

Country Visit to Benin of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

End of Mission Statement, 27 November 2024

The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul, conducted an official visit to Benin from 18 to 27 November 2024 to assess the consistency of Benin's counter-terrorism laws, policies and practices with its international human rights obligations. The Special Rapporteur commends the constructive way in which the Government facilitated his visit, enabling a frank and open dialogue. He particularly thanks the Ministry of Justice and the Ministry of Foreign Affairs for their well-organized engagement and the solid support in preparation for and throughout his visit. He commends the cooperative approach of all authorities and the readiness to accommodate requests. He also thanks the United Nations Resident Coordinator and the UN Country Team for the support provided during the visit.

The Special Rapporteur met during his visit with the Minister of Foreign Affairs, the Minister of Justice and Legislation, Minister of State for Development and Coordination of Government Action, Minister Delegate to the President in charge of National Defense, Minister of Interior and Public Security, Minister of Decentralization and Local Governance, Chief of General Staff of the Armed Forces, Court for the Repression of Economic Offenses and Terrorism (CRIET), Benin Penitentiary Agency Benin Agency for Integrated Border Management (ABeGIEF), High Commissioner for the Sedentarization of Herders, Directorate of Immigration and Emigration, National Agency for Civil Protection, Directorate of General Intelligence and Territorial Surveillance, General Directorate of the Republican Police, Permanent Secretariat of the National Commission for countering radicalisation, violent extremism and terrorism, National Unit for Financial Intelligence (CENTIF), National Agency for Employment Promotion, and the Small and Medium Enterprise Development Agency. He also met with the Benin Human Rights Commission.

The Special Rapporteur visited the Civil Prison of Akpro-Missérété, which handles all counter-terrorism-related cases, where he met with many detainees. He thanks the Government for providing unhindered access and acknowledges the transparency and constructive nature of this visit. Additionally, he travelled to northern Benin, visiting Parakou and Kandi, where he held discussions with local authorities, traditional and religious leaders, community members, displaced persons, and victims of terrorism. He also met with diverse stakeholders, including civil society organizations, lawyers, and other representatives of the international community.

Applicable International and Regional Human Rights Frameworks

Benin is a party to the major international human rights instruments and has accepted many inquiry procedures and complaint mechanisms in relation to torture, persons with disabilities, child rights, and discrimination against women. The Special Rapporteur encourages Benin to accept the individual complaints procedures under the International Covenant on Economic, Social and Cultural Rights (ICESCR). Benin's human rights record was recently examined by the UN Human Rights Council's Universal Periodic Review (UPR) in 2023 and by the Human Rights Committee in 2024. Benin was elected in 2024 to the Human Rights Council for 2025-2027. Benin is also party to the 1951 and 1967 refugee instruments and the major international humanitarian law instruments of 1949 and 1977. Benin is party to major regional instruments relevant to human rights, including the African Charter on Human and People's Rights and its Protocol establishing the African Court on Human and Peoples' Rights. However, in April 2020, Benin withdrew its declaration made under article 34(6) of that Protocol, thus preventing non-government organizations and individuals from submitting complaints to the Court. He encourages Benin to reconsider its withdrawal.

Under Benin's Constitution, treaties ratified in accordance with law have superior effect under national law (articles 145 and 147). The Constitution also contains a comprehensive suite of economic, social, civil and political rights. The Special Rapporteur echoes the position of the UN country team in the UPR of Benin in 2023 that Benin's legal framework has been strengthened by enhanced compliance with its international obligations, including the criminalisation of torture and the abolition of the death penalty. New laws concerning refugees and internally displaced persons (IDPs) have also been adopted. The duty on state authorities to cooperate with the Benin Human Rights Commission was strengthened in 2024, although there are concerns about the Commission's budget and capacities; and a 2024 law establishes a national preventive mechanism for torture within the Commission. A 2024 law on counter-terrorism financing positively adopts a risk-based approach to the terrorist financing risks of non-profit organizations, in accordance with international law, and provides for due process and judicial safeguards in relation to sanctions. As a small country, Benin values multilateralism, the UN and human

rights, and the international rule of law, exemplified by its election to the Human Rights Council, its participation in the international human rights instruments and procedures, and its invitation to the Special Rapporteur to visit. More generally, the Government has an ambitious domestic reform agenda, including improving governance, access to justice, transparency and accountability, economic policy and regional integration, including security cooperation with ECOWAS and through the Accra Initiative.

Terrorist threat

Since 2019 Benin has been increasingly affected by the infiltration of multiple terrorist groups across its northern borders with Burkina Faso, Niger and Nigeria, part of the wider spillover of terrorism from the heavily affected Sahel states. Attacks have been reported on the Benin police, military and local authorities, as well as on the local population. The latter have also been victims of kidnapping for ransom, forced recruitment, theft, extortion and reprisals for cooperating with security forces. Terrorist tactics have reportedly evolved from direct assaults on security forces to the indiscriminate use of mines and improvised explosive devices. Terrorist activity has been concentrated in border areas, particularly in the remote Pendjari and W national parks and peripheral villages, resulting in internal displacement of people and negative impacts on environmental conservation, including through the poaching of wildlife and the disruption of tourism.

Following the surprise onset of terrorism, the Government moved quickly to enhance security in the northern border regions. It adopted a “whole of government”, comprehensive security strategy augmenting security measures to prevent violent extremism and address conditions conducive to terrorism through improving economic and social development. The Government has engaged with international, regional and bilateral partners to reform legal frameworks and institutions and build capacity and expertise across relevant sectors.

Definition of terrorist act

The definition of an act of terrorism in articles 161 to 163 of the Penal Code partly reflects best practice international standards. In article 161, the specific intent elements of an “aim of seriously intimidating the population or unduly coercing the public authorities” are drawn from European Union Counter-Terrorism Directive 2017, and these elements, in turn, are drawn from the Terrorist Financing Convention 1999 and Security Council resolution 1566 (2004). The requirements of “seriously” intimidating or “unduly” compelling, drawn from EU law, raise the threshold for terrorist acts and thus ensure that terrorism is limited to the most serious cases. The cumulative contextual requirement that the act “may seriously harm the state” is also reflected in EU law and further confines the scope of offences, although this element is ambiguous and could make the operation of the law uncertain. Further, this element only requires that the act “may” seriously harm the state, whereas it would be preferable to require that the act does cause such harm.

The larger concern with the definition is that it provides three additional, alternative specific intent elements: “perverting the fundamental values of society and destabilizing constitutional, political, economic structures and/or institutions of the Nation, [or] of harming the interests of other countries or of an international organisation”. Each of these elements goes beyond best practice international standards as their terms are vague and overbroad, infringing the principle of legality under article 15 of the ICCPR that requires offences to be defined with sufficient clarity and specificity so that individuals can prospectively know the scope of their liability. Vague references to social values, national structures and foreign state interests also entail a risk of criminalizing the legitimate exercise of civil and political freedoms. The element of “destabilizing... structures” is based on a heavily criticized element in the above-mentioned EU Directive (see OTH 133/2024). Repealing these elements would also help to make the Penal Code definition more consistent with the definition of terrorist act in article 2 of Benin’s recently adopted Law No. 2024-01 on terrorist financing, which is closely based on the Terrorist Financing Convention 1999. Benin should also consider excluding for the definition (a) acts of democratic protests which do not cause death or serious injury; (b) the delivery of impartial humanitarian relief; and (c) the activities of armed forces in armed conflict governed by international humanitarian law.

Terrorism offences

The Penal Code definition contains a lengthy and complex list of 21 different terrorist acts in articles 162 to 163. Many of these extend well beyond best practice international standards on the definition of terrorism¹ by encompassing acts that are not offences under the international counter-terrorism conventions or do not otherwise intend to cause death or serious personal injury. In article 162, these include computer offences, transport offences, conventional weapons and munitions-related activities, while the act of undermining “the internal and/or external security of the State” conflates a different type of threat to national security with terrorism. In article 163, these include certain acts causing considerable economic loss or material damage; degradation of the natural

¹ As indicated by Security Council resolution 1566, the consensus definition in the Terrorist Financing Convention and the United Nations Draft Comprehensive Counter-terrorism Convention, and the model definition of the Special Rapporteur.

environment; and using national territory or national ships/aircraft to commit terrorism against another state's mere "interests". In article 163(10), the offence of "inciting ethnic, racial or religious fanaticism" confuses possible hate speech with terrorism. Some of the other acts under article 163 require that the act have "the effect of endangering human life", but such offences are overbroad because they do not require that the person intend their act to endanger life, thus setting liability too low. Article 163 also confusingly intermingles substantive terrorism offences (e.g. article 163(1)-(4) with preparatory or inchoate offences (such as training, recruiting, terrorist group offences, using territory for preparations, weapons offences, incitement, support, concealment and threats), whereas the latter should be distinguished from the "terrorist acts" that they facilitate, and penalties should be differentiated.

Article 163 (10) of the Penal Code criminalises "calling, by any means, for the commission of terrorist acts, inciting ethnic, racial or religious fanaticism, or using any name, term, symbol or other sign for the purpose of glorifying a terrorist organization, any of its leaders or its activities". The vagueness of "glorification" may infringe the principle of legality and enable the potential misuse of the law to curtail the legitimate exercise of the right to freedom of expression. The Human Rights Committee has highlighted that prohibitions on the "encouragement," "praising," "glorification," or "justification" of terrorism or extremist activity must adhere to the strict requirements for the limitation of freedom of expression on national security grounds or to protect the rights of others under article 19(3) of the ICCPR. Laws addressing terrorist-related expression must: be precisely prescribed by law and avoid vague terms; be based on a precise underlying definition of terrorism; be strictly necessary and proportionate; and include both an intent to incite terrorism and an objective risk that it will be committed (A/HRC/16/51, para. 31).

The definition of "terrorist organization" in article 165 of the Penal Code appears to conflate the concept or definition of a terrorist organization with the modes of criminal participation in such organization, namely attempt, complicity, organizing or inciting, and conspiracy. Further confusion is created because article 163(5) also addresses a type of organizational conspiracy. These provisions create unnecessary uncertainty about the scope of criminal liability related to terrorist groups and should be simplified to enhance legal certainty and reduce duplication.

Penalties

Article 166 of the Penal Code provides the penalty of life imprisonment for an act of terrorism. The provision appears to impose a mandatory sentence for all terrorist cases, irrespective of the characteristics of a particular crime, the circumstances of the offender, or any mitigating factors. Individual terrorist acts vary widely in their gravity, particularly where the definition of terrorism covers a very wide range of acts as under Benin's law. The principle of proportionality in criminal sentencing requires that the penalty for a crime should reflect its seriousness and the degree of culpability of the offender. Proportionate sentences can also encourage rehabilitation by offering convicted persons the possibility of eventual release and reintegration into society, whereas mandatory life sentences undermine prospects of rehabilitation, including deradicalization of terrorism offenders.

Arrest

Since the escalation of violence from 2019, hundreds of arrests have been made of people suspected of terrorist offences. In some cases, no substantive reasons were reportedly given for the arrest, whether upon arrest or during subsequent detention, even after a person was formally charged before the CRIET. Article 9(2) of the ICCPR requires the state to inform an arrested person at the time of their arrest of the reasons for the arrest and to promptly inform them of any charges. The reasons must include not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim, in a language that the person understands (General Comment No. 35, paras. 25 and 26).

The Special Rapporteur received numerous complaints of arrests being made without any apparent reasonable suspicion of involvement in terrorist activity, including some instances of mass arrests by the military, which may indicate arbitrary deprivations of liberty contrary to article 9(1) of the ICCPR. The release in August 2023 of 127 persons arrested for terrorism, while welcome, may indicate the potential scale of unsubstantiated arrests. While 652 individuals suspected of terrorism are currently in pre-trial detention, the Special Rapporteur has received reports of other individuals arrested for periods of days or weeks before being released for lack of evidence to prosecute, which could also indicate a lack of sufficient grounds for the initial arrests.

There are further indications some arrests may have been made in part on the basis of a person's religious affiliation or association with implicated family members, including through the arrests of wives and children of a male suspect. Discrimination against certain communities was frequently reported, particularly the disproportionate targeting of members of the Peulh (Fulani) community. Such instances have reportedly fuelled grievances and feelings of victimization, resulting in distrust of authorities, impediments to community cooperation with the authorities, and risks of radicalization in response to perceived bias. One non-governmental

source recorded 310 Peulh detainees, among a total number detained on terrorism charges of 652 people, representing almost half of all suspects, despite the Peulh constituting nine percent of Benin's population.

Senior central and local government and security officials had a strong awareness of the need to avoid the stigmatization of particular groups or communities (although some denied stigmatization exists), and direction has been given to police, military and local authorities to prevent it. The number of counter-terrorism arrests as a whole appears to have slowed. There nonetheless remain concerns that Benin's strong legal and policy settings against stigmatization have not always been fully implemented. There is a need to strengthen the training of personnel, and ensure appropriate orders and supervision, to guarantee that arrests are only made when there are reasonable grounds of suspicion of an offence according to law, and to avoid arrests based on unfounded accusations or pejorative associations of particular groups with terrorism.

A relatively low percentage of criminal justice actors, including police, military personnel, lawyers and judges, are drawn from the Peulh community that is over-represented in terrorism cases. It is recommended to continue Government efforts to diversify the composition of the police and the military, including increasing recruitment from northern communities, to enhance trust with local communities, which in turn can reduce stigmatization and increase information sharing and cooperation. Women are also substantially under-represented in the police force and particularly in the military. Efforts to improve their recruitment and promotion are to be encouraged.

Some civil society and community leaders reported being able to secure the freedom of some individuals who had been arbitrarily arrested after intervening with the police or prosecutors and providing evidence of the person's innocence, often with "good character" references from local authorities or communities. Where arrests have been wrongfully made, the law provides for potential compensation claims, but these may not be readily accessible to people who lack the means to engage lawyers, have low levels of education and literacy, and do not speak French.

Numerous charge sheets observed by the Special Rapporteur indicate that suspects are commonly charged with what is described as the offence of "belonging to a terrorist organization", typically mentioning one or more of articles 161 to 163 of the Penal Code. Few suspects appear to be charged with committing any substantive offence involving actual violence. Despite the typical accusation of "belonging to a terrorist organization", no further specification of the precise basis of this offence is provided (for example, article 163(5) on organizational conspiracy). As mentioned, these three articles of the Penal Code cover 21 different offences, while the principal terrorist organization offence is separately found in article 165. The lack of clarity in the specification of charges may not be consistent with the requirements under article 9(2) and 14(3)(a) of the ICCPR to inform an arrested person of the charges against them, which should include the precise legal basis and the facts, nature and cause of the charge (General Comment No. 32, para. 31).

The Special Rapporteur received a number of credible reports of individuals being beaten, whipped or kicked in police custody, particularly around the time of arrest. When terror suspects are arrested, usually in the north, they are then transferred by road to the criminal brigade of the Republican Police in Cotonou. The authorities indicated that these transfers are typically initiated immediately and completed within a few days. However, reports were received that some transfers can take as long as 15 days since suspects are transferred from police station to police station along the route from the far north to the far south of the country. For reference, a fast, continuous journey from Kandi in the north to Cotonou on the well-paved highway takes around ten hours, and many suspects are brought through Kandi from remote places along inaccessible rural roads, including the national parks. Reports were received of mistreatment and unsafe conditions during these transfers, including being jolted around in vehicles, being blindfolded or shackled for protracted periods, and being denied food and water for long periods, potentially in very hot weather.

Under Benin's criminal procedure law, the period of police custody is limited to 48 hours unless an extension is authorized by the prosecutor for up to eight days. Protracted transfers from the north to the south of Benin risk rendering police custody of the person unlawful, highlighting also the problem of justice institutions being remote from the areas where those arrested live. A different concern is that Benin's law authorizes the prosecutor to extend detention up to a total period of 10 days instead of requiring an independent judge to do so. Under article 9(3) of the ICCPR, an arrested person must be brought promptly before a judge, normally within 48 hours (General Comment No. 35, para. 33). The judicial authority must be independent, objective and impartial (General Comment No. 35, para 32), which is not satisfied where the prosecutor in charge of investigating the suspect is also authorizing the extension of detention.

Use of force

The Special Rapporteur received a number of allegations of excessive use of force by the police or military, namely shootings resulting in death or injury, particularly in encounters with young men, but also the killing of one woman who was carrying a child on her back. Such cases do not appear to be commonplace, but there was insufficient

information available to fully assess the problem. A lack of independent and impartial investigations was reported in some cases.

Pre-trial detention and fair trial

Once a suspect is transferred to the criminal brigade in Cotonou for investigation, they are brought before the prosecutor, who launches an investigative procedure by a request to the investigating judge, who can authorize detention for six months (renewable) while an investigative commission conducts inquiries. The case may then be referred to the CRIET for trial and judgment. The suspect may challenge the lawfulness of their detention before the investigating judge or separately before the Constitutional Court; civil proceedings are also available for reparation for wrongful detention. A judgment from the CRIET is required within six months from when the court is seized of the case, unless pre-trial detention is extended. Detention tends to be automatically ordered, regardless of any assessment of the seriousness of the accusations against particular individuals, or eligibility for conditional release on bail (such as with reporting conditions to police) does not appear to be used as an alternative to detention.

The CRIET was established as a specialised jurisdiction with competence over economic crimes and terrorism. The authorities indicate that it was designed to speed up trials compared to the regular courts, modernize access to justice, and enhance good governance, including by combating corruption. However, many terrorism suspects have been held for protracted periods in pre-trial detention, many for two to three years, and some for as long as five years. Under article 14(3)(c) of the ICCPR, suspects must be tried without undue delay, to avoid leaving them in a state of uncertainty, ensure detention lasts only as long as necessary, and to serve the interests of justice (General Comment No. 32, para. 35). Those on remand must be tried “as expeditiously as possible” (ibid) and whether delay is unreasonable is in part determined by the conduct of the administrative and judicial authorities (ibid). The duration of terrorism cases contrasts with the CRIET’s disposal of certain other cases within very short periods, including those perceived to have a political dimension, undermining public confidence that the CRIET is fully independent and impartial, while also signalling a lack of concern for speedy trial in relation to terrorism suspects. Public confidence is further undermined by the very high conviction rate in CRIET cases generally and the rarity of acquittals. It is recommended to continue to enhance training of police in relation to law and policy in relation to arrests, custody, transfers, investigations, including special investigative techniques and intelligence gathering, evidence collection and preservation, personal data protection and the right to privacy, and the prohibition on torture, ill-treatment and forced confessions. Protracted pre-trial detention could become a grievance that fuels radicalization in prison, including since convicted terrorists are intermingled with those on remand. It is recommended to devote sufficient resources to urgently prioritize the finalization of protracted terrorism cases.

A major defect in the fairness of the pre-trial procedure is the lack of legal representation, which undermines both the right to liberty under article 9 and fair trial under article 14 of the ICCPR. Benin’s law requires the authorities to assign a lawyer when the judicial investigation commences; in earlier police custody, a person can only request a lawyer. However, the accused must pay for the lawyer, and legal aid has not been widely available, although a recent law provides for it. Many detainees reported never having had a lawyer for lack of means to pay for one. Some reported paying large sums to lawyers who then did not provide the necessary representation. A shortage of lawyers was also noted. Many detainees lack an understanding of the CRIET process, and some encounter difficulties when their comprehension of French is limited or non-existent. Many suspects had attended court only for the purpose of their detention being extended, without being provided any substantive information about the allegations or the progress of any investigations.

Numerous stakeholders indicated that CRIET hearings are closed to the public. A lack of public information about the scheduling of hearings was also reported, making it difficult for NGOs and the media to monitor cases.

The location of the CRIET in Cotonou, far from the north where the alleged terrorism took place and the suspects lived, raises questions about the perceived remoteness of justice from affected communities as well making it difficult for the suspects’ families to visit and support them (due to the expense of transport), including in the preparation of their defence and at trial. Article 5 of the CRIET law allows the court to hold hearings in any other place in Benin. Thus far, this provision has not been used in terrorism cases.

Military “Operation Mirador”

After the kidnapping of tourists in 2021, the Government of Benin deployed 100 personnel from the Benin Armed Forces to the Pendjari National Park to secure the borders and deny movement to terrorists. The current deployment of Operation Mirador since December 2021 comprises 3,000 military personnel concentrated in the northern border areas. The Special Rapporteur visited the Alibori headquarters in Kandi. Many fortified military posts are scattered throughout the border regions. The operation is largely defensive and conducts patrols and searches, collects intelligence, and makes arrests. The operation is legally premised on the existence of a non-

international armed conflict against organized non-state armed group(s) governed by international humanitarian law, as reflected in rules of engagement for the conduct of hostilities. The conflict appears to be very low intensity, perhaps at the margins of the threshold for armed conflict. The appropriateness of applying humanitarian law should be kept under continuous review as the intensity of the conflict changes over time. Applying humanitarian law replaces a law enforcement approach to the use of force (self-defence or defence of others in response to an imminent lethal threat, and the graduated use of force as a last resort) with authority to “shoot to kill” combatants.

The rules of engagement and rules for the conduct of soldiers for Operation Mirador² are broadly consistent with the fundamental rules of international humanitarian law, referencing the Geneva Conventions of 1949 and requiring soldiers to respect international law. Officer training and pre-deployment training include instruction on humanitarian law and human rights, while bilateral partners have also provided training. Accountability is enforced through military orders and disciplinary rules, military police, and, ultimately, penal sanctions.

When the military arrests suspects, they are usually transferred into police custody on the same day or, if the arrest is made at night, the next morning, along with a report detailing the circumstances. Temporary holding of suspects is usually in guarded tents or rooms. The military also conducts patrols jointly with police forces, and coordinates with African National Parks, the South African company contracted to conserve and manage the national parks, which also monitors the parks and shares information.

There exists a civil/military affairs unit within the Armed Forces to engage with the population. The Armed Forces have sought to build trust by bringing security to local communities and providing occasional free health services through military doctors and nurses and have undertaken mine and IED awareness-raising activities. Like the police and local authorities, the military encourages the population to share information about terrorist threats, part of the state’s “co-production of security”. Relations with the population have reportedly improved over time. The military relies on human intelligence, with more limited resources for aerial and electronic surveillance.

There appears to be a lack of public information surrounding military operations, including their nature, encounters with armed groups, the number of attacks and casualties, the number of arrests, and any allegations of violations by military personnel and the investigation and accountability measures taken. It is unclear whether the apparent secrecy is deliberate or merely a result of a lack of adequate public communication strategies. Some stakeholders report being unable to obtain information they believe is in the public interest, and some reported being threatened with legal action for reporting on security matters, including under the 2018 Digital Code. While there may be security reasons for secrecy in specific operations, the Government is encouraged to publicise as much information as possible to improve transparency and public confidence.

Prison conditions

At the time of the Special Rapporteur’s visit, Benin’s prison system held 10 people convicted of terrorism offences and 652 people in pre-trial detention for terrorism (of whom 22 were women). The convicted persons and 609 of the pre-trial detainees were held at the Akpro-Misséréte prison, the largest facility in Benin, constructed in 2007. The remainder were mainly held at the Cotonou detention centre, while the women detainees were held at the detention centre in Porto Novo. The authorities stated that there were no children detained on terrorism charges. However, the visit to Akpro-Misséréte prison identified one 14-year-old boy detained in prison with his father and held among the adult population. The boy had been detained for one year and six months, so he was arrested at the age of 13 years. He was held on terrorism charges like his father. Under article 37 (c) of the CRC, every child must be separated from adults unless it is in their best interest not to do so. The Special Rapporteur endorses the recommendation of the Committee of the Rights of the Child that the age for criminal liability should be raised from 13 to 14 years old. The oldest terrorist suspect encountered was 82 years old.

The visit to the Akpro-Misséréte prison confirmed that all individuals involved in terrorism cases were held in the general prison population and were not subject to any special security measures, reflecting a positive easing of earlier, segregated, higher security conditions. In addition to reflecting the presumption of innocence of pre-trial detainees, the relaxation of security conditions could also reflect that the terrorism inmates are not perceived as presenting any distinctive threat of violence or radicalization within the prison. The terrorism suspects enjoy equal rights and conditions as other inmates. Concentrations of terrorist suspects were found in particular cell blocks (e.g. the “CRIET” block), but they were still mixed with other inmates. Cell blocks were progressively locked between 6 and 8 pm for the evening.

Suspects in pre-trial detention appear to be held together with convicted prisoners. Although there are designated quarters for those convicted, these areas are open during the day to the rest of the prison, and all prisoners share common recreation spaces and facilities. Article 10(2)(a) of the ICCPR provides that “[a]ccused persons shall,

² Instruction du chef d’état-major général relative aux règles d’engagement sur le théâtre mirador, No. 23-441/EMG/CIDE/SA, 8 février 2023; see also Règles de conduite du soldat pour l’opération mirador, No. 23-1942/EMG/CIDE/SA, 16 Juin 2023.

save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons” (see also Rule 11(b) of the Mandela Rules). This issue has been previously identified by the United Nations and NGOs. A number of current and former terrorist suspects are foreign nationals, including from Burkina Faso, Niger, Chad, Togo, Nigeria, Ghana, Afghanistan, and Bangladesh. Some nationals have reported not having benefitted from the right to consular access or to be informed of this right under international law.

The prison authorities professed their commitment to international standards of detention, including the Mandela Rules. No reports were received of physical mistreatment of detainees by prison staff. Inmates are entitled to meet with their lawyers in private rooms without time restrictions. Few suspects reported having access to a lawyer. Lawyers who have been engaged have described difficulties in preparing the defence.

The principal concerns about prison conditions are chronic overcrowding, poor sanitation, limited access to water, inadequate hygiene and bedding, insufficient food quality and quantity, and insufficient medical services. United Nations mechanisms have previously raised such concerns.³ The Akpro-Missérété prison was built for 1,000 inmates but held three times that capacity at the time of visit, or 3,058 detainees (down from over 3,700 in 2023). In one dormitory cell, for example, over 70 inmates were held in a room measuring around 11 metres by 6 metres, representing less than one square metre per inmate. The same cell had no fixed beds or other furniture and required all inmates to sleep on the floor in an extremely congested manner. In the same cell, the sanitation facilities were entirely inadequate, with one toilet and two bathrooms/showers for 70 inmates. There was a lack of water flow during the daytime. There were four electric fans and electric lighting, but little natural light, windows or ventilation despite the very hot temperatures. There was a lack of mosquito nets to protect against malaria. The overcrowding has acute adverse effects on physical and mental health. The contrast is stark with the conditions of the 11 prisoners who were convicted by the International Criminal Tribunal for Rwanda, who each have their own cell with a bathroom, which were built to meet international standards.

The Benin Government is conscious of the problem of overcrowding and is taking genuine steps in response, including redeveloping prison infrastructure, diversion from detention, accelerating trials and reducing the length of pre-trial detention, lighter sentences, and increasing the number of times per year that they release (groups of) people, from 2 to 4 times. Nonetheless, the situation remains seriously non-compliant with international standards and may amount to cruel, inhuman or degrading treatment or punishment contrary to article 7 of the ICCPR and the Convention against Torture. The protracted nature of pre-trial detention, coupled with the apparent arbitrariness of detention in many cases and the lack of reasons for arrest, place many pre-trial detainees in a position of acute uncertainty and mental stress, exacerbating the inhuman detention conditions.

The Akpro-Missérété prison does not have a formal deradicalization program. UNODC is supporting the government on a classification of detainees’ tool, not apparently in use. The prison psychologist may meet with inmates about whom concerns arise, including to encourage them to maintain contact with their families, address disputes, and build trust with the authorities. Patient confidentiality is maintained except where the person is a danger to themselves or others. There is also a special program, available to all inmates, involving sensitization and education, including by religious leaders, plus “social reintegration” to assist in preparing inmates for re-entry into the community after release. There is also a plan, not yet implemented, to create probation and reintegration service once prisoners have been released.

Border security, refugees and internal displacement

The predominantly cross-border origin of the terrorist threat to Benin and the historic porosity of borders established in colonial times have led the Government to strengthen border security. The Government has established 40 border posts nationwide, although some are not functioning and equipping and staffing them is a challenge. It has also sought to demarcate certain borders with Burkina Faso and Niger, to further stabilize and control its borders, but recent coups in those countries have complicated the resolution of these issues.

Benin is to be commended for its hospitable policy towards refugees, with significant numbers from Burkina Faso, Niger and Togo. As of September 2024, UNHCR recorded 16,141 refugees and 981 asylum seekers, most fleeing from terrorist groups and related violence. Benin is a party to the 1951 Refugee Convention and its 1967 Protocol, the 1954 Statelessness Convention, as well as the African Union refugee instrument of 1969. It has domesticated its international obligations through Law No. 2022-31 on refugees, including the obligation of non-refoulement, exclusion clauses, and refugee rights.

Benin has accorded prima facie recognition of mass influxes at the border. The Special Rapporteur encourages Benin to expand its domestic prohibition on refoulement beyond prosecution, torture, and other ill-treatment, to also forbid return to other serious human rights violations, including arbitrary deprivation of life, arbitrary

³ Human Rights Committee; Committee against Torture; UPR.

detention, and flagrant denial of justice. Those who claim asylum at border posts are registered and referred to the central authorities for determination of their claims. No reports of refoulement at the border were received. Many refugees do not, however, cross at border posts and are thus unregistered. They often lack identification documents and face additional difficulties accessing public services. There are efforts by the Government and international partners to identify and register them.

Refugees are not placed in camps but are hosted by and integrated with local communities, sometimes within the same ethnic/linguistic group as the hosts. Supported is provided by local authorities, including mayors and village chiefs, with assistance from the central authorities, United Nations, bilateral and NGO partners, including a diaspora association of Burkinabe citizens in Banikoara. Stakeholders indicated that better coordination between the various stakeholders is desirable.

Consultations with refugees, asylum seekers and IDPs in Banikoara and Bensékou indicated that despite the hospitality of host communities and other stakeholders, many refugees face serious difficulties accessing clean water, adequate food, decent shelter (with some living in grass huts), schooling, livelihoods, and land for cultivation and livestock. Access to healthcare was a recurrent challenge, with refugees having to take out loans to pay for treatment of sick children, while lacking incomes to repay loans. There were significant unmet needs relating to treatment of traumas experienced in home countries, including for individuals whose family members were killed. Local communities reported being under pressure from hosting refugees, given population pressures, resource competition, and scarcity of public services. One local king warned the situation “could become explosive” if not addressed. Support to refugees must be accompanied by adequate assistance to host communities.

Many of the above concerns apply similarly to internally displaced persons, who are also hosted by local communities, while facing fewer challenges relating to nationality or documentation. UNHCR reported 13,452 IDPs in February 2024, a significant increase on the previous year, with relatively few people returning to their homes. Benin is a party to the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa and has domestically addressed IDPs through a 2023 decree on civil protection and a 2024 inter-ministerial decision on IDPs, which imposes a duty on the state to assist them. Assistance from UN and NGO partners can include cash transfers and food assistance. The IOM is conducting a project tracking internal displacement and its impacts, to inform responses. The Special Rapporteur recommends the UN Guiding Principles on Internal Displacement as a further tool that may assist the Government in its response.

Victims of terrorism

Benin does not have any specific laws addressing victims of terrorism although provisions address victims of crimes in general. There is a law to provide for the children of security personnel killed and social insurance for the family. The Government is aware of the difficulty of facilitating the participation of victims in criminal trials involving terrorism due to the long distances from the north to the CRIET. The CRIET law provides for the possibility of field hearings, but so far, it has not been used to prosecute terrorism cases. Initiatives to bring justice closer to affected areas are to be encouraged while guaranteeing fair trial and ensuring sufficient security to protect victims and witnesses from risks of reprisals from terrorist groups. It is recommended that Benin consider adopting the necessary laws and institutional frameworks to recognize the specific needs and vulnerabilities of victims of terrorism to better assist and protect them. Best practice is provided by the United Nations Model Legislative Provisions to Support the Needs and Protect the Rights of Victims of Terrorism and other guidance.

Addressing the conditions conducive to terrorism

The Government has a sophisticated understanding of the imperative to complement hard security responses with holistic measures to address the conditions conducive to terrorism and prevent local support for terrorist groups, recruitment and radicalization. The Government is aware of potential risk factors in the northern border areas, including poverty, a feeling of abandonment by the state, and a lack of essential services (such as security, health care, schools, roads, bridges, transport, water, sanitation, and social protection), a lack of employment, livelihood and market access opportunities, and the marginalization of some ethnic and social groups. One local stakeholder described the north as the “fourth world”, far from the locus of central government, economic activity, and the majority of the population in the coastal south. Benin is ranked 166th of 191 countries in the Human Development Index, and the north is the least developed part of the country. Terrorist groups have offered money to local young people in exchange for supplies (including fuel and food) and information, and economic drivers seem more common than ideological motivations.

The National Single Reference Security Development Framework is based on three ambitious programs addressing governance, security and development, which in part aim to increase the sense of belonging to the nation of the northern population. In addition to the military deployment in the north, the security pillar seeks to expand the presence of police stations to all 546 districts across Benin, with challenges remaining in completing,

equipping and staffing them. Community policing, building trust in security forces, and “co-production” of security through collaboration with communities on information sharing are also key elements, and early warning systems in communities to identify suspicious activities. The security forces host “social cohesion days” where they open police stations to the public, provide free healthcare and help plant forests. They also engage in sensitization activities with religious leaders. Strengthening border posts, as mentioned earlier, and reforming the intelligence sector are further goals. In some areas, concerns were expressed that night curfews to counter terrorism were too rigid and indiscriminate in their adverse effects on the community, including access to services and maintenance of livelihoods.

Development activities aim to address many deficiencies mentioned earlier in rural infrastructure, economic opportunities (including training, employment, microcredit and small enterprises), and essential social services. A range of programs and actors engage with northern border communities, including targeting vulnerable young people with limited education for employment and skills training; and providing women with opportunities such as handicrafts, soap making, and milk processing. Some stakeholders suggested that the Government is more successful in relation to infrastructure and macroeconomic reform, in comparison to social or human development indicators. Many northern areas lack accessible or adequate basic services, including water, sanitation, health care, schools and electricity. The standard of school buildings, the quality of teaching, and high teaching/student ratios are also problematic. The Special Rapporteur echoes many of the recommendations of the Committee on Economic, Social and Cultural Rights in its Concluding Observations on Benin in 2020. The Government is conscious of its obligation under article 2 of the ICESCR to progressively realize economic, social and cultural rights to the maximum of its available resources. This requires that it fulfil its minimum core obligation to satisfy the minimum essential content of each right, including essential food, primary health care, basic housing, and primary education (CESCR, General Comment No. 3, para. 10). Benin has a particularly low revenue base, and the Special Rapporteur is encouraged by the Government’s commitment to expanding it, which will enable greater funding for economic and social rights. He encourages the Government to expand inclusive and participatory engagement with local communities and civil society stakeholders in economic and social development, including groups with special needs such as women, young people, and certain ethnic or social groups.

One phenomenon contributing to social fragility, grievances, and the potential for violence in northern Benin is continuing tensions over land and pasture between cattle herders and settled farmers and the adverse impacts on herder livelihoods, although there is no direct connection to terrorism thus far. The rights of both groups are formally secured through the Land Code and the Pastoral Code, including recognized corridors for moving livestock. The law also provides for dispute settlement through mediation by local authorities, police intervention and the courts. The number of disputes appears to have reduced in recent years and become less violent. However, implementation of the legal rights of herders remains challenging. In practice, some farmers reject herders’ rights. It is often hard for herders to acquire land or to prevent eviction from land even when they have used it or been semi-sedentarized there for many years; under the law, ten years of settlement is supposed to confer land rights.

The Government’s policy of sedentarization of herders is aimed in part to reduce tensions by providing greater access to cattle movement corridors, land, pasture and water by herders, as well as facilitating access to public services, including schools and health care. Such efforts have also, however, encountered challenges in practice, including resistance from local communities, tensions over local resources, and a reluctance by herders to settle in unfamiliar or remote places. Voluntary participation in such reforms must be guaranteed in order to protect Peulh minority cultural rights. The High Commissioner for Herder Settlement was conscious of the many competing interests and challenges in this area and committed to sensitively balancing the interests.

Social stigmatization of herders, who predominantly come from the Peulh community, contributes to their marginalization. Others sometimes blame them for any incidents that occur, and face retaliation. Exclusion has been compounded by low levels of schooling and literacy, and a lack of instruction in their own language by teachers who are Peulh. The Government is encouraged to continue to sensitize not only officials but also the community in non-discrimination.

In terms of the governance pillar of the Government’s current strategy, decentralization and local government reforms aim to make governance, including development and security, more responsive to local needs, more efficient, expert and professional, and less corrupt. The law faces challenges in implementation, with stakeholders in the north indicating a lack of clarity of responsibilities between the different levels of government. There remains a need to increase the participation of women in local governance, including security and development decision-making, and to widen consultation with affected communities, civil society organizations and vulnerable groups like youth. Some civil society actors perceived civic space to be too restricted in Benin and indicated that they could not speak freely on sensitive topics.

The Government has not adopted a national strategy to prevent and counter violent extremism. Various ad hoc social cohesion activities are conducted by various authorities and partners, including awareness raising about

risks of terrorism and radicalization, engagement with young people, parents, religious leaders, and traditional hunters, inter-community and conflict prevention dialogues, digital campaigns, and efforts to identify young people at risk. Centrally efforts are coordinated by Permanent Secretariat of the National Commission for Countering Radicalization, Violent Extremism and Terrorism.

The Special Rapporteur encountered some concerns about the vulnerability and rights of children in Koranic schools, who often come from very poor families. Curricula may be limited to religious learning and solely in Arabic language, without also teaching the public secular curriculum in French or another national language, which fails to equip students with necessary literacy and knowledge to transition to vocational or professional employment. Some talibé children are also forced to beg or engage in other forms of child labour prohibited under Benin's law, and some leaders of these schools appear not to respect Benin's law. Some Beninois imams studied in Gulf states and returned with a stricter form of Islam than the moderate form that is prevalent in Benin's tradition. The authorities have mapped religious schools nationwide, and the Directorate of Internal Affairs and Cults has some monitoring role, as does the Departmental Directions of the Ministry of the Interior and of Public Security. Under article 13(3) of the ICESCR, the right of parents to choose religious schooling is subject to the limitation that it must conform to the minimum educational standards established by the state. The Government of Benin is encouraged to strengthen its efforts to apply a national minimum curriculum in religious schools while respecting religious freedoms.