

STATE VIOLENCE IN BENIN

ALTERNATIVE REPORT
TO THE COMMITTEE ON HUMAN RIGHTS



EXECUTIVE SUMMARY AND RECOMMENDATIONS



Association des Femmes Juristes du Bénin



ENFANTS SOLIDAIRES D'AFRIQUE ET DU MONDE



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PART 1: GENERAL SITUATION

1. Administrative, judiciary and criminal structure

The Constitution of Benin, in force since 11th December 1990, envisages various guarantees in order to found a state of law. The main impediments are the state of the criminal legislation, governmental interferences with the administration of justice and generalised corruption.

2. Right to life

Extrajudicial killings and arbitrary/illegal taking of life

The main and recurring problem, already mentioned in 2002 by the Committee against Torture (CAT), is the practice of mob justice. It is the result of an inability on the part of the authorities to prevent civilians from resorting to violence and to eliminate the causes of such a practice.

Death penalty

Article 381 of the Benin Criminal Code envisages the death penalty for people found guilty of armed robbery. This sentence is not frequently pronounced, but it has not been abolished. The Constitutional Court stated that the death penalty would be carried out not arbitrary and based on law. Furthermore, it will probably be reinstated in the criminal code project currently under discussion.

Disappearances

Disappearances are not frequent in Benin. However, the government has not reacted following the kidnapping of the former sub-prefect, Panphile Hessou, during the crisis of the 1990s.

Right to life and article 2 ICCPR

Awareness raising activities have been organised by the ministry of justice in order to develop the population's confidence in public justice and to eliminate private justice. Aside from this programme, the government of Benin has not been very active. The Benin Commission on Human Rights has not been effective due to its lack of professionalism.

3. Prohibition of torture

Legislation

The main problems are the absence of a definition of torture strictly in keeping with article 1 of the Convention, and the lack of specific penalties for the crime of torture, as mentioned by the CAT in 2002.

Executive power related problems

Torture and other ill treatments are not uncommon during police custody and are rarely prosecuted (especially in rural areas). Furthermore, police officers tend to resort to violence against their wives and/or family.

Judiciary power related problems

The Constitutional Court has a tendency to refuse cases of allegation of torture and other ill treatment on the basis of lack of evidence, the burden of proof being with the plaintiff. In 2001, only two cases of inhuman and degrading treatment (out of the twenty two cases of police custody brought before the Court) were allowed to progress.

Mob justice

The practice of mob justice on suspected thieves is a result of the lack of credibility of public justice, as was mentioned by the CAT in 2002.

Prohibition of torture and article 2 ICCPR

There is a lack of attention paid to the prohibition of torture in training programmes for civilian and military law enforcement personnel and medical personnel, and there is also a lack of medical and psychological rehabilitation programmes for torture victims, as mentioned by the CAT in 2002.

4. Detention

Detention conditions

Prisons in Benin are in very bad conditions, as stated by several national NGOs and international monitoring organs. The main problems are overcrowding and deplorable physical conditions, lack of hygiene, adequate food or appropriate medical care, as well as violence between detainees.

Detention and article 2 ICCPR

Except for the “Centre pour la sauvegarde de l'enfance et de l'adolescence de Agblangandan”, which had to close down a number of times for financial reasons, there are no social or professional reinsertion structures.

5. Remedies

The lower courts are rather ineffective due to their slowness, corruption and resulting lack of credibility. Other than the Constitutional Court's tendency to refuse cases of allegation of torture and other ill treatment to progress, its main problem is the lack of follow-up and enforcement mechanisms.

6. Reparation

Articles 2 to 10 of the Procedural Criminal Code of Benin allow victims to engage in civil or public actions in order to obtain reparation and satisfactory compensation. However, there are no enforcement mechanisms. Therefore, even when the violation is recognised, victims rarely obtain reparation.

PART 2: VIOLENCE AGAINST WOMEN IN BENIN

1. Female Genital Mutilation

Law N° 2003-03 (3rd March 2003) makes female genital mutilation (FGM) a crime. This new law imposes prison sentences and fines on individuals who practice FGM in Benin. However, there are some serious concerns regarding the interpretation of article 3 of this law which relates to exceptions to forbidding FGM. Are there really medical improvements for any woman subjected to female genital mutilation?

The practice of FGM still occurs in Benin although there appear to be signs that this practice is decreasing.

2. Abortion

Benin amended its abortion law in March 2003, with law N°2003-04, which permits the procedure in cases of risk to the health or life of a woman, and in cases of rape and incest.

However, Article 317 of the current penal code (code Bouvenet) still prohibits abortion and provides for penalties.

3. Forced marriages and levir:

Forced marriages, as well as levir, remain in practice in different regions in Benin despite an awareness campaign. The Criminal Code does not prohibit either.

4. Conditions in Prisons and Detention Facilities

There are eight prisons in Benin in which women are separated from men, but girls are not separated from adults. No female-only prisons exist.

Prisons in Benin have financial problems, conditions are poor (unsanitary, ill-equipped, often overcrowded) and the quality of food, health care and medical equipment is poor.

Funds are urgently needed for prisons and prison staff needs to be educated.

PART 3: STATE VIOLENCE AGAINST CHILDREN IN BENIN

Introduction

Childhood reveals the ambivalence of tradition within Benin's society. On the one hand, a child is traditionally considered as a source of happiness and pride for his/her family. On the other hand, society and, in particular, parents commonly ill-treat children. Nevertheless, the authorities of Benin are concerned about the protection of the rights of the child and have tried to legislate and set up specialised organisations to protect the child. The main difficulties preventing the effective improvement of the protection of children's rights are: the impunity of the perpetrators; a child's ignorance of the law and their rights; and the resistance of society to consider the child as a person who holds rights.

1. Definition of the child

In Benin a child is a person who has not reached the age of:

- 21 for civil matters;
- 18 for political and penal issues; and
- 14 so as to be able to work, 12 in case of "light" work.

2. Protection of the child against torture and other cruel, inhuman or degrading treatment or punishment

A) Legal framework

1) International law

- Convention on the Rights of the Child (ratified by Benin on 3rd August 1990),
- African Charter on the Rights and Welfare of the Child (ratified by Benin in 1996),
- ILO Conventions n°138 and 182 (ratified by Benin on 6th November 2001).

2) Benin law

- Constitution of 11th December 1990: articles 18 and 19 state the prohibition and punishment of acts of torture, particularly those committed by a state agent.
- Criminal law: the act of torture is neither defined nor qualified as a crime in Benin law and no sanction is set in the case where a state agent is responsible for such an act. This is the reality for all citizens of Benin, including children.

Other texts exist in order to sanction a state agent who performs an act of violence against a child. Moreover, generally, the sanctions are heavier when the victim is a minor and, according to the law, the sanctions are dissuasive enough. Nevertheless, practice shows that when there are acts of violence against children committed by state agents (in particular police officers) they are rarely denounced.

B) Torture in practice

There are two phenomena:

- the culture of denunciation is not widespread in case of violence against a child; and
- acts of torture and ill treatment against children by state agents are not effectively punished (in the rare cases when they are denounced).

Currently, the practice of ill treatment against children is endemic in police stations in Benin but such acts are still taboo and not denounced by the victims themselves. The main cause of this phenomenon is the victim's ignorance of the law and their rights, as well as a latent trend in Benin society to use corporal punishment. Numerous parents (especially in rural areas) bring their disobedient children to police officers or teachers in order to punish them, often by thrashing them.

C) Procedures of complaint

Besides usual procedures of complaint (Constitutional Court, ordinary tribunals and administrative complaints), children victims of violence can lodge a complaint with organisations defending human rights and call a special free phone number. However, this complaint can only be lodged through their parents. Nevertheless, children are usually dissuaded from lodging a complaint and no real effort is made to make their involvement easy.

3. Children in conflict with the law

A) Age of criminal responsibility

Criminal majority is at 18 years old. Before thirteen years of age, the minor is criminally irresponsible and cannot be subjected to criminal sanctions. Between 13 and 18 years old, a minor can be judged before a special tribunal and sentenced to measures of deprivation of liberty.

B) The system of juvenile justice

1) The procedure with police officers and agents from the juvenile liaison police (*Brigade de Protection des Mineurs*)

When police officers deal with minors in conflict with the law, their task is to record the offence committed by the minor and try to settle the case out of court. The fact that this specific mission is not legally framed, and that there is no judicial assistance at this moment, may lead to the infringement of the rights of the minor when he/she faces police officers. This informal procedure allows agents to abuse their duty and ill-treat minors. This is particularly common in rural areas.

2) The procedure before the judge

There are three special courts for juvenile justice (Cotonou, Porto-Novo and Ouidah) but only two judges for minors in the whole country. Judicial assistance is compulsory at this stage and the judge can decide to remand the minor in pre-trial detention.

C) Measures against a minor in conflict with the law

Any minor in conflict with the law under 18 years of age may be subjected to educative, supervision or guardianship measures. Moreover, minors over 13 but under 18 years old may be sentenced to criminal sanctions including deprivation of liberty. If so, the sentence cannot be more than half of that to which an adult may be sentenced.

Although it no longer exists in practice, no legislation clearly prohibits the death penalty or life imprisonment of a minor.

D) Conditions of detention

Except in Parakou, the eight prisons in Benin have specific areas for minors. Conditions of detention in prisons for minors are awful: the space is too small; hygiene conditions are poor; there are no games or entertainment; there is no medical care; 20 to 30 minors live and sleep together; and minors awaiting trial live with minors sentenced by a court. There are more minors in pre-trial detention than minors who have already been judged and sentenced to detention by a court.

4. State institutions accommodating children

A) Schooling

Even if the law in Benin bans corporal punishment, teachers use it in practice.

B) The National Centre for the Safeguard of Childhood and Adolescence

5. Protection against all forms of violence against children

A) The custom of “vidomégon”

This phenomenon consists in the placement of a child, through a third party or not who may be a member of the child's family, who is paid or not for his/her work. These children are often abused, beaten, etc.

Today, this custom hides real trafficking within the country. It is a new form of slavery or sale of children. The causes are mainly economic and intellectual poverty as well as the irresponsibility of certain parents.

There is no law specifically for “vidomégon”. Instead the government has chosen to fight against child trafficking to which “vidomégon” is closely linked.

B) Child trafficking

For some years, Benin has become a real turntable for child trafficking in West Africa. UNICEF estimates the number of children victims of trafficking at 200,000 in this region. Benin is a country of origin, destination and

transit for child trafficking. The children victims of trans-border trafficking are then illegally adopted, prostituted, sold or exchanged. The children victims of trafficking inside the country (see “vidomégon”) are sold or used for domestic work or paid work such as farm work or on a building site.

Even if some efforts should be noticed, the work of the government of Benin remain theoretic and are limited to trans-border trafficking. There is no explicit statute prohibiting child trafficking and which allows for the effective judgement of traffickers. A project is currently under discussion before the National Assembly.

C) Ritual infanticide of “sorcerer”-children

The tradition in some regions of the country still considers a category of children as “sorcerers” according to the way they were born. Most of the time those children are promptly killed or sometimes forsaken, sold or enslaved. The main difficulty in fighting against this custom is the absence of denunciation when such cases happen. And if the act is denounced, the number of proceedings is low because of the difficulty in providing evidence.

In 1999, the Committee on the Rights of the Child was already concerned by this phenomenon and stated that: “While the Committee notes the efforts of the State party, it remains concerned that infanticide continues to be practised, particularly in rural communities and on infants with disabilities. The Committee recommends that the State party (...) take measures, including those of a legal nature, to prevent and discourage infanticide and protect infants and guarantee their right to life, survival and development” However, the situation does not seem to have changed.

RECOMMENDATIONS

1. General Recommendations:

Concerning the judicial system and incrimination of torture:

1. Revise legislation with regards to the incrimination of torture and other cruel, inhuman or degrading treatment or punishment so that it be conform to international standards. In particular, incriminate torture in the penal code in conformity with the definition adopted by the Convention against Torture.
2. Take concrete measures so that each individual in police custody and/or detention be informed of his rights in a language that he understands, by posting these rights in police stations, gendarmeries and prisons. Ensure systematically and in an effective manner that all persons in police custody and/or provisional detention have access to a doctor and a lawyer.
3. Ensure that the programme of reinforcing the judicial and legal systems, validated in August 2004, is put in place effectively.
4. Create an organ to follow up on the decisions of the Constitutional Court related to the violation of human rights.

Concerning the battle against impunity and the right to reparation for victims of torture:

5. Ensure an immediate independent, impartial and effective investigation into all allegations of torture and other cruel, inhuman or degrading treatment, and, if needs be, prosecute all perpetrators of these acts. Ensure that victims receive an equitable and adequate indemnity.
6. Put in place compulsory training and education programmes for State employees in charge of applying laws as well as medical personnel in order to eradicate and render torture and all other cruel, inhuman or degrading treatment forbidden.
7. Simplify and widely diffuse penal and/or administrative procedures which allow the prosecution of functionaries, linked to the gendarmerie or police, suspected of acts of torture, cruel, inhuman or degrading treatment or abuse in detention.
8. Persevere in putting in place awareness raising and training activities of civilian populations in order to stop the practice of lynching and mob justice.

Concerning living conditions in prisons:

9. Improve detention conditions and remedy all problems of overpopulation, lack of hygiene, lack of food and appropriate medical supplies. Based on evidence gathered in Cotonou prison, prisoners are badly fed and as a result often depend on their families for food.

2. Recommendations concerning women:

1. Concerning the protection of the right of the woman in general, AFJB and OMCT welcome the adoption of the Family Code of 7 June 2002, law No. 2003-04 on Reproductive Rights and Sexual Health, as well as law 2003-03 of 3 march 2003 regarding repression of the practice of Female Genital Mutilation, three laws which considerably improve the legal framework for the women. However, AFJB and OMCT would like that the rights entailed in these texts be effectively implemented and would like therefore to recommend the adoption of a programme of action.
2. Benin should concentrate its efforts on guaranteeing freedom of marriage and the eradication and repression of forced marriages and levir.

3. Conditions of detention should respect standards defined by international conventions, to which Benin is party, and notably Article 8 of the ensemble of minimum rules for the treatment of detainees which specifies that different categories of prisoners should be detained in separate institutions based on the age and sex of the detainee.

4. Reform legislation pertaining to the penitentiary regime in Benin so that it be conform with international norms to which Benin has adhered, as Decree No. 73-293 of 15th September 1973, related to the penitentiary regime of Benin, no longer seems to meet the current reality of the state of law in Benin.

5. Benin should lead a supported action of awareness building and training of official authorities (judges, prosecutors and security officials) on issues of gender, violence specific to women (initial and continued training) and mobilise the law in favour of a better protection for women whose rights have been violated.

6. Suppress trafficking of women through a law aimed at suppressing the trafficking of persons and children, in particular girls.

3. Recommendations concerning children:

1. Concerning the protection of the right of the child in general, ESAM and OMCT would like the Committee on Human Rights to recommend that the government of Benin define a global policy on the protection of childhood by harmonising different initiatives aimed at putting an end to all violations against children, notably through information and awareness building of society (including rural areas) and through training qualified persons.

2. Concerning legislation aimed at protecting children from torture and all other cruel, inhuman and degrading treatment, ESAM and OMCT would like the Committee on Human Rights to recommend that the government of Benin develop and state in its legislation:

- The list of "light" work which can be carried out by a child of 12 years old in conformity with Convention 138 of the International Labour Organization;

- The definition and criminalisation of acts of torture and other cruel, inhuman or degrading treatment or punishments, particularly when they are committed by a State official and constitute an abuse of power, and notably foreseen for more severe punishment when the victim is under 18 years of age;

- The facilitation, practically and legally, for a child victim of torture and other cruel, inhuman and degrading treatment to lodge a complaint, notably through information campaigns aimed at children.

3. Concerning the practice of torture and other cruel, inhuman or degrading treatment, including general recourse to ill treatment and infanticide of 'sorcerer' or 'abnormal' children, ESAM and OMCT would like the Committee on Human Rights to recommend that the government of Benin develop education and awareness raising campaigns for society generally, parents and police officials, persons working with children, as well as children themselves. Such programmes should aim to modify the behaviour of society and inform adults of national and international law and the protection and respect due to children. Education programmes should inform children of their rights and support the denunciation of acts of which they are victim.

4. Concerning the situation of a minor in conflict with the law, ESAM and OMCT would like the Committee on Human Rights to recommend that the government of Benin organise a justice system for minors and special penal procedures in conformity with relevant international standards (principle of Riyadh and rules of Beijing) and notably:

- Ensure that a parent and/or legal aid be informed as of the first hour following arrest;
- Train legal personnel working with children (policemen and judges);
- Name judges for children at each level of jurisdiction;
- Make sure, legally and practically, that measures depriving liberty (including preventive detention) be decided as a last resort, notably favouring alternative measures;
- Explicitly prohibit the death penalty for persons under the age of 18.

5. Relating to detention conditions of minors, ESAM and OMCT would like the Committee on Human Rights to recommend the government of Benin to:

- Create quarters for minors in all Benin prisons, notably in Parakou, and ensure that minors are effectively separated from adults in detention, so that only wardens and educators mix with them;
- Improve conditions of detention for minors (in prisons as well as reception centres) through modernising premises, medical attention, and organisation of their education within these institutions;
- Put in place independent control mechanisms to verify living conditions of detained minors.

6. Concerning the trafficking of children, ESAM and OMCT recognise the efforts made by the government of Benin during the last few years to fight against the phenomenon, and encourage them to continue along these lines notably by:

- Creating control mechanisms for the placement of children (Vidomégon phenomenon) in order to avoid abuse. For example, by putting in place public placement agencies and through regularly visiting host families;
- Fighting against generative forces of trafficking, notably economic poverty, but also intellectual by providing free primary education for girls and boys in the cities and countryside;
- Heightening public awareness, in particular that of parents, on the consequences of trafficking and such abuses (news bulletins in newspapers, on television and on the radio);
- Establishing a law which effectively and efficiently punishes traffickers;
- Joining with other African governments, equally concerned, in fighting this phenomenon.