



Fédération internationale de l'Action des chrétiens pour l'abolition de la Torture
International Federation of Action by Christians for the Abolition of Torture
Federación Internacional de la Acción de los Cristianos para la Abolición de la Tortura

FIACAT and Benin¹ ACAT:

Contribution to Benin's second Periodic Review

Human Rights Council

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¹ ACAT Benin is a Human Rights organisation founded in 1989 and affiliated to FIACAT (International Federation of Action by Christians for the Abolition of Torture). FIACAT is a non-governmental Human Rights organisation that fights to abolish torture and the death penalty.

1. FOLLOW-UP TO THE 2008 REVIEW

Evaluation of the recommendations and commitments made by the State to improve human rights.

CONSULTATIONS ON AND PUBLICISING INFORMATION ABOUT WAYS TO IMPLEMENT THE RECOMMENDATIONS ACCEPTED BY BENIN AT THE UPR

The Human Rights Department within the Ministry of Justice and Human Rights is responsible for the practical steps needed to implement the recommendations that resulted from the UPR. It held three meetings that were intended to inform NGOs on the recommendations made in Benin in 2008. However, most recommendations are cross-sectional; they do not all concern the Ministry of Justice. Yet there was no synergy between the departments for their implementation. The National Council for Human Rights, a body undergoing restructuring, has not played its role as coordinator.

ACAT Benin, AFJB (Association of Female Lawyers in Benin) and ESAM (Solidarity for Children in Africa and the World) have informed civil society by way of an awareness and information workshop that was held in Porto-Novo on 17 November 2009.

A recurrent theme of the meetings with the Minister of Justice requested by civil society to promote the defence of human rights, centred around the need for an action plan. The Minister even gave instructions for such a plan to be made available to the NGOs. However, they have never received any information about them.

CONTINUE ITS EFFORTS TO COMPLETELY ABOLISH THE DEATH PENALTY, RESPECTING THUS THE RIGHT TO LIFE OF EVERY HUMAN BEING (recommendations 7 and 8)

On 18 August 2011, Parliament authorised Benin's support for the second optional Protocol to the International Covenant on Civil and Political Rights with a view to abolishing the death penalty by 54 votes in favour, 5 against and 6 abstentions.

By authorising ratification of the second optional Protocol, parliament committed itself to changing soon its Criminal Code and Code of Criminal Procedure in order to bring the contents of these codes into line with the rules set out in the Protocol. The revision of the Code of Criminal Procedure was passed on March 30, 2012 but it was impossible to ACAT Benin to obtain a copy to verify whether the provisions of this legislation have been modified.

- FIACAT and Benin ACAT invite Benin to do everything possible to speed up the ratification process of the optional Protocol to the International Covenant on Civil and Political Rights and to commute the sentences of those sentenced to death in Benin.

FOLLOWING THE RECOMMENDATION OF THE COMMITTEE AGAINST TORTURE, ESTABLISH WITHOUT FURTHER DELAY AN EFFECTIVE AND INDEPENDENT NATIONAL PREVENTIVE MECHANISM (Recommendation 9)

The bill leading to the setting up of a national prevention mechanism (NPM) was presented to the National Assembly in October 2007. It provides for a national, collective, five-member mechanism called the ONPT, (National Institute for the Prevention of Torture). The Department for Legislation and Codification approved the bill in its special session on 23 September 2008. Today the bill appears to be with the *députés* waiting to be adopted. The bill has been under examination prior to adoption for some time now.

Civil society seems barely aware of the bill and does not appear to have been involved in its drafting.

It is important to promote a public discussion on the NPM in order to guarantee full respect of the principles of openness, transparency, inclusiveness and independence during the process of adopting and implementing the NPM, as recommended in the optional Protocol, and to do so in such a way as to inspire the confidence of the whole population in the NPM.

- FIACAT and Benin ACAT recommend that the process be completed as swiftly as possible.

Benin publicly declared that it intended granting NGOs permanent access to places of detention. In reality no such access has been allowed and the NGOs meet with obstacles when they try to visit detention centres, especially prisons. They are often refused entry because they have not been authorised to visit. Often the access applications are lost within the administration.

ACAT Benin has obtained temporary permission to visit places of detention in 2010. The Prison Service and Social Welfare have asked ACAT Benin to provide a list of documents to obtain a new permit. The documents were provided, nonetheless no authorization was granted to ACAT Benin.

- FIACAT and Benin ACAT recommend that the authorities set down clear and objective criteria on which NGOs are authorised to visit detention centres and consider granting these NGOs permanent visiting authorisation.

URGENTLY AMEND ITS CRIMINAL LAW TO COMPLY WITH INTERNATIONAL RELEVANT STANDARDS (Recommendation 10)

TAKE MEASURES TO ENSURE THAT TORTURE IS DEFINED AND LISTED AS A SPECIFIC OFFENCE WITHIN BENIN'S CRIMINAL LAW (Recommendations 12 and 13)

National law contains no criminal clause that defines or bans torture. It is punished alongside wilful bodily harm and there is no specific punishment when a state employee is responsible for such an act.

The Criminal Code is at the voting stage. On April 10th 2012, the draft bill hasn't still be adopted by MPs. ACAT was not able to get of copy of the draft bill.

- FIACAT and ACAT Benin recommend that the Beninese authorities introduce into the draft revision of the Penal Code a definition of torture consistent with Article 1 of the UN Convention against Torture and to adopt the draft as soon as possible.

ENSURES THAT NO STATEMENT OBTAINED UNDER TORTURE OR DURESS CAN BE INVOKED IN PROCEEDINGS AND THAT ORDERS FROM A SUPERIOR MAY NOT BE INVOKED AS A JUSTIFICATION OF TORTURE (Recommendation 14)

There is no legal provision in Benin legislation to ban the use of proof obtained under torture. When taking into consideration an admission of guilt in order to convict an individual, Articles 397 and subsequent of the Code of Criminal Procedure set out that an admission of guilt, as with any other form of proof, can be used by the judges as they see fit and that any offence can be proved using any form of proof.

- FIACAT and ACAT Benin invite the Beninese authorities to introduce into the Penal Code that any statement which is established to have been obtained by the use of torture, may be invoked as evidence in proceedings only if it is in a procedure against a person accused of torture, as evidence that the statement was obtained under duress.

DISPLAY GREATER FIRMNESS IN PREVENTING ABUSES OF POLICE CUSTODY, TORTURE AND ILL-TREATMENT AND BRINGS CRIMINAL PROCEEDINGS AGAINST THE PERPETRATORS OF SUCH VIOLATIONS (Recommendation 16)

Recommendation 16 is unlikely to be achieved because illegal use of custody is still prevalent. This was the case recently with a Benin citizen who took his case, in April 2011, to the Constitutional Court, for arbitrary detention. In its decision DCC-12-023, on the 7th February 2012, the Constitutional Court declared the Aplahoué Brigade in the Couffo *département*, guilty of violation of the Constitution including Article 18 which states: "No one shall be detained for more than forty-eight hours without the decision of a magistrate. This period may be extended only in exceptional cases provided by law and not exceeding a period of eight days. "

Recording custody details in a register by way of guarantee against abusive treatment: Article 52 of the Code of Criminal Procedure sets out that an investigating police officer must mention the following details in the interview record: the duration and details of the interview, the day and time of commencement of custody, the day and time that custody ends together with reasons for custody. The practice of writing these reports varies considerably depending on the different police and *gendarmerie* stations. The problem is that the security force officer is the only one to record the custody. The absence of legal counsel during the preliminary inquiry allows police officers not to mention some custody when it is convenient.

Moreover, there is no legal provision setting out access to a lawyer during the preliminary enquiry. Lawyers are not authorised to be present during the official interview. Detainees are often not informed of their right to consult a lawyer and do not benefit from free legal aid.

Article 18 of the Constitution of the Republic of Benin sets out the right of each individual held in detention to be examined by a doctor of his choice and Article 52 of the Code of Criminal Procedure sets out that the State Prosecutor can designate, by officially appointing one or at the request of a family member of the individual in custody, a doctor to examine the detainee during custody. However, it appears that this provision is a matter of theory rather than practice as most detainees are not aware of this right.

The National Assembly of Benin voted unanimously on March 30 2012 a law including the Code of Criminal Procedure of the Republic of Benin. The law contains about 994 articles, beginning with a preliminary title and five books incorporating numerous new additions. They seem to include, among other things, a reinforcement of individual liberty guarantees, with possible limitations, and the duration of detention; acquisition criteria for senior officers and criminal investigators; the possibility to sanction officers or criminal investigators; installment by the prosecution of an instructional dossier from the Minister of Justice; the obligation for police officers to inform the state prosecutor of all decisions concerning custody; release from the pre-trial detention office by the prison manager in the absence of a statute regarding prolongation of a prisoner's detention after instructions from the examining magistrate. The new Code of Criminal Procedure seems to anticipate the creation of a Juvenile Criminal Ruling Tribunal and a detention liberties judge on either side of the examining magistrate.

ACAT Benin had not yet obtained a written copy of this law at the time this paper was written.

- FIACAT and Benin ACAT believe that the recording, in proper and due form, of the loss of liberty of a person is one of the fundamental guarantees against abusive treatment. It is also an indispensable pre-condition for the proper management of the right to a defence, together with the right to challenge the legality of detention and the right of any detainee to be brought before a judge.
- FIACAT and ACAT Benin recommend having more magistrates so that they can carry out random visits regularly.

TAKE EFFECTIVE MEASURES TO ENSURE THAT PRISON CONDITIONS ARE CONSISTENT WITH INTERNATIONAL STANDARDS (Recommendation 17)

There are nine prisons in Benin, in Cotonou, Porto-Novo, Missérété, Ouidah, Abomey, Lokossa, Parakou, Kandi and Natitingou. The Missérété prison was built through international cooperation to host ICC prisoners. It is also used today to ease the overcrowding of Porto Novo and Cotonou and is also currently used for the new Pobè Court. There is a risk that Missérété will soon be as crowded as the others. All prisons are overcrowded in Benin; they generally exceed more than 40% the normal rate of occupancy.

Conditions within Benin's prisons are also distinguished by visiting rights' violations, bullying, poor hygiene, a lack of health care, poor quality and insufficient quantities of prison food. It is equally important to ensure that convicted prisoners be held separately from prisoners on remand.

In the Porto Novo's Court, the second instruction office had no instruction judge and clerk for nearly four years. It handles more than 200 inmates. Indeed, in 2009, the investigating judge of the office was appointed Prosecutor in the same court and the office has been without magistrate until 2011 when a new judge was appointed to this position. He took office but was unable to actually work as there was no appointed clerk. He remained inactive until January 2012 when he was promoted to a position in the UN system in Congo.

Consequently, committal orders are not renewed and cases not instructed. Therefore people are detained arbitrarily, often at Missérété prison.

To date, none of the 218 detainees have been released. The interim judge has not yet taken office and no clerk is available to assist.

Improving levels of hygiene must also be a priority. Prisoners catch fleas and contract a variety of illnesses: dermatitis, various infections and often serious illnesses that demand special treatment. These facts have recently been noted by the Republic's Ombudsman and published in several newspapers² on 12 January 2012.

² L'Autre quotidien, l'Évènement précis, le Meilleur, Ajianankou and le Matinal.

Current prison overview in December 2011:

	Men	Women	Minors	
Porto-Novo	603	42	30	
Misserete				476 convicted prisoners; 315 on remand; 14 on death row
Abomey	1083	91	30 including 1 girl	
Parakou	622	12	18	
Kandi	443	5		
Natitingou	466	22	8	
Cotonou	2186	130	59	
Ouidah	355	23	12	
Lokossa	428	16	17 including 1 girl	

ESTABLISH AS A PRIORITY A REFORM OF THE JUDICIARY BY STRENGTHENING A JUSTICE SYSTEM WHICH WOULD BE BETTER ABLE TO COMBAT IMPUNITY AND CORRUPTION, INCLUDING BY PUTTING AN END TO EXAGGERATED PRE-TRIAL DETENTION (Recommendation 23)

The chief problem lies in the inadequate number of magistrates, especially in the south of the country. Therefore, when an individual is held in preventive custody and is granted bail, this amounts to the case being closed as a magistrate will not reopen a case until 5 or 6 years later.

There are three main reasons for this:

- The maladministration of the “Chancellerie”: some judges, after their training, spend more than two years without being assigned to a position even if they receive a salary. This is the case of the last promotion that works for several months. Sometimes it's simply the dresses that are not ordered on time.
- The principle of equal importance attributed to each jurisdiction in Benin as regards to designating where magistrates work: the magistrates that are newly trained every three years are sent around the country in equal measure and not fairly distributed, thus the south of the country which has a higher population does not have more magistrates than the north;
- Many magistrates have been sanctioned in the course of anti-corruption trials thereby emptying the law courts in Benin.

Corruption in the justice sector is still a current issue. The Minister for Justice admitted this publicly on December 2011, which led to a number of strikes in the legal administrative service in January 2012.

Execution of sentences is also poorly enforced: some people are kept in prison although they have served their sentence in full.

2. RECOMMENDATIONS CONCERNING ACTION TO BE UNDERTAKEN BY THE STATE BEING REVIEWED

FIACAT and Benin ACAT recommend that the Benin government:

- Take all the necessary steps to adopt the bill of the Criminal Code as soon as possible and to ensure that the new Criminal Code contains a definition of torture in line with Article 1 of the United Nations Convention on Torture and other abuses;
- Enact quickly the Law N° 2012-15 of 30 March 2012, on the Code of Criminal Procedure and make it easily accessible to all and ensure national coverage including through radio and television stations;
- Ensure that the legislation concerning visiting rights and the prevention of torture in detention centres set up by OPCAT is adopted;
- Facilitate effectively the formalities giving access to NGOs to places of detention in Benin;
- Recruit more police officers, judges and clerks;
- Continue the construction of Courts;
- Ensure greater involvement of the prosecutor's actions in protecting and defending human rights including through training and informing them about the various international Conventions.