

Benin

Amnesty International Submission to the UN Universal Periodic Review

Second session of the UPR working group, 5-16 May 2008

Key words: death penalty, implementation of the Rome statute, prison conditions, police use of force

In this submission, Amnesty International provides information under sections B and C (as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*¹):

- Under B, Amnesty International raises concern over legislation providing for the death penalty and the implementation of the Rome Statute of the International Criminal Court.
- In section C, we describe concerns related to prison conditions and excessive use of force.
- In each section Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and Institutional Framework

The issue of the death penalty

1. Benin is an abolitionist country in practice. According to official records, the last execution was carried out in 1987 while the last death sentence was passed *in absentia* in February 2006. Despite the reduction over the years in the number of executions and death sentences, the death penalty is still provided for in the Beninese criminal code.
2. Amnesty International is concerned about statements made in recent years by high-levels officials on the issue of the death penalty. On 29 May 2006, Mr. Abraham Zinzindohoué, the then Minister of Justice, stated that the death penalty should be maintained to avoid Benin becoming a sanctuary for criminals. The statement was delivered as the Law Commission of the National Assembly was examining a draft bill to reform the penal code. Divided on the question of whether to include a provision abolishing the death penalty in the draft, the members of the National Assembly asked to hear the position of the Minister of Justice. His statement was consequently reported by the press and led to important debates in the national media.
3. On 20 June 2006, Amnesty International met the President of the National Assembly, the President of the Law Commission and the Minister of Justice and was invited to send a written submission on the issue of the death penalty to members of Parliament. The Minister of Justice explained his position further and stated that he was personally opposed to capital punishment and did envisage the possibility of adopting a moratorium on executions.
4. In February 2007, during the closing ceremony of the Third World Congress against the Death Penalty in Paris, Mr. Nestor Dako, Minister of Justice of Benin stated that his government was in favor of measures towards the abolition of the death penalty. According to the Minister, the

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I, adopted 27 September 2007.

government is considering establishing a commission of experts (composed of lawyers, judges and others) to define the issue and propose a draft law on the issue of the death penalty, including in view of Benin's possible ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights. Amnesty International welcomes this positive development as well as Benin's vote in favour of the recently adopted UN General Assembly resolution calling for a moratorium on executions.

5. *Amnesty International calls on the Beninese authorities:*

- *to adopt a moratorium on executions with a view to permanently abolish the death penalty in the Beninese criminal code and to support the draft bill currently before the National Assembly;*
- *to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.*

Implementation of the Rome Statue of the International Criminal Court

6. Benin ratified the Rome Statue of the International Criminal Court in January 2002. It is Amnesty International's understanding that draft legislation, *Avant Projet de Loi Portant Mise en œuvre du Statut de la Cour Pénale Internationale au Bénin*, is currently under consideration by the Supreme Court. While the organization welcomes this development, Amnesty International has concerns in relation to a number of provisions which fall short of the international standards laid out in the Rome Statue.

7. Amnesty International welcomes the introduction into the *Avant Projet* of a provision on universal jurisdiction over the crimes of genocide, crimes against humanity and war crimes, as set out in Article 13 of the draft legislation. However, Amnesty International is concerned that Article 13 (2) introduces a restriction on the scope of universal jurisdiction by requesting the physical presence of the person on the territory of Benin before an investigation can be opened. Not only is this restriction not required by any rule of customary international law, but also it is inconsistent with the system of repression of grave breaches of the Geneva Conventions of 1949, which envisage states parties seeking the extradition of persons suspected of grave breaches who have never been in the requesting state.

8. Amnesty International is also concerned with other provisions in the *Avant Projet* which risk restricting the full implementation of the Rome Statue: the draft legislation maintains a distinction between war crimes committed in international and non-international armed conflicts, allowing for certain acts to be defined as war crimes when they are committed in an international armed conflict, but not when committed in a non-international conflict. Furthermore, provisions included in the *Avant Projet* do not specify under which circumstances or in which cases Benin may withhold its cooperation with the Court. Such broad provisions, which seem to reflect a discretionary power, would allow national authorities to reject requests from the Court.²

9. *Amnesty International recommends that:*

² More the full report of Amnesty International's concern over the *Avant Projet* see "Benin: Comments on the *Avant Projet de Loi Portant Mise en œuvre du Statut de la Cour Pénale Internationale au Bénin*", AI Index: AFR 15/001/2006, March 2006

- *Benin, as a state party to the Rome Statute, enacts the broadest jurisdiction possible under international law, consistently with the Preamble of the Rome Statute, in which states parties recall that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes". This includes each state's jurisdiction under international law, and should not limit such jurisdiction to certain classes of persons.*
- *Beninese authorities enact the draft legislation implementing the Rome Statute into national law and with the necessary amendments and changes in order to bring it in line with international standards and give full implementation to the Rome Statute.*

C. Protection and promotion of human rights in Benin

Prison and detention conditions

10. Reports from national NGOs as well as from the government itself confirm serious concerns over extremely harsh prison conditions. Overcrowding and a lack of proper sanitation and medical facilities are posing serious risks to prisoners' health. Several prisons, including in Cotonou and Abomey, suffered very high overcrowding levels reaching 600 % of their capacity resulting in very harsh living conditions for prisoners.

11. The food served to inmates is reportedly inadequate, and malnutrition and disease are common. Family members are expected to provide food for inmates to supplement prison rations. There are deaths in prison due to malnutrition, disease and neglect; however, statistics are not available.

12. *Amnesty International urges the government to put in place effective measures to ensure that prison conditions in Benin are consistent with international standards at all stages of detention.*

Excessive use of force

13. In May 2007, members of the presidential guard killed two people and injured at least five others in Ouidah, west of the capital Cotonou, when they fired at people protesting that a road remained blocked after the Head of State's car had passed. The then Public Security Minister, Mr. Edgar Alia, announced that an investigation had been opened into these incidents, but to date the result of this investigation has not been made public.

14. *Amnesty International urges the government to ensure that all incidents of excessive use of force by police authorities and special forces are promptly investigated and that those responsible are brought to justice in line with international standards.*

Appendix: Amnesty International documents for further reference

- “Benin: Comments on the *Avant Projet de Loi Portant Mise en œuvre du Statut de la Cour Pénale Internationale au Benin*”, AI Index: AFR 15/001/2006, March 2006.