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Contribution from the World Organisation Against Torture (OMCT) to the Universal Periodic Review (UPR) Process on BENIN

OMCT wishes to draw attention to the serious situation as regards torture and other cruel, inhuman or degrading treatment or punishment in Benin and, in particular, to emphasise the following:

1/ Inadequacy of the domestic legislation on torture with international relevant standards

Articles 18 and 19 of the Beninese Constitution, which set out the principle of the ban on torture, have not filtered through into criminal law. Torture as an act is not defined and is not specified as a criminal act; no specific sentence is laid down for a public official who admits having committed such an act.

Moreover, the bill for the new Criminal Code, which the National Assembly has been postponing scrutiny for more than six years, does not envisage making torture an offence in the domestic law. It is now essential that Assembly members amend the bill in order to make torture a criminal offence.

2/ Excessive use of force, including torture, by law enforcement agents against persons arrested and kept in police custody

Human rights abuses begin in police custody – at police stations in urban and rural areas alike. Detainees are subjected to acts of torture or other ill-treatment. Some officers have admitted to such practices, whilst pointing out that they view them as a means of extracting a confession, above all when the investigation uncovers information that the detainees deny. Ill-treatments that may amount to torture are also used against arrested children to obtain confession, despite the existing minors' protection police unit (*Brigade de Protection des Mineurs*).

Moreover, excessive duration of police custody is not uncommon.

3/ Shameful conditions of detention

- *Insufficient access to prisons and other places of detention*

There is no mechanism enabling NGOs or other independent bodies to visit regularly places of detention. In connection with the implementation of the Optional Protocol to the Convention against Torture, the Benin authorities are currently looking into establishing a national torture prevention mechanism. A draft bill, submitted on 27 September 2007, is now under examination.

- *Overpopulation*

Most prisons in Benin date from the colonial period, and capacity is thus very limited. Renovation work is perfunctory and not common to all prisons.

Buildings constructed to hold 45 people may contain as many as 150 detainees.

In the prisons of Cotonou and Abomey, the quarter dedicated to juveniles undergoes the same overpopulation problem because of the excessive use of pre-trial detention, the limited use of

alternative measures and the expensiveness of bails. Therefore, juveniles suffer a lot from promiscuity (there were 67 detainees in 20m² in October 2007 in the juvenile quarter of the prison of Cotonou) as well as hygienic and health problem in those two prisons.

- *Violence and abuses, including bribes, in detention*

There are reports of cases of violence perpetrated against juvenile detainees by guards and peers. Corruption as well as abusive initiation procedures for new arrivals, youngest, etc. is widespread. These include different types of payments (also in kind) to obtain a place to sleep, food, to access the family during visits, etc. These practices occur among both adult and juvenile detainees.

- *Rights to food and to health*

The right to food is constantly subject to grave violations. Detainees suffer from malnutrition and under-nourishment; they receive only one inadequate meal a day. The daily food allowance per detainee under the State budget is 290 CFA francs; neither the government nor the judiciary have done anything to improve this situation.

Efforts on the part of relatives and friends to give even the smallest help to their loved ones are futile and thwarted by the confiscation of food and corruption.

The difficult detention conditions make for frequent outbreaks of illnesses such as skin diseases, depression or infections which affect detainees on a regular basis. In addition, prison healthcare staff are unable to cope with complications and outbreaks of serious illnesses requiring intense care. Such cases require hospitalisation, but the State only reimburses consultation fees; prisoners or their families must pay all other fees themselves.

In most instances, prison healthcare centres have no first-aid medication with which to treat detainees, other than paracetamol and sleeping tablets. Moreover, since responsibility for prison health was transferred from the Ministry of Health to the Ministry of Justice, medical supplies are no longer delivered regularly. No prison in Benin has received medical supplies since January 2007.

Concerning the treatment of women, care for pregnant and nursing women is inadequate.

- *Visits*

Corruption and the influence of the “mafia” in prison establishments means that for many detainees visits have become rarer or have dried up completely. Many relatives and friends wanting to visit detainees are stripped of their meagre possessions, especially personal items that visitors are required to check in on arrival. Visitors are charged for access to the visiting room. Likewise, detainees have to pass through “toll areas” in order to return to their cells or detention centres. Supplies brought in for detainees are often confiscated.

- *Unclear separation of detainees according to the ground of detention and the age*

In the majority of the country’s prisons, there is no separation between defendants and convicted offenders.

Concerning the separation according to the age, despite the detention of juveniles in separate quarters, this separation from adults remains slight in practice: adults often enter the juveniles’ quarter; juveniles should cross regularly places where adults live, etc. Regarding women and girls specifically, there is no separation between them: they literally live together.

4/ Violations of human rights against women, including torture or other cruel, inhuman or degrading treatment or punishment

In the last years, the situation of women in Benin seems to have improved. In particular, legislative measures have been adopted in order to enhance the protection of women’s rights in the country. Several provisions of the current legislation state the principle of equality between women and men (Constitution, Law on Sexual Health and Reproduction). Moreover, some projects of law could improve the legal framework for the protection of women from violence

(project of a new Criminal Code and one of a Criminal Procedure Code and draft Law on violence against women).

Yet, women are still victims of several forms of violence. Domestic violence including marital rape, forced marriages, female genital mutilation (FGM), rape, forced abortion, exploitation and trafficking in women are quite widespread, especially in the North of Benin.

Domestic violence is not criminalized as such in the current Criminal Code and is neither included in the Project of new Criminal Code. Domestic violence is a widespread phenomenon in Benin. It often occurs in the context of forced marriages, especially in the North of the country. But these cases of violence are not denounced because of cultural and social obstacles. The priorities are to ensure the training of the State agents to this problem and to open shelters for women victims of violence. In addition, the Prosecutor should be able to open a case on his own initiative (*ex officio*) in cases of domestic violence.

Rape is strictly defined in the current Criminal Code. A broader definition must be adopted such as the one chosen in the Project of Criminal Code. Marital rape must also be integrated in the criminal legislation in Benin, as there are numerous cases in Benin, especially in the context of forced marriages.

Female genital mutilations are still practiced in Benin in certain villages of the Atacora area despite the existence of a law prohibiting FGM. Two problems remain. First, the definition of outlawed forms of FGM excludes from this category surgical operations done on medical prescription which are thus allowed and let open a possibility to practice such interventions. Secondly, the legislation is not effectively applied and as such this practice is not denounced and the authors are most of the time not prosecuted.

Trafficking in women is not integrated in the criminal legislation in Benin and is not prohibited by any specific legislation.

Although violence against women is mainly perpetrated in the private sphere, frequently the State is, directly or indirectly, liable for it. State omission in the failure to adopt measures to prevent and punish such practices is generally due to cultural reasons.

Several cases show that the authorities are very reluctant to intervene and investigate situations where women are victims of violence within the family, of forced marriages, of female genital mutilation or of other acts seen as private affairs. This maintains the general impunity which exists in cases of violence against women.

5/ Violations of human rights against children, including torture or other cruel, inhuman or degrading treatment or punishment

- *Frequent use of corporal punishment against children*

Traditional social behaviours continue to encourage the recourse to violence within the family, schools, care and judicial institutions and in general the whole society. Children's ill-treatment is a widespread and ordinary in Benin. Corporal punishment is a daily practice to educate one's child. It is not completely prohibited in the law, even at home, in breach of the recommendations by the Committee on the Rights of the Child in its General Comment n°8 and in its last Concluding Observations on Benin¹.

¹ Committee on the Rights of the child, Concluding observations : Benin, CRC/C/BEN/CO/2, 20 October 2006, para. 39 and 40.

- *Violence against children in situation of exploitation, including child trafficking and labour*

The new law on trafficking in children adopted in 2006 is an improvement for children but gaps remain. In practice, child trafficking persists in Benin but also concerns other countries from the sub-region. A transnational collaboration is needed. Frequently, children are brought in difficult conditions and when arrived, are forced to carry out tasks beyond the normal capacity of a child, including prostitution.

Beyond the daily exploitation of child domestic workers also called “*vidomégon*”, they are frequently victims of cruel, inhuman or degrading treatments, including sexual and psychological violence by employers. Those cases are rarely denounced and brought to court. It is necessary to establish a legislation that regulate this sector and properly protect children from exploitation and violence.

- *Infanticides of children considered witches*

This phenomenon is limited to the North of the country. It is based on traditional belief and may amount to worst forms of cruelty. Certain babies, because of the way they are born, are killed, sometimes in a manner that amount to torture. There is no legislation or governmental policy on this issue. The government should sensitise the population (particularly women, mid-wives and communities)

Recommendations

The government of Benin and all relevant governmental, legislative or judicial authorities at national and local level should:

(points 1 to 3)

- Take urgent steps to amend its criminal law (particularly by taking the opportunity of the current bill reforming the Criminal Code) to make torture a criminal offence and to define torture in compliance with international relevant standards (notably article 1 of the UN Convention Against Torture).
- Ensure that all measures are taken in order to cease all excessive use of force by law enforcement agents against individuals during arrest and police custody. It should introduce human rights legal safeguards in its law and ensure their proper implementation.
- Establish promptly a procedure governing visits to detention centres, in accordance with the obligations laid down in the United Nations Optional Protocol to the Convention against Torture (OPCAT). Moreover, non-governmental organisations working in the field of human rights ought to be afforded easier access to detention centres.
- Adopt practices in line with the Standard Minimum Rules for the Treatment of Prisoners. It should move urgently to establish an ambitious policy to improve the state of prisons and other closed centres, in which living conditions are growing ever worse.
- Take urgent measures to combat prison overcrowding, with priority given to alternative measures to detention, particularly in respect of individuals who have been sentenced for minor offences or who have been held in custody for several years, and by reducing the recourse to pre-trial detention.
- Take the measures required to ensure that detainees enjoy access to basic medical care and receive proper attention.
- Guarantee that women and children are segregated from men and adults respectively, and that accused and convicted are segregated. Benin ought also to ensure that only women prison staff is assigned to guard female detainees.
- Guarantee that detainees have access to a doctor and to legal assistance, which, where appropriate, should be free of charge for people with no means. Detainees should be able to be informed of their rights in a language they understand and have the opportunity of contacting their families and close relations.

- End the practice of bribes between detainees and between guards and detainees as well as the abusive initiation procedures as a condition to access basic rights.

(point 4)

- Reinforce the action of NGOs working for the promotion and the defense of women's rights by investing towards the elimination of illiteracy, the education and instruction of girls and women, notably in the Northern part of the State.
- Diffuse the relevant laws, international and national, to which Benin is a party to, in the main national languages (about seven), and all over the territory, especially to the political and administrative authorities, mayors, heads of neighbourhoods or villages.
- Implement the international instruments ratified by Benin and particularly the Additional Protocol to the African Charter on Human and People's Rights related to the women's rights, at the national scale, by integrating them to the internal legislation, and by monitoring their effective application to all the citizens, without any distinction or discrimination by the judicial personal and the judicial services.
- Add to the Project of Criminal Code the provisions on the repression of domestic violence and trafficking in women and to revise the penalties in cases of violence against women; in this respect, also adequately and similarly review the text of the legislative bill on violence against women by adding the offence of domestic violence, including domestic rape.
- Effectively punish perpetrators of violence against women, especially perpetrators of female genital mutilations, in conformity with the sanctions prescribed by the texts.
- Set up shelters for women and girls who are victim of violence or exploitation.
- Ensure a specialized training for the judicial personal and services, on amicable and judicial resolution in cases of violence against women, especially in the domestic context. If possible, set up special brigades, composed of women who would be attentive to women in all the territory.
- Ensure periodical training to update the magistrates, the judicial personal, the directors of detention centers and the officers of the police, and make the new laws that were voted and adopted available to them.
- Improve the conditions of detention in the State, more particularly by ensuring that minors, including girls, are separated from adults; that all detainees are treated with humanity, that they have access to care and benefit from basic sanitary and food necessities, with special attention given to the needs of women and children; and that all employees of the detention facilities are provided with satisfactory and effective human, material and logistic means.

(point 5)

- Expressly prohibit in the law all forms of corporal punishment against children for any purpose (including education) and in all situations and settings, including at home; and sensitise key actors (personal working with children, parents, etc) on the harmful effects of corporal punishment and on the value of non harmful conducts of education and child development.
- Adopt and implement measures to make effective the 2006 law on child trafficking; in particular, negotiate a transnational plan of action with other concerned neighbouring countries.
- Establish a legislation to regulate the sector of domestic labour and especially adopt rules to protect children from exploitation and violence while working.
- Urgently adopt legislation and a governmental policy to stop infanticides, notably by sensitising the concerned parts of the population and giving support to families.