in custody caused by ill-treatment and noted in the mortality register of Cotonou Prison, and in particular details of any investigation or criminal or disciplinary proceedings and any penal and/or disciplinary sanctions

73. There have been no deaths in custody caused by ill-treatment.

74. There have been no allegations of ill-treatment by gendarmes.

E. Cooperation

75. Authorities at detention centres are sufficiently informed that there must be no repercussions after visits.

76. In response to the recommendation made by the Subcommittee, the prisoners under sentence of death were transferred from the civilian prison of Cotonou to the civilian prison of Akpro-misséré-té, where conditions are better and meet standards.

77. The authorities of Benin welcome the cooperation with the Subcommittee. The constructive dialogue has made it possible to improve prison conditions and ensure better protection for persons deprived of their liberty.

78. However, they regret the virtual non-existence of a database that would enhance the visibility of preventive action.

79. They therefore request the support of the Subcommittee in this matter.

80. The authorities of Benin do not oppose publication of the report of the Subcommittee.

81. To facilitate future visits by the Subcommittee, the authorities of Benin intend to disseminate the Optional Protocol more widely and to inform stakeholders of the mechanisms set forth in that instrument, with a view to improving the implementation of its provisions.