



## **BENIN CRIME AND CRIMINAL JUSTICE ISSUE PAPER 2007**

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### **Enhancing the Delivery of Security in Africa: COMPLEMENTING THE APRM AND WORKING TO THE AFRICAN UNION**

#### **Background**

AHSI2 is working on a project that aims to improve the containment of crime and reformation of the criminal justice system in Benin. The ultimate aim is to develop capacity in the effort to influence better governance through the APRM review process. The project also intends to contribute to the generation of knowledge on the inadequacies of the criminal justice system that can be used to assist capacity building in this sector. This implies answering the following questions amongst others: What are the relevant laws in the country? Are the laws enforced and how accessible and useful is the justice system to victims?

Benin, the first country to effect a successful transition from a dictatorship to a pluralistic political system, has remained underdeveloped and is one of the poorest countries in the world with an average capita of US\$400 and an economy that is largely based on subsistence farming and transshipment of goods to neighbouring countries. There is also very little off-shore oil production. The aim is thus to investigate the status of the criminal justice system in the country and establish the linkages with the rather stagnant development.

This issue paper highlights problems in the system and attempts to give pointers to recommendations that would influence policy changes and facilitate a review of the criminal justice laws where essential. The information, which will take into consideration respect for human rights, will be applied to envisaged structural (reforms) in the criminal justice system (police, prisons, courts and the judiciary). This report starts off by attempting to give an overview of the crime scenario in Benin. The issue paper is compiled from internet based research and relies heavily on materials from:

The Human Rights Committee 81<sup>st</sup> session Human Rights Violations in Benin, CCPR/C/BEN/2004/1, Human Rights Watch Reports and a report prepare by Patrick Mutzenburg, 2004, OMCT Human Rights Violations in Benin: Alternative Report to the United Nations Committee Against Torture 82<sup>nd</sup> session, October-Nov.

Being a country where animistic beliefs are widespread, (50% of the population is animistic) both Christian and Moslem groups have continued to practice animistic traditions and the practices vary across the ethnic groups. The implication is that definitions of crime also vary just as much and forms of traditional justice in particular are different.

Crime and unemployment figures are generally unavailable for this country. Life expectancy is 52 years, one third of the population is illiterate and lives below the poverty line. The high levels of poverty and generally poor economic conditions are thus likely to contribute to high crime levels.

### The Incidence of Crime

Petty crime is common in the entire country and this includes common crimes such as armed robbery, murder and carjacking. Armed robberies are usually committed at knife or machete point. The use of home made weapons in all crimes has increased to an alarming level. In 2005, armed hold ups and car jackings became increasingly common across Benin. 2006 in particular saw an increase in the sophistication of criminals in conducting surveillance of their victims especially in car jackings and organized crime. Highway bandits in particular continue to get away with simple road barricades used to waylay their victims.

Residential break-ins are generally low and don't pose a threat as such. However, many people live behind barricades of window grilles, alarm systems, night guards and security lights.

Increasing oil prices make it harder for the poor Beninoise to survive and even the price for oil smuggled in from Nigeria also increases tremendously such that all goods/prices continue to spiral out of reach for many and this contributes to the increasing crime rate.

### Incidence of crime - Interpol data 1998

<b>Murder rate per 100 000</b>		<b>Rape</b>	
Benin	5.12	Benin	2.55
<b>Robbery</b>		<b>Aggravated assault</b>	
Benin	4.27	Benin	102.03
<b>Burglary</b>		<b>Larceny</b>	
Benin	4.57	Benin	59.90
<b>Motor vehicle theft</b>		<b>All offences index</b>	
Benin	0.63	Benin	179.07

### Crime in Benin

	1996	1998	Difference
Murder	3.70	5.12	-1.42
Rape	1.03	2.55	147.60%

Robbery	4.28	4.27	+0.30
Aggravated assault	17.40	102.03	486.4%
Burglary	2.12	4.57	115.60
Larceny	32.85	59.90	82.40
Motor vehicle	2.47	0.63	-74.50
Total index for all offences	63.85	179.07	180.50

Part of the crime problem is blamed on the country's porous borders. The Benin-Nigerian (Seme) border is particularly notorious for all sorts of illegal activities. Gangsters are known to operate on both sides of the border, launching attacks on one side and seeking shelter on the other side. The networks on each side sustain the illegal activities. Highway banditry has forced drivers to travel in armed convoys on Benin's main roads in the north. Still, the public continues to fall prey to highway bandits. In May 2006, bandits between Niger and Benin stripped a busload of passengers of all valuables and slit the throat of a woman who had tried to resist. This continued lawlessness forced the minister of State for Defense to call in the army to help.

In August 2003, the Beninese government closed down the Seme border with Nigeria because of the threat posed by the criminal activities at this post. All the smuggled and banned goods find their way into Benin through the Seme border. All used cars passing through the Seme border are snatched in Benin and estimates are that 2000 cars passing through the post are snatched from Benin. There is also massive corruption at the Seme border. It is well known that state customs officials lobby heavily to be moved to the border where it is easy to ignore state rules on clearing goods. Corrupt officials complicate the problem.

### ***Economic crimes***

Corruption is rife in everyday life in the country and as in many other African countries, the scourge of corruption affects developmental efforts. Investors seeking to do business are often expected to make unofficial payments to speed up business decisions; firms are expected to give gifts in meetings with tax inspectors and a certain portion of the business value is expected as a gift to secure government contracts. However, losses due to theft, robbery, vandalism and arson against firms are relatively low when compared with regional neighbours (0.34 and 2.29% respectively).

At the highest level, the privatization of state enterprises revealed that cronies of president Kerekou were the major beneficiaries e.g. the sale of Titan Corporation in 2005. Judges are known to ask for bribes, teachers sell degrees and health workers ask for bribes from service seekers. Petty bribes by street-level bureaucrats impede development efforts in every dimension of life.

### **Drug trafficking**

Nigerian traffickers operate with impunity in Benin. Traffickers use legitimate business to camouflage drug operations. Proceeds are often invested in property (real estate) and this enables them to launder illicit profits. Anti-narcotic legislation was only passed in 1997 but the government is yet to enforce its own legislation. Few tangible results on counter narcotics action have been recorded in the country. The problem seems to be that of capacity in implementing the international laws and localizing them for their own context. Much of the drug enforcement effort is concentrated on the small scale couriers and users.

### **Human trafficking**

Benin has been the centre of human and child trafficking in west Africa. Unicef reports that over 200 000 children have been victims in this region with Benin being the starting, transit and destination point for these children. Victims are usually between 7 and 16 years and more than two thirds are girls. Some children are acquired through the Vidomegon practice and some are kidnapped or simply handed over by their parents. Both internal and external trafficking are endemic in the country. The children have many uses, some get illegally adopted, some are used for prostitution and some are sold into domestic servitude. The worst is that some children end up as human spare parts when they are killed and used for ritual purposes. Though government has doubled the number of civil servants working against child trafficking and established a National Commission for the Protection of Children composed of officials from the government and the police, these efforts have largely remained at a theoretical level. No laws have yet been articulated to prohibit child trafficking. For now, traffickers are prosecuted for kidnapping, prostitution, forced labour and the exploitation of children under 14 years of age. Both Unicef and the ILO continue to work against trafficking by giving technical and financial aid.

Children are trafficked to Ghana, Nigeria and Gabon for indentured or domestic servitude, farm labour and prostitution. Trafficking occurs mostly along the paved coastal highway that links Cote d'Ivoire, Togo, Benin and Nigeria. 'Traffic don' is the name given to the practice whereby children are given to a migrant family who in turn will pass them on to another stranger for vocational training or education. 'Traffic gage' refers to a form of indentured servitude in which debt was incurred to transport the child. 'Traffic-ouvrier', which involves children under 15 working and artisans, construction labourers and farm or domestic workers, was the most common variant and makes up for 75% of the total trafficking crimes (Unicef 2000). 'Traffic-vente' was simply the outright sale of children. Organized child traffickers are reported to have victimized certain villages where up to 51% of children were trafficked.

Estimates say that at least 75% of labourers working in the country as seamstresses, hairdressers, carpenters, and mechanics were younger than 5 yrs. Child prostitution is encouraged by teachers who offered better grades for sex and older men who lure them for work and act as their protectors.

Collaboration with regional governments has not really been effective in combating the problem. ILO runs a 2 part project with several countries: Burkina Faso, Cameroon, Cote d'Ivoire, Ghana, Nigeria, Senegal and Togo. The government also has bilateral agreements with Togo, Gabon and Nigeria that focus on border controls and the repatriation of

trafficked persons. The discovery of Beninoise children working in Nigerian mines alerted officials to the plight of trafficking victims.

### **Mob justice**

Many Beninoise believe that anyone who kills another person deserves to die. This belief, coupled with an incompetent justice system and lax security services, compels the public to take the law into its own hands making it difficult to stop mob justice. The few who have faced the wrath of the law after participating in administering mob justice have not stopped the practice.

Mob killings are a very common phenomenon in Benin. In most cases, mobs kill or severely injure suspected criminals especially thieves caught in the act. Good examples are: in October 2001, a mob set fire to a man who had allegedly attacked a motorbike taxi driver in Calavi. In the same month, a mob beat to death 2 men who had allegedly stolen a woman's purse. They were saved from a fiery death by fire-fighters. In April, a suspected sorcerer and an accused thug were burnt to death in Bante sub-prefecture. In Cotonou, 10 suspects were attacked by mobs and five of them were killed on the accusations that they had committed ritualistic thefts of children and body parts. In January 2002, 2 men were killed at the home of a known vigilante leader who went by the name "Colonel Devil". In this incident, the 'Colonel' was arrested but in many others, the perpetrators go unpunished. And even though these violent acts take place in urban areas and in public spaces, the security forces have not made attempts to curb the practice.

### **Organised crime**

Weapons and drug trafficking through Benin remain a common problem and as can be expected, some drugs stay in the transit country.

In 2006, Benin became a hot-bed of the Nigerian '419' internet fraud scams. However, Nigerians living in Nigeria and pretending to pass themselves off as Beninoise, are often responsible for these scams but this does not exonerate Benin citizens. The frauds tend to mutate very quickly making it harder to detect but the logic is always the same- deceiving unsuspecting members of the public to part with their money for a seemingly good cause. The latest scam, the 'Basic Travel Allowance' fooled the public into believing that by parting with a small amount of money termed the traveling allowance, they would be eligible for a US visa.

The lack of port and border security has left room for organised criminal gangs from Togo, Nigeria and Burkina Faso that are involved in the transshipment of stolen goods. In 2006 there was a highly profiled case of 6 Beninoise car-jackers who escaped from prison. The leader of the gang was known to have ties to both Nigerian and Togolese crime gangs.

Illegal drugs, mostly marijuana, are primarily for local consumption and not for export. Drug syndicates are a relatively unknown phenomenon in Benin.

## **Policing**

The fragmented security approach to policing does compromise the quality of justice the citizens get. The civilian-controlled security forces consist of the armed forces which fall under the State Minister responsible for Defense Matters and the police force under the Ministry of Interior, Security and Decentralisation. The former supervises the *Gendarmerie* which exercises police functions in rural areas and the latter, all the other police forces. The net result of this fragmentation is the general lack of police presence in Benin in public places. Police performance is very poor as the response rate to crime and complaints is very slow or non-existent at all. It is therefore almost always necessary for the victim to have to physically go to the nearest police station. Police patrols are rare and the military gendarmes mostly respond to crime calls.

Serious human rights violations are usually blamed on the police's failure to prevent acts of vigilantism and mob justice. The harsh and de-humanising prison conditions also encourage many offenders to avoid engaging with law enforcers whenever possible. Administrative delays in processing criminal cases results in the denial of justice to the accused, and this is worsened by unfair trials, judicial corruption, violence and societal discrimination against women which in turn encourages the law enforcement agencies to turn a blind eye to child and women trafficking.

Police force members are accused of routinely committing human rights abuses.

## **Extra-judicial behaviour**

Though the constitution prohibits the torture of convicts and suspects, reports are rampant that the police sometimes torture suspects. The Human Rights League has claimed on numerous occasions that the police and military agents have often tortured members of the public for expressing political opinions.

## **Prosecution**

Arbitrary arrest and detention is prohibited by the constitution and after 48 hours, detainees must be released unless if there has been a hearing. Unfortunately, there have been numerous reports that authorities exceeded the 48 hour limit in many cases. This is done through the practice of holding a person indefinitely "at the disposition of" the public prosecutor's office before they present their case to a magistrate. At least 75% of persons in prison were pre-trial detainees. The constitution prohibits forced exile of citizens and it is not practiced.

## **Prisons**

Prison conditions in Benin are appalling. Overcrowding, lack of proper sanitation and medical facilities all pose a great risk to the health of prisoners. The country has 8 civil prisons with a collective holding capacity of about 5 000 persons. However, the prisons are very often forced to hold 3 times their estimated capacity. Only the Atacora province prison, Natitingou, is below full holding capacity. The government is currently constructing a 1 000 capacity prison in Oueme province. The food is so bad that malnutrition is a major affliction on prisoners. Though women are accommodated separately from men, juveniles on both sides are very often incarcerated with adults pre-trial detainees are also held with convicts

even though they are not mixed with the violent and death row prisoners. In Cotonou, adult prisoners are reported to have access to the holding cells of minors. Many prisoners have been on death row for as long as 18 years. Reports of their living conditions are dissatisfactory. Women are subjected to a more severe regime in prison.

Prisoners are allowed visitors by family, lawyers and other persons. The government has at times pardoned petty crime convicts and allowed human rights monitors and NGOs to visit prisons as part of the independence celebrations. The Benin Commission for Human Rights has made announced visits to several prisons.

### **Corporal punishment**

School system openly violates the country's laws against corporal punishment with teachers often slapping or beating children with sticks to maintain order. Tradition practices sanction corporal punishment and it is encouraged in the family, in schools, hospitals, police stations and in the whole society. Parents are known to often take their children to an authority for caning.

Case jurisprudence of violence against children shifts from sentences with remission to firm sentences. As a result, the acts of torture or ill-treatment against children by state agents are not efficiently punished by justice. Testimonies by children in trouble with the law reveal that they are often severely beaten in police stations and headquarters of gendarmes with a piece of wood made specifically for beating them for disciplinary purposes. Articles 309 to 312 of the Criminal Code prohibit voluntary assault and battery. The penalty for the crime varies according to the circumstances and age of the child and violates all the provisions of the: UN Convention on the Rights of the Child; the African Charter on the Rights and Welfare of the Child and Convention no 182 of ILO.

### **The criminal justice process**

#### **The Court system**

Though the judiciary is defined as independent, the executive exercises important powers over the judiciary. This has contributed to the inefficiencies and corruption at all levels within the judiciary. The judges in civil courts are magistrates appointed by the president. The Ministry of Justice is mandated by the constitution to exercise administrative authority over the judges and it has the power to transfer them. Capacity problems that range from poorly trained staff, inadequate facilities and overcrowded dockets all cripple the system such that corruption is inevitable. This is worsened by the low remuneration of magistrates and clerks leaving the staff susceptible to corruption. A civilian court system operates at the provincial and national levels and there is only one court of appeal. The Supreme Court is the court of last appeal in all administrative and judicial matters. The Constitutional Court is mandated with deciding on the constitutionality of laws, disputes between the President and the National Assembly and disputes regarding legislative and presidential elections. Previous rulings against both the executive and the legislature demonstrated its independence at times but the 2001 electoral dispute ruling in favour of the presidency cast doubt on its standing.

The first members of the High Court were sworn in 2001 and almost immediately, inefficiency and corruption began to affect the judiciary at the trial court and investigating magistrates at all levels.

With a legal system based on French civil law and local customary law, contradictions abound in reconciling justice with constitutional provisions due to the diversity in the customs. The constitution provides for the right to a fair public trial. A defendant enjoys the presumption of innocence and has the right to be present at trial and to representation by an attorney at public expense if necessary. In practice, the court provides indigent defendants with court-appointed counsel upon request. A defendant also has the right to confront witnesses and to have access to government held evidence. Trials are open to the public, but in exceptional circumstances the president of the court may decide to restrict access to preserve public order or to protect the parties. Defendants who were awaiting a verdict may request release on bail, however the courts granted requests only on the advice of the Attorney General's office. Customary law conciliation tribunals do not always respect guarantees of the right to a fair trial.

The different mandates of the tribunals and the ordinary courts are vaguely defined and not clear to the public.

The trial of judges, registrars and tax collectors charged with misappropriation of court fees has resulted in the imposition of heavy sentences on 63 persons.

Confidence levels in the judiciary system is reportedly low at 35%. However, when compared with other countries in the region, this is well below the mean of 60%. Still the country spends just as much time as the others on resolving disputes (an average of 11 weeks). Again, there is a problem of failing to make resolutions in courts because of overdue payments and in Benin, this is higher than the rest of the region (93 and 83% respectively).

Criminal investigations officers and gendarmes are part of the judicial system. Military personnel contribute tremendously to incidences of torture in the country.

### **Gender related crimes**

Violence against women is rampant in Benin. In 1999, rough estimates derived from court records revealed that there were only 35 criminal proceedings on reports on violence against women. Judges and police are reportedly reluctant to intervene in domestic disputes since society views them as internal family matters.

Another crime against women is genital mutilation which takes place in women from infancy to the early 30s. A 1999 WHO estimate put the figure of women who suffer from the excisions at 50%. Though the numbers are decreasing annually, the practice is yet to stop. Act 3 of March 2003 adopted the female genital mutilation a punishable offence.

Women experience societal, political and economic discrimination especially in rural areas where local customs prohibit them from inheriting property. Government has attempted to curb the old age tradition of abducting and raping a prospective bride below marriageable age (14) but the practice continues because many cases never reach the courts due to lack of education and access to the courts and fear of police involvement in the problem.

### **Bonded labour/Vidomegon**

Bonded child labour (Vidomegon) is still a major problem that has deep cultural undertones such that tackling it remains a big problem. Vidomegon is the situation of placing a child in an apprentice-like position with a third party in order to make the child earn money for the parent/guardian. Sometimes people go to distant villages and take their children on the promise of either educating the child or assisting the family financially in return for the child's labour. This cultural practice masks real child-trafficking in the country. In a few cases, the child is paid a paltry amount for its work. The middleman, who sourced the child from the village, will then get his cut and either send the rest to the parents or use it all. In many cases, the Vidomegon child learns to read or some useful skill but most of the time, these children are physically, sexually and psychologically abused. It thus a kind of slavery caused by poverty, illiteracy and the neglect by some parents.

Government lacks commitment to ending the practice. The Cabinet Council drafted a law in 1997 but the legislative procedure was stopped. Hence the system continues unguarded and perpetrators continue to abuse the system. Today the people seem to be more reluctant to place their children into Vidomegon status but they will still gladly give them over to traffickers who move the children collected from 'villages and cities' to abroad.

### **Juvenile justice**

Child justice is compromised by the police officers that tend to act as judicial bodies by taking what they call friendly measures of conflict resolution. These unofficial police services provide for negotiations between the child (perpetrator) family and the plaintiff. The police believe they are acting in the interests of the child to avoid legal action against the child. The result of the negotiations is thus taken to the public prosecutor who then decides on the appropriate legal action. There is no custody for juveniles in Benin and police have no right to put a child into prison but there have been reports of children thrown into prison. In the absence of a proper framework for administering child justice, many loopholes exist for the violation of children's rights. Actually, it is common knowledge that no policeman has ever respected the rights of a child who was seen as a law breaker.

The Minors Protection Brigade is a police body created by decree no 83-233 of 29 June 1983 and its competence covers the country. There is just one unit in Cotonou for the entire country and this hinders the justice procedure since a minor arrested elsewhere in the country has to be transferred to Cotonou. The brigade has a mandate to act whenever children are in moral or physical danger and prevent youth delinquency. It has evolved into an institution that settles children's problems in a friendly way. It is more of a moral sanctioning authority. Unfortunately its reception centre doesn't function efficiently and defectively due to capacity problems. Children are traditionally dissuaded from complaining and yet the Minors Protection Brigade help line has never worked since it was made public.

Minors live in deplorable conditions in prison. As many as 20-30 children are cramped in a tiny room and they sleep together on the bare ground in poor hygienic conditions without access to medical. Minors in preventive detention are kept with others who have already been convicted and a lot of children have been waiting for their trial for more than six months and sometimes for as long as one year.

In 3 departments, there are tribunals specialised in the criminal cases of juveniles but there are just 2 judges for children in the entire country. These are located in the commercial and political capitals, Cotonou and Porto-Novo. This makes it difficult for juveniles to access justice expeditiously. For children under 13, their protection when they break the law is achieved by placing them in the National Centre for the Safeguard of the Infancy and Adolescence and they are then returned home after a few days.

### **Infanticide**

Infanticide, though a lesser problem, is still prevalent and is motivated by traditional beliefs. Many of the cases have to do with the ritual infanticide of child witches:

Ancestral beliefs denote that a child is a witch if it falls into any of the categories below:

A child whose mother dies whilst giving birth

A child who is born bottom first

A child whose first teeth emerge from the superior jaw

Those who are born [pre-maturely and

Those who do not cry at birth

Such children are immediately handed over to an executioner who uses different techniques to kill the newborn baby. Usually the child is crashed against a tree or slaughtered before burial. Sometimes they are just abandoned, sold or given to a family known for caring for such people. The family will later use them to sell or as domestic slaves and they survive through begging. Though infanticide does not appear to be a crime in Benin, homicide is still a crime that can be used to punish those who perform such acts against child witches. The government does not denounce such cases due to traditional beliefs and perpetrators are never brought to book because there usually is no evidence. Only human rights activists and churches denounce this practice. The Committee on the Rights of the Child has strongly condemned Benin officials for ignoring ritual infanticide and continues to urge the government to guarantee children's rights.

### **Presidential immunity**

The president has no immunity and in the event of his committing a crime, the constitution provides for a high court of justice to convene and consider the crime.

### **Death penalty**

Country still has death [penalty in the Criminal Code.

