



**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**

**Report on the visit of the Subcommittee on  
Prevention of Torture and Other Cruel, Inhuman  
or Degrading Treatment or Punishment to  
Benin<sup>\*,\*\*</sup>**

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\* In accordance with the decision of the Subcommittee on Prevention at its fifth session regarding the processing of its visit reports, the present document was not edited before being sent to the United Nations translation services.

\*\* In accordance with article 16, paragraph 1, of the Optional Protocol, the present report was transmitted confidentially to the State party on 17 June 2009. On 19 January 2011, the State party communicated its decision to make the report public.

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## Preliminary remarks

1. The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter ‘SPT’) was established following the entry into force in June 2006 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter ‘OPCAT’).<sup>1</sup> The SPT began work in February 2007.

2. The aim of the OPCAT is “to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty”,<sup>2</sup> in order to prevent ill-treatment. The term ill-treatment is used in its generic sense and encompasses torture and other cruel, inhuman or degrading treatment or punishment. It should be interpreted in its widest sense, to include *inter alia* ill-treatment arising from inadequate material conditions of deprivation of liberty. The SPT has two pillars of work: visiting places of deprivation of liberty to examine current practice and system features in order to identify where the gaps in the protection exist and which safeguards require strengthening; and assisting in the development and functioning of bodies designated by States Parties to carry out regular visits – the national preventive mechanisms (NPMs). The SPT focus is empirical – on what actually happens and what practical improvements are needed to prevent ill-treatment.

3. Under the OPCAT, a State Party is obliged to allow visits by the SPT to any places under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.<sup>3</sup> States Parties further undertake to grant the SPT unrestricted access to all information concerning persons deprived of their liberty and to all information referring to the treatment of those persons as well as their conditions of detention.<sup>4</sup> They are also obliged to grant the SPT private interviews with persons deprived of liberty without witnesses.<sup>5</sup> It is for the SPT to choose the places it wants to visit and the persons it wants to interview.<sup>6</sup> Similar powers are to be granted to NPMs, in accordance with the OPCAT.<sup>7</sup> The work of the SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity, in accordance with article 2, paragraph 3, of the OPCAT.

4. Whether or not ill-treatment occurs in practice, there is always a need for States to be vigilant in order to prevent ill-treatment. The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment. The SPT’s preventive approach is forward looking. In examining examples of both good and bad practice, the SPT seeks to build upon existing protections and to eliminate or reduce to a minimum the possibilities for abuse.

5. The prevention of torture and other cruel, inhuman or degrading treatment or punishment proceeds from the respect for the fundamental human rights of persons deprived of their liberty in whatever form of custody they may find themselves. The visits of the SPT to States Parties centre on determining which factors may contribute to, or

<sup>1</sup> A/RES/57/199, 9 January 2003.

<sup>2</sup> OPCAT, article 1.

<sup>3</sup> OPCAT, articles 4 and 12 (a).

<sup>4</sup> OPCAT, articles 12 (b) and 14, paragraph 1(a) and (b).

<sup>5</sup> OPCAT, article 14, paragraph 1(d).

<sup>6</sup> OPCAT, article 14, paragraph 1(e).

<sup>7</sup> OPCAT, articles 19 and 20.

inhibit, situations conducive to ill-treatment, in order to make recommendations to prevent ill-treatment from happening or from recurring. In this sense, rather than merely checking or verifying whether torture has occurred, the SPT's ultimate aim is to anticipate and forestall the commission of torture by persuading States Parties to improve the system of functioning safeguards to prevent all forms of ill-treatment.

## Introduction

6. In accordance with articles 1 and 11 of the OPCAT, the SPT visited Benin from Saturday 17 May until Monday 26 May 2008.

7. In this first visit to Benin, the delegation of the SPT examined the state of progress in developing the national preventive mechanism and focused on the situation, as far as protection against ill-treatment, of people deprived of their liberty in police facilities, gendarmeries and prisons.

8. The delegation consisted of the following members of the SPT: Ms. Silvia Casale (head of delegation), Mr. Hans Draminsky Petersen, Mr. Zbigniew Lasocik, and Mr. Leopoldo Torres Boursault. Pursuant to article 13, paragraph 3, of the OPCAT, the delegation was accompanied by Dr. Jonathan Beynon, expert.

9. The SPT members were assisted by Mr. Patrice Gillibert (Secretary to the SPT), Ms. Estelle Askew-Renaut, and Ms. Nosy Ramamonjisoa, staff members of the Office of the United Nations High Commissioner for Human Rights (OHCHR), as well as by three interpreters.

10. During its visit to Benin, the delegation reviewed the treatment of persons deprived of their liberty and made observations and conducted private interviews with staff and people deprived of their liberty in various types of institutions: five police stations, five gendarmeries, and three prisons.<sup>8</sup>

11. In addition to visiting places of deprivation of liberty, the SPT had discussions with public authorities, including ministerial, judicial and prosecutorial interlocutors, and members of civil society in order to gain an overview of the legal framework regarding the administration of criminal justice and places of deprivation of liberty and of how the system was functioning in practice.<sup>9</sup> The delegation met with representatives of the Supreme Court and with the Constitutional Court in plenary session. It also visited the *Palais de Justice* in Abomey and spoke with its Prosecutor (*Procureur*) in order to discuss the treatment of persons deprived of their liberty by the judiciary.

12. At the end of the visit, the delegation presented its preliminary observations concerning the visit to the Beninese authorities. Those preliminary observations, like the visit report, are confidential.<sup>10</sup> The SPT acknowledges receipt of the note verbale of 7 November 2008, attaching the government of Benin's preliminary replies to its observations. The SPT has considered these replies and included clarification on a number of issues in this report.

13. The following report on the first SPT visit to Benin, produced in accordance with article 16 of the OPCAT, sets out the findings of the delegation and the SPT's observations and recommendations concerning the treatment of people deprived of their liberty, in order to improve the situation as regards the protection of such persons from all forms of ill-

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<sup>8</sup> For a full list of places of deprivation of liberty visited, see Annex I.

<sup>9</sup> A full list of officials and others with whom the delegation met can be found in Annex II.

<sup>10</sup> OPCAT, article 16, paragraph 2.

treatment. The visit report is an important element of the dialogue between the SPT and the Beninese authorities aimed at preventing torture and other cruel inhuman or degrading treatment or punishment. In principle, the report is confidential until such time as the authorities of Benin request publication.<sup>11</sup>

14. One of the crucial factors inhibiting ill-treatment is the existence of a fully functioning system of independent visits to monitor all places where person may be deprived of their liberty. For this reason, the first section of the report is devoted to a discussion of the development of the national preventive mechanism (NPM) in Benin.

15. The second section of the visit report looks at the legal and institutional framework in Benin from the perspective of prevention of torture. Situations favourable to torture may arise from the lack of an appropriate legal and institutional framework guaranteeing the rights of persons deprived of their liberty. These safeguards are considered not so much as due process safeguards — this task falls to other United Nations bodies — but as instruments of prevention of torture and other cruel, inhuman or degrading treatment or punishment.

16. In subsequent sections of the report, the SPT examines the concrete situation of people deprived of their liberty in different settings in the light of those safeguards and the access thereto, which the SPT considers will, if properly established and/or maintained, diminish the risk of ill-treatment of persons deprived of their liberty. The SPT makes recommendations concerning changes to improve the situations encountered and to ensure the development and improvement of a coherent system of safeguards in law and in practice.

## I. Development of the National Preventive Mechanism

17. The SPT was provided with information before the visit about the process of development to date concerning the NPM, the *Observatoire National de Prévention de la Torture* ('ONPT'). The SPT welcomes the fact that there had been open preparatory consultation with civil society on this matter, which culminated in the drafting of legislation in August 2007. The SPT congratulates all involved in achieving this important first step towards placing the NPM on a statutory basis. The SPT regrets that, despite requesting meetings with members of the Ad-hoc Working Group during its visit to Benin, it was unable to meet with them. It is also concerned that civil society does not seem to be aware of the draft legislation, nor involved in its development at this stage. The SPT considers it important to continue to foster public debate concerning the NPM, in order to ensure adherence to the principles — openness, transparency, inclusiveness and independence — in the process of adoption of the legislation and the establishment of the NPM, as referred to in the OPCAT, so that the NPM will command the confidence of the public generally.

**18. The SPT requests information concerning steps taken to foster public debate at this later stage about the adoption of the legislation and the development of the NPM.**

19. The SPT examined the draft legislation provided at the time of the visit and dated 23 August 2007. After the visit, the SPT requested further information on the process of adoption of the draft legislation. The government of Benin provided an update in its note verbale of 7 November 2008, and the SPT was provided with a copy of the amended draft legislation in December 2008.<sup>12</sup> The SPT considers that it contains provisions capable of

<sup>11</sup> Idem.

<sup>12</sup> For the text of the draft legislation, as provided electronically by the authorities on 23 December 2008, see Annex III.

establishing a firm basis for the NPM, and generally in line with the preliminary guidelines on the development of NPMs put forward by the SPT in its first annual report in May 2008.<sup>13</sup> In particular, the SPT notes with satisfaction the following elements:

- The draft legislation includes a broad definition of places where people are or may be deprived of liberty in line with the provisions of the OPCAT
- It provides powers of access for the NPM in line with those envisaged in the OPCAT
- The NPM is described as being financially independent (“autonomie financière” and “un organe indépendant qui a pour but de prévenir la torture et autres peines ou traitements cruels, inhumains ou dégradants, notamment dans les lieux de détention” (Articles 1 and 3))
- There is an express prohibition of any sanctions/reprisals against any person or organisation who may have given information to the NPM
- Provision is made for co-operation between the NPM and international bodies at the global and regional level
- The NPM is to publish an annual report after submitting it to the President

20. As to the membership of the five-person NPM, the SPT welcomes the fact that attention is given to the requirement for gender diversity of members of the NPM, and for members having relevant experience in the field of administration of justice in particular. The SPT also notes that the members will be nominated by Ministerial decree, upon a suggestion made by the Minister of Justice and Human Rights. The SPT notes a revision of the previous provision that exercise of any function which could affect the independence and impartiality of a member of the NPM would be incompatible with membership of the NPM. The revised draft legislation now includes a provision of ineligibility to serve on the NPM for anyone involved in public employment, any political or professional activity or any elected office. **The SPT is concerned about the exclusion of anyone exercising a professional function and recommends that this be reconsidered, as it would appear to exclude a practising legal or medical professional from NPM membership.** In order to guarantee the independence and impartiality of the members of the NPM, **the SPT recommends that the draft law provide that membership of the NPM is incompatible with any other function which could affect its independence and impartiality.** The SPT notes that the draft legislation provides for a selection panel made up of senior persons in the legal and medical professions, and includes a representative of civil society. The SPT trusts that membership of the five-person NPM will also reflect such diversity. **The SPT recommends that priority be given to the inclusion in the NPM of a medical professional.**

21. As to the budget for the NPM, the SPT is concerned that some of the previous provisions for autonomous management by the NPM of its budget and its financial reporting to the accounting chamber of the Supreme Court have been dropped from the revised legislation. **The SPT recommends that these provisions be reinstated.**

22. **The SPT is particularly concerned that article 19 of the draft law provided by the authorities on 5 December 2008 indicates that a ministerial decree will lay down the modalities of work of the NPM (“un décret pris en Conseil des Ministres déterminera les modalités de fonctionnement de l’Observatoire”). The SPT recommends that the modalities of work of the NPM be spelt out clearly in the draft NPM law, and**

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<sup>13</sup> See Annex IV.

**not left to subsequent decrees, unless those decrees are also the subject of broad public consultation and debate.**

23. The SPT has considered the stage of adoption of the draft legislation and understands from the letter of 7 November 2008 from the authorities that the draft legislation was examined and adopted by the National Commission on Legislation and Codification during its special session of 23 September 2008. The authorities also informed the SPT that the next step in the adoption process will be the transmission of the draft to the Head of State with a view to its examination by the National Assembly. The SPT considers that the draft legislation has been under consideration for adoption for some time and **recommends that the process be completed with all possible speed. If the draft legislation is further amended during the adoption process, the SPT asks to be provided with a copy of any amended text. Any substantive amendments to the draft legislation should be the subject of further consultation.**

24. **As a body complementing, at national level, the work of the SPT, the NPM is in a frontline position to ensure the continuity of the dialogue with the national authorities on issues relating to prevention of ill-treatment. To this end, the NPM should make recommendations to the competent authorities with the aim of improving the treatment, including the conditions, of the persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment. In doing so, the NPM should pay due attention to the relevant norms of the United Nations as well as the recommendations made by the SPT. Furthermore, one of the key aspects of the work of the NPM is to maintain direct contact with the SPT and facilitate exchange of information in order to follow up the compliance with the recommendations of the SPT.**

25. The SPT looks forward to further discussions about all aspects of the NPM's work through a dialogue with the authorities and with the NPM as it develops.

## **II. Formal safeguards against ill-treatment**

26. The SPT considered those elements of the legal framework with the potential to provide safeguards for persons deprived of their liberty and those potentially contributing to the risk of ill-treatment.

### **A. Legal framework – primary legislation and codes**

#### **1. The Constitution of Benin and the Constitutional Court**

27. The Constitution of Benin of 11 December 1990 is the supreme law of the State, and Title II is devoted to the rights and duties of the individual. Moreover, article 147 of the Constitution provides that “treaties or agreements lawfully ratified shall have, upon their publication, an authority superior to that of laws”. In particular, the principles enunciated in the African Charter on Human and People's Rights were incorporated into Title II of the Constitution. Further, the full text of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ratified by Benin on 12 March 1992 was published in the Official Gazette of 5 September 2006.

28. With respect to the role of the judiciary as a guarantor of the human rights of detainees, article 114 provides for the Constitutional Court to exercise the highest jurisdiction of the State in constitutional matters. The Court rules upon the constitutionality of laws and is responsible for guaranteeing fundamental individual rights and civil liberties. Any citizen may ask the Court to rule on the constitutionality of laws either directly, or

through the special action of unconstitutionality invoked in a case before a court involving that citizen.

## 2. Legal codification of the offence of torture

29. Article 18 of the Constitution states that “no one shall be submitted to torture, nor to mistreatment, nor to cruel, inhumane or degrading treatment. No one shall have the right to prevent a detainee or an accused person from being examined by a doctor of his choice. No one may be detained in a penal institution if he does not fall under the provisions of a penal law in force. No one may be detained for a duration greater than forty-eight hours except by a decision of the magistrate before whom he must have been presented. The delay may be prolonged only in circumstances exceptionally provided by law and may not exceed a period greater than eight days.” Any individual or agent of the State who, during the exercise of his functions, commits acts of torture or inflicts cruel, inhuman and degrading treatment, whether on his own initiative or under orders, shall be punished in accordance with the law (article 19 of the Constitution).

30. There is no formal definition of torture in Beninese legislation. The SPT understands that the Constitutional Court has attempted to bridge this gap by providing a broad definition of torture. The SPT understands that steps are being taken to incorporate the definition of torture in accordance with article 1 of the Convention against Torture, and to define torture as an offence in the final version of the draft criminal code currently before the National Assembly. However, the SPT notes that the text of the draft criminal code provided by the State Party does not contain a definition of torture and does not provide for a specific criminal offence of torture. It also notes that the draft criminal code and the draft code of criminal procedure have been discussed by Parliament for six years. **The SPT associates itself with the recommendations of the Committee against Torture<sup>14</sup> and asks that the State Party involve NGOs and academic experts in the revision of national legislation, namely, the draft criminal code and the code of criminal procedure, with a view to alignment with the provisions in the Convention. The authorities of Benin should take all necessary measures to adopt these two draft laws as soon as possible.**

## B. Institutional framework – systems for complaints, monitoring and legal aid assistance

### 1. Police and gendarmerie complaints and monitoring processes

31. The SPT notes that article 114 (onwards) of the Criminal Code provides for a number of offences in cases where public officials commit acts which, *inter alia*, deprive others of their liberty. In particular, article 119 of the Criminal Code provides that civil servants and public officials who are made aware of an allegation of illegal and arbitrary detention, and who do not follow through on the allegation with their superiors, are liable for damages and to be stripped of their civil rights (*dégradation civique*).<sup>15</sup> Finally, the SPT notes that according to article 186 of the Criminal Code, civil servants and public officials can be found guilty of using force against persons without legitimate grounds. **The SPT requests further information on these offences and statistics on the number of**

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<sup>14</sup> CAT Concluding Observations, CAT/C/BEN/CO/2, 2007, paragraph 28.

<sup>15</sup> “Public officials responsible for policing or criminal investigation who refuse or neglect to respond to a lawful request to report illegal or arbitrary detention, either at detention facilities or elsewhere, and who fail to prove that they have reported it to a higher authority, shall be liable to loss of civic rights and payment of damages [...]”.



**complaints/sanctions imposed as a result of these provisions of the Criminal Code during 2006, 2007 and 2008.**

32. Decree No. 2004-394 of 13 July 2004 gives competence to the Ministry of the Interior, Security and Territorial Administration to ensure public order and security. To carry out its mission, the Ministry of the Interior has special powers, such as the general inspection of security forces, which is directly under the Ministry, and the general management of the national police. Similarly, in accordance with Decree No. 2005-249 of 6 May 2005, the Ministry of Defence has oversight of the actions of the gendarmerie.

33. The delegation was informed that the *Inspection Générale de la Police*, the *Inspection technique* (for the gendarmerie) and the *Inspection Générale des Forces de Sécurité* all undertake oversight activities, including receiving and investigating ‘ethical and moral’ complaints, i.e. allegations of corruption or racketeering by officers. Further, the delegation was informed that there are two other types of internal oversight of the police. Firstly, the *Direction de la Police* conducts oversight, including visits, on the orders of the *Directeur Général de la Police*. Secondly, the Minister of the Interior can himself order an inspection. **The SPT wishes to receive further information for 2006–2008 about the mandate of these bodies; the number of complaints received per year; the number of complaints pursued per year, for which offences, and against whom; and the outcome of all such complaints, including sanctions imposed on the officers responsible.**

34. According to the Annual Statistical Report for 2005 of the Ministry of Justice,<sup>16</sup> provided by the liaison officer to the delegation during the visit, the Department for Civil and Criminal Cases (*Direction des Affaires Civiles et Pénales*) of the Ministry of Justice is mandated to receive complaints of ill-treatment by security forces and abuse of *garde à vue*. In particular, according to the Annual Statistical Report for 2005, three complaints were lodged for violence by security forces (*violences exercées par les forces de l’ordre*). **The SPT requests more statistical information on those activities for the past three years, as well as more detail on the outcome of such complaints.**

## **2. Prison monitoring bodies and complaints**

### *(a) Monitoring*

35. The SPT understands that there are a number of bodies whose responsibility includes prison monitoring, and some of those will be discussed in the next sections dealing with judicial oversight. For example, in meetings with representatives of the Supreme Court, the delegation heard that it has conducted an inspection of all prisons in Benin, and submitted visit reports to the government. **The SPT requests copies of these inspection reports.**

36. The DAPAS (*Direction de l’Administration Pénitentiaire et de l’Assistance Sociale*) is the department within the Ministry of Justice, Legislation and Human Rights charged with the administration of prisons. Its mission is to ensure the regulation, organization and control of the different punishments, and ensure the management of personnel and equipment to provide assistance for persons of all ages concerned with judicial procedures. One of its missions is to regularly visit prisons. **The SPT regrets that it has not been provided with any such mission reports, and requests any further information for the last three years on visits undertaken and recommendations made by the DAPAS to improve the treatment, including conditions, of persons deprived of their liberty.**

<sup>16</sup> Statistical Yearbook, 2005, Ministry of Justice, officer in charge of relations with institutions.

37. The SPT understands that the DAPAS is also mandated to receive and act upon visit reports conducted by the Commission for the Oversight of Prisons (*Commissions de surveillance des prisons*), set up pursuant to article 578 of the Code of Criminal Procedure and article 80 of Decree No. 73-293 on the administration of prisons (*Décret No. 73-293 du 15 septembre 1973 portant régime pénitentiaire*). According to the Annual Statistics Report for 2005 of the Ministry of Justice, provided by the liaison officer to the delegation during the visit, these Commissions conducted 10 visits in 2005. The SPT requests copies of the Commissions' mission reports, and information on any follow-up as a result of these prison visits. **The SPT also requests that the authorities clarify whether visiting occurs on an on-going basis and provide information on any visits carried out after 2005.**

38. In addition, the Human Rights Department (*Direction des Droits de l'Homme*) of the Ministry of Justice is mandated to ensure that United Nations minimum standards on detention are observed, and to carry out periodic visits to places of detention. These visits can be both reactive in nature (after a denunciation of a human rights violation), or preventive (to encourage respect of the rules on conditions of detention). The SPT wishes to thank the liaison officer for providing it with three reports of visits conducted by the Human Rights Department. It notes that in one such report, the Human Rights Department issued a recommendation that it should be endowed with the necessary resources to conduct unannounced visits to places of detention.<sup>17</sup> **The SPT requests information as to the resources earmarked for the preventive work of the Human Rights Department in 2007 and 2008, and copies of all visit reports which have been undertaken since 2006. The SPT also requests the comments of the authorities on the recommendation to mandate the Human Rights Department to carry out unannounced visits.**

39. According to the Annual Statistics Report 2005, the *Inspection Générale des Services de la Justice* (IGSJ) also conducted 20 prison visits in 2005. **The SPT requests copies of any such visit reports, any recommendations made, and information about any action taken following these visits.**

40. The delegation understands that similarly, other departments of the Ministry of Justice are mandated to visit places of detention (including for example the Direction de la Protection Judiciaire de l'Enfance et de la Jeunesse). **The SPT requests copies of any such visit reports for the past three years, any recommendations made, and any actions taken following these visits.**

(b) *Complaints*

41. Discussions with representatives of the Ministry of Justice highlighted that there is no formal framework for receiving complaints about ill-treatment in prisons. A detainee is however entitled to directly address the director of the prison, or complain through the normal judicial processes. Further, the authorities explained that complaints can be registered in the main courante of the Penitentiary Brigade, which is obliged to inform the DAPAS, which in turn reports the matter to the Ministry of Justice. In this regard, the SPT notes that article 120 of the Criminal Code provides that heads of security of prisons, who, inter alia, hold a detainee without legal warrant or refuse to bring a detainee before a police officer, may be deemed guilty of arbitrary detention, and can be sentenced to six months imprisonment.<sup>18</sup> **The SPT requests more information about the content of this offence,**

<sup>17</sup> Report on visit to places of deprivation of liberty in Ouémé and Plateau regions, March 2006.

<sup>18</sup> "Staff at remand centres, short-stay prisons, detention facilities or prisons who admit a prisoner without a warrant or judicial decision, or persons who, in the absence of a provisional government order, detain an individual or refuse to present the individual to the police officer or the person transmitting his orders, without an injunction from a public prosecutor or a judge, and persons who

and confirmation of whether it could apply, for example, if a detainee asks to be brought before a judge and the request is not met promptly by prison authorities. It also requests statistical information on the results/outcome of any cases brought under this provision of the Criminal Code since 2005.

42. The SPT notes that, according to the Annual Statistics Report for 2005, the Human Rights Department investigates human rights complaints, and **asks for further information on this mandate, details on the complaints investigated, statistical information on the results/outcome of such complaints, and in particular any complaint which resulted from a visit to a place of detention.**

43. The SPT notes that all Ministry of Justice departments are under the supervision of the IGSJ, which is an internal supervisory organ under the direct supervision of the Minister of Justice. According to the Annual Statistics Report for 2005, the IGSJ, *inter alia*, receives complaints from individuals (118 in 2005). Of those complaints received, six were actually investigated in 2005. **The SPT would welcome further information on the complaints mandate of the IGSJ, the type of complaints it has investigated since 2005, and statistical information on the results/outcome of such complaints.**

44. **More generally, the SPT requests 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.**

### 3. Prosecutorial oversight

45. The SPT notes that there are a number of provisions in the Criminal Code and the Code of Criminal Procedure which relate to prosecutorial oversight. Under article 12 of the Code of Criminal Procedure, the functions of the judicial police are carried out by officials under the direction of the Public Prosecutor. Under article 13, the judicial police are “supervised by the Public Prosecutor at the Court of Appeal, under the control of the Indictments Chamber” (*Chambre d’Accusation*). Further, Article 22 of the Code of Criminal Procedure gives power to the Prosecutor of the Republic (*Procureur*) to receive complaints. According to paragraph 4 of article 34, and paragraph 2 of article 38, of the Code of Criminal Procedure, the Prosecutor or the Procedural Judge has direct power over public forces to protect detainees who complain of ill-treatment.

46. The SPT also notes that article 78 of Decree No. 73-293 provides that investigating judges and Prosecutors regularly visit prisons in order to ensure the legality of detention of each detainee. The SPT regrets that it was not provided with any practical details on these prosecutorial oversight functions, on any such oversight activities undertaken, and any results obtained. **The SPT requests that it be provided with more information on the practice of prosecutors in monitoring the legality of detention and in receiving complaints, as well as statistical information for 2005–2008 on the results/outcome of such complaints.**

### 4. Judicial oversight

47. In meetings with the Constitutional Court and with representatives of the Ministry of the Interior and of Defence, the members of the delegation heard that the *Constitutional Court* receives allegations of ill-treatments, in accordance with article 120 of the

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refuse to produce custody registers to a police officer shall be deemed to be guilty of arbitrary detention, liable to a prison term of between six months and two years and a fine of between 4,000 and 48,000 francs.”

Constitution. Nevertheless, the delegation was not able to obtain statistics regarding cases referred to such institutions and/or tried in the criminal justice system. **The SPT requests 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 (including the length of *garde à vue*, conditions of detention, and allegations of ill-treatment by officials during such periods), as well as the results/outcomes of such complaints.**

48. According to article 199 of the Code of Criminal Procedure, the *President of the Indictments Chamber (Chambre d'accusation)* has a mandate to visit places of detention whenever he/she deems necessary, and at least once every three months to carry out visits to prisons and to verify the situation of detainees in preventive detention. The SPT notes that similar provisions can be found in the draft Code of Criminal Procedure (article 674). The SPT regrets that it was not provided with any further details on the preventive work of the President of the Indictments Chamber, or with any reports which may be available on such visits. **The SPT requests that it be provided with the reports of the President on its three monthly visits to prisons since 2005.**

49. Further, according to articles 183 and 201 of the Code of Criminal Procedure, the *Indictments Chamber (Chambre d'Accusation)* exercises judicial oversight over all procedures which come before it, and over the work of civil service, military officials, criminal investigation officers, and senior officers. In this regard, article 200 of the Code of Criminal Procedure provides that the President of the Indictments Chamber can seize the Chamber so that it may rule on whether an *inculpé* (a charged person) should remain in preventive detention. Further, where a victim complains to the Constitutional Court and the Court finds that an act of torture has been committed, it may seize the Indictments Chamber. A complaint may be brought before the Indictments Chamber by the Public Prosecutor or by the President of the Chamber. After having been seized of a complaint, the Indictments Chamber initiates an inquiry, and hears the public prosecutor and the criminal investigation officer under suspicion. The SPT notes that Benin has reported to the Committee Against Torture that, pursuant to these rules, some criminal investigation officers have been suspended from duty and in other cases remarks have been addressed to officers at fault. The investigations were conducted following complaints by victims.<sup>19</sup> **The SPT requests further information and concrete examples of such investigations and sanctions imposed on officers at fault for the years 2005–2008.**

50. Article 551 of the Code of Criminal Procedure provides that, when a judicial police officer is suspected of having committed a crime, the Prosecutor must seize the Judicial Chamber of the *Supreme Court* without delay, who must render a judgment within eight days. **The SPT requests further information and concrete examples of such investigations and sanctions imposed on such officers for the years 2005–2008.**

## 5. Monitoring by NGOs

51. The SPT notes that the State Party has made public declarations that it intends to grant NGOs permanent access to places of detention. However, the SPT was informed that in practice such access had not been granted, and that NGOs encountered hindrances when attempting to visit places of detention, and in particular prisons. **The SPT recommends that the authorities develop clear and objective criteria for selecting NGOs to be granted the right to visit places of detention, and that they consider granting those NGOs permanent authorization to visit.**

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<sup>19</sup> CAT/C/BEN/Q/2/Add.1, 17 September 2007, paras. 120–129.

## 6. Provision for legal representation/legal aid

52. The SPT notes that the Code of Criminal Procedure does not allow for the right to a lawyer during *garde à vue* (see also paragraph 83 below).

53. The draft code of criminal procedure provides for the assistance of a lawyer from the start of the preliminary investigation. A duly accredited lawyer may be present at all questioning sessions.<sup>20</sup> **The SPT considers the right to have a lawyer present from the very beginning of the criminal investigation as an important means of preventing torture and ill-treatment. It welcomes the proposed change in the legislation and requests further 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.**

54. Article 240 of the Code of Criminal Procedure currently in force provides that the court can appoint a lawyer before the Trial Court (*Cour d'Assises*) if the accused refuses to choose a lawyer; that the *prévenu* can be represented by a lawyer before the Tribunal of first instance (article 386 of the Code of Criminal Procedure) and the Court of Appeal (article 476); and that the *inculpé* can be represented in all proceedings before the investigating judge (articles 98 and 99). The SPT notes that the investigation judge (*juge d'instruction*) must inform the detainee of his right to a lawyer during the first hearing before the judge (article 98 of the Code of Criminal Procedure). **The SPT requests confirmation that this right is indeed notified to all detainees by the judge.**

55. With regard to *legal aid*, the SPT notes that there are no provisions for free legal aid in Beninese law. **The SPT recommends that Benin guarantees access to legal assistance to persons without sufficient resources.**

## III. Situation of persons deprived of their liberty

### A. In gendarmeries and police facilities

56. The police, under the Ministry of Interior, have primary responsibility for enforcing law and maintaining order in urban areas. The gendarmerie, under the Ministry of Defence, performs the same function in rural areas. The delegation was informed that, in times of peace, in essence the police and the gendarmerie perform the same judicial police functions. The delegation observed that, in practice, both the police and the gendarmerie deprived persons of their liberty during the initial investigation phase.

#### 1. Initial custody period

57. The SPT has referred already (see paragraph 0 above) to the constitutional time limit of 48 hours before presentation of a detained person before a magistrate, the legal provisions for prolongation of initial custody for a maximum of 48 hours by the prosecutor (total 96 hours) and, exceptionally, for up to 8 days. These are in principle important safeguards against ill-treatment.

58. The actual practice diverged from the provisions in law. For example, the delegation met with persons who had been taken into custody on a Friday and remained until Monday without being presented before a court. The delegation spoke with staff at police and gendarme establishments who confirmed this situation and explained that the delay beyond the legal time limit was due to the days and times on which courts operated.

<sup>20</sup> CAT/C/BEN/Q/2/Add.1, 17 September 2007, paras. 105–107.

59. Production before a court within a time limited period in law after deprivation of liberty is one of the fundamental safeguards for persons deprived of liberty. **The SPT recommends that the provision in law of a maximum of 48 hours in initial custody before presentation before a court must be matched by a system of court sessions enabling this legal time limit to be respected in practice.**

60. At the Gendarmerie Territoriale de Godomey, officers reported that a prolongation of initial custody might be ordered for 24 hours, if the case were nearly ready; they confirmed that prolongation could be for up to 48 hours, but stated that persons held in initial custody were usually transferred from the gendarmerie after a total period of between 48 and 72 hours. It was not possible to confirm with any certainty whether persons were brought before a judge within the legal time limit at the police stations and gendarmeries visited, since examination of registers revealed various shortcomings in record-keeping (see further below).

## 2. Recording of custody as a safeguard against ill-treatment

61. Article 52 of the Code of Criminal Procedure provides that the record (*procès verbal*) drawn up by the judicial police officers should contain the following information: details and length of questionings, date and time of the start of *garde à vue*, date and time of the end of the *garde à vue*, and reasons for the *garde à vue*. The practice of keeping records concerning initial custody varied considerably among the different law enforcement locations visited. Shortcomings identified included the following:

- *Inaccurate recording of date and time of arrival* of persons deprived of liberty by law enforcement agents at a police station or gendarmerie. For example, at *Dantokpa police station* (Cotonou), the delegation noted that a person observed by the delegation to be in police custody at 17:50 on 18 May 2008 was registered in the logbook as arriving on 19 May 2008.
- *Absence of recording of crucial data*, such as the age of the detainee. For example, at the Gendarmerie in *Godomey*, the registers did not indicate the age of the detainees, and there was no separate register for adolescent detainees. Further, as the hour and time of entry and departure from police/gendarme custody were not recorded, the total duration of such custody in many cases could not be ascertained. Most registers also did not indicate whether or when a person had been presented before a judge to renew the *garde à vue*, making it impossible to check whether the legal time limit had been adhered to.
- *Post facto recording of police custody details* in the registers. For example, at the *Gendarmerie of Bohicon* the delegation observed that the register, which in principle was acceptable as to its format, had not been filled in for several months; staff reported that it was standard practice to transfer information from the daily log sheets into the register at a later date, even though persons deprived of their liberty were required to sign or affix their fingerprints in advance to an empty register.
- *Lack of a uniform system in use for recording police custody*. In the '*registre de garde à vue*', described by gendarmes at *Godomey* as a uniform book provided to all establishments throughout the country, certain key information was recorded. However, the delegation found that this register was not systematically and consistently used at all law enforcement establishments visited. The delegation saw a variety of means in use for recording initial custody, including a daily log sheet and '*main courante*' at the *Dodji police station* in Porto Novo (with date but no hour of entry into custody recorded and no details on time of departure from custody); a "*registre de permanence*" at the *Central police station* in Cotonou (with date and

hour of entry recorded, but no record of prolongation at weekends); and a “*registre des procès-verbaux*” at the *Gendarmerie in Zogbodomey* (with details of the case).

- *Absence of a register of confiscated items.* The delegation noted that there was no general practice of recording items of personal property taken from persons deprived of liberty by law enforcement agents.

62. It goes without saying that, in the absence of proper record-keeping, it was impossible for senior staff to oversee effectively the use and duration of police or gendarmerie custody.

63. The SPT considers that the proper recording of deprivation of liberty is one of the fundamental safeguards against ill-treatment, as well as a prerequisite for effective exercise of due process rights, such as the right to challenge the lawfulness of deprivation of liberty and the prompt production of a person in custody before a judge.

64. **The SPT recommends that the police and gendarmeries throughout Benin develop a standardised and unified record for registering contemporaneously and comprehensively all key information about every individual’s deprivation of liberty, and that staff be trained to use this appropriately and consistently. The SPT further recommends that the record should include the reasons for the deprivation of liberty, the exact time and date when it started, how long it lasted, who was responsible for its authorisation and the identity of the law enforcement officials concerned, precise information about where the person was during the period, and when the person first appeared before a judicial or other authority.<sup>21</sup> Finally, the SPT recommends that all entries in the registers be monitored and countersigned by the directors of each of the establishments.**

65. In addition to the absence of a proper recording system, the delegation encountered an even more serious problem: in respect of some people held by law enforcement agencies, there was no official record of their custody at all.

66. For example, at the *Gendarmerie of Zogbodomey*, the delegation encountered two persons held by the gendarmes after reportedly being involved in embezzling funds from an employer to go into business for themselves. The organisation alleging the embezzlement, which the two readily admitted, had not yet decided to file a formal complaint. Meanwhile, it was seeking restitution from them through the proceeds of their continuing work. When the delegation visited at the weekend, they were in custody in the holding cell pending release into the custody of the employing organisation to work off the debt. The SPT takes no position on the restorative approach to the offence, but is concerned that there was no official record of the fact that persons deprived of liberty were being held by the Zogbodomey gendarmes.

67. Secondly, Commandant Adjoint KOUHO of the *Recherche de la Brigade Territoriale at Bohicon* informed the delegation that persons invited for informative talks were not listed among those held in *garde à vue*, nor in any other record. Any person who is obliged to remain with law enforcement agencies and is not free to leave is deprived of liberty; and such deprivation must be recorded systematically.

68. **The SPT recommends that the authorities take immediate steps to ensure that there is an official record of the details of deprivation of liberty of all persons, regardless of their status in law, who are obliged to remain with the law enforcement agencies.**

<sup>21</sup> See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 12.

### 3. Information on rights as a safeguard against ill-treatment

69. From the discussions held, the delegation noted that the language of rights is not part of the normal discourse concerning the law enforcement process. The delegation formed the view from discussions with law enforcement staff and person deprived of their liberty, that there is no systematic practice of informing person deprived of their liberty about their rights. This was confirmed by staff, for example at *Dantokpa police station*, who indicated that it was not part of their practice to inform people in custody about their rights.

70. The provision of information on rights is an important safeguard against ill-treatment. In order for people deprived of liberty to exercise their rights effectively, they must first be informed of and understand those rights.

71. **The SPT recommends that the legislation be amended to spell out the rights of persons deprived of liberty, as well as the right of such persons to be notified of their rights as from the moment of deprivation of liberty.**

72. **The SPT further recommends that law enforcement staff be trained to inform persons deprived of their liberty of their rights, including orally in the languages usually spoken by such persons, and to assist in the exercise of all such rights as from the very outset of deprivation of liberty.**

### 4. Risk entailed in reliance on confession for conviction

73. There is no legislative provision in Benin banning the use of evidence obtained under torture. The delegation discussed with various interlocutors the possibility under Benin law of convictions being based solely on confession, and this was generally considered as a problematic practice of the past. As to the reliance on confessions for convictions, article 397 (onwards) of the Code of Criminal Procedure provides that confessions, like all other evidence, shall be evaluated at the court's discretion, and that guilt may be established by any form of evidence.

74. Several persons deprived of their liberty indicated that they had been asked by law enforcement officers to sign a statement about the case while in initial custody. Some of those who could read had signed without reading the document; one had signed after reading; one had refused to sign. Others had signed by thumbprint, since they could not read or write, but none reported having had the statement read to them. Furthermore, a detainee at *Dantokpa police station* indicated that he refused to make a statement implicating him in a case of breaking and entering. He was beaten severely, and explicitly told the delegation "but I did not confess". In his mind, the ill-treatment was aimed at extracting a confession.

75. In this context it should be recalled that the safeguard of a lawyer's involvement does not apply in initial custody, since in Benin most people do not benefit from the assistance of the legal representative at this stage.

76. **The SPT recommends that no pressure be exerted to make detainees confess to an offence. The SPT further recommends that detainees are able to know and understand what is in the statement before signing it, for example by being provided with the statement to read or by having it read to them. The SPT recommends that the authorities consider reviewing the legislation to guarantee the right to silence.**

77. The SPT considers that the possibility of criminal conviction based solely on confession opens the way for certain individuals to abuse the process by trying to extract confessions by ill-treating persons deprived their liberty. Such conduct is never acceptable and in some cases could amount to torture. In this respect, the SPT would like to highlight the prohibition to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify



against any other person, and the principle that no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.<sup>22</sup> The SPT considers an evidence-led, and not confession-led, criminal investigation to be one of the fundamental safeguards, as it would render having recourse to extracting confessions by means of ill-treatment meaningless, and thus reduce considerably the risk of ill-treatment of persons in police custody.

78. **The SPT recommends that the authorities review the legislation regarding confessions with a view to eliminating the possibility for convictions based solely on confession. The SPT also recommends that police training in investigative methods emphasise the need to proceed from the evidence to the suspect rather than the reverse.**

## 5. Notification of deprivation of liberty to family as a safeguard against ill-treatment

79. Police and gendarmerie officials informed the delegation that, as a matter of course, they informed the families of detainees of their arrest. Among detainees interviewed, many reported that their family knew where they were, because they had been picked up either at home or in the presence of a friend or acquaintance, who had contacted their family. Very few people interviewed reported that their families had been notified by the police or the gendarmerie about their detention. On the contrary, several people interviewed indicated that they had not been able to notify family, despite repeated requests.

80. In the absence of a budget for food for persons held in police and gendarmeries (see further below), detainees have to rely on family to feed them. Notification of custody is therefore important not only for due process rights, but also to meet their most basic needs. In this regard, the SPT observed that most places visited displayed visiting hours, which in practice seemed to be very flexible, so as to enable detainees to receive visits and therefore food.

81. The right to notify someone on the outside about the fact of one's deprivation of liberty is an important safeguard against ill-treatment; those who might otherwise resort to ill-treatment may be deterred by the knowledge that someone outside has been notified and may be vigilant about the detained person's well-being. The SPT notes that this right is all the more important in the current situation in which legal aid is not available at the initial stage of police custody.

82. **The SPT recommends that the right to notify family or other relevant person outside of the fact of one's deprivation of liberty be enshrined in law. The SPT further recommends that the right of notification of custody be included in the standard notice of rights of persons deprived of liberty and such persons be informed about the right and asked to indicate the person they wish to notify. Police and gendarmerie personnel should be trained to properly inform detainees of this right and to carry out the notification.**

## 6. Access to a lawyer as a safeguard against ill-treatment

83. The delegation was informed that there is no legislative provision for *access to a lawyer* during the preliminary investigation phase. Police and gendarmerie officials confirmed that people did not normally have a lawyer at the initial custody stage and that lawyers were not allowed to be present at the formal interview of the person held in initial

<sup>22</sup> As enshrined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 21.

custody. Detainees interviewed by the delegation in police stations and gendarmeries confirmed that they had not been informed of a right to see a lawyer, nor provided with any free legal assistance.

84. In this regard, the delegation observed that in the office of the Commissaire de police at *Dantokpa police station*, a notice on the wall listed the 136 lawyers registered in Benin and 10 trainee lawyers (*avocats stagiaires*). With regard to ensuring access to a lawyer from the start of the preliminary investigation, as foreseen in the draft code of criminal procedure which provides for the assistance of a lawyer, **the SPT would welcome 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.**

85. From a preventive point of view, access to a lawyer is an important safeguard against ill-treatment which is a broader concept than providing legal assistance solely for conducting one's defence. The presence of a lawyer during questioning may not only deter the police and gendarmerie from resorting to ill-treatment or other abuses, but it may also work as a protection for police and gendarmerie officers in case they face unfounded allegations of ill-treatment. In addition, the lawyer is the key person to assist the person deprived of liberty in exercising his or her rights, including access to complaints mechanisms. **The SPT emphasises that all persons deprived of their liberty should enjoy equal access to a lawyer and at as early a stage of the deprivation of liberty as possible, including at the first police or gendarmerie questioning. In light of the above, the SPT recommends that the authorities ensure that all persons enjoy equal access to defence counsel not only in law but also in practice. Necessary steps should be taken to extend the right to public defence counsel to the initial stage of the deprivation of liberty (*garde à vue*).**

86. The delegation learned that the NGO *Association des Femmes Juristes du Bénin* had run a project providing free legal aid to prisons for the past three years, but that the project had now ended. **In the absence of a sufficient number of certified lawyers, and a fully fledged legal aid system covering all stages of deprivation of liberty, the SPT recommends that the authorities, as an interim measure, grant detainees the right to have a trusted third party present during questioning in initial custody.**

87. **The SPT recommends that all persons deprived of their liberty by the police are systematically informed, as from the outset of such deprivation, about their right of access to a lawyer or other trusted third party, and are provided with the means necessary to consult in private with a lawyer or other trusted third party.**

88. **For the right to a lawyer to be realised in practice, detainees must have the means to have a lawyer. The SPT recommends that the authorities review the law on and system for providing legal assistance to suspects and defendants in the criminal justice process with a view to providing legal aid to persons held in initial police and gendarmerie custody.**

## **7. Access to a doctor as a safeguard against ill-treatment**

89. The SPT welcomes the fact that Article 18 of the Constitution of Benin establishes the right of all persons deprived of liberty to access to a doctor of his/her choice, and that article 52 of the Code of Criminal Procedure provides that the *Procureur* can, on his own motion or at the request of the detainee's family, order that the detainee be examined by a doctor during the *garde à vue*. However, this provision appears to exist in theory rather than practice, and detainees interviewed by the delegation were not aware of this right. The delegation observed detainees who were in need of medical treatment, for example because

the mob who had brought them to the gendarmerie had beaten them, but who had either not asked to see a doctor, or had not been provided with access to a doctor.

90. Moreover, a man held at *Dantokpa police station* said that he had not asked to see a doctor, despite having been beaten; he opined that, even if he had made the request, the officials would have done nothing. This view was shared by many of the detainees with whom the delegation spoke. After the doctors of the delegation had examined this man, the delegation recommended to the Commissaire that the man be taken to see a doctor in view of his exhaustion, pains, and signs of beating, and possible fracture of the left wrist. A follow-up visit by the delegation on the following morning confirmed that he had been taken to the police hospital at 07.30 under escort by the two officers involved in the alleged beating.

91. If a person deprived of liberty is ill-treated by the police or the gendarmerie, that person may quite understandably be afraid, while still in the hands of the police or the gendarmerie, to tell someone else about it. If the person does want to complain about the ill-treatment, a doctor could be a likely choice, since consultations with doctors should be private and, if injuries have been inflicted, the doctor is best placed to examine and record these. From the preventive perspective, if persons deprived of liberty are routinely examined by a doctor in private while in custody, this may have a deterrent effect on any officer who might resort to ill-treatment. For a person deprived of liberty by the police or the gendarmerie, access to a doctor without the presence of police staff is therefore an important safeguard against ill-treatment.

92. **The SPT recommends that the authorities introduce systematic medical examination of all detainees held by the police and the gendarmerie, upon arrival, and that the history of each detainee and any signs of ill-health or injuries be recorded. Further, the SPT recalls that the right to see a doctor upon request should be duly respected. The SPT also recommends that medical examinations be conducted in accordance with the principle of medical confidentiality; non-medical persons, other than the patient, should not be present. The results, and any notes, of the medical examination are also to be kept confidential by the examining doctor, and are not to be disclosed to those holding the patient in *garde à vue*. In circumstances where the doctor recommends transfer to a clinic or hospital for treatment, only the minimum necessary information regarding the reason for transfer need be disclosed to the authorities.**

93. Proper recording of injuries, in addition to proper medical examination of persons deprived of their liberty, is an important safeguard, contributing to the prevention of ill-treatment as well as to combating impunity. The examination of all persons detained and thorough recording of injuries may well deter those who might otherwise resort to ill-treatment. **The SPT recommends that the doctor carrying out systematic screening of people deprived of liberty by the police and the gendarmerie record all essential information relevant to the medical examination, including (a) medical history, (b) an account by the person examined of any violence, (c) the result of the physical examination, including a description of any injuries and an indication as to whether the whole body was examined, and (d) the doctor's conclusion as to consistency between the three first items.**

94. Another issue which arose from interviews with the detainees and the staff at police and gendarmeries was the means available to take the detainee to a hospital. Most police stations and gendarmeries reportedly did not have access to a vehicle to take the detainees to the nearest hospital. In addition, while hospital treatment might be free, any prescriptions for medication necessitated payment by the detainee. In such cases, if the detainee could not pay the medication, access to a doctor and to medical care was problematic in practice. **The SPT recommends that resources be provided for the transportation of detainees,**

**including transportation to hospitals, and that resources be allocated for medication and treatment of detainees.**

#### 8. Complaints process

95. The delegation spoke with a number of persons deprived of liberty, about the possibility to complain about ill-treatment in custody. Many considered it pointless to seek to complain about physical ill-treatment or ill-treatment in the form of extremely poor conditions.

96. One of the basic safeguards against ill-treatment is the right of a detained person or his representative to make a request or complaint regarding his treatment, in particular in the event of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with powers of review or redress.<sup>23</sup>

97. The SPT has already discussed the various mechanisms in place for receiving complaints (see Section II.B above). **In this respect the SPT emphasises that complaints against the police and the gendarmerie should be investigated and pursued by bodies independent of the police or gendarmerie. The mere existence of complaints mechanisms is not enough; they must be, and must be seen to be, independent and impartial, and should offer guarantees of effectiveness, promptness and expeditiousness.**

98. Production of precise data concerning complaints of ill-treatment by the police or the gendarmerie and of what happens to such complaints is part of the duty of public accountability. However, the authorities who met with the delegation indicated that the only way to find out about such cases was to contact the Constitutional Court, as no body systematically gathered statistics on prosecutions of cases of alleged police or gendarmerie brutality. It was therefore not possible for any of the authorities to indicate or monitor the degree to which complaints about ill-treatment were pursued and resulted in findings of wrongdoing and in sanctions. **The SPT recommends that statistics be compiled and maintained on an on-going 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. The SPT requests that it be kept informed about any development in this regard.**

#### 9. Monitoring bodies as a safeguard against ill-treatment

99. The delegation observed that there was usually no systematic record in law enforcement facilities visited of any monitoring visits and when asked to indicate the date of the last visit by a prosecutor, staff were often at a loss to remember or recall an occasion long since past.

100. Staff at the *Gendarmerie of Godomey* reported that prosecutors came to check two or three times a year on how initial custody is handled, and gave oral or written feedback to the places visited. They also referred to monthly inspection by the military hierarchy and indicated that the President of a local NGO, the *Ligue des Droits de l'Homme*, had visited.

101. At *Dodji police station*, Porto Novo, staff initially indicated that prosecutors did monitor their work. However, it transpired that in the two years of service of the senior

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<sup>23</sup> See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 33.

officer, there had only been one such visit. Staff there reported that there were no internal monitoring visits and that no NGOs visited.

102. At the *Central police station in Cotonou* staff reported that the last monitoring visit had been 10 months ago and was a joint inspection by the Ministries of Interior and Justice. The check included registers, duration of initial custody, conditions and hygiene. The station had not received a report on the inspection, but recommendations had been made on the spot. The last visit to the *Central police station in Porto-Novo* was in November 2007 by a delegation of the police. At the *Gendarmerie in Séhoué*, the *registre de garde* indicated that the gendarmerie had been visited by the military hierarchy on 8 May 2008, with the comment that there was nothing to report. However, as indicated in section C. 11 (a) para 117 below, the material conditions in the gendarmerie in themselves would have necessitated comments and recommendations.

103. The delegation was informed by representatives of the Ministry of Defence that, in theory, judges and members of the Constitutional Court can conduct unannounced visits to gendarmeries. It would appear however that internal and external systems for regular unannounced checks by the police/gendarmes hierarchy and prosecutor's office, respectively, are not in place. The state of the records in law enforcement facilities would, in the event of such monitoring visits, provide no firm basis on which to assess the legality of custody or observance of legal time limits; the conditions of custody would however be clear to any inspector going into cells and talking with persons held. **The SPT recommends that the law enforcement services introduce an internal system of regular monitoring of initial custody covering both legal aspects and material conditions of detention. This should operate in parallel with the monitoring to be carried by the NPM, once it is established.**

104. **With the advent of the NPM, the SPT expects the development of a proactive and regular programme of independent visits to police and gendarme facilities to ensure that the safeguards against ill-treatment are functioning well in practice; such regular visits, including unannounced visits, to police and gendarmeries should include interviews in private with detainees as well as discussions with staff.**

## 10. Adolescent children deprived of their liberty

105. The delegation met few adolescent children in initial custody. Staff informed the delegation that children could be questioned and could make statements without the presence of a parent or other trusted adult. There were no special detention facilities for children at the law enforcement establishments visited. Staff confirmed that children were held with adults, although reportedly women were normally not placed in the holding cells, unless there was a particular security issue.

106. At *Cotonou Central Police Commissariat*, the delegation interviewed an adolescent detainee under 18 years of age from Niger who was unable to communicate properly with police staff. When the delegation met him he had been in one of the holding cells with adults since the previous day. It proved impossible to check from the register how long he had been held. He was listed as being 12 years old. The adolescent detainee's mobile telephone had been confiscated and he had been unable to contact his family. He could not remember his brother's telephone number for notification and only after the delegation's intercession was he allowed to have his mobile, to find his brother's number. Finally, under police supervision, he was allowed to call his brother, who arranged to come to the central police station. The delegation was informed that the adolescent detainee was subsequently released into the custody of his brother the next day.

107. At the *Gendarmerie in Séhoué*, the delegation spoke to an adolescent detainee who had been brought to the police station the previous evening; he reported not having received

any water or food since he had been placed in the cell, and having been handcuffed behind his back the whole night until earlier that morning. The SPT views this restraining of an adolescent detainee with handcuffs overnight, while locked in the cell as inhuman and degrading treatment and punishment. No person should be handcuffed in custody without a valid grave security reason. Any such handcuffing or use of other restraints should be fully recorded in the relevant register and include the security reason and length of the use of the restraint.

108. The adolescent detainee also said that he had been threatened by one of the gendarmes and that he had been told that, although he would be released later that day, he would be beaten first to teach him a lesson. Children in the criminal justice system are especially vulnerable. Every attempt should be made to avoid deprivation of liberty of children and to ensure that initial custody is used as a last resort. The safeguards applying to all persons deprived of liberty should apply a fortiori to children.

109. **The SPT recommends that the authorities take steps to ensure:**

- **That children are not held in initial custody except as a genuinely last resort**
- **That children are held separately from adults**
- **That their rights are fully and clearly explained to children in a way that is readily understandable**
- **That a relative or trusted person is immediately informed of the custody of the child concerned**
- **That no child is subjected to questioning without the presence of a trusted adult**
- **That no child is subjected to restraint while in a custody cell**

## **11. Material conditions in gendarmeries and police facilities**

110. The delegation observed that material conditions varied from acceptable to appalling, as a result of lack of access to sanitation, complete darkness in some cells, very rare access to showers, absence of any kind of bedding, and the lack of provision of food to detainees.

### *(a) Cells*

111. The *Compagnie de Gendarmerie de Cotonou, Brigade de Territoriale de Godomey* had two holding cells. The delegation was informed that the normal capacity was 10 persons but, depending upon the fluctuation of persons held, each cell might hold up to 20. The first tiled cell was 15 sq.m. (3m x 5m x 3m) and was dirty and very dark, as the only artificial light was broken and a barred opening (approximately 40 cm x 80 cm, 2.5m from the floor of the cell) let in no light and very little air. The cell was humid and smelled of urine. A bucket was placed in the corner for sanitary purposes, and there was no water in the cell. The second tiled cell was slightly larger (around 20 sq.m.) and let in more natural light from vents in the far wall. The cell was also dirty, its dominant smell was of urine, and again there was no furniture at all, except a bucket for sanitation. People were obliged to sleep on the floor in these two cells. Women detained at the gendarmerie were kept in a room off an office. This room was not locked, let in natural light and air, and contained various pieces of office furniture, but no bed or mats for the detainees. There were no toilet facilities in this room.

112. *Dantokpa police station, Cotonou (Commissariat de police de Dantokpa)*, had two large cells (measuring 3m x 3.5m with a height of 3.6m) situated on either side of the open reception area. One was fronted by floor to ceiling bars, with an inset door, placing the person deprived of liberty in that cell in full view of any member of the public entering the

station. The other cell was without any window, save a small metal shutter in the solid door. When the shutter was closed, there was no light at all in the cell; the temperature in the cell was 30 degrees centigrade at 21.30 hours. There was no furniture at all in either cell, except for a bucket for sanitation. People held there were obliged to sleep on the floor. The persons interviewed by the delegation complained of the mosquitoes and the fact that the cells were dirty.

113. The *Dodji police station in Porto Novo (Commissariat de police de Dodji)* offered the most acceptable conditions seen by the delegation. There were two cells, one measuring 1.9m x 3.4m with a height of 2.8m, and one measuring 2.9m x 3.6m with a height of 2.8m. Both cells had access to natural light and ventilation. There was no artificial light at night. The solid cell doors had a small metal window with a flap. The cells were clean; there was a toilet next to the cells to which detainees had free access during the day. At night, detainees were locked in the cells and had to call for a police officer if they wished to use the toilet. At 12.40 the temperature was 32 degrees centigrade in one of the cells with a humidity factor of 74. There was no furniture in the cells and people held there were obliged to sleep on the floor.

114. At the *Central police station in Porto Novo (Commissariat Central de Porto Novo)*, there were two cells, one for men and one for women. The delegation observed a woman in police custody with her 8 month old naked baby. The cell was large, with three solid walls and a fourth consisting of floor to ceiling bars, with a door inset. The cell smelt overpoweringly of urine and faeces. The woman explained that there was no bucket for sanitation in the cell, as the police indicated that they would allow the woman out to use the toilet; however, she had called in vain at night and the baby had defecated in the corner of the cell. The woman had no means of cleaning the cell. Flies buzzed in the cell and the baby had several mosquito bites. In the morning the staff had come and taken her to the toilet near the cell. The delegation also observed a second cell (5m x 4.4m with a height of 2.7m) in which five men were detained. This cell had access to running water as well as a separate area with a toilet and a shower. The cell was dark and smelt foul.

115. At the *Gendarmerie of Zogbodomey*, there was one small bar-fronted holding cell (2m x 2.4m, with a height of 2.6m) giving on to the main office/reception room. It had no furniture and was holding two persons who slept there overnight. The duty officer reported that, depending on staffing, the detainees could sit on the bench in the office during the day until called to work and could be let out of the cell to go to the toilet. Otherwise they had to use a bucket in the cell. It is worth noting that there was no toilet for detainees or staff at the gendarmerie. There was also no provision of running water. The women's cell was not currently being used as a cell but as a storage room. Women were reportedly not kept in cells but allowed to sit outside the building during the day, and sleep in the locked offices at night.

116. At the *Brigade Territoriale de Bohicon*, the detention section of the Brigade de Recherches was made up of four single cells and two large communal cells. There was also a bathroom area, although there was no flushing toilet as the establishment had been without running water for several months. The single cells each measured 3.8m x 0.8m x 3m high and had a solid metal door with a grille window. There was no furniture or bedding in the cells, and the tiled floor was covered in a thick layer of dust. Apparently none of the artificial lights worked. There was a small bucket in the cells used as a toilet. The two communal cells each measured 3.8m x 3.8m and 3.7m high. One wall was entirely made up of a large metal grille so that the whole cell was entirely visible from the corridor. A narrow window gave some natural light. The supply of electricity was reported to be "variable", and detainees complained that there was no electricity in the cells. The tiled floor of the communal cells was also covered in thick dust. The two bathrooms were in an appalling state with no running water, and both dust and refuse strewn on the floor and in

the toilets. According to the gendarmes, detainees had access to these bathrooms, which also had showers, but according to the detainees they used old water bottles to urinate and empty those down the toilets.

117. At *Cotonou Central Police Station (Commissariat Central de Cotonou)*, the men's cell was large (9.6m x 9.83m), foul smelling and poorly lit with a single neon strip light. At 20:00, the temperature in the cell was 30.5 degrees centigrade, with a humidity factor of 70, giving a heat index of 37 degrees centigrade.<sup>24</sup> A single toilet and shower were located behind a low wall at the back of the cell. The women's cell was smaller (5.5m x 9.83m), dark and smelled of urine. It had a working shower, from which the detainee was able to obtain water, and windows near the door to the cell. The only available toilet had been blocked by refuse for some time, and piles of refuse including old fish bones covered parts of the cell floor. The temperature was 29.7 degrees centigrade, with a humidity factor of 53. Detainees complained about the mosquitoes, the lack of hygiene, and the heat in the cells due to the exposed tin roof.

118. At the *Brigade de Gendarmerie in Séhoué*, the single cell was dark, oppressively humid and smelled strongly of urine. The walls of the cell were black with humidity, dirt and mould, the floor was filthy and there was no furniture or bedding. The cell measured 4.15m x 1.94 m and was 2.7m high, with a single narrow window with a grille giving on to the adjacent street. The original large window had been bricked up, which meant very little natural light entered the cell. There was no electricity in the cell. A small well in front of the building was used for water. The detainees had no access to the water and, since there was no running water, the toilet could not be used.

119. At the *Commissariat d'arrondissement of Ouando*, both cells were dirty (one measuring 3.2m x 2.2m and the other 3m x 1.75). There was a toilet and shower next to the cells, and whereas the shower was relatively clean, the toilet was very dirty. The detainees' only way to access water was to request to be let out of the cells in order to use the water tap in the toilet.

(b) *Food*

120. The delegation met with representatives of the Ministry of Defence and the Ministry of the Interior, who explained that there was currently no budgetary provision for food to be distributed to those held in *garde à vue*. They acknowledged, as confirmed by police officers and gendarmes, that persons deprived of their liberty relied on their families and friends to receive food.

121. It was reported that, if there were no family or friends, police officers and gendarmes would provide food to the *gardés à vue*. In practice, however, the delegation heard that detainees often did not receive any food for the entire duration of their stay in police stations and gendarmeries. For example, the detainee at the *police station in Dodji* said that he had last eaten on the morning of the day before and explained that detainees could not have food unless they ordered it and paid for it, or unless their family brought in food. The police had offered to notify his family, but he had no immediate family and the only number of a friend he had on him did not work. He said that he had no money for food.

122. The woman in police custody at the *Central police station in Porto Novo* indicated that she had eaten some rice early in the morning of the day prior to custody, and the baby who was in the cell with her had had some porridge at the same time. The baby was breast-

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<sup>24</sup> The heat index is a measure of the sensation of temperature experienced by the human body when temperature and humidity are combined.



feeding. In police custody she could not buy porridge, so she gave the baby water. She had no money and was hoping to obtain money for food from her family. As the delegation was leaving, the woman's brother arrived to assist her.

123. The male adolescent detainee at the *Gendarmerie in Séhoué* said he had not been provided with any food or water since he arrived at the Gendarmerie the previous evening.

124. Many detainees also spoke about the problem of corruption in relation to obtaining food while in initial custody. It is not difficult to see the scope for abuse: the delegation observed people bringing money to the police station, for example in Dantokpa police station, and no recording of this process.

125. By letter of 7 November 2008, the authorities informed the SPT that, "in addition to the existing solidarity displayed in places where people are detained, and whereby food brought in by family members is shared among the detainees, it is envisaged that such places be provided with petty cash boxes, within available resources, to bridge this gap." **The SPT requests to be provided with more information on the authorities' proposal to provide petty cash boxes in places where persons are deprived of their liberty. In this regard, the SPT recommends that a specific budget for food provision for people in initial custody be established and carefully administered to ensure that the food reaches the persons concerned. If families are able to bring food in for their relatives in custody this process also must be scrupulously supervised to prevent abuse, and be duly and promptly recorded in a register.**

(c) *Water and sanitation*

126. As regards the provision of water, both for drinking and for sanitation, the delegation observed that no cells had water taps, and that access to water was therefore sporadic if available at all, and dependent on the law enforcement officers. The showers in the two cells at Cotonou Central Police Station provided water for the detainees, but they had to have bottles in which to collect the water. At *Dantokpa police station*, one detained person said that there was water already in the cell when he arrived. At the *police station in Dodji*, Porto Novo, the one person in *garde à vue* said that he had not asked for water, as he was afraid to ask. By letter of 7 November 2008, the authorities informed the SPT that police stations are provided with drinking water for use by detainees. They also reported that other measures are being taken to ensure that detainees have better access to water without having to leave their cells. **The SPT recommends that detainees be systematically provided with at least two litres of drinking water per day free of charge, and without this being dependent on an actual request from the detainee. Regular access to toilets and bathrooms must be provided to those deprived of their liberty. The detention sections and cells should be swept and mopped regularly by staff. The toilets must be unblocked and thoroughly cleaned.**

127. **In addition, and specifically relating to the Gendarmerie of Bohicon, it is imperative that steps are immediately taken to restore the water supply, both for the staff working at the gendarmerie and for those held in *garde à vue*. In the absence of a piped water supply, a raised water tank with a minimum capacity of 500 litres should be installed and regularly filled by a water tanker.**

128. None of the establishments visited granted any access to outdoor exercise for the detainees. The only occasion when some detainees could leave the cell was in those few establishments where they could go to the toilet or to use the shower. Otherwise, detainees would remain in the cell for the entire period of the *garde à vue*. **The SPT recommends that persons kept in police custody for more than 24 hours should, as far as possible, be offered outdoor exercise every day.**

129. The SPT recognises that generally initial custody lasts for 96 hours or less in Benin. However short the period of initial custody, the SPT considers that minimum conditions of health and hygiene must be met for all persons held. **The SPT recommends that any person held in initial custody by law enforcement officials must be provided with a clean place to stay, including at a minimum a mat to sleep on, with access to sanitation, and with food and drinking water to meet the basic necessities of life. The cell should have access to natural and artificial light and ventilation.**

## 12. Health care in police and gendarmerie custody

130. There was no health-care staff at the police stations or gendarmeries visited. At the *Central police station in Cotonou*, staff reported that, although visiting the emergency department at the hospital was free of charge, medication was not and that therefore there was a need for a budget for medicines. In theory, upon request to see a doctor, the officer in charge informed the director of the establishment of the request, who in turn informed the Procureur, who was responsible for authorising any transfer of detainees to medical facilities. In practice, although some detainees met by the delegation had requested medical treatment, all requests had been refused by the officers in charge. In addition, although officials explained that in urgent cases, the Procureur could be contacted over the weekend, they also highlighted that, there was a serious lack of cooperation between the Ministry of Justice and the Ministry of Health.

131. Lack of provision of adequate healthcare can in itself constitute ill-treatment. By way of illustration, the delegation recommended to the Police Chief of *Cotonou Central Police Station* that two medical cases be transferred to hospital for assessment. By the end of the following day, the delegation returned to the Police Station and neither had been sent to hospital. At *Dantokpa police station*, staff reported that, if someone in custody were ill, s/he could be taken to the nearby clinic or to a hospital 5 km away. After a medical examination of one of the detainees, the delegation recommended to the officer that the detainee be transferred to a hospital or clinic. This was refused, on the ground that there were not enough staff to effect the transfer, and that the detainee's wife would bring medicines. After a repeated request by the delegation, the detainee was taken to the hospital the following day. The SPT recalls that article 18 of the Constitution guarantees access to a doctor, and **recommends that all detainees requesting medical treatment, or in obvious need of urgent medical attention, be transferred to a hospital or clinic without delay, in particular when there are no staff members present in police and gendarmerie facilities with the medical qualifications necessary to assess the health needs of persons deprived of liberty. An agreement between the Ministry of the Interior (for the police) and the Ministry of Defence (for the gendarmerie), and the Ministry of Health should be negotiated to provide free emergency care and medicines to detainees, as well as a health check on arrival. Failing this, a budget for medical care for detainees should be established within the relevant ministries.**

## 13. Use of restraints

132. A woman detainee and a male adolescent detainee spoke of being restrained in shackles and in handcuffs while in their cells, including overnight. **The SPT considers that the use of restraints on persons deprived of their liberty should be exercised with great caution, and systematically recorded, indicating the officer who took the decision to use the restraints, the specific security reason which led to that decision, and how long the person was restrained. Persons deprived of their liberty by law enforcement officials should not be subject to restraint while in the custody cells.**

#### 14. Allegations of ill-treatment and corroborative findings

133. In general, the delegation heard few allegations of physical ill-treatment by police or gendarmes of people deprived of their liberty. However, the following two situations were noted in the preliminary observations presented to the Benin authorities on 26 May 2008: the treatment of persons deprived of their liberty at the police station of Dantokpa (Cotonou) and at the Brigade territoriale de la gendarmerie de Bohicon.

134. There were two separate cases of people having been physically ill-treated at the police station of Dantokpa (Cotonou). By way of example, the first allegation of ill-treatment was recorded by the delegation on 20 May 2008 at 21.00 hours, and again the next morning. The detainee told the delegation that he was brought to the police station after his apprehension during the night of Monday/Tuesday on suspicion of breaking and entering; and that he had refused to confess to any offence. He reported that he was beaten in the early hours of Tuesday morning in the police yard. There were four officers present; he was beaten by one police officer with a “whiplash” and one with a thin stick. He described in detail to the delegation the stick made of hard leather with strips of leather at one end, which he called a “whiplash”.

135. The man had visible injuries on the right wrist, left elbow and forearm on the under side and on the legs, some of which were still bleeding. The medical expert of the delegation examined the man, and opined that the remarkably shaped lesions on many parts of his body appeared to be one or two days old. The lesions were in complete agreement with the history of beatings with a thin long instrument like a stick or a “whiplash”.

136. The man’s description of the two instruments used for ill-treatment corresponded exactly to two items observed by the delegation on the premises of the police station. The delegation observed that one of the officers on duty was carrying a thin stick, which he described as his personal property. The delegation also found a “whiplash” on the floor under the reception desk located directly outside the cell. Initially, staff at the police station sought to explain the presence of the “whiplash” as a piece of criminal evidence seized for presentation in a criminal case; this unconvincing explanation failed to fit with the account, as given by the senior officer, of procedures for documenting, labelling and storing items taken in evidence by the police – procedures verified by the delegation as being applied to other items of evidence present at the police station.

137. **The SPT recommends that any item which is not part of the standard equipment issued to law enforcement officers should not be allowed on police premises without the express authorisation of the senior officer and without careful recording of the details, including reasons. The SPT further recommends that all items taken in evidence should, immediately upon receipt at law enforcement premises, be listed, labelled and stored in a secure manner.**

138. The delegation recommended to Commissaire Edouard Babatoundji Konfo that the “whiplash” should be stored securely. The following morning, when the whole delegation returned, it was observed once again in the reception area of the police station. Two members of the delegation witnessed a private security agent, who was standing in the reception area, place the “whiplash” in his large trouser pocket and remove it from the police station. When the delegation reported this to the Commissaire, he made no comment. He explained that the man was working for a private security company, which had in the past provided security to the nearby market.

139. The two police officers on duty on the occasion of the first and subsequent visits by the delegation refused to give their names to the delegation. This refusal was made and not countermanded in the presence of the Commissaire. These two officers were the subject of serious allegations of ill-treatment; while on duty, one was in possession of a weapon, identified by him as his personal property, which corresponded in striking degree to the

injuries observed by the delegation. The other was sitting at the desk where the “whiplash” was located.

140. From the preventive standpoint, it is important that no impunity is seen to exist, if law enforcement officers ill-treat persons in their custody. **With a view to decreasing impunity, the SPT recommends that all law enforcement officers be obliged to wear a means of clear identification, such as a name badge or other identification while on duty.**

141. The second allegation of ill-treatment related to two persons kept in *garde à vue* at the *Gendarmerie of Bohicon*. On 19 May 2008, around four low-ranking gendarmes reportedly entered the cell and began to beat a detainee with truncheons and a flat wooden bat (a “*parmatoire*”) around 50 cm long and 10 cm wide. A bat similar to that described was observed by the delegation just outside the cell at Bohicon Gendarmerie during the visit. The detainee also reported having been made to sit on the floor of the cell, while one gendarme held his legs out and another hit him on the soles of his feet with a truncheon. He was made to hold his palms out and upward, and was struck several times on the palms with the bat. He also told the delegation that he was made to stand facing the wall with his arms stretched above his head, and then was struck with the bat on the buttocks. A medical examination of the detainee showed injuries consistent with the extensive beating which he described. A second detainee reported having been beaten on the back and shoulders with a truncheon and was bruised over these areas. The delegation’s medical examination concluded that the bruising observed was entirely consistent with blunt trauma from a cylindrical object such as a truncheon.

142. In the preliminary observations presented to the authorities on 26 May 2008, the delegation requested that the authorities initiate an inquiry into the treatment of persons deprived of liberty at Dantokpa police station and at the Gendarmerie of Bohicon. The SPT subsequently wrote to the authorities requesting that they provide information about the actions taken to implement this request and the outcomes of the inquiries.

143. In a letter dated 7 November 2008, the authorities responded by providing preliminary information as follows: “the competent services were immediately requested to investigate the treatment of persons deprived of their liberty, not only in the places mentioned, but in many other places throughout the country. These investigations have shown that the exiguity of the premises, the lack of financial resources in stations and the low number of staff in certain places counteract the efforts made by that authorities of Benin to treat persons deprived of their liberty in a more humane manner. However, certain measures have already been taken in order to set up a commission which will review these various challenges, and propose urgent adequate solutions to address them.” **The SPT requests clarification as to which services conducted the investigations, and confirmation that they were independent from the police and gendarmerie stations which were investigated. The response of the authorities refers to material constraints such as lack of budget and personnel cancelling out its efforts. The SPT reaffirms that lack of resources can never be a reason for ill-treatment. As far as material conditions are concerned, the SPT notes as a positive development the establishment of a commission, and wishes to remain informed about the outcomes of its work. Finally, it reiterates its concerns, and recommends an independent inquiry into the treatment of persons in custody by staff at the police station in Dantokpa and the Commissariat in Bohicon.**

144. These examples concerning allegations of torture and other corroborative findings by the delegation indicate that there is no room for complacency about the risk of torture or other ill-treatment by the police and the gendarmerie. There is a need for greater vigilance over the initial stages of police and gendarmerie apprehension and investigation. From a preventive perspective, it is important to acknowledge the risk of torture and other forms of

ill-treatment happening during apprehension and to ensure that such abuse is prevented by the knowledge that it will be dealt with severely. The SPT considers the establishment of an independent police and gendarmerie complaints body as a key opportunity to reinforce the message to law enforcement officers that ill-treatment will not meet with impunity.

145. **The SPT recommends that the authorities remind all police and gendarmerie personnel at all levels that torture and other forms of ill-treatment of persons in their custody are prohibited. The SPT also recommends that training in investigation methods should emphasize the need to respect human rights, including the right to silence of a suspect or accused person, and the requirement to proceed from the evidence to the suspect. In the SPT's view, and in light of state obligations pursuant to articles 12 and 16 of the Convention against Torture, even in the absence of a formal complaint, such authorities are under a legal obligation to undertake an investigation whenever they receive credible information, from any source, that ill-treatment of persons deprived of their liberty may have occurred.**

## B. In prisons

### 1. Overpopulation and strategies for reduction

146. The delegation visited three of the nine prisons<sup>25</sup> in Benin. The visit to Akpro-Misséréte Civil Prison<sup>26</sup> was a focused visit, whereas the visits to Cotonou Civil Prison and Abomey Civil Prison<sup>27</sup> were full visits.

147. The SPT notes that the rate of persons held in prisons in Benin is around 77 per 100,000 of the population of Benin (approx. 7,900,000), whereas the official number of places available in prisons is around 2,675. Official data confirm that, with the exception of the new prison, Akpro-Misséréte, which was still in the process of taking in prisoners, the prisons of Benin were massively over-populated, with consequent extreme overcrowding in certain quarters. From the standpoint of preventing ill-treatment, this raises serious concerns, since the strain on material conditions, regime and services increases with the rate of overcrowding; moreover, overcrowding exacerbates the tensions inherent in custodial settings, adversely affecting the relations among prisoners and between prisoners and staff.

148. At the time of the visit to *Cotonou Prison*,<sup>28</sup> the director reported a total of 2,257 prisoners, of whom about 180 were sentenced, while most were *inculpés*. The great majority of prisoners were men, with a small group of male adolescent detainees; 118 were women; and among those there were 7 female adolescent detainees; 16 were death row prisoners; and there were also 10 babies or young children (from 10 months to 24 months old) who were living with their mothers in the prison and did not figure at all in the official statistics, nor in budgetary provisions. The prison was reportedly built for 400 prisoners, and later extended. The director of Cotonou Prison confirmed that there was no criterion for certifying the capacity of the prisons.

149. At *Abomey Prison*, the population at the time of the visit was reported as 1,105 prisoners. There were 1,035 male prisoners, 22 of them male adolescent detainees who

<sup>25</sup> Holding 6,140 prisoners in total, according to statistics provided by the liaison officer prior to the delegation's visit.

<sup>26</sup> Holding 187 male prisoners on 21 May 2008, all sentenced, according to the prison authorities, for an official maximum capacity of 1,000.

<sup>27</sup> Holding 1,105 detainees on 22 May 2008 according to the prison authorities, for a maximum total capacity originally of 200.

<sup>28</sup> Holding 2,175 prisoners on 19 May 2008 according to the prison authorities.

were held in a separate unit; all female prisoners were housed in two parts of a separate unit for women, with four female adolescent detainees among them, in addition to 10 babies and young children aged from 30 days old to 4 years old. The prison was reportedly built in 1,950 for 200 prisoners, with ten buildings designed to house 20 prisoners each. This level of occupancy was, according to the current director, never respected. The inner compound of the Prison was as a result very cramped and detainees had little space available to exercise outside the buildings where they slept.

150. The SPT notes that the authorities intend to transfer all sentenced prisoners to the new prison opened in November 2007 in Akpro-Misséréte, so that the remaining eight prisons are used for remand prisoners only. The delegation also heard of plans to build more new prisons along the Akpro-Misséréte Prison model. In this regard, the director of Abomey Prison referred to a site having already been identified to house a new prison for 1,000 detainees. **However, prison building alone will not constitute, and should not be seen as, the sole solution to the current overcrowding.**

151. Representatives of the Ministry of Justice informed the delegation that a number of steps have been taken to address the overcrowding, including discussions on alternative measures to detention, particularly for adolescent detainees; use of the annual presidential pardon; introduction of social rehabilitation activities to reduce the number of repeat offenders; and the drafting of a bill on community work as an alternative to detention. The SPT encourages Benin's for its efforts in this regard, and notes that article 118 of the Code of Criminal Procedure provides that preventive detention **should be** an exceptional measure.

152. The SPT notes that no information was provided on the availability of bail as an alternative to remand. Although bail might be granted by the court, there could still be financial obstacles to achieving bail in practice. A number of detainees in prisons complained about the very high amounts imposed by the judge for bail. This may be a factor contributing to the population remanded in custody. **The SPT requests 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. The SPT invites the authorities to ensure observance of the principle that release on bail should be the rule, and remand custody the exception and to consider the introduction of legal time limits for proceeding to trial.**

153. **The SPT recommends that a concerted strategy be adopted by the authorities to reduce the prison population through a combination of measures, including:**

(a) **Conducting a thorough review of bottlenecks in criminal procedures before the various instances, in order to identify gaps in resources and structural reasons for delays;**

(b) **Increasing communication and cooperation between the courts and the prisons to minimize delays in transmitting judgments and orders, and in particular release orders, to ensure that persons are released as soon as the courts so orders;**

(c) **Use of non-custodial measures for children, in accordance with Order No. 69-23 of 10 July 1989 relating to judgments of crimes committed by minors;**

(d) **Diversion from custody of persons charged with petty offences through the use of other measures (such as caution) or a fine proportionate to the financial means of the individual person;**

(e) **Reduction in the number of people remanded in custody through the use of conditional release (*liberté provisoire*) in accordance with article 120 of the Code of**

**Criminal Procedure (with or without bail), and article 358 of the Code of Criminal Procedure;**

**(f) Respecting legal times for dealing with cases provided for in the Code of Criminal Procedure;**

**(g) Release of all remand prisoners who have already been in custody for longer than the maximum prison sentence imposable for the offence of which they stand accused;**

**(h) Reduction of the sentenced population through the imposition of community penalties, reparation and restitution;**

**(i) Increase in the use of the *régime de semi-liberté* in accordance with article 574 of the Code of Criminal Procedure;**

**(j) Increase in the use of release on license/parole (*liberté conditionelle*) in accordance with article 580 of the Code of Criminal Procedure (conditional release of sentenced prisoners meeting risk assessment criteria); and**

**(k) Commutation of all death sentences so that there is a possibility of review and eventual release.**

*(a) Remand prisoners*

154. According to article 570 of the Code of Criminal Procedure, remand prisoners in Benin can be detained in prisons where sentenced prisoners are serving their sentence. However, they should be detained separately from sentenced prisoners and, if possible, detained in individual cells. The separation between *prévenus/inculpés* and sentenced prisoners is also provided for in article 15 of Decree No. 73-293. As will be detailed below, there was no such separation in the two prisons to which the delegation paid full visits.

155. Statistics provided by the authorities indicated that 81% of all prisoners were in custodial remand. According to the statistics provided by the prison authorities to the delegation at the time of the visit, in Cotonou Prison, only 8.75% of the total prison population had been convicted. In Abomey Prison, over 80% of the adult prisoners had not yet been convicted. The delegation noted that no detailed statistics were kept for the adolescent detainees, so that it is impossible for the authorities to know how many of them were sentenced or on remand.

156. The delegation met prisoners who said that they had been on remand for years. At Abomey Prison, examination of the records indicated that a large number of remand prisoners had been in prison for years. According to the registers examined, a detainee present at the time of the visit had been held on remand in prison since 22 October 1993. The delegation selected at random two remand prisoners who had been in the prison for over 3 years. One reported and was recorded as having been in prison for 4 years and 1 month, the other reported that he had been in Abomey Prison for seven years; he said that he had not been to a hearing in four years. The delegation asked the staff in charge of documentation at the prison to identify the prisoner's case in the files, but they were unable to find any trace of him.

157. Some remand prisoners at Abomey Prison reported that, instead of being taken to appear in court for a prolongation, they were asked to sign a document requesting release; this was taken to the court and returned with the indication 'refusé'. To the SPT's knowledge, there is no provision in law for extensions of remand in custody to be handled as a paper exercise. **The SPT requests the authorities to confirm that the procedure as described is not in conformity with the law.** Appearance in court for a decision as to

continued deprivation of liberty is an important safeguard against ill-treatment. **The SPT recommends that in all such instances the prisoner be brought before the court.**

158. Long periods of pre-trial custody contribute to overcrowding in prisons, exacerbating the existing problems as regards conditions and relations between the detainees and staff; they also add to the burden on the courts. From the standpoint of preventing ill-treatment, this raises serious concerns for a system already showing signs of stress.

159. The delegation received reports that many prisoners on remand had been held for periods far exceeding the maximum penalty of imprisonment to which they could be sentenced if convicted of the offence with which they stood accused. This state of affairs is not in conformity with the rule of law. It is clearly arguable that remand prisoners, who are to be presumed innocent, should not be in a worse situation than prisoners sentenced for offences of which the remand prisoners stand accused: sentenced prisoners are eligible to be considered for discretionary release through a judicial process. There can be no justification for holding remand prisoners beyond the period equivalent to the maximum sentence imposable for the offence of which they stand accused. The SPT was informed of a past innovative pilot programme<sup>29</sup> to identify all remand prisoners in this situation, with a view to arranging for their immediate release.

160. **The SPT recommends that a permanent system be set up for the regular review of the time served on remand by prisoners in Benin with a view to releasing from custody all who have served time in excess of the maximum term imposable for the offence with which they are charged.**

161. In this regard, the lack of clear and comprehensive registers makes it difficult to ascertain with any certainty the length of time any detainee has spent on remand. Losing track of prisoners or lack of information about their penal status appeared to be a frequent cause for overstaying on remand.

(b) *Registers*

162. A major challenge facing the prison authorities is the keeping of accurate and proper registers, as indicated above. Article 575 of the Code of Criminal Procedure provides that each prison should keep a *registre d'écrou*, which should record arrest warrants, judgments and release dates for each detainee. Further, Decree No. 73-293 provides for a long list of registers which should be kept by prison registrars,<sup>30</sup> whereas the situation is in reality very different.

163. At Cotonou prison, in addition to some of the above paper registers, the delegation was shown a computer system which recorded all major events for each detainee, and was thorough, except for the time of arrival and departure from the prison. The computer system allowed the delegation to search by name and the delegation was able to cross check the information in paper registers. The SPT welcomes the computerised database which exists at Cotonou Prison, and which enables the registrar (*greffe*) to see how long each detainee has been at the Prison (see further below). However, Cotonou is the only prison which has such a system, albeit in basic Excel format. **The SPT recommends that all prisons in**

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<sup>29</sup> Penal Reform International project: ([http://www.justiceinitiative.org/db/resource2?res\\_id=102011](http://www.justiceinitiative.org/db/resource2?res_id=102011)).

<sup>30</sup> For example, *registres d'écrou* for *prévenus* and sentenced prisoners; register of committal orders (*registre des mandats de dépôt*); register of items brought in by detainees (*registre de prise en charge des effets*); register of medical visits (*registre des visites médicales*); register of disciplinary sanctions (*registre des punitions disciplinaires*); *registre des contraignables*; register of solitary confinement (*registre des mises au secret*); and a register of visits (*registre des visites*).



**Benin be provided with at least one computer, that a standard national database be set up which will enable the authorities to track each detainee, and that this software be also rolled out to the courts, as well as centrally at ministerial level. All users should receive appropriate training. Computerised data systems have the capacity to signal whenever a legal time limit has been reached; this is a potentially important tool in preventing lengthy pre-trial detention.**

164. At Abomey prison, the records were still kept exclusively in paper format, and the delegation came across numerous gaps and inconsistencies. Some registers relating to certain time periods were missing completely, while others were not updated. The delegation examined registers for 2004 and 2005, and noted that, whereas some detainees accused of small thefts were still awaiting trial from that period, others, who had committed graver crimes more recently, had already been sentenced and released.

165. An issue highlighted by the registrars at both Cotonou and Abomey Prisons was that information, including release orders, was often not forwarded by the *Palais de Justice*: for example, a case might be transferred to a Cabinet, but if the information never reached the prison, the detainee's file was lost for all intent and purposes. As detainees only had a copy of the committal order (*mandat de dépôt*), it was often hard to trace which stage of the procedure the case had reached. The lack of telephone at Abomey Prison made it even harder to receive information from the *Palais de Justice*. The delegation was informed that the registrar at Abomey Prison had recently been requested by the Ministry of Justice to forward a list of sentenced prisoners who would be eligible for release on licence (*liberté conditionnelle*). In light of the concerns highlighted above, it is almost impossible for that list to be exhaustive.

166. **As a basic guarantee both for prisoners and for staff in prisons, the SPT recommends that registers should follow a standard format (as appears to be the case in gendarmeries). The following basic information should be included, at a minimum, and updated daily: the precise date and time of arrival of each detainee in the prison; the legal reasons for their deprivation of liberty and the authority which ordered the detention; any medical visit which was ordered or requested; the date and time of any removal from detention (for example in the framework of a court hearing) and return to the place of detention; the date and time of the transfer to another place of detention or release, and the authority for this transfer or release; and information about the identity of the detainee, including the detainee's signature and that of the person responsible for any transfer or release. Prisons should record any incidents occurring in prison and action taken, including use of restraints or other restrictions; there should also be a register of all disciplinary proceedings and sanctions, including isolation or segregation. In addition, prisons should keep an inventory of the personal property of the prisoner that is to be held in safekeeping and ensure a receipt is provided to each detainee upon arrival.**

## 2. Managing prisons

167. The delegation observed that at the three prisons visited, there was a *system of free movement* during the day within the inner precincts of the prison for most prisoners, the majority of whom were only locked up at night in the very confined sleeping spaces within the accommodation buildings. During the day most prisoners were out in the courtyard going about the business of daily life. The latter is a positive feature of prison life.

168. The delegation noted that a *system of self-management* was in place inside the prison. Some measure of perimeter security was provided by gendarmes around the outside of the prison and in the inner area immediately within the outer walls, before entry into the inner core of the prison. Within the core of the premises, a prison existed within the prison.

In the inner prison, life was ruled by the prisoner hierarchy; it was observed that prison staff appeared hesitant about entering this area.

169. Self-management by prisoners can in principle be positive, bringing with it benefits in terms of fostering a sense of communal and individual responsibility and providing a focus for using time in prison to positive effect. However, in the absence of oversight by the prison authorities, self-management can easily degenerate into the law of the jungle, with the strongest (or richest) wielding power arbitrarily over the weakest. The delegation noted that the Ministry of Justice itself admitted that there is a tendency towards abuse of power among those detainees involved in self-management.

170. At Cotonou Prison, the director explained the system as follows: there was a chief for each building (*chef bâtiment*), with a controller checking the roll at lock-up time and a committee whose members were the 'elders' of the prisoner community, dealing with any problems in each building. Each building also had a *chef pot* (dealing with toilets) and *chef douche* (who handed out tickets for the shower). There was a kitty and each prisoner paid a fee into it, so that cases of poverty or prisoners with nobody on the outside could be provided for. The head of all detainees was the '*chef cour général*', who answered to the *gardien chef* and the director. The director described it as a good system in which prison management did not get involved. The director also explained that he appointed the detainees to these various roles, based on recommendations of other detainees. The appointed detainees wore distinctive green overalls, and undertook numerous different functions, including helping the registrar and the nurses, and being responsible for hygiene in the cells.

171. At Cotonou and Abomey Prisons, the delegation saw evidence that the system of self-management produced great inequalities and violations of human rights. The problem reached into virtually all areas of prison life affecting who had room to sleep, food and water; who was subjected to additional restrictions of liberty or punished; who worked for whom and who gained the most benefit at the expense of others. Many prisoners reported that they had to pay in order to receive visits from the outside and detainees alleged that those who could not pay the levy on new arrivals (see below) had to do chores (*corvées* such as cleaning the buildings and toilets) until they could raise the money. The delegation observed a degree of deference or resignation in the face of this inequality, although some prisoners did voice a strong sense of injustice.

172. However, the delegation was forced to the conclusion that prison staff at various levels were involved in the inequitable operation of the processes by which prison life was organised. For example, the delegation observed staff putting cash from visitors in their pockets with no attempt to document the provision of money. Many prisoners interviewed separately reported that the going rate for a place to sleep for new arrivals was 5,000 CFA (CFA 2,000 for a place in the women's quarters in Abomey Prison). In addition, detainees at Abomey prison said that they had to pay extra to sleep outside or to stay outside until the final lock up or to be allocated to a particular building. It appeared to the delegation that this was part of a wider system, in which the staff as well as the leading members of the prisoner hierarchy gained from the daily transactions of prison life.

173. The director of Cotonou Prison informed the delegation that, in order to stop racketeering, the prison authorities had placed two gift boxes in the inner courtyard used for visitors, to enable them, if they so wished, to make donations to the detainees who facilitated the visits. The gifts were then split among the detainee guards. Despite this endeavour, the delegation was informed by representatives of the Ministry of Justice that corruption remained widespread, and that it received complaints from family members who were forced to pay in order to have access to a detainee during visiting hours.

174. The situation at *Akpro-Misséréte Prison* appeared to be, for the moment, less problematic. The delegation heard that no money was exchanged for basic necessities such as a place to sleep or receiving visits. However, this may have been due to the current low occupancy rate. As more detainees are transferred from other prisons, and as the prison fills up, the same abuse of the system of self-management may be reproduced unless prison authorities take early and decisive action.

**175. The SPT recommends that the system of self-management be subject to careful oversight by the prison administration to prevent abuse and/or corruption. The authorities should take immediate steps to ensure that they effectively and fully assume control of the prisons. Under no circumstances should prisoners be in charge of determining and inflicting disciplinary punishments on fellow prisoners.**

### **3. Medical screening on entry as a safeguard against ill-treatment**

176. The screening of people arriving from police and gendarmerie custody in prison is of key importance for the prevention of ill-treatment by the police or gendarmerie. The entry point into prison is a critical time for detection of any injuries and assessing whether ill-treatment may have occurred. The delegation therefore paid attention to the practice as regards medical screening on entry and the procedures for reporting cases of possible police ill-treatment. In this regard it noted the Ministry of Justice's assertion that all detainees are examined by the prison health care provider on arrival, as provided for in article 62 of Decree No. 73-293.

177. At *Cotonou Prison*, the chief medical officer spoke about examining for injuries on arrival at the prison. The delegation examined the recording of the medical screening which, although very summary, included all basic required information. Interviews with detainees confirmed that they were brought before the health care professionals, although this might not be for several hours or even days after their arrival.

178. From the interviews with prisoners at *Abomey Prison*, the delegation concluded that access to a doctor was problematic in practice, although there was a nurse on duty at the infirmary. There was no medical screening on arrival at the prison, and many prisoners interviewed indicated that they had not had an opportunity to see a doctor on arrival. The same applied to detainees at *Akpro-Misséréte Prison*. **The SPT recommends that all detainees should receive a medical screening on entry to prison, which follows the basic system in place in Cotonou Prison.**

- **The SPT recommends that the authorities introduce systematic medical examination of all newly admitted prisoners and subsequently that the right to see a nurse or doctor (or member of the health staff) upon request is duly respected. The SPT also recommends that medical examinations be conducted, and medical records maintained, in accordance with the principle of medical confidentiality; non-medical persons, other than the patient, should not be present.**
- **The SPT recommends that medical screening upon admission to prison should include an examination thorough enough to reveal any injuries and to reveal any pre-existing medical conditions that may require new or on-going treatment. It also recommends that the standard medical report be amended to encourage the full recording of any injuries. The form for the medical examination should include (a) medical history, (b) an account by the person examined of any violence, (c) the result of the physical examination, including a description of any injuries and an indication as to whether the whole body was examined, and d) the doctor's conclusion as to consistency between the three first items.**

- **Further, the SPT recommends that a procedure be established, with due consideration for medical confidentiality and the consent of the individual, for all cases of violence/alleged ill-treatment documented by doctors or other members of the health staff to be reported directly to the Ministry for Justice and Human Rights.**

#### 4. Material conditions

##### (a) Accommodation

179. At the prisons of Cotonou and Abomey, the combination of over-population and the extreme age and dilapidation of the buildings produced extremely poor custodial conditions, as was recognised by the officials in charge of these establishments. Further, the theoretical separation of women from men was in practice not implemented, as women relied heavily on male detainees for access to certain services. Moreover, the delegation noted that, although male adolescent detainees were separated from adults, as provided by law, female adolescent detainees lived with adult women detainees.

180. The conditions were particularly bad in the accommodation units at night, when prisoners were locked in for twelve hours at a stretch (in time with the absence of daylight). The delegation saw with its own eyes on a night visit to Abomey Prison on 23 May 2008 that detainees were obliged to sleep in constant physical contact with at least two other prisoners. The overcrowding resulted in some detainees not being able to lie down to sleep, but having to stand or sit for the twelve hours of lock-up. The delegation measured the temperature in one of the dormitories housing around 100 prisoners as 36 degrees centigrade with a humidity factor of 72 at 23:30 hours. This equates to a heat index of between 51 and 54 degrees centigrade. Such temperatures produce extreme heat stress. The detainees had to use an uncovered plastic bucket as there were no toilet facilities in the locked cells at night. The air was hot, humid, and fetid with human sweat.

181. The delegation also observed that around 150 male prisoners slept outside of the locked buildings in the courtyard at Abomey Prison, a privilege which prisoners reportedly paid for.

182. In the male adolescent detainee unit at *Abomey Prison*, one adolescent detainee was sleeping under the canopy in the unit's yard, while the 21 others slept in the one room (measuring 3.48m x 4.74m with a ceiling height of 3.2m). There was no window in the room and when the door was shut, there was no ventilation; there was a ceiling fan to move the air about within the room. The adolescent detainees confirmed that they were locked up for the night at 18.00 hours. Some adolescent detainees slept on the six benches in the room but most slept on the floor. The only other furnishing in the room was a small television provided by UNICEF.

183. Even when material facilities are very poor, their effect on prisoners can be made less acute by the way in which they are used. For example, it was clearly viewed as a privilege to sleep in the yard of the adolescent detainee unit, despite the potential problem of mosquitoes. There was space in the yard for all adolescent detainees to sleep outside, but this option was not used.

184. The women's quarters at Abomey Prison appeared very cramped, and detainees were locked in at night in two buildings, one of 4m x 4m for 32 women, and the other of 7m x 4m for 33 women. All women slept on the floor on mats, each shared by 3 or 4 other women. The quarters also included a covered patio area which the women used to cook and store food. In light of the stifling heat and the cramped conditions in the buildings, the prison administration should consider allowing more prisoners to sleep outside the buildings, as some men and male adolescent detainees did in their quarters.

185. In *Cotonou prison*, the women's quarters were separated from the men in that one had to go through a closed metal door to enter the women's quarters. The door was guarded by a male detainee guard in a green uniform. In practice, the delegation observed that on a number of occasions the male detainee guard and other men (including the chef de brigade) entered the women's quarters with no warning. There were four buildings in which detainees slept, but approximately 60 women, including babies and young children and all the female adolescent detainees, slept outside for lack of space. Detainees reported that there were no available places to buy in any of the four buildings due to the overpopulation. The conditions outside were extremely harsh and unhygienic, particularly for those women with young babies or for pregnant women.

186. The situation in the women's quarters in the prisons visited was further complicated by the fact that female adolescent detainees were accommodated with adult women, as were babies and children up to age four living with their mothers in the prison. **The lack of provision for differentiation among the female prisoner population is in violation of UN Standard Minimum Rule 8(d) for the Treatment of Prisoners.**

187. Some male prisoners at Cotonou Prison were housed in better conditions than others. A building bearing the name Rotary, reflecting the source of donations provided for it, housed privileged prisoners. The director referred to the fact that there were some prisoners of high social status, including two ambassadors. Prisoners accommodated at the Rotary were able to leave the prison wearing a security bracelet. The registrar was reluctant to discuss with the delegation how he assigned new detainees to the different units in the prison. Some of the units at Cotonou Prison were extremely overcrowded, and prisoners described sleeping conditions similar to those observed by the delegation at Abomey Prison (see above).

188. In the male adolescent detainee unit at Cotonou Prison, around 60 detainees (aged 12 to 18) shared one cell and 15 bunk beds. As a result, half of the detainees slept on the floor. The male adolescent detainees claimed that segregation was virtually non-existent: for example, adult male detainees come to the minors' unit to use the toilets.

189. The situation at *Akpro-Misséréké Prison* was considerably better than at Abomey or Cotonou, in light of the low number of prisoners. However, the director informed the delegation that the prison had not yet received any beds or mattresses for the buildings, and therefore prisoners slept directly on the floor on mats.

190. **The SPT recommends that the material conditions in all prisons in Benin be improved in order to provide:**

- **A place of rest and bedding (at minimum a mat) for all detainees, in accordance with article 59 of Decree No. 73-293<sup>31</sup>**
- **Access to natural light and ventilation in cells**
- **A call system in accommodation buildings for summoning the staff in case of need**
- **Arrange of outdoor facilities meeting standards for hygiene and health (ensuring access to water, sanitation, showers, laundry and adequate refuse disposal facilities)**

191. **More generally, the SPT recommends that the material conditions in prisons be the subject of urgent review, including the use of the space currently available and programmes of refurbishment and renovation.**

<sup>31</sup> "With regard to bedding, they shall be provided with a mat and a cotton blanket."

192. **The SPT recommends that the authorities ensure that measures are permanently in place to reduce overcrowding and to mitigate the effects of over-population. Such measures should include ensuring that all detainees have equal access to all of the above services regardless of their personal resources, in line with the principle of non-discrimination.**

193. **Finally, the authorities should ensure that adult and adolescent detainees are effectively separated, including separating adult women from female adolescent detainees who are not related.**

(b) *Food*

194. It was reported that the budgetary *per capita* allowance for daily food provision to each prisoner was 290 F CFA. At meetings with ministerial officials it was confirmed that there was a provision for food through a central budgetary allocation at the level of the Ministry of Justice. Staff at the prisons visited confirmed that the food budget is not administered by the prisons themselves. However, the actual *per capita* allocation was not officially confirmed, and was requested by the SPT at the final talks and subsequently after the visit. By letter of 7 November 2008, the authorities informed the SPT that the cost of a meal varied between 250 and 350 FCFA per detainee, and that the estimated annual budget for the provision of food to detainees was 500.000.000 FCFA. Measures were in place to increase this budget in order to provide two hot meals per day to the detainees. In this regard, and based on an official prison population of around 6,000 detainees, the daily cost per detainee would be 230 CFA. **The SPT requests the authorities to provide more precise information on the budgetary per capita allowance for daily food provision, and the plans to increase it.**

195. At Cotonou Prison, the director explained that the Ministry established the contracts for food provision for the year with various suppliers, usually one supplier per day of the week. Similarly, at Abomey Prison, the director reported that on each day of the week a different contractor provided a set cooked dish. The contractors came with staff to distribute the food. A problem of equal rations was noted by the director, but he considered this up to the chief prisoner in charge of the food for each unit. According to the registrar at Abomey Prison, the prison authorities sent an update on the actual number of detainees to the Ministry on a daily basis, who forwarded the information to the food provider based in Cotonou, who then forwarded the information to its distributors throughout the country. **The SPT requests further information as to whether the budgetary *per capita* allocation for prisoners' food includes funds to pay food providers and if so, as to 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.**

196. The system of purchasing food was run by the prisoner hierarchy. For example, male adolescent detainees in one prison described how in their unit of 26 they pooled their resources to have food for everyone; they received money from visitors, but if one did not have visitors, they all shared. One prisoner was designated as the secretary in charge of food, deciding upon what was provided and how it was shared; one prisoner went to collect the food provision for the whole male adolescent detainee unit. The two *chef-bâtiment adjointes* at Abomey Prison went to collect the food provision from the male detainees, and then distributed it among the women in the two buildings.

197. The value of the food-stuffs or cooked food available to each prisoner on average through this process was observed by the delegation to be far less than the reported *per capita* ration. It was impossible to avoid the conclusion that some individuals, whether in the prison service or among the prisoner hierarchy or in both, were reaping personal gain

from the process of food provision. The corollary of this was that some prisoners as well as staff appeared to have an economic interest in the prison population remaining at a high level.

198. Additional food was provided by commercial vendors who came from the local markets to the prisons and sold food-stuffs for prisoners to purchase and cook for themselves, as well as cooked food. Further, prisoners told the delegation that they relied heavily on their relatives to supplement the food ration and to provide them with money to purchase more food in the prison market places. In this regard, the delegation noted that the cost of food available in the prison market places or from sellers from outside the prison was noticeably higher than the cost of food outside the prison. **The SPT recommends that prices are regulated to approximately the cost of food products available outside the prison.**

199. At Abomey Prison, the male adolescent detainees were provided with food not only from their families outside, but also through UNICEF's World Food Programme. UNICEF provided raw materials for cooking and the adolescent detainees cooked food for themselves as a unit. When the store of raw materials decreased, the adolescent detainees made a list and UNICEF provided further supplies. The women detainees also confirmed that they had recently received food from UNICEF for the female adolescent detainees and for the babies and young children of women detainees.

200. However, the babies and young children who were living with their mothers in prison did not have an official food allocation, and prisoners with babies or young children had to stretch their ration to feed them. **The SPT recommends that the prison authorities and the Ministry of Justice immediately conduct a census of the number of babies and young children living with their mothers in all prisons in Benin, in order to ensure that an adequate supplementary food ration is distributed to the mothers, many of whom are still breastfeeding.**

201. There was a particular problem of food provision for prisoners newly arriving at Cotonou Prison. One such prisoner interviewed said that he had arrived on Monday evening, having been in police custody since Friday without any food apart from some bread which his brother gave him during his court appearance; when interviewed at 11.45 on Tuesday he had still not had anything else to eat. Another remand prisoner interviewed on a Tuesday at midday gave a similar account: he had been apprehended on the previous Thursday, which was the last time he had eaten food; he had been told that he would be given some prison food at 15.00 hours.

202. A particular problem arose relating to the prisoners sentenced to death and held at Cotonou Prison. They reported that two male adolescent detainees were assigned to buy them food and prepare it. Aside from the fact that this breached the rule of separation of adolescent and adult detainees, prisoners sentenced to death had little or no access to food to supplement the daily ration provided by the prison.

203. In Akpro-Misséréte Prison, the main challenge for prisoners was supplementing their daily ration. They complained that, because of the location of the prison (which is slightly out of town), they could not access sellers from outside the prison. In addition, those prisoners who had been transferred from prisons located far away from Akpro-Misséréte, such as Abomey and Kandi, could no longer rely on their families to supplement the daily ration. As a result, some prisoners had begun cultivating land within the prison compound which, according to the director, was originally not meant to be accessed by prisoners. The delegation also observed that a shop was kept by a civilian within the prison walls, but it was not clear how many prisoners could afford to buy food there.

204. The SPT considers it a fundamental requirement that every prisoner be provided with food sufficient to meet his or her nutritional needs. The daily ration provided by the

Ministry of Justice is seriously deficient in the minimum daily requirements for energy, vitamins and minerals. In particular, the ration appears to provide only between 45% and 75% of the daily energy needs, and on most days is deficient in protein, fat, Vitamins A and C, Riboflavin, Iron Calcium and Iodine. **The SPT recommends that in every prison food should be provided to all prisoners, on a non-discriminatory basis, and carefully monitored by the prison administration, to ensure that provision meets the nutritional needs of individuals held in prison.**

205. By letter of 7 November 2008, the authorities informed the SPT that a sensitization session was held for food providers at the Ministry of Justice, Legislation and Human Rights. Likewise, prison visits were conducted, as a result of which a control register is now available for comments as to the quality and quantity of meals by a representative for detainees, the director, the health staff and the registrar. In addition, directors received instructions to refuse meals which are not satisfactory.

(c) *Water and hygiene*

206. The sanitary facilities were quite unable to cope with the level of over-population in the prisons visited. The supply of water for washing presented problems at certain times of the day. Prisoners had to shower, wash themselves and even urinate in open view, in clear violation of the right of every prisoner to privacy for intimate purposes.

207. As to the provision of water, the conditions at *Abomey prison* for women detainees were particularly poor. The water taps in the women's quarter had been cut and, in order to fill up various containers with fresh water for the day, the women had to go into the men's quarter before or after the men locked into the buildings were released or locked in, but while some 30 men are still in the courtyard. Most women re-used dirty water to wash dishes and to try to keep cool during the day. This also meant that the already cramped conditions in the women's quarter were worsened by the numerous water containers. These concerns were echoed in the men's quarter where the two available taps were used all day to fill the storage tank and the prisoners' jerry cans. Women also complained that the prison authorities did not provide them with sufficient cleaning products to keep their quarters clean, especially as the wood burners produced large amounts of black smoke and dust.

208. *Cotonou Prison* is connected to the town's water supply and there was no main water storage tank on the premises. As a result, prisoners also had to store water for daily use in jerry cans, using the various taps throughout the prison. It appeared that inequality ruled among prisoners depending on which building they slept in. Some prisoners reported having to pay to have access to the water taps, including for showering. In the buildings which were particularly overcrowded, detainees had to pay to use the toilet in the building. In this regard, the number of shower spaces and toilets was totally inadequate for the prison population, and prisoners were seen urinating directly into the sewage channels. In the women's quarters, there were two working showers for 136 detainees, and two taps; detainees complained that the water was cut every day. **The SPT recommends that the prison authorities should significantly increase the number of toilets and showers in respect of each unit.<sup>32</sup> The water supply to the women's quarters should be constant.**

209. The water supply at *Akpro-Misséréte Prison* is reportedly more reliable than in Abomey or Cotonou Prisons. Prisoners reported that they had free access to water both in the courtyards and in the dormitories, and free access to the toilets and showers throughout

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<sup>32</sup> In this regard, the SPHERE project sets as a minimum standard that people should have adequate numbers of toilets, sufficiently close to their dwellings, to allow them rapid, safe and acceptable access at all times of the day and night. A key indicator is a maximum of 20 people for each toilet. <http://www.sphereproject.org/content/view/43/84/lang.french/> (French language site).



the prison. However, the delegation observed sewage leaking from pipes throughout the prison, and noted that the buildings, through relatively new, were already dirty and worn.

210. The provision of decent conditions is important for the well being of prisoners and staff. Poor material conditions are exacerbated by overcrowding and adversely affect everyone living or working in prison; they contribute to the tensions in custody and to the deterioration of relations among prisoners and between prisoners and staff, which in turn increases the risk of ill-treatment.

211. **The SPT recommends that the authorities ensure adequate access to sanitation facilities and adequate provision of water for prisoners for drinking, washing and sanitation. As a matter of urgency and at a minimum, the SPT recommends that:**

- Refuse be collected and placed in rat-proof concrete containers and regularly burnt to prevent rat infestations
- Each bucket used as a latrine in the buildings be provided with a lid
- As a minimum, rubber gloves should be provided to those prisoners emptying the latrine bucket every day, and to those whose chore it is to clean the toilets

## 5. Health care in prison

212. The SPT welcomes the fact that Article 18 of the Constitution of Benin establishes the right of all persons deprived of liberty to access to a doctor. Decree No. 73-293 also provides that detainees have the right to be brought to a doctor for treatment, and that all treatment ordered by the doctor is free, except for hospitalisation. The delegation found that in principle health care in prisons was provided free of charge to prisoners. This is a positive finding. However, the delegation also learned that detainees have first to buy a *carnet de soins* (FCFA 100) before their first healthcare appointment, an amount which may be prohibitive for some indigent detainees.

213. The delegation was informed by detainees that requests to see the nurse were granted in the vast majority of cases. However, the delegation noted that there was no oversight by the nurse of prisoners kept in disciplinary cells. Women detainees faced the additional hurdle of having to ask the male detainee in charge of social affairs (*détenu chargé des affaires sociales*) in order to access the nurses. The delegation spoke to women with very young babies who had not been examined since giving birth, nor had their children been examined. **The SPT recommends that the healthcare and other provision of care for babies and young children in prison be reviewed.**

214. Some prisoners who were clearly very weak had not requested to see the nurse, as they were convinced that they would not receive any free medication. On this point, once the supply of medications available at the health care centre of the prisons was exhausted, there was reportedly no replenishment. Thereafter, nurses simply wrote prescriptions for medication, and prisoners were forced to buy medicines for themselves, if they could afford to do so. The delegation was informed that the situation in relation to the supply of medicine had worsened since responsibility for health care in prisons was transferred from the Ministry of Health to the Ministry of Justice. The Ministry of Justice clarified that there was no specific budget calculated for individual prisons in Benin, but that the global budget was based on the actual prison population. **The SPT recommends that the authorities review the system of supply of medication to prison, in particular to ensure provision of free medication for all common diseases. Closer links should be re-established between the Ministry of Health and the Ministry of Justice with the aim of providing a more equitable level of healthcare for prisoners, and in particular to establish a standard list of medicines and system of procurement for all prisons.**

215. In Abomey and Cotonou prisons, the remarkably low number of consultations corroborated the prisoners' opinion that it was pointless to request to see the nurse. Indicators that the prison health system was not functioning well include: statements from prisoners, the low number of daily consultations, the absence, at Abomey Prison, of health care staff at weekends or on public holidays, and the fact that approximately half of the detainees who had died during the last three years had died in prison, and not in hospital. **In this regard, the SPT recommends that judicial procedures be established to consider, on the basis of medical reports, early release, transfer to home or hospital, of prisoners found to have a terminal illness.**

216. As to material conditions, at *Abomey Prison*, the infirmary was dark and dingy, and the rooms had the appearance of being unused and with no evidence that patients were actually treated there. The new *Akpro-Misséréké Prison* had a large purpose built infirmary within the inner prison compound, with four large rooms equipped with tables, chairs, sinks and beds. However, the infirmary was not being used, as the only nurse assigned to the Prison had requested to be removed from the inner compound to a much smaller office within the visitors' block. In Cotonou Prison, the rooms were used but, as noted above, the medicine stores were largely empty of medication.

217. **The SPT recommends that the authorities take action to ensure that prison health care service is fully operational in every prison, in terms of adequate staffing levels, premises, installations and equipment. There should be appropriate supervision of the pharmacy and of the distribution of medicines, in order to ensure a constant supply of medicines.**

(a) *Training of health-care staff*

218. The delegation took note of the fact that the healthcare staff at the prisons had not had specific training relating to prison healthcare, including hygiene, control of epidemics, human rights and forensic medical documentation of injuries. By way of illustration, whereas in Cotonou Prison there was a special cell for contagious diseases, in fact the room was kept open and other detainees had access to it. The delegation observed many prisoners with visible signs of medical problems in the three prisons visited, including numerous skin conditions which can be attributed to the high level of overcrowding, poor hygiene, poor access to healthcare and the absence of any preventive measures. **The SPT recommends that more emphasis be placed on preventive healthcare measures, such as reducing mosquito breeding locations, routine disposal of refuse, and mass treatment of scabies infestations, in addition to stricter measures of hygiene. In this regard, the SPT recommends that the Ministry of Justice and the Ministry of Health develop a specific training programme for all health care staff prior to and during postings in prisons, in order to ensure that the quality and appropriateness of health care and health prevention programmes provided by the health care professionals.**

219. The SPT notes that article 62 of Decree No. 73-293 provides that a chief doctor is responsible for the sanitary state of prisons in his area, and that he visits prisons at least every two weeks and makes recommendations. The SPT considers that this could be an important measure in ensuring that sanitary conditions in prisons are improved, which would in turn reduce the risk of some diseases. It requests copies of any such visit reports concerning the last three years and recommendations and recommends that the authorities ensure implementation of the legal provision in practice.

(b) *Medical registers*

220. At Cotonou Prison, the initial medical examination was recorded in a book in an acceptable manner. However, there was no specific registration of injuries, nor were all transfers for hospital treatment noted in the appropriate booklet. At Akpro-Misséréké

Prison, the nurse maintained some basic statistics on diseases in the prison, using forms from the Ministry of Health which she obtained through the *Direction départementale de Santé*. **The SPT recommends that the Ministry of Justice institute the practice of initial examinations and recording of statistics on diseases in all prisons in Benin, and provide appropriate forms to each health professional. This information will also enable the Ministry of Justice to identify which medicines should be supplied to prisons. In this regard, the SPT recommends that a standardised list of generic medicines be established for all prisons. Based on the required list of medication, a budget for healthcare, including preventive measures, should be established, based upon the actual prison population.**

(c) *Mortality rates and registers*

221. At Cotonou Prison, the delegation was told of the efforts of the director to reduce the mortality rate by exercising checks for signs of malnutrition; symptoms, such as swollen feet, were noted, indicating that prisoners were malnourished and/or had not been able to lie down at night. Deaths in prisons or in a hospital were registered consecutively in a notebook. The content of the notebook was in complete accordance with the list of deaths in custody which the authorities provided to the delegation. Causes of death ranged across of a broad spectrum of ordinary diseases, while two deaths resulted from violence: one case of injuries sustained during an escape attempt and one case from ill-treatment. Neither the notebook, nor the list provided by the authorities, clarify who was responsible for the ill-treatment. **The SPT requests further information on the death in custody caused by ill-treatment, and in particular details of any investigation, criminal or disciplinary proceedings and any penal and/or disciplinary sanctions.**

222. The delegation also noted that the statistics on deaths in custody did not indicate the age of the deceased. In addition, uncertainties as to the precision of diagnosis make inferences difficult. Nonetheless, it is clear from the statistics provided that roughly half of the deaths occurred in the prison, and most resulted from ordinary diseases, including surgical conditions which should have been treated in a hospital. For example, the prisoners sentenced to death and held at Cotonou Prison reported to the delegation that a prisoner had died in the cell on 2 January 2006. They had called the nurse on the previous day as an emergency; the nurse came and left. The prisoner died in the cell the next morning.

223. No registers of death in prison was kept by the nurse at Akpro-Misséréfé, and the delegation was not provided with the registers of deaths at Abomey Prison. **The SPT recommends that a system be put in place to investigate, notify and record each and every death in custody.**

(d) *Prisoners sentenced to death*

224. At Cotonou Prison, the prisoners sentenced to death showed documents indicating their problems of access to healthcare: when one of these prisoners had a health problem, he could put his name down to see the nurse. The nurse consulted with the prisoner through the bars of the cell door and never entered the cell. It was therefore impossible for these prisoners to have a proper medical examination by the nurse. **The SPT recommends that medical consultations occur in an appropriate setting and never through the bars of a cell door.**

225. The prisoners sentenced to death complained that, in addition to not being properly examined, they also had no access to specialist care. Two of the prisoners were blind and said that they had lost their sight while in prison without receiving specialist attention. Another showed his healthcare booklet in which he requests an X-ray because of persistent pain in the abdomen radiating to the back and left hip; no response was noted in the carnet other than the prisoner's insistence.

226. The prisoners reported an additional problem of delay in access to the nurse. The delegation saw a book listing prisoners' requests to see the nurse. It was clear that there were considerable delays before the nurse visited; for example, there was a string of names beginning on 26 February 2008, reaching nine prisoners in total until 7 March 2008 when the nurse came (a delay of 9 days from the first request). Still worse, a string of requests for medical attention starting on 8 April 2008 reached a total of nine on 12 May 2008, when the nurse finally came. The prisoner who made the first request had had to wait over a month to see the nurse. This state of affairs is unacceptable. Every prisoner regardless of his/her status has a right to prompt access to healthcare. **The SPT recommends that the authorities take the necessary steps to ensure that every prisoner who requests to see the healthcare staff is able to do so without delay.**

(e) *Access to hospital care*

227. There appeared to be screening by non-medical staff of requests to be transferred to a hospital, as the request had to be made to the Régisseur, approved first by the Procureur, then by the Ministry of Justice, a procedure which, according to the director of Cotonou Prison, could take between three days and a week. **The SPT recommends that non-medical personnel not be involved in filtering requests by prisoners to see a doctor. If health care staff at the prison recommends transfer to a hospital, the prison and judicial authorities should simply endorse the request for transfer.**

228. In addition, the delegation was informed that, unless the prisoner was able to pay for hospital treatment and subsequent medicine, the transfer might never take place. The SPT recommends that, upon transfer to a hospital, healthcare and treatment be provided free of charge to detainees.

## 6. Staff

229. Staffing at the prisons visited was provided by the gendarmerie, including the director who belonged to the military hierarchy. At Abomey Prison, the director described the gendarmes as 'apt' for prison work, but confirmed that they had had no training specifically designed for the custody and care of persons deprived of their liberty. The SPT considers that training in law enforcement is not an appropriate preparation for work in a prison context. **The SPT recommends that the authorities develop a special programme for the training of all custodial staff, which should include the rights of detainees, and establish a specially trained and separate service for prison staff of all levels.**

230. The *staffing levels* were totally inadequate at the two prisons which received full visits.

231. At Cotonou Prison, the staff of 21 consisted of managers and guards including two women, as well as four nurses (one major). The staff worked primarily in the area inside the outer walls of the prison. In addition, 30 detached military personnel were responsible for perimeter security. They reinforced the capacity of the prison staff, by performing medical and judicial escorts and by assisting with full searches for drugs, weapons or mobile telephones. The director of Cotonou Prison was of the opinion that if the prison held 1000 instead of 2257 and if there were 100 staff, including 10 women staff, the prison could be managed without the prisoner control system.

232. At Abomey Prison, the director reported having a prison staff consisting of 4 senior officers, including himself, and 5 gendarmes for the custody and care of 1105 prisoners, as well as one nurse. The military personnel (8 at any one time) designated to guard the perimeter were reportedly not involved in extractions or escorts, which was regarded as the work of the prison gendarmes.

233. At Akpro-Misséréte Prison, the director reported having 9 staff from the gendarmerie, plus an extra 10 gendarmes for security purposes. The military was expected to provide troops shortly. The director already felt that this was insufficient for the prison which housed 187 at the time of the visit; the self management system had taken over basic tasks such as roll calling and keeping keys to various rooms throughout the prison. It is unclear to the SPT how the arrival of the International Criminal Tribunal for Rwanda convicted prisoners will affect the organisation and staffing of Akpro-Misséréte prison.

**234. The SPT recommends that the number of prison staff be reviewed in order that staffing at each prison is sufficient to guarantee the safety of detainees and staff within the prison, without having to rely on involving prisoners in the basic management tasks of the prison.**

235. Another issue of concern arises out of the lack of resources for essential functions, including transportation of detainees. Abomey Prison reportedly had no vehicles for this purpose. Escorts by the gendarmes were carried out on foot; the parquet was nearby, but the Court of Appeal was at the other end of the town. The director of the prison also indicated that some prisoners refused to walk to the Palais de Justice, and therefore the prison had to hire transportation, at its own cost. Escort duties further eroded the capacity of the prison staff to perform their role at the prisons visited.

236. Deployment of staff was a major cause for concern. At all three prisons, gendarmes were observed to spend much of their time on duty in the area between the outer wall and the inner wall, i.e. not actually inside the inner core of the prison. During the day the inner prison was dominated by the prisoners circulating within the inner walls, with very occasional presence of prison staff. When the delegation decided to conduct a night visit at Abomey Prison it became clear that entering the inner prison at night after lock up was a most unusual phenomenon. At night the inner prison was virtually a no-go area for staff.

## **7. Security and control: discipline, segregation, use of force and restraints**

237. The SPT notes that in addition to the Criminal Code and the Code of Criminal Procedure, which would apply where crimes were committed within the prison, the main source of information on discipline and sanctions is Decree No. 73-293 on the organisation of prisons. The directors of the prisons visited confirmed that the prisons did not have additional internal rules aside from the Decree. According to the Decree, sanctions can include the removal of visiting rights, of the right to smoke, of corresponding with the outside world, and of receiving food from the outside; all for a maximum of one month. In addition, sanctions can include placement in a cell which will automatically also incur the other available sanctions. The director may impose placement in a cell for a maximum of eight days, whereas the *Procureur* may order a stay of 30 days, and the Minister of Justice a stay of 45 days, and in exceptional circumstances, 3 months. All such sanctions should, according to the Decree, be detailed on the register of sanctions.

### *(a) Disciplinary process*

238. At *Cotonou Prison*, the director clarified that the Brigade Pénitentiaire would be responsible for investigating any crimes committed within the prison, whereas the *gardien chef* would be responsible for any disciplinary sanctions. He also reported that there were two cells within the Penitentiary Brigade, one of which was used for disciplinary sanctions and could hold two prisoners simultaneously. The delegation found that this cell measured 2.4m x 1.96m, with a ceiling height of 3.4m and an additional section measuring 1.8m x 0.9m. It had a small high level window and a solid door with a light above it. There was a metal barrel for use as a toilet in the corner of additional section. The delegation also saw a disciplinary cell in the women's quarter. It measured 2 sq.m. (with a ceiling height for

around 3 m), and had no toilet or running water. It had a small window and a solid metal door, which was locked when the delegation arrived. The Chief gendarme had the key.

239. The director said that for prisoners in the disciplinary cell, as for all others, there was a daily provision of one meal per day and the food could be supplemented from relatives outside. Women detainees reported that it was rare for women to be placed in the disciplinary cell, and that, when it happened, it was only for a few days at most.

240. The director also spoke of the system of prisoner self-management, indicating that cautions could be given out by prisoners for minor matters, but no disciplinary sanctions. If the case were serious enough to warrant a disciplinary penalty, the matter was referred to the prison management. The director at Cotonou Prison stated that the detainees were not informed on arrival of the internal rules applying in prison.

241. At *Abomey Prison*, the director reported that official punishments included denial of free circulation within the prison (confinement to a room) and placement in one of the two disciplinary cells. Women detainees reported that shackles could be ordered as punishment by the Commandant de Brigade or by the director, and that a woman detainee was last shackled in November 2007 as a disciplinary sanction for fighting. Male detainees reported confinement in the disciplinary cells and use of shackles.

242. The delegation was concerned to learn that the self-governing system operated by prisoners inside the prisons of Cotonou and Abomey appeared to include punishments by the prisoners in charge imposed on prisoners deemed to have transgressed the unwritten rules of the prison community. Prisoners interviewed described the normal procedure for placement in the disciplinary cells as starting with a beating followed by cellular confinement. They explained that the procedure was adopted by the gendarmes, for example in respect of prisoners attempting to escape, or by the chief prisoner, who was given the key to the disciplinary cell by the gendarmes. Prisoners reported that sometimes the prisoners in the disciplinary cells were placed in shackles (*entraves*);<sup>33</sup> prisoners thought that this required the permission of the prison administration. Some detainees also reported that prisoners had been handcuffed to a tree in the main yard for extended periods of time.

243. **The SPT recommends that no prisoner be employed or given authority in the prison in any disciplinary capacity. The SPT further recommends that the use of shackles be discontinued and that restraints not be applied to prisoners while in disciplinary cells.**

244. At *Akpro-Misséréte Prison*, the delegation observed two sets of disciplinary cells (24 in total). Each cell measured 2 sq.m., and let in some natural air and light through cuts in the walls. Each cell had a urinal and a tap, which did not work, as well as an artificial light. According to the director and the chef brigade, detainees can be kept in the cells for minor offences from 1 hour to 8 days. The keys to the cell are kept with the gendarme. Upon examining the *main courante* register, where some sanctions appeared to be recorded, it became clear that no time of entry or removal from disciplinary cells was indicated, which made it impossible to ascertain how long prisoners are kept in these cells. Both the director and the *adjudant-chef* reported that new arrivals to the prison are told of the rules and the sanctions as a deterrent. However, interviews with detainees revealed that some did not know the rules.

245. The delegation found that there was no official register of sanctions at any of the prisons visited. By letter of 7 November 2008, the authorities informed the SPT that

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<sup>33</sup> Shackles were observed in use in Cotonou Prison, not only in relation to disciplinary cells. See subsection (c) on restraints.

disciplinary sanctions were imposed by the registrars on detainees who disturbed other detainees, and that statistics on these complaints were not available. **The SPT emphasizes that all proceedings concerning sanctions should be strictly recorded, with details of the reasons, date, nature and duration of the penalty and authorization.**

246. **The SPT recommends that all disciplinary procedures be authorized and implemented by the prison administration through duly established and recorded disciplinary procedures, about which all detainees should be informed. Disciplinary isolation should not be used for minors (adolescents), nor for mentally ill detainees. Those detainees placed in disciplinary cells retain the same right to access healthcare, and may require extra vigilance from all staff as to their state of health. The SPT also recommends, in the specific context of the prisons visited, that, when detainees are placed in a disciplinary cell for more than 12 hours, they should be given access to the outdoors for one hour each day, and the healthcare staff of the prison should perform daily checks on their health in the disciplinary cell, it being understood that the doctor should act, as always, in the best interests of the health of the prisoner.**

247. The delegation was gravely concerned to learn of the inclusion of *corporal punishment* among the penalties imposed by prisoners on other prisoners. At Abomey Prison male detainees reported that punishment could include beatings on the palms of the hands by other prisoners.

248. At Abomey Prison, even the male adolescent detainees held in a separate unit frankly explained the number of blows with a wooden stick meted out to adolescent detainees for various types of misconduct. The adolescent detainee elected by the others as chief (*chef de sécurité*) was the most important and slept under the canopy in the yard. He explained the process:

- If one of the adolescent detainees did not follow the rules, he beat him on the hands with a wooden stick measuring 37 cm: a first offence merited four strokes, and a repeat offence, ten strokes
- If there was a fight between adolescent detainees, the chief adolescent detainee listened to them both; both were beaten, but the one deemed more culpable had ten strokes and the other five
- To date the adolescent detainees had not referred any disciplinary matter to the director, but had settled all such matters themselves
- No adolescent detainee had ever been placed in a disciplinary cell

249. They did not see anything wrong with this use of corporal punishment, which reflected the general culture in the prison.

250. **The SPT considers that any corporal punishment is unacceptable and constitutes inhuman and degrading treatment. The SPT recommends that the prohibition of corporal punishment be enshrined in law and that corporal punishment of any kind should never be allowed in practice.**

251. When the state deprives a person of liberty, it becomes responsible for that person's safety. The obligation includes protecting that person from other people in custody. Lack of such protection is a failure in the duty of care, even though managing inter-prisoner violence can be extremely difficult.

(b) *Weapons and use of force*

252. At Abomey Prison, the director reported that the military did not go into the inner prison. The gendarmes did so and were observed to carry rifles. The guard on duty at the

visitors' reception desk, situated immediately outside the inner gate, sat with his rifle over his shoulder.

253. At Cotonou Prison, the director reported that the detached military personnel could be involved in interventions. The director also carried a weapon with him at all times, which was of concern in terms of security of the weapon. Such a practice is not conducive to fostering positive relations between staff and detainees. Preferably, custodial staff should not carry weapons at all. If, nevertheless, it is considered indispensable for them to do so, **the SPT recommends that the weapons not be carried in plain view.**

254. In addition, the stock of weapons was stored in the director's office, which is not the appropriate place for weapons within a prison. At Akpro-Misséréké Prison, the delegation asked to see the weapons room. The prison authorities only located the keys and opened the safe door after twenty minutes.

255. Except in an operational emergency, prison staff should not carry lethal weapons within the prison perimeter. The SPT recommends that the open carrying of other weapons, including batons, by persons in contact with prisoners be prohibited within the prison perimeter, unless they are required for safety and security in order to deal with a particular incident.

(c) *Restraints*

256. At Cotonou Prison, the delegation observed a number of prisoners in shackles (cuffed at the ankles with metal restraints linked to each other by a rigid metal bar behind the ankles). Reports on the number of prisoners in shackles varied from 11 to 17. Upon inquiry, the delegation was told by prisoners that the shackled prisoners presented particular control problems, some of them having tried to escape. The prisoners in charge had decided that they should be restrained. The delegation was unable to locate any formal record of this or any other use of restraint, although the practice was visible.

257. At Abomey Prison, the director indicated that restraints were not used in the prison, since "they are already in prison". If a prisoner was deemed to be "dangerous", he would be handcuffed for escort to the court; the cuffs would be taken off at the courtroom.

258. **The SPT recommends that restraints should never be used as punishment and in principle should not be used on prisoners when they are in cells or other secure accommodation. All use of restraints should be the subject of a carefully documented and reasoned process under the authority and control of the prison administration, with procedural safeguards observed in all instances. The SPT also recommends that the use of shackles, chains and irons be prohibited.**

(d) *Security and control*

259. At Cotonou Prison, there were a total of 28 military personnel posted to ensure *perimeter security*. There were gendarmes at the entry gate and in the outer courtyard overseeing the 85 prisoners in charge of security, who worked in teams of roughly 12 and were distinctively dressed in green overalls. The director explained that they checked the identity of people visiting and exiting and were supposed to prevent escapes. (There had been one escape in January 2007, when a prisoner had been killed by military fire).

260. At Abomey Prison, the delegation observed the *perimeter security* to be limited (virtually non-existent). At times when the delegation arrived, including during the night, there was nobody at the outer gate and sometimes no guard outside the inner wall. On one occasion (14.40 hours) the delegation arrived to find no guard at the outer gate and no guards visible on duty in the area between the inner and outer walls; the only people in view were a few prisoners chopping wood in the area between the outer and inner walls. It



appeared that the external security either did not function properly or did not depend on perimeter guarding but was controlled from within. The delegation had serious reservations about the external security and about the ability of the prison staff to take effective and appropriate action in case of an emergency, such as a fire.

261. At Akpro-Misséréte Prison, the director informed the delegation that the Minister of Defence had not, as yet, sent military personnel to assist in maintaining perimeter security. The prison was relying on ten gendarmes to secure the entire prison. Further, as noted above, the SPT is concerned at the lack of awareness and training as to access to the weapons room by those gendarmes, particularly in case of an emergency.

**262. The SPT recommends that the external security of the prisons be reviewed in order to ensure that:**

- The perimeter is secured by the prison administration rather than by internal controls exercised by prisoners
- Effective and appropriate action is possible in the event of an emergency

263. The delegation also observed the system of *internal control*. This appeared to be operated largely, if not exclusively by prisoners. When a prisoner had a visitor, s/he was called to exit the inner prison, for a visit in the room immediately beyond the inner gate. This room was guarded by gendarmes carrying rifles in Cotonou Prison. Upon the visitor's arrival, the guards gave the prisoner's name to a member of the prisoner hierarchy, who had the prisoner delivered from inside the inner prison to the door between the inner and outer prison areas. The leading prisoners assigned to this function knocked on the inner door and called out the name of the prisoner who had been delivered and the door was then briefly opened to allow the prisoner to pass through. The process appeared to work smoothly. However, it was notable that the guards did not operate beyond the door.

264. It was clear that the authorities had ceded control of the prisons to the prisoners. The SPT has the gravest concerns about this situation at Cotonou and Abomey Prison. The SPT considers that the authorities and the prison administration must not abrogate their responsibility for what goes on in prisons, whether it be the provision of basic necessities of life, such as food, drinking water and minimum conditions for health and hygiene or whether it be the imposition of control measures, including restraints or punishments. These matters all belong and must remain with the authorities. **The SPT considers that the effective control of any place where persons are deprived of their liberty by public authorities is and must remain the domain of the State.**

**265. The SPT recommends that the authorities take steps immediately to institute a system whereby they effectively and fully assume control of the prisons in order that they are in a position to discharge properly their obligations for the custody and care for persons deprived of liberty by the State.**

## **8. Activities**

266. The prison day at Cotonou Prison was structured around lock-up times; at Cotonou Prison, at 07.00 hours each unit was unlocked briefly in turn for the room search; at 07.30 the doors of all the prisoner accommodation (except for the cell with the prisoners on death sentence) were unlocked for the daily routines to begin. Lock up occurred for most prisoners around 17.30 or 18.00 hours. Therefore, the vast majority of prisoners spent more than twelve hours locked up at night.

267. At Abomey Prison, the same system of lock-up prevailed. The exceptions were those privileged prisoners who held positions entitling them to sleep outside in the yards.

268. The delegation observed a system of free movement during the day within the inner precincts of the prisons for most prisoners. During the day, most prisoners were out in the courtyard going about the business of daily life. This is a potentially positive feature of prison life. The relative autonomy enjoyed by the prisoner population within the inner precinct of the prisons is in principle also positive, provided that there is adequate oversight to prevent abuse. It could allow the time spent in custody to pass less onerously and could provide for the development of constructive activities. As it was, the prison activities centred on the necessities of life – obtaining food and drinking water, obtaining water to wash oneself and one’s clothes, and finding a place to sleep.

(a) *Activities and education for adult detainees*

269. The market place within the prison was a central focus of activity at Cotonou Prison. Here, prisoners were engaged in various activities connected to daily life, including selling food stuffs, preparing food for cooking, cooking, laundering clothes, and making useful items. The director also informed the delegation that detainees had access to various workshops run by NGOs, such as hairdressing courses, but that the workshops are not well attended. He also reported that the library had some 800 books; the delegation briefly saw the library housed in a building near the market used also as a church. It had been refurbished thanks to NGO donations.

270. The delegation noted that at the prisons visited some of the adult prisoners were unable to read or write. The SPT notes the positive fact of provision of education for young male prisoners and **recommends that the authorities take steps to provide at least basic education for young female prisoners and adult prisoners who cannot read or write.**

271. At Abomey Prison, the director said that a programme of training courses for prisoners in the workshops had been started by the Ministry in 2007; the work involved preparation of gari, mustard, pancakes and bread. The work also generated income, although detainees indicated that they had not yet been given any of the income they had generated. The delegation noted that outside the inner wall of the prison there was a modern building provided from external funding which appeared to be unused. An area of the premises between the outer and inner wall was in use for chopping wood and provided work for a small number of prisoners.

272. At Akpro-Misséréte Prison, there were no activities available to the detainees. Detainees made various items to sell to the other detainees, and planted vegetables in the main courtyard to supplement the daily ration. The director had canvassed the detainees and written to the Ministry of Justice in April 2008 to ask for equipment and resources to set up a number of activities, such as sewing, hairdressing, computer science, and language classes.

273. Programmes of activities for prisoners play an important role in the well-being and safety of prisoners and staff. Enforced idleness increases the tensions in a custodial institution and can have serious consequences for the health and well-being of persons deprived of their liberty, as well as for future re-integration on release. The extreme of enforced total inactivity over a prolonged period is inhuman. **The SPT recommends that every effort be made to provide programmes and activities for all prisoners, including those sentenced to death. In this regard, the SPT welcomes the Akpro-Misséréte Prison authorities’ proactive approach, and recommends that budgetary provisions be set aside for providing activities in all prisons throughout Benin.**

(b) *Activities for adolescent detainees*

274. At Cotonou prison, the delegation observed a round concrete shed in the minors’ quarters, which was reportedly used for teaching purposes. Male adolescent detainees

explained that classes were sometimes given on reading and religion by teachers, and that NGOs also taught them other skills such as hairdressing.

275. The delegation observed that education at Abomey Prison was limited to classes for male adolescent detainees. UNICEF had, in 2000, initiated a programme of basic education in French for them; this was originally run by a prisoner, who had since been released; he had been assisted by another prisoner, aged 19 years, who was still on remand and now ran the classes, with a salary of 5000 CFA per month paid by UNICEF. Educational supplies, such as a blackboard, books and pencils were also provided by UNICEF. No education classes were available for female adolescent detainees in any establishment visited by the delegation. **In this regard, the SPT recommends that similar classes be organised for female adolescent detainees who are detained in the women's quarters throughout Benin, as well as to the children of female detainees once they reach compulsory schooling age.**

276. At Abomey Prison, there were two sewing machines and material for making shirts on tables under the canopy in the yard of the male adolescent detainee unit. The delegation was told that they were taught to sew by adult prisoners; classes occurred in the morning and from 16.00 to 18.00 hours. **The SPT recommends that the authorities provide similar activities and workshops for adolescent detainees, both male and female, in all prisons, in order to facilitate their reintegration upon release.**

(c) *Activities for female prisoners*

277. Activities for women were limited by the fact that they were in theory separated from the men prisoners and therefore their access to communal facilities such as the prison market were curtailed. A difficulty faced by women was the lack of access to activities which the men ran in the market area of the prison. Some women were allowed to work in the market at Cotonou Prison to earn money. Most did not have access to the market even to buy food, and therefore relied on male detainees to buy supplies for them. Women detainees at Abomey Prison wanted to have access to activities which currently mainly men are able to undertake. They appeared not to have equal access to the training courses and workshops provided for some male prisoners, nor to the education classes provided to male adolescent detainees. Many women expressed the wish to be allowed to participate in the various workshops. **The SPT recommends that activities and education classes be provided for women detainees.**

278. The *female adolescent detainees* did not have any money to buy food to supplement the daily ration, and were therefore at increased risk of malnutrition and disease. The delegation spoke to some female adolescent detainees who had in fact become virtual slaves to older female detainees, in order to have access to more food.

279. A particular concern arose as regards the *babies and young children* who lived in the women's quarters. The director at Cotonou Prison reported that children up to the age of four were allowed to stay with their detainee mothers. However, the budget of the prison did not include those children, either in the provision of sleeping space or food. As a result, the meagre daily ration had to be split further in order to feed the children of those detainees. The women's quarter had a playroom which was donated by an NGO, but during delegation visits no one used the room, which had a few toys.

280. **The SPT recommends that:**

- **Women's quarters be increased to improve the extremely cramped conditions**
- **Babies and children of female detainees be included in officials account for assigning sufficient space, food and water for women's quarters**

- **Babies and children of female detainees be provided with sufficient clothes, nappies, soap and towels and a sleeping place of their own, e.g. a cradle**
- **Women and female adolescent detainees be granted equal access to activities and workshops organised within the prison and to specific activities tailored towards their needs**
- **At a minimum, all female adolescent detainees and children of women detainees of schooling age should have access to education classes**

#### 9. Contact with the outside world

281. Maintaining contact with the outside world and, in particular, sustaining family and other affective ties is an important element of custodial care and crucial for the eventual re-integration of prisoners into society without re-offending. Moreover, the ability to communicate with family and friends can be a safeguard against ill-treatment, which tends to flourish in the most closed environments.

282. There were two *telephones* at Cotonou Prison for 2241 prisoners (excluding the prisoners sentenced to death) and one telephone at Abomey Prison for the 1105 prisoners which were controlled and run by the prisoner hierarchy. Prisoners with money could buy a telephone card, reportedly at prohibitive prices. Calls were monitored for security purposes. In addition, mobile phones had been confiscated since a recent escape attempt on 24 December 2006 from Cotonou Prison. The number of telephones was clearly insufficient for the high number of detainees. By letter of 7 November 2008, the authorities informed the SPT that detainees have complained that they could not communicate with their families. In those prisons where such complaints had been made, directors had been authorised to install public telephones to allow prisoners to communicate with their families.

283. According to the director of Cotonou Prison, prisoners organised the schedule of *visits* and searching of prisoners, under the supervision of two gendarmes. At Abomey Prison, prisoners reported that they did not have to pay to have a visit, but the visit time allotted to each prisoner was very short and visitors or the prisoner had to pay for extra time. This would explain why the delegation saw visitors paying cash to the gendarme on duty at the visitors' reception desk.

284. **The SPT recommends that rules for visiting times and duration of visits be clear and posted in writing at the entrance of each prison. All visits should be registered and the prison authorities should oversee the visiting system to ensure that the rules are abided by, and that no staff or detainees receive any bribes regarding visiting. All detainees should be informed of the rules verbally, and the rules should be posted in writing in poster and pamphlet format throughout the prison. All detainees, including prisoners sentenced to death, should have the possibility of receiving family visits.**

#### 10. Allegations of physical ill-treatment and corroborative findings

285. In general, the delegation heard few allegations of physical ill-treatment of prisoners by prison staff, apart from the allegations made by prisoners who had tried to escape or were considered to pose other risks to security. Indeed, the director of Abomey Prison commented that there was no physical torture at the prison, but that the overcrowding produced "a kind of torture", since prisoners were not able to sleep properly. By letter of 7 November 2008, the authorities informed the SPT that "corporal punishment does not occur in prisons except between detainees, to which prison authorities are not witness, but that nonetheless and in order to prevent this type of punishment it is envisaged to: sensitise staff working in prisons; recruit specialised staff to oversee prisons; reduce the number of

prisoners pro rata to the number of staff tasked with overseeing them; sanction staff and detainees who use corporal punishment; and reinforce existing mechanisms to allow detainees to bring complaints against such ill-treatment.”

286. The delegation heard numerous allegations of ill-treatment in the form of violence among prisoners in the context of the self management system observed in Cotonou and Abomey Prisons (see further section III.B.7). The delegation heard from various prisoners that they feared violence from other prisoners. There were reportedly tensions between certain groups of prisoners, often concerning drugs in the prison and frictions between Benin prisoners and some foreign national prisoners, particularly from neighbouring states.

287. When the state deprives a person of liberty, it becomes responsible for that person’s safety. The obligation includes protecting that person from other people in custody. Lack of such protection is a failure in the duty of care, even though managing inter-prisoner violence can be extremely difficult. Since staff at both prisons was not in control of the prisons, they were unable to ensure prisoner safety against inter-prisoner violence. This requires management to develop a clear policy on dealing with inter-prisoner violence and staff to be properly trained and prepared to work in close contact with prisoners, to be vigilant for the signs of conflict before escalation and to take appropriate action when needed. **The SPT recommends that prison authorities develop their policy on managing inter-prisoner violence, including significantly increasing staff numbers and conducting staff training, which should focus on building and maintaining positive relations among prisoners, as well as between staff and prisoners: the dynamic security approach to prison work.**

288. **The SPT further recommends that the authorities undertake a fundamental review of the management of prisons so as to ensure that the prison administration is in control and is able to ensure the safety of everyone inside the prison, including their protection from inter-prisoner violence.**

## 11. Prisoners sentenced to death

289. Cotonou Prison is the only prison visited by the delegation holding prisoners under death sentence. At the time of the visit, there were 16 such prisoners. The director reported that the 16 were held together in a unit near the entrance to the prison. This turned out to be a single cell. The director described these prisoners as presenting significant risks, since they had nothing to lose. The director described them as the most spoilt because they received preferential treatment. The delegation found that in practice this was not the case.

290. The 16 prisoners sentenced to death lived together in a small locked cell measuring 10m<sup>2</sup> with a barred door giving on to a narrow corridor. The cell felt airless and hot, and was infested with rats from a nearby storage room. The cell was poorly lit, which had reportedly had an impact on the eyesight of three of the prisoners. The prisoners were locked up and had no family visits. They were allowed to leave the cell once a month for 15 minutes to be shaved, and this was the only time they saw the sky, which was not visible from the cell. A member of the delegation entered the cell in order to interview the prisoners sentenced to death. The prisoners said that this was the first time anyone had been inside the cell in 10 years (the longest serving prisoner having arrived in July 1998). **This situation is an affront to human dignity and constitutes cruel and inhuman punishment.**

291. **The SPT recommends that alternative accommodation be provided for prisoners sentenced to death, so that they can have access to adequate conditions, including space for sleeping, and that the regime and restrictions applied to these prisoners be reviewed as a matter of urgency, in order to provide time out of cell every day, including an hour of outdoor exercise.**

292. By letter of 7 November 2008, the authorities informed the SPT that “there is currently no measure in place to grant prisoners sentenced to death access to one hour of outdoor exercise per day, in the sense that their cell does not have access to a special courtyard. However, prisoners sentenced to death leave their cells once a month to be shaved and for a ‘sun bath’. Consultations are ongoing to determine how the government can improve this situation or take such a decision.”

293. The current situation of the prisoners under death sentence was not safe. When a member of the delegation insisted on entering the cell to speak with them in private, it took quite some time for staff to find the keys to the four padlocks on the door. The staff was unable to demonstrate how they would have evacuated these prisoners in time in the event of a fire. **The SPT recommends that, for as long as the cell accommodating the prisoners sentenced to death is in use, steps should be taken to ensure that the door can be opened efficiently in case of emergency.**

294. The prisoners described how their *conditions* had improved 14 months ago with the installation of a toilet with flush in an adjacent former store, which had been incorporated as an annex to the cell. This replaced the pot in the corner which they had previously used and emptied through the bars of the door. Although a shower was installed a year ago, the water supply was reportedly often cut during the day. Six months ago the new director had provided a ceiling fan.

295. The *daily regime* was one of extreme monotony: a small shared television set donated through a woman prisoner provided some relief. They said that they spent most of their time reading or in prayer; all were of the Islamic faith and reported that the imam had only come twice in ten years, although a nun came every Sunday. They also passed the day taking turns to sleep, since it was difficult for them all to sleep at night. They demonstrated how they lay down on the cell floor at night; they were packed together like sardines in a tin.

296. The situation of these prisoners, held for many years without prospect of release, creates a risk of serious adverse psychological effects, mental health problems and eventual disintegration of the personality. **In the view of the SPT, it is cruel and inhuman to imprison people in such conditions for years on end.**

297. The prisoners informed the delegation that most of them did not know what stage of procedure their case had reached. They reported that only two of them had had their sentence confirmed by the Supreme Court, while others were still waiting for various appeals. **The SPT considers that it is an important right that all prisoners, including those prisoners sentenced to death, have the possibility of communicating with their lawyers, as well as their family.**

298. The SPT recognizes that the authorities have instituted a moratorium on the death penalty and that there have reportedly been no executions since 1986. The SPT encourages the authorities to take the next step by abolishing capital punishment in law as well as practice. **The SPT recommends that all sentences of death be commuted to sentences of life imprisonment so that there is a possibility of review and eventual release.**

299. **In all the circumstances described above, and taking into account the extremely poor material conditions and the length of time that some prisoners have been subjected to them, the SPT considers that their situation amounts to cruel and inhuman treatment.**

## 12. Complaints procedures and monitoring as a safeguard against ill-treatment

300. When asked about *monitoring* of prisons, the director of Cotonou Prison said that the General Inspector visited either to verify a complaint or to carry out routine inspections;

the last visit was in 2007. The Department of Human Rights within the Ministry of Justice visited; when pressed as to dates of the most recent visits, he said that there had been a visit in 2007 and 2008. He also mentioned NGOs visiting, such as Amnesty International; they made announced visits after obtaining authorisation from the Ministry of Justice. The registrar at Abomey Prison indicated that the prison had been visited once by the Procureur, and the *Commission de surveillance des prisons* had also conducted a visit, but no visit reports were available. Further, the registers at Abomey Prison were examined by the *Inspecteur Général Adjoint des Services de la Justice* on 13 July 2005, who recommended that Tipp-Ex<sup>34</sup> be used less frequently. There were no written records at Cotonou Prison about monitoring of any kind. As far as internal monitoring was concerned, the director's superior (from within the military hierarchy) had visited the prison on the previous Friday to see how security was organised. **The SPT recommends that a written detailed report be produced after every prison visit, which should be communicated to the prison authorities and the Ministry of Justice.**

301. Several prisoners interviewed at Cotonou and Abomey Prisons indicated that they had sent written *complaints* to the Minister of Justice complaining about conditions but had received no reply.

302. The SPT considers that one of the basic safeguards against ill-treatment is the right of an imprisoned person or his counsel to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with powers of review or redress.<sup>35</sup> **The SPT recommends that the authorities ensure that there is an effective, confidential and independent complaints system in operation.**

## IV. Cooperation

### A. Facilitation of the visit

303. The SPT recognises that efforts had been made by the authorities to facilitate the visit. In particular, various documents requested before the visit were provided to the SPT, including legal texts, some statistics and information on the addresses of law enforcement establishments. In this regard the SPT notes that the official list of police stations provided to the SPT included Zogbodomey (*Commissariat de police de localité*); the delegation was informed however by local law enforcement officials that such a police station has never existed.

### B. Access

304. The delegation encountered a number of problems relating to access.

305. A fundamental problem was the absence of credentials from the Ministry of Defence until Saturday 24 May 2008, that is two days before the departure of the delegation. As a result, the SPT was denied access to holding cells at the *Brigade Territoriale and Brigade de Recherches of Porto Novo*. However, the SPT delegation did gain access to the holding cells at the Brigade Territoriale of Godomey, when it made an unannounced visit on 18

<sup>34</sup> A brand of correction fluid used for painting over mistakes in a piece of writing.

<sup>35</sup> See Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173 (9 December 1988), Principle 33.

May 2008. Access was possible owing to the presence of Commandant Valette Chrysostome, who, despite having reportedly received no information concerning the SPT, understood and acknowledged the obligation to facilitate the delegation's task.

306. A further problem arose from inadequate communication by the authorities of essential information concerning the SPT and its mandate to law enforcement officials at all levels. By way of illustration, the delegation was denied access to persons deprived of their liberty at *Dantokpa police station*, Cotonou on 18 May 2008, as the delegation was only provided with credentials from the Ministry of the Interior on 19 May 2008. After intervention by the liaison officer, access was finally achieved on 20 May 2008 and 21 May 2008. The initial denial of access was a serious breach of the obligation to grant the SPT with access to any place of deprivation of liberty and to any person held there. When the delegation subsequently spoke in private with persons held at Dantokpa, it received accounts of serious ill-treatment; the delegation was able to document medical evidence highly consistent with those allegations and found weapons corresponding strikingly to the injuries observed. The refusal on the first visit to the police station to grant confidential communication between the SPT and persons in custody could easily be construed as an attempt to conceal evidence of ill-treatment.

307. At *Cotonou Prison*, the delegation encountered initial resistance concerning access to prisoners sentenced to death. The delegation was informed that it could only communicate with these prisoners through the bars of the cell door. The SPT considers that conducting an interview through a barred door could be perceived by prisoners as degrading treatment. The delegation insisted on its right of access. After consultations with the prison management, arrangements were made for a member of the delegation to enter the cell shared by the 16 prisoners sentenced to death. The interview took place inside the cell as a group interview.

308. At *Abomey Prison*, the SPT's initial attempt to carry out a night visit was refused by the prison authorities on the grounds of security. When the delegation arrived, there were no security guards to be seen at the outer gate and only one at the inner gate. After consultations with the director of the prison, it was agreed that arrangements would be made to reinforce security on the following evening so that the SPT delegation could visit the prison at night. After initial delays the following evening and intervention by the liaison officer, the delegation eventually gained access to the prison to visit cells at 23.00 hours.

309. On this first SPT visit to Benin, the authorities were not familiar with the SPT's methods of working, despite preparatory explanations. The SPT trusts that on subsequent visits persons acting on behalf of the State will be better prepared to facilitate swift access for the SPT delegation to carry out its work, including without prior notice and at any time of the day or night.

### C. Repercussions of the visit

310. The SPT has serious concerns about the possibility of repercussions following the visit.

311. Persons deprived of liberty in different locations expressed their fear of retaliation for speaking to the delegation. The delegation was told that many people deprived of their liberty were also warned not to talk frankly to SPT delegation.

312. Any intimidation of or repercussions to persons deprived of their liberty are unacceptable and in breach of the State's obligation under the OPCAT to co-operate with the SPT. **The SPT invokes Article 15 of the OPCAT and calls upon the Benin authorities to ensure that there are no reprisals as a result of the SPT visit. This matter was raised during the preliminary observations on 26 May 2008. The SPT**



requests the authorities for detailed information about the steps they have taken to ensure that no repercussions were experienced after the visit.

#### **D. Dialogue with and feedback/responses of the authorities**

313. The meetings with officials were very helpful in understanding the framework of the system of deprivation and liberty. The SPT wishes to thank the Ministries and institutions for the valuable information provided.

314. At the end of the visit, the delegation presented its preliminary observations to the Benin authorities in confidence. The SPT is grateful to the authorities for the spirit in which the delegation's observations were received. The SPT asked the authorities for feedback on the steps taken or being planned to address the issues raised in the preliminary observations. In addition, the SPT wrote to the authorities on 10 June and 4 November 2008 requesting updated information on any steps taken since the visit on certain issues which could be or were due to be addressed in the weeks following the visit. These issues included measures taken by the authorities with regard to the treatment of detainees at Dantokpa police station and Bohicon gendarmerie; measures taken with regard to the provision of food and water to persons detained in police and gendarmerie custody; measures taken to eliminate corporal punishment in prisons; and measures taken in relation to prisoners sentenced to death.

315. By a note verbale of 7 November 2008, the authorities transmitted some preliminary responses which have been reflected in the present report. The SPT appreciates the preliminary responses provided and **reiterates its request for further clarification on matters where sufficient detail was not provided.**

316. **The SPT requests the authorities to provide, within one month, information on the action taken to provide acceptable alternative accommodation for the prisoners under sentence of death, in response to the recommendation made at the end of the SPT's visit and reiterated in paragraph 288. The SPT also requests the authorities to provide, within six months, a full written response to this visit report and in particular to the conclusions, recommendations and requests for further information contained therein.** This six months period allows time for at least some of the steps planned or in the process of implementation to be realised in practice and for the programme of longer term action to be initiated. The SPT looks forward to continuing co-operation with the Benin authorities in the shared commitment to improving the safeguards for prevention of all forms of ill-treatment of people deprived of liberty.

### **V. Summary of recommendations and requests for information**

#### **A. Recommendations**

##### **1. National preventive mechanism**

317. The SPT recommends that:

(a) The exclusion of anyone exercising a professional function from the membership of the NPM be reconsidered as it would appear to exclude a practising legal or medical professional;

(b) The draft NPM law provide that membership of the NPM is incompatible with any other function which could affect its independence and impartiality;

(c) Priority be given to the inclusion in the NPM of a medical professional;

(d) The provisions for autonomous management by the NPM of its budget and its financial reporting to the accounting chamber of the Supreme Court be reinstated;

(e) The modalities of work of the NPM be spelt out clearly in the draft NPM law, and not left to subsequent decrees, unless those decrees are also the subject of broad public consultation and debate;

(f) The process of adoption of the draft NPM law be completed with all possible speed. Any substantive amendments to the draft legislation should be the subject of further consultation;

(g) The NPM should make recommendations to the competent authorities with the aim of improving the treatment, including the conditions, of the persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment or punishment. In doing so, the NPM should pay due attention to the relevant norms of the United Nations as well as the recommendations made by the SPT. Furthermore, one of the key aspects of the work of the NPM is to maintain direct contact with the SPT and facilitate exchange of information in order to follow up the compliance with the recommendations of the SPT.

## **2. Legal and institutional framework**

318. The SPT recommends that:

(a) The State Party involve NGOs and academic experts in the revision of national legislation, namely, the draft criminal code and the code of criminal procedure, with a view to alignment with the provisions in the Convention. The authorities of Benin should take all necessary measures to adopt these two draft laws as soon as possible;

(b) The authorities develop clear and objective criteria for selecting NGOs to be granted the right to visit places of detention, and that they consider granting those NGOs permanent authorization to visit;

(c) That Benin guarantees access to legal assistance to persons without sufficient resources.

## **3. Deprivation of liberty by police and gendarmeries**

319. The SPT recommends that:

(a) The provision in law of a maximum of 48 hours in initial custody before presentation before a court be matched by a system of court sessions enabling this legal time limit to be respected in practice;

(b) The police and gendarmeries throughout Benin develop a standardised and unified record for registering contemporaneously and comprehensively all key information about every individual's deprivation of liberty, and that staff be trained to use this appropriately and consistently;

(c) The standardised and unified record should include the reasons for the deprivation of liberty, the exact time and date when it started, how long it lasted, who was responsible for its authorisation and the identity of the law enforcement officials concerned, precise information about where the person was during the period, and when the person first appeared before a judicial or other authority;

(d) All entries in the registers be monitored and countersigned by the directors of each of the establishments;

- (e) The authorities take immediate steps to ensure that there is an official record of the details of deprivation of liberty of all persons, regardless of their status in law, who are obliged to remain with the law enforcement agencies;
- (f) The legislation be amended to spell out the rights of persons deprived of liberty, as well as the right of such persons to be notified of their rights as from the moment of deprivation of liberty;
- (g) Law enforcement staff be trained to inform persons deprived of their liberty of their rights, including orally in the languages usually spoken by such persons, and to assist in the exercise of all such rights as from the very outset of deprivation of liberty;
- (h) No pressure be exerted to make detainees confess to an offence;
- (i) Detainees are able to know and understand what is in a statement before signing it, for example by being provided with the statement to read or by having it read to them;
- (j) The authorities consider reviewing the legislation to guarantee the right to silence;
- (k) The authorities review the legislation regarding confessions with a view to eliminating the possibility for convictions based solely on confession;
- (l) Police training in investigative methods emphasise the need to proceed from the evidence to the suspect rather than the reverse;
- (m) The right to notify family or other relevant person outside of the fact of one's deprivation of liberty be enshrined in law;
- (n) The right of notification of custody be included in the standard notice of rights of persons deprived of liberty and such persons be informed about the right and asked to indicate the person they wish to notify. Police and gendarmerie personnel should be trained to properly inform detainees of this right and to carry out the notification;
- (o) The authorities ensure that all persons enjoy equal access to defence counsel not only in law but also in practice. Necessary steps should be taken to extend the right to public defence counsel to the initial stage of the deprivation of liberty;
- (p) The authorities, as an interim measure, grant detainees the right to have a trusted third party present during questioning in initial custody, in the absence of a sufficient number of certified lawyers and of a fully fledged legal aid system covering all stages of deprivation of liberty;
- (q) All persons deprived of their liberty by the police are systematically informed, as from the outset of such deprivation, about their right of access to a lawyer or other trusted third party, and are provided with the means necessary to consult in private with a lawyer or other trusted third party;
- (r) The authorities review the law on and system for providing legal assistance to suspects and defendants in the criminal justice process with a view to providing legal aid to persons held in initial police and gendarmerie custody;
- (s) The authorities introduce systematic medical examination of all detainees held by the police and the gendarmerie, upon arrival, and that the history of each detainee and any signs of ill-health or injuries be recorded;
- (t) Medical examinations be conducted in accordance with the principle of medical confidentiality; non-medical persons, other than the patient, should not be present. The results, and any notes, of the medical examination are also to be kept confidential by the examining doctor, and are not to be disclosed to those holding the patient in *garde à*

*vue*. In circumstances where the doctor recommends transfer to a clinic or hospital for treatment, only the minimum necessary information regarding the reason for transfer need be disclosed to the authorities;

(u) The doctor carrying out systematic screening of people deprived of liberty by the police and the gendarmerie record all essential information relevant to the medical examination, including (a) medical history, (b) an account by the person examined of any violence, (c) the result of the physical examination, including a description of any injuries and an indication as to whether the whole body was examined, and (d) the doctor's conclusion as to consistency between the three first items;

(v) Resources be provided for the transportation of detainees, including transportation to hospitals, and that resources be allocated for medication and treatment of detainees;

(w) Complaints against the police and the gendarmerie should be investigated and pursued by bodies independent of the police or gendarmerie;

(x) Statistics be compiled and maintained on an on-going 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;

(y) The law enforcement services introduce an internal system of regular monitoring of initial custody covering both legal aspects and material conditions of detention. This should operate in parallel with the monitoring to be carried by the NPM, once it is established;

(z) The authorities take steps to ensure:

- That children are not held in initial custody except as a genuinely last resort
- That children are held separately from adults
- That their rights are fully and clearly explained to children in a way that is readily understandable
- That a relative or trusted person is immediately informed of the custody of the child concerned
- That no child is subjected to questioning without the presence of a trusted adult
- That no child is subjected to restraint while in a custody cell

(aa) A specific budget for food provision for people in initial custody be established and carefully administered to ensure that the food reaches the persons concerned. If families are able to bring food in for their relatives in custody this process also must be scrupulously supervised to prevent abuse, and be duly and promptly recorded in a register;

(bb) Detainees in initial custody be systematically provided with at least two litres of drinking water per day free of charge, and without this being dependent on an actual request from the detainee. Regular access to toilets and bathrooms must be provided to those deprived of their liberty. The detention sections and cells should be swept and mopped regularly by staff. The toilets must be unblocked and thoroughly cleaned;

(cc) Steps are immediately taken to restore the water supply to the Gendarmerie of Bohicon, both for the staff working at the gendarmerie and for those held in *garde à vue*. In the absence of a piped water supply, a raised water tank with a minimum capacity of 500 litres should be installed and regularly filled by water tanker;

(dd) Persons kept in police custody for more than 24 hours should, as far as possible, be offered outdoor exercise every day;

(ee) Any person held in initial custody by law enforcement officials must be provided with a clean place to stay, including at a minimum a mat to sleep on, with access to sanitation, and with food and drinking water to meet the basic necessities of life. The cell should have access to natural and artificial light and ventilation;

(ff) All detainees requesting medical treatment, or in obvious need of urgent medical attention, be transferred to a hospital or clinic without delay, in particular when there are no staff members present in police and gendarmerie facilities with the medical qualifications necessary to assess the health needs of persons deprived of liberty. An agreement between the Ministry of the Interior (for the police) and the Ministry of Defence (for the gendarmerie), and the Ministry of Health should be negotiated to provide free emergency care and medicines to detainees, as well as a health check on arrival. Failing this, a budget for medical care for detainees should be established within the relevant ministries;

(gg) The use of restraints on persons deprived of their liberty be exercised with great caution, and systematically recorded, indicating the officer who took the decision to use the restraints, the specific security reason which led to that decision, and how long the person was restrained. Persons deprived of their liberty by law enforcement officials should not be subject to restraint while in the custody cells;

(hh) Any item which is not part of the standard equipment issued to law enforcement officers should not be allowed on police premises without the express authorisation of the senior officer and without careful recording of the details, including reasons;

(ii) All items taken in evidence should, immediately upon receipt at law enforcement premises, be listed, labelled and stored in a secure manner;

(jj) All law enforcement officers be obliged to wear a means of clear identification, such as a name badge or other identification while on duty;

(kk) An independent inquiry into the treatment of persons in custody by staff at the police station in Dantokpa and the Commissariat in Bohicon;

(ll) The authorities remind all police and gendarmerie personnel at all levels that torture and other forms of ill-treatment of persons in their custody are prohibited;

(mm) Training in investigation methods should emphasize the need to respect human rights, including the right to silence of a suspect or accused person, and the requirement to proceed from the evidence to the suspect.

#### **4. Deprivation of liberty in prisons**

##### *Criminal justice issues*

320. The SPT recommends that:

(a) The authorities ensure observance of the principle that release on bail should be the rule, and remand custody the exception and to consider the introduction of legal time limits for proceeding to trial;

(b) A concerted strategy be adopted by the authorities to reduce the prison population through a combination of measures, including:

- Conducting a thorough review of bottlenecks in criminal procedures before the various instances, in order to identify gaps in resources and structural reasons for delays
- Increasing communication and cooperation between the courts and the prisons to minimize delays in transmitting judgments and orders, and in particular release orders, to ensure that persons are released as soon as the courts so orders
- Use of non-custodial measures for children, in accordance with Order No. 69-23 of 10 July 1989 relating to judgments of crimes committed by minors
- Diversion from custody of persons charged with petty offences through the use of other measures (such as caution) or a fine proportionate to the financial means of the individual person
- Reduction in the number of people remanded in custody through the use of conditional release (*liberté provisoire*) in accordance with article 120 of the Code of Criminal Procedure (with or without bail), and article 358 of the Code of Criminal Procedure
- Respecting legal times for dealing with cases provided for in the Code of Criminal Procedure
- Release of all remand prisoners who have already been in custody for longer than the maximum prison sentence imposable for the offence of which they stand accused
- Reduction of the sentenced population through the imposition of community penalties, reparation and restitution
- Increase in the use of the *régime de semi-liberté* in accordance with article 574 of the Code of Criminal Procedure
- Increase in the use of release on license/parole (*liberté conditionnelle*) in accordance with article 580 of the Code of Criminal Procedure (conditional release of sentenced prisoners meeting risk assessment criteria)
- Commutation of all death sentences so that there is a possibility of review and eventual release

(c) In all instances of request for a prolongation, remand prisoners are brought before a court;

(d) A permanent system be set up for the regular review of the time served on remand by prisoners in Benin with a view to releasing from custody all who have served time in excess of the maximum term imposable for the offence with which they are charged.

#### *Prison records*

(a) All prisons in Benin be provided with at least one computer, that a standard national database be set up which will enable the authorities to track each detainee, and that this software be also rolled out to the courts, as well as centrally at ministerial level. All users should receive appropriate training;

(b) Registers should follow a standard format. The following basic information should be included, at a minimum, and updated daily: the precise date and time of arrival of each detainee in the prison; the legal reasons for their deprivation of liberty and the authority which ordered the detention; any medical visit which was ordered or requested;

the date and time of any removal from detention (for example in the framework of a court hearing) and return to the place of detention; the date and time of the transfer to another place of detention or release, and the authority for this transfer or release; and information about the identity of the detainee, including the detainee's signature and that of the person responsible for any transfer or release. Prisons should record any incidents occurring in prison and action taken, including use of restraints or other restrictions; there should also be a register of all disciplinary proceedings and sanctions, including isolation or segregation. In addition, prisons should keep an inventory of the personal property of the prisoner that is to be held in safekeeping and ensure a receipt is provided to each detainee upon arrival;

(c) The system of self-management be subject to careful oversight by the prison administration to prevent abuse and/or corruption. The authorities should take immediate steps to ensure that they effectively and fully assume control of the prisons. Under no circumstances should prisoners be in charge of determining and inflicting disciplinary punishments on fellow prisoners.

#### *Prison medical screening*

(a) All detainees should receive a medical screening on entry to prison, which follows the basic system in place in Cotonou Prison;

(b) The authorities introduce systematic medical examination of all newly admitted prisoners and subsequently that the right to see a nurse or doctor (or member of the health staff) upon request is duly respected;

(c) Medical examinations be conducted, and medical records maintained, in accordance with the principle of medical confidentiality; non-medical persons, other than the patient, should not be present;

(d) Medical screening upon admission to prison should include an examination thorough enough to reveal any injuries and to reveal any pre-existing medical conditions that may require new or on-going treatment;

(e) The standard medical report be amended to encourage the full recording of any injuries. The form for the medical examination should include (a) medical history, (b) an account by the person examined of any violence, (c) the result of the physical examination, including a description of any injuries and an indication as to whether the whole body was examined, and d) the doctor's conclusion as to consistency between the three first items;

(f) A procedure be established, with due consideration for medical confidentiality and the consent of the individual, for all cases of violence/alleged ill-treatment documented by doctors or other members of the health staff to be reported directly to the Ministry for Justice and Human Rights.

#### *Prison conditions*

(a) That the material conditions in all prisons in Benin be improved in order to provide:

- A place of rest and bedding (at minimum a mat) for all detainees, in accordance with article 59 of Decree No. 73-293
- Access to natural light and ventilation in cells
- A call system in accommodation buildings for summoning the staff in case of need

- A range of outdoor facilities meeting standards for hygiene and health (ensuring access to water, sanitation, showers, laundry and adequate refuse disposal facilities)
- (b) The material conditions in prisons be the subject of urgent review, including the use of the space currently available and programmes of refurbishment and renovation;
- (c) The authorities ensure that measures are permanently in place to reduce overcrowding and to mitigate the effects of over-population. Such measures should include ensuring that all detainees have equal access to all of the services regardless of their personal resources, in line with the principle of non-discrimination;
- (d) Adult and adolescent detainees are effectively separated, including separating adult women from female adolescent detainees who are not related;
- (e) Prices are regulated to approximately the cost of food products available outside the prison;
- (f) The prison authorities and the Ministry of Justice immediately conduct a census of the number of babies and young children living with their mothers in all prisons in Benin, in order to ensure that an adequate supplementary food ration is distributed to the mothers, many of whom are still breastfeeding;
- (g) In every prison food should be provided to all prisoners, on a non-discriminatory basis, and carefully monitored by the prison administration, to ensure that provision meets the nutritional needs of individuals held in prison;
- (h) The prison authorities should significantly increase the number of toilets and showers in respect of each unit. The water supply to all women's quarters should be constant;
- (i) The authorities ensure adequate access to sanitation facilities and adequate provision of water for prisoners for drinking, washing and sanitation. As a matter of urgency and at a minimum, the SPT recommends that:
- Refuse be collected and placed in rat-proof concrete containers and regularly burnt to prevent rat infestations
  - Each bucket used as a latrine in the buildings be provided with a lid
  - As a minimum, rubber gloves should be provided to those prisoners emptying the latrine bucket every day, and to those whose chore it is to clean the toilets

#### *Prison health care*

- (a) The healthcare and other provision of care for babies and young children in prison be reviewed;
- (b) The authorities review the system of supply of medication to prison, in particular to ensure provision of free medication for all common diseases. Closer links should be re-established between the Ministry of Health and the Ministry of Justice with the aim of providing a more equitable level of healthcare for prisoners, and in particular to establish a standard list of medicines and system of procurement for all prisons;
- (c) Judicial procedures be established to consider, on the basis of medical reports, early release, transfer to home or hospital, of prisoners found to have a terminal illness;
- (d) The authorities take action to ensure that prison health care service is fully operational in every prison, in terms of adequate staffing levels, premises, installations and



equipment. There should be appropriate supervision of the pharmacy and of the distribution of medicines, in order to ensure a constant supply of medicines;

(e) More emphasis be placed on preventive healthcare measures, such as reducing mosquito breeding locations, routine disposal of refuse, and mass treatment of scabies infestations, in addition to stricter measures of hygiene;

(f) The Ministry of Justice and the Ministry of Health develop a specific training programme for all health care staff prior to and during postings in prisons, in order to ensure that the quality and appropriateness of health care and health prevention programmes provided by the health care professionals;

(g) The authorities ensure implementation of article 62 of Decree No. 73-293 in practice;

(h) The Ministry of Justice institute the practice of initial examinations and recording of statistics on diseases in all prisons in Benin, and provide appropriate forms to each health professional;

(i) A standardised list of generic medicines be established for all prisons. Based on the required list of medication, a budget for healthcare, including preventive measures, should be established, based upon the actual prison population;

(j) A system be put in place to investigate, notify and record each and every death in custody;

(k) Medical consultations occur in an appropriate setting and never through the bars of a cell door, in particular with relation to prisoners sentenced to death;

(l) The authorities take the necessary steps to ensure that every prisoner who requests to see the healthcare staff is able to do so without delay, including prisoners sentenced to death;

(m) Non-medical personnel not be involved in filtering requests by prisoners to see a doctor. If health care staff at the prison recommends transfer to a hospital, the prison and judicial authorities should simply endorse the request for transfer;

(n) Upon transfer to a hospital, healthcare and treatment be provided free of charge to detainees.

#### *Other prison issues*

(a) The authorities develop a special programme for the training of all custodial staff, which should include the rights of detainees, and establish a specially trained and separate service for prison staff of all levels;

(b) The number of prison staff be reviewed in order that staffing at each prison is sufficient to guarantee the safety of detainees and staff within the prison, without having to rely on involving prisoners in the basic management tasks of the prison;

(c) No prisoner be employed or given authority in the prison in any disciplinary capacity;

(d) The use of shackles be discontinued and that restraints not be applied to prisoners while in disciplinary cells;

(e) All proceedings concerning sanctions should be strictly recorded, with details of the reasons, date, nature and duration of the penalty and authorization;

(f) All disciplinary procedures be authorized and implemented by the prison administration through duly established and recorded disciplinary procedures, about which

all detainees should be informed. Disciplinary isolation should not be used for minors (adolescents), nor for mentally ill detainees. Those detainees placed in disciplinary cells should retain the same right to access healthcare, and may require extra vigilance from all staff as to their state of health;

(g) In the specific context of the prisons visited, when detainees are placed in a disciplinary cell for more than 12 hours, they should be given access to the outdoors for one hour each day, and the healthcare staff of the prison should perform daily checks on their health in the disciplinary cell, it being understood that the doctor should act, as always, in the best interests of the health of the prisoner;

(h) The prohibition of corporal punishment be enshrined in law and that corporal punishment of any kind should never be allowed in practice;

(i) Weapons not be carried in plain view by prison staff;

(j) Except in an operational emergency, prison staff should not carry lethal weapons within the prison perimeter;

(k) The open carrying of other weapons, including batons, by persons in contact with prisoners be prohibited within the prison perimeter, unless they are required for safety and security in order to deal with a particular incident;

(l) Restraints should never be used as punishment and in principle should not be used on prisoners when they are in cells or other secure accommodation. All use of restraints should be the subject of a carefully documented and reasoned process under the authority and control of the prison administration, with procedural safeguards observed in all instances;

(m) The use of shackles, chains and irons be prohibited;

(n) The external security of the prisons be reviewed in order to ensure that:

- The perimeter is secured by the prison administration rather than by internal controls exercised by prisoners
- Effective and appropriate action is possible in the event of an emergency

(o) The authorities take steps immediately to institute a system whereby they effectively and fully assume control of the prisons in order that they are in a position to discharge properly their obligations for the custody and care for persons deprived of liberty by the State;

(p) The authorities take steps to provide at least basic education for young female prisoners and adult prisoners who cannot read or write;

(q) Every effort be made to provide programmes and activities for all prisoners, including those sentenced to death;

(r) Budgetary provisions be set aside for providing activities in all prisons throughout Benin;

(s) Education classes be organised for female adolescent detainees who are detained in the women's quarters throughout Benin, as well as to the children of female detainees once they reach compulsory schooling age;

(t) The authorities provide activities and workshops for adolescent detainees, both male and female, in all prisons, in order to facilitate their reintegration upon release;

(u) Activities and education classes be provided for women detainees;

(v) With regard to women, female adolescent detainees and babies:

- Women's quarters be increased to improve the extremely cramped conditions
- Babies and children of female detainees be included in officials account for assigning sufficient space, food and water for women's quarters
- Babies and children of female detainees be provided with sufficient clothes, nappies, soap and towels and a sleeping place of their own, e.g. a cradle
- Women and female adolescent detainees be granted equal access to activities and workshops organised within the prison and to specific activities tailored towards their needs
- At a minimum, all female adolescent detainees and children of women detainees of schooling age should have access to education classes

(w) Rules for visiting times and duration of visits be clear and posted in writing at the entrance of each prison. All visits should be registered and the prison authorities should oversee the visiting system to ensure that the rules are abided by, and that no staff or detainees receive any bribes regarding visiting. All detainees should be informed of the rules verbally, and the rules should be posted in writing in poster and pamphlet format throughout the prison. All detainees, including prisoners sentenced to death, should have the possibility of receiving family visits;

(x) Prison authorities develop their policy on managing inter-prisoner violence, including significantly increasing staff numbers and conducting staff training, which should focus on building and maintaining positive relations among prisoners, as well as between staff and prisoners;

(y) The authorities undertake a fundamental review of the management of prisons so as to ensure that the prison administration is in control and is able to ensure the safety of everyone inside the prison, including their protection from inter-prisoner violence;

(z) Alternative accommodation be provided for prisoners sentenced to death, so that they can have access to adequate conditions, including space for sleeping, and that the regime and restrictions applied to these prisoners be reviewed as a matter of urgency, in order to provide time out of cell every day, including an hour of outdoor exercise;

(aa) For as long as the cell accommodating the prisoners sentenced to death is in use at Cotonou Prison, steps should be taken to ensure that the door can be opened efficiently in case of emergency;

(bb) All prisoners, including those prisoners sentenced to death, have the possibility of communicating with their lawyers, as well as their family;

(cc) All sentences of death be commuted to sentences of life imprisonment so that there is a possibility of review and eventual release;

(dd) A written detailed report be produced after every prison visit, which should be communicated to the prison authorities and the Ministry of Justice;

(ee) The authorities ensure that there is an effective, confidential and independent complaints system in operation.

## **B. Requests for information**

### **1. National preventive mechanism**

321. The SPT requests:

- (a) Information concerning steps taken to foster public debate at this later stage about the adoption of the legislation and the development of the NPM;
- (b) If the draft legislation is further amended during the adoption process, to be provided with a copy of any amended text.

## 2. Legal and institutional framework

322. The SPT requests:

- (a) Information on the offences provided for in articles 114 (onwards), 119 and 186 of the Criminal Code and statistics on the number of complaints/sanctions imposed as a result of these provisions of the Criminal Code during 2006, 2007 and 2008;

- (b) Further information for 2006–2008 about the mandate of the *Inspection Générale de la Police*, the *Inspection technique*, the *Inspection Générale des Forces de Sécurité*, and the *Direction de la Police*; the number of complaints received per year; the number of complaints pursued per year, for which offences, and against whom; and the outcome of all such complaints, including sanctions imposed on the officers responsible;

- (c) Statistical information on the activities for the past three years of the Department for Civil and Criminal Cases (*Direction des Affaires Civiles et Pénales*) of the Ministry of Justice with regard to its mandate to receive complaints of ill-treatment by security forces and abuse of *garde à vue*, as well as more detail on the outcome of such complaints (in particular, and according to the Annual Statistical Report for 2005, on the three complaints lodged for violence by security forces;

- (d) Copies of any inspection reports of visits undertaken by those bodies whose responsibility includes prison monitoring (including the Supreme Court);

- (e) Further information for the last three years on visits undertaken and recommendations made by the DAPAS to improve the treatment, including conditions, of persons deprived of their liberty;

- (f) Copies of the Commissions for the Oversight of Prisons (*Commissions de surveillance des prisons*) mission reports, and information on any follow-up as a result of these prison visits. The SPT also requests that the authorities clarify whether visiting occurs on an on-going basis and provide information on any visits carried out after 2005;

- (g) Information as to the resources earmarked for the preventive work of the Human Rights Department (*Direction des Droits de l'Homme*) of the Ministry of Justice in 2007 and 2008, and copies of all visit reports which have been undertaken since 2006. The SPT also requests the comments of the authorities on the recommendation to mandate the Human Rights Department to carry out unannounced visits;

- (h) Copies of any visit reports produced by the *Inspection Générale des Services de la Justice* (IGSJ), any recommendations made, and information about any action taken following these visits;

- (i) Copies of any visit reports undertaken by other departments of the Ministry of Justice which are mandated to visit places of detention (including for example the *Direction de la Protection Judiciaire de l'Enfance et de la Jeunesse*) for the past three years, any recommendations made, and any actions taken following these visits;

- (j) 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 detainee asks to be brought before a judge and the request is not met promptly by prison authorities. It also requests statistical information on the results/outcome of any cases brought under this provision of the Criminal Code since 2005;

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

(l) Further information on the complaints mandate of the IGSJ, the type of complaints it has investigated since 2005, and statistical information on the results/outcome of such complaints;

(m) 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;

(n) More information on the practice of prosecutors in monitoring the legality of detention and in receiving complaints, as well as statistical information for 2005–2008 on the results/outcome of such complaints;

(o) 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 (including the length of *garde à vue*, conditions of detention, and allegations of ill-treatment by officials during such periods), as well as the results/outcomes of such complaints;

(p) To be provided with the reports of the President of the Indictments Chamber (*Chambre d'accusation*) on its three monthly visits to prisons, pursuant to article 199 of the Criminal Code, and since 2005;

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

(r) 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;

(s) 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;

(t) Confirmation that the right for a detainee to be informed by the investigating judge of his right to a lawyer during the first hearing before the judge (article 98 of the Code of Criminal Procedure) is indeed notified to all detainees by the judge.

### 3. Police and gendarmeries

323. The SPT requests:

(a) 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;

(b) That it be kept informed about any development with regard to its recommendation that statistics be compiled and maintained on an on-going 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;

(c) 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;

(d) 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;

(e) 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.

#### **4. Prisons**

324. The SPT requests:

(a) 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;

(b) 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;

(c) The authorities to provide more precise information on the budgetary per capita allowance for daily food provision, and the plans to increase it;

(d) 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;

(e) Copies of any visit reports conducted pursuant to article 62 of Decree No. 73-293 concerning the last three years and recommendations;

(f) 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, criminal or disciplinary proceedings and any penal and/or disciplinary sanctions.

#### **5. Co-operation**

325. The SPT requests:

(a) Detailed information about the steps they have taken to ensure that no repercussions were experienced after the visit;

(b) Further clarification on matters where sufficient detail was not provided in response to the preliminary observations and subsequent notes verbales;

(c) The authorities to provide, within one month, information on the action taken to provide acceptable alternative accommodation for the prisoners under sentence of death, in response to the recommendation made at the end of the SPT's visit and in this report;

(d) The authorities to provide, within six months, a full written response to this visit report and in particular to the conclusions, recommendations and requests for further information contained therein;

(e) The authorities to provide, within one month, information on the action taken to provide acceptable alternative accommodation for the prisoners under sentence of death, in response to the recommendation made at the end of the SPT's visit and in this report;

(f) The authorities to provide, within six months, a full written response to this visit report and in particular to the conclusions, recommendations and requests for further information contained therein.

## Annexes

### Annex I

#### **List of places of deprivation of liberty visited by the delegation**

##### **I. Police facilities**

###### **A. Police stations**

Commissariat Central de Cotonou

Commissariat Central de Porto-Novo

Commissariat de police de Dantokpa

Commissariat de police de Dodji

Commissariat d'arrondissement de Ouando

###### **B. Gendarmeries**

Compagnie de Gendarmerie de Cotonou – Brigade Territoriale de Godomey

Brigade de Gendarmerie de Zogbodomey

Brigade Territoriale et de Recherches de Porto-Novo

Brigade Territoriale et de Recherches de Bohicon

Brigade de Gendarmerie de Séhoué

##### **II. Prisons**

Prison civile de Cotonou

Prison civile d'Akpro-Misséréte

Prison civile d'Abomey

##### **III. Other institutions**

Palais de Justice d'Abomey



## Annex II

### List of officials and others with whom the delegation met

#### I. National authorities

##### State Ministry in charge of National Defence

*(Ministère d'Etat Chargé de la Défense Nationale)*

Adj. J.C. ADJILE Representative

##### Ministry of Justice, Legislation and Human Rights

*(Ministère de la Justice, de la Législation et des Droits de l'Homme)*

Mr. H. AKPOMEY	<i>Directeur de Cabinet</i>
Mr. H. KOUKOUID	SG
Mrs. M. ZINKPE	Human Rights Department ( <i>Direction des Droits de l'Homme</i> )
Mrs. O. EDON	Human Rights Department ( <i>Direction des Droits de l'Homme</i> )
Mr. H. DADJO	Department for Judicial Protection of Children and Youth ( <i>Direction de la Protection Judiciaire de l'Enfance et de la Jeunesse</i> )
Mr. B. ALANMENOU	Director, National Centre for the Safeguard of Children and Adolescent ( <i>Centre National de Sauvegarde de l'Enfance et de l'Adolescence</i> )
Mrs. H. FALANA	Department of Penitentiary Administrations and Social Assistance ( <i>Direction de l'Administration Pénitentiaire et de l'Assistance Sociale</i> )
Mr. I. ADTIBA	Department of Penitentiary Administrations and Social Assistance ( <i>Direction de l'Administration Pénitentiaire et de l'Assistance Sociale</i> )
Mr. G. GANYE	Minors Protection Unit ( <i>Brigade de Protection des Mineurs</i> )
Mr. D.G. GANHOU	Department for Civil and Criminal Cases ( <i>Direction des Affaires Civiles et Pénales</i> )
Mrs. D. TOSSOUNON-ZAKARI ALLOU	General Inspection of Justice Services ( <i>Inspection Générale des Services de la Justice</i> )

**Ministry of the Interior and Public Security**  
*(Ministère de l'Intérieur et de la Sécurité Publique)*

Mr. A. AGOUNTCHOU	Representative from the Republican Security Unit ( <i>Compagnie Républicaine de Sécurité</i> )
Mr. S. A. FASSASSI	Representative from the CTJ
Mr. A. LASSISSI	Representative from the National Police General Inspection ( <i>Inspection Générale de la Police Nationale</i> )

**Ministry of Foreign Affairs, of African Integration, of the Francophonie and of Beninois outside of the country**  
*(Ministère des Affaires Etrangères, de l'Intégration Africaine, de la Francophonie et des Béninois de l'Extérieur)***Benin Penitentiary Service**

Capt. E. ODOH	Director ( <i>Régisseur</i> ), Civil Prison of Akpro-Misséréte
Mr. C. P. AGBANEHOUN	Head of Security ( <i>Guardien-chef</i> ), Civil Prison of Akpro-Misséréte
Adjudant-Chef H. AYELO	Commandant, Penitentiary Brigade, Civil Prison of Akpro-Misséréte
Mr. P. NAHUM	Interim Director ( <i>Régisseur interim</i> ), Civil Prison of Cotonou
Mr. HOUNKPE	Director ( <i>Régisseur</i> ), Civil Prison of Cotonou
Mr. L. HOUNDONONGBO	Director ( <i>Régisseur</i> ), Civil Prison of Abomey
Mr. B. AHOANYJINOU	Director ( <i>Régisseur</i> ), Civil Prison of Porto Novo
LcL I. MAMA TOURE	Commandant, Penitentiary Brigade

**Benin Police Force**

Mr. B. GBEHA	Central Police Station, Cotonou ( <i>Commissariat Central de Cotonou</i> )
Mr. F. AGBO	Central Police Station, Cotonou ( <i>Commissariat Central de Cotonou</i> )
Comm. E.B. KONFO	Commissariat of Dantokpa

**Benin Gendarmerie officials**

Mr. H. DAVES	Commandant, Brigade of the Gendarmerie of Bohicon
Mr. KOUI-Ho	<i>Brigadier-adjoint pour la Recherche</i> of the Gendarmerie of Bohicon

Mr. L. AKALONE	<i>Commandant-adjoint</i> , Brigade of the Gendarmerie of Séhoué
Colonel A.G. ASSAVEDO	DGGN (Gendarmerie)
Ltn. D. AGASSOUMON	Adj. Cdt. Compagnie Cotonou
Mr. E. F. TELLA	Gendarmerie of Zogbodomey
Mr. V. CHRYSOSTOME	Commandant, Gendarmerie of Godomey

**Other authorities**

	Procureur of Abomey
Mr. V. ADOSSOU	Judge of the Supreme Court
Mrs. V. MONGBO	President, Indictments Chamber ( <i>Chambre d'Accusation</i> ) of the Cotonou Appeals Court
Mr. E. MOUTCHO	FADESP/UAC
Mr. E. VOVONOU KPONOU	Benin Order of Lawyers ( <i>Barreau du Bénin</i> )
Mrs. E. EGUÉ-ADOTE	Benin Order of Lawyers (Barreau du Bénin), Rapporteur of the Committee on the follow-up to the implementation of the NPM ( <i>Comité de suivi pour la mise en place du MNP</i> )
Mrs. M. MEDEGAN ép. FASSINOY	<i>Juge d'instruction</i> , Tribunal of first instance of Cotonou
Mr. J. CHABI MOUKA	Representative, Judge of the <i>Premier Cabinet</i> , Tribunal of first instance of Cotonou
Mr. A. BODHRENOU	Head of Statistics of the DEA/MFE ( <i>Chef de Service des Statistiques à la DEA/MFE</i> )
Mr. M. TOGNODE	Professor of psychiatry, CNHU HKM Cotonou
Mr. B.A.S. OTEYAMI	DGB/MEF

**II. United Nations Development Programme**

Ms. E. GASANA	Resident Representative, Resident Co-ordinator
Mr. A. L. IMAM	UNDP Benin
Ms. A. POGNON	UNDP Benin
Mr. N. OUEDRAOGO	Security Officer

### **III. Non-governmental organizations**

Amnesty International Bénin

ACAT-Bénin (Action des chrétiens pour l'abolition de la torture)

Ligue pour la Défense des Droits de l'Homme

Association des Femmes Juristes du Bénin

## **Annex III**

### **Draft legislation on the national preventive mechanism Draft Act on the establishment, organization, powers and operation of the National Observatory for the prevention of torture and other cruel, inhuman or degrading treatment or punishment**

#### **Title I General provisions**

##### **Chapter I National Observatory for the prevention of torture and other cruel, inhuman or degrading treatment or punishment; establishment and principal office**

###### **Article 1**

There is established in the Republic of Benin a National Observatory for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereafter referred to as “the Observatory”).

The Observatory shall enjoy legal personality and financial autonomy.

###### **Article 2**

The principal office of the Observatory shall be in Cotonou. However, it may be transferred to any other place in the national territory by decree of the Council of Ministers following a reasoned report by the Observatory.

##### **Chapter II Purpose of the Observatory**

###### **Article 3**

The Observatory is an independent body whose purpose shall be to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention.

## **Title II**

### **Composition, appointment and termination of office of members of the Observatory**

#### **Chapter I**

##### **Composition and appointment of members of the Observatory**

###### **Article 4**

The Observatory shall be composed of five members, at least two of whom shall be women, chosen from among persons meeting the following requirements:

- They are nationals of Benin
- They are at least 30 years of age
- They are in possession of their civil and political rights
- They are of good moral character
- They have the required expertise:
  - In the area of human rights or at least five years' professional experience in the administration of justice, in particular criminal law, prison or police administration
  - In the various fields relevant to the treatment of persons deprived of their liberty

They must be nationals of Benin, at least 30 years old and in possession of their civil and political rights.

###### **Article 5**

Membership of the Observatory is incompatible with the performance of any public office, political or professional activity or elected office.

###### **Article 6**

Members of the Observatory shall be appointed, following a call for applications from the Minister of Justice, by a selection panel made up of the following members:

- (a) One member from the National Assembly Law Commission;
- (b) One member from the Constitutional Court;
- (c) One judicial officer;
- (d) One representative of the Bar Council;
- (e) One representative of the College of Physicians;
- (f) One representative of the President of the Republic;
- (g) One representative of non-governmental organizations (NGOs) working in the field of human rights promotion and protection.

The members of the selection panel shall each be appointed by their peers with the exception of the representative of the President of the Republic.

**Article 7**

The members of the Observatory thus nominated shall be appointed by decree of the Council of Ministers, upon a proposal by the Minister of Justice and Human Rights.

**Chapter II  
Term of office of members of the Observatory****Article 8**

Members of the Observatory shall be appointed for a term of five years, renewable once.

However, the terms of the members first taking office shall expire as follows: the terms of three members shall expire at the end of three years and the terms of the other two members shall expire at the end of five years.

One year after their initial appointment, the names of the three members referred to in the preceding paragraph shall be chosen by lot by the Secretary General of the Observatory. Their alternates shall be appointed in accordance with the requirements of articles 4, 5, 6 and 7 of this Act.

**Article 9**

Any public official who is appointed to be a member of the Observatory shall be seconded to it.

**Article 10**

Before taking office, members of the Observatory shall take the following oath before the Supreme Court:

**“I swear that I will discharge my duties faithfully and with probity and perform them with impartiality in accordance with the law.”**

**Chapter III  
Termination of membership of the Observatory****Article 11**

Membership of the Observatory shall be terminated by death, resignation or loss of mandate in the event of serious breach of the provisions of this Act in accordance with the stipulations of the rules of procedure of the Observatory.

The seriousness of the misconduct shall be explicitly recognized by the members of the Observatory by a simple majority of the other members. In this case, dismissal is automatic.

**Article 12**

In the event of loss of mandate, resignation or death of a member of the Observatory, he or she shall be replaced within 30 days.

The new member shall be appointed in accordance with articles 4, 5 and 6 of this Act.

## **Title III**

### **Powers, organization and operation of the Observatory**

#### **Chapter I**

##### **Powers of the Observatory**

###### **Article 13**

The Observatory is authorized to:

- (a) Carry out periodic, scheduled or unannounced visits to all places of detention;
- (b) Examine the situation of persons deprived of their liberty in such places with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) Within the sphere of its powers:
  - Issue opinions and make recommendations to the competent authorities
  - Submit proposals and observations concerning existing or draft legislation
- (d) As part of its activities, cooperate with national, regional and international mechanisms.

###### **Article 14**

Places of detention shall be understood to mean any place under the jurisdiction or control of the Republic of Benin where persons are or may be deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence.

###### **Article 15**

Deprivation of liberty shall be understood to mean:

1. Any form of detention;
2. Any form of imprisonment;
3. The placement of a person in a public or private custodial setting.

#### **Chapter II**

##### **Organization**

###### **Article 16**

The Observatory shall have a General Secretariat headed by a Secretary General.

The rules of procedure of the Observatory shall establish the rules for the recruitment of the Secretary General and other members of staff, their remuneration, and the organization and operation of the General Secretariat.

###### **Article 17**

The Observatory may, if it deems necessary, have recourse to experts for specific assignments.



Such experts shall act on the instructions and under the responsibility of the Observatory. They must have specific expertise and experience in matters falling within the mandate of the Observatory. Experts and interpreters shall be bound by an obligation of confidentiality.

### **Chapter III Operation**

#### **Article 18**

- The Observatory shall meet in camera.
- Three fifths of its members shall constitute a quorum.
- Decisions shall be made by a majority of the members present.

#### **Article 19**

A decree of the Council of Ministers shall establish the procedures governing the operation of the Observatory.

## **Title IV Privileges and immunities of members of the Observatory**

### **Chapter I Privileges**

#### **Article 20**

- The Observatory shall have access to:
1. All places of detention and all detainees therein;
  2. All information referring to the treatment of persons deprived of their liberty and their conditions of detention;
  3. All information useful to its work.

It shall have private interviews with persons deprived of their liberty without witnesses, either personally or through an interpreter if deemed necessary, as well as with any other person it believes may supply relevant information.

It may freely choose the places it wants to visit and the persons it wants to interview.

Information gathered by the Observatory shall be protected; no personal data shall be published without the express consent of the person concerned.

#### **Article 21**

After each visit, the Observatory shall make recommendations to the competent authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment.

#### **Article 22**

The competent authorities or the institutions visited shall be bound to consider the Observatory's recommendations, follow up on them and, within 30 days, engage in a dialogue on possible measures to implement them.

#### **Article 23**

The Observatory may decide to make a public statement if the competent authorities or the institutions visited fail to cooperate or follow up on the recommendations duly forwarded to them.

#### **Article 24**

The Observatory shall submit an annual report to the President of the Republic, with a copy to the President of the National Assembly.

The Observatory shall subsequently publish the report.

### **Chapter 2 Immunities**

#### **Article 25**

Members of the Observatory may not be subject to any form of inquiry, legal proceedings, detention or trial in respect of opinions expressed in the course of or in connection with the performance of their duties.

The Observatory alone shall be competent to waive the immunity of members.

#### **Article 26**

No public authority or public official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Observatory any information insofar as such information was provided in accordance with the law. Where appropriate, the authority may incur liability.

### **Title V Resources and financial management of the Observatory**

#### **Article 27**

The resources of the Observatory shall be made up of:

- The initial endowment of premises, furniture and fixtures belonging to the State and placed at the Observatory's disposal and start-up funds, the amount of which shall be set by decree of the Council of Ministers, upon a proposal by the Minister of Justice
- Annual appropriations allocated to the Observatory by the State; they shall be set in the Finance Act upon a proposal by the Minister of Justice

The Observatory may receive gifts and legacies in accordance with applicable legislation.

**Article 28**

A decree of the Council of Ministers shall establish the financial regulations of the Observatory and the recruiting procedures for the accounting officer.

**Title VI**  
**Final provisions**

**Article 29**

Any matter not covered by this Act, including the adoption of a logo or distinctive sign and the bearing of professional identity cards, shall be governed by the rules of procedure.

**Article 30**

All previous conflicting provisions shall be repealed.

**Article 31**

This Act shall be executed as State law.

**Done in Cotonou, on**

## Annex IV

### **Preliminary guidelines for the development of national preventive mechanisms**

In order to facilitate the dialogue with NPMs generally, the SPT wishes to indicate some preliminary guidelines concerning the process of establishing NPMs, either by development of new or existing bodies, and concerning certain key features of NPMs:

- (i) The mandate and powers of the NPM should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of liberty as per OPCAT shall be reflected in that text;
- (ii) The NPM should be developed by a public, inclusive and transparent process of establishment, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the NPM, the matter should be open for debate, involving civil society;
- (iii) The independence of the NPM, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position which could raise questions of conflict of interest;
- (iv) Selection of members should be based on stated criteria relating to the experience and expertise required to carry out NPM work effectively and impartially;
- (v) NPM membership should be gender balanced and have adequate representation of ethnic, minority and indigenous groups. The State shall take the necessary measures to ensure that the expert members of the NPM have the required capabilities and professional knowledge. Training should be provided to NPMs;
- (vi) Adequate resources should be provided for the specific work of NPMs in accordance with Article 18, 3 of the OPCAT; these should be ring-fenced, in terms of both budget and human resources;
- (vii) The work programme of NPMs should cover all potential and actual places of deprivation of liberty;
- (viii) The periodicity of NPM visits should ensure effective monitoring of such places as regards safeguards against ill-treatment;
- (ix) Working methods of NPMs should be developed and reviewed with a view to effective identification of good practice and gaps in protection;
- (x) States should encourage NPMs to report on visits with feedback on good practice and gaps in protection to the institutions concerned, as well as with recommendations to the responsible authorities on improvements in practice, policy and law;
- (xi) NPMs and the authorities should establish an on-going dialogue based on the recommendations for changes arising from the visits and the action taken to respond to such recommendations, in accordance with Article 22 of the OPCAT;

(xii) The annual report of NPMs shall be published in accordance with Article 23 of the OPCAT;

(xiii) The development of NPMs should be considered an on-going obligation, with reinforcement of formal aspects and working methods refined and improved incrementally.

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