



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Concluding observations on the second periodic report of Burundi\*

1. The Committee against Torture considered the second periodic report of Burundi (CAT/C/BDI/2) at its 1262nd and 1265th meetings, held on 11 and 12 November 2014 (CAT/C/SR.1262 and 1265), and adopted the following concluding observations at its 1284th meeting, held on 26th November 2014.

#### A. Introduction

2. The Committee welcomes the second periodic report of Burundi, although it is regrettable that it was submitted more than three years late and is not in conformity with the Committee's guidelines for the preparation of periodic reports.
3. The Committee also welcomes the written replies to its list of issues (CAT/C/BDI/Q/2/Add.2) and the responses provided in the course of its constructive dialogue with the representative delegation of the State party.

#### B. Positive aspects

4. The Committee notes with satisfaction that the State party has ratified or acceded to the following international instruments:
  - (a) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in October 2013;
  - (b) The Convention on the Rights of Persons with Disabilities, in May 2014;
  - (c) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in May 2014;
  - (d) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in May 2012.

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\* Adopted by the Committee at its fifty-third session (3–28 November 2014).



5. The Committee also takes note with satisfaction of the State party's efforts to amend its legislation in order to give effect to the Convention, including:

(a) The amendment of the Criminal Code in 2009 to do away with the death penalty; define the criminal offence of torture and other cruel, inhuman or degrading treatment or punishment and establish the corresponding penalties; increase the age of criminal responsibility from 13 to 15 years; and establish the criminal offences of rape, domestic violence, sexual harassment, war crimes, crimes against humanity and genocide;

(b) The amendment of the Code of Criminal Procedure in 2013 to provide for compensation for victims of torture and establish community service as a non-custodial penalty;

(c) The preparation of a bill for the prevention and suppression of gender-based violence;

(d) The preparation of a bill on the prevention and suppression of trafficking in persons and on the protection of trafficking victims.

6. The Committee welcomes the formulation of a national human rights policy and plan of action and the establishment of the Ombudsman's Office in 2011.

### **C. Main subjects of concern and recommendations**

#### **Applicability of the Convention in the nation's courts**

7. While noting that judges are free to refer to article 19 of the Constitution in interpreting the law, the Committee remains concerned by the fact that the State party's courts do not invoke the Convention. The Committee also notes with concern that the courts admit confessions obtained under torture into evidence, in violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Code of Criminal Procedure (arts. 2 and 15).

**In order to ensure the effective application of the Convention in its national legal order, the State party should take the necessary steps to align its laws with the provisions of the Convention and to ensure that justice officials are aware of the importance of applying those provisions. The State party should also ensure that articles 52 and 251 of its Code of Criminal Procedure are applied in practice so that confessions obtained under torture are systematically declared null and void.**

#### **Legislative measures for the prevention of torture**

8. While noting that an absolute prohibition of torture is established in the Constitution, the Committee is concerned at the numerous shortcomings of the organization and command structure of the country's security services, particularly the Burundian National Police (Police nationale du Burundi) and the National Intelligence Service (Service national de renseignement). These services are still governed by presidential decrees, whereas the Constitution provides that they be governed by the necessary legal framework. While noting that article 31 of the State party's Criminal Code establishes that an order from a superior officer cannot be used as an argument by the defence in a case of torture, the Committee remains concerned about the effective implementation of that provision (arts. 2, 6 and 16).

**In terms of the activities of the Burundian National Police and the National Intelligence Service, the State party should adopt the necessary legal framework to ensure the full observance of the Convention. The State party should also ensure the**

**effective application of article 2 of the Convention, under which an order from a superior officer or a public authority may not be invoked as a justification of torture.**

#### **The absolute prohibition of torture**

9. The Committee is concerned by the fact that the Military Criminal Code of the State party is not in conformity with international standards relating to the elimination of torture because, contrary to article 4 of the Convention, under the Code acts of torture committed by military personnel do not constitute an offence (arts. 2 and 4).

**The State party should, as a matter of urgency, take steps to incorporate provisions into its Military Criminal Code that establish that acts of torture and ill-treatment committed by military personnel constitute an offence, that such offences are not subject to any statute of limitations and that the sentences for such offences are irreducible. The provisions to be incorporated into the Code should also establish appropriate penalties.**

#### **Police custody, pretrial detention and fundamental legal safeguards**

10. While taking note of the State party's amendment of its Code of Criminal Procedure, the Committee remains concerned at: the excessive length of time during which people can be held in police custody; numerous instances in which the allowable duration of police custody has been exceeded; failures to keep registers on persons in custody or failures to ensure that such records are complete; failures to comply with fundamental legal safeguards for persons deprived of their liberty; the absence of provisions that guarantee access to a doctor and access to legal assistance for persons of limited means; and the excessive use of pretrial detention in the absence of regular reviews of its legality and of any limit on its total duration (arts. 9, 10, 11 and 14).

**The State party should: amend its Code of Criminal Procedure to reduce the allowable duration of police custody to 48 hours; set a reasonable limit on the duration of pretrial detention; guarantee that persons held in police custody or pretrial detention can avail themselves of fundamental legal safeguards, including those of being informed of their rights, having access to a lawyer and a doctor of their choice, being able to contact family members or friends, having access to legal assistance in the case of persons of limited means and being brought before a judge without delay. The State party should also bring its practices with regard to pretrial detention into line with international standards of due process in order to ensure the prompt administration of justice.**

#### **Allegations of torture and extrajudicial killings**

11. The Committee is alarmed by credible, corroborative and persistent reports of a large number of acts of torture and extrajudicial killings committed by members of the Burundian National Police and the National Intelligence Service. It is concerned about the slow pace and limited scope of the investigations and judicial proceedings that have been opened in this connection, which would appear to corroborate claims that the perpetrators of these acts enjoy impunity. The Committee also finds it regrettable that no information about cases that have gone to trial or the outcome of those trials has been forthcoming. It is also concerned at the absence of protection for victims and witnesses, who are subject to reprisals (arts. 2, 4, 6, 7, 12 and 14).

#### **The State party should:**

**(a) Adopt all the effective measures necessary to combat impunity by systematically undertaking prompt, impartial and effective investigations into any and all reports of torture or the arbitrary deprivation of the right to life in order to**

identify and prosecute the suspected perpetrators and, if they are found guilty, punish them appropriately and provide proper redress to the victims or their families;

(b) Inform the Committee, in writing, of the outcomes of the investigations and judicial proceedings that are opened and on the convictions and sentences handed down regarding both the above-mentioned reports and those referred to in the list of issues (CAT/C/BDI/Q/2/Add.1, paras. 9, 10, 12, 13 and 15), including the killings that occurred during and in the wake of the 2010 elections and more recent events, such as the killings of several members of religious minorities;

(c) Introduce a provision into its Code of Criminal Procedure to make it mandatory to open investigations into all allegations of torture or ill-treatment and establish that no statute of limitations applies to the crime of torture or ill-treatment;

(d) Protect victims from any sort of reprisal and guarantee them appropriate redress, as recognized in article 14 of the Convention and set out in the Committee's general comment No. 3 (2012).

#### **Persons with albinism**

12. The Committee is concerned by the fact that persons with albinism are the targets of persecution and physical assaults which have led to the death of 18 persons and the mutilation of numerous others since 2008 (arts. 10, 12 and 16).

**The State party should, as a matter of urgency, protect persons with albinism from discrimination and physical assaults, combat the impunity of those responsible for such violations and conduct campaigns to combat such forms of discrimination.**

#### **Independence of the judiciary**

13. The Committee is concerned by numerous reports concerning the judiciary's lack of independence, which include reports of interference by the executive branch in the workings of the justice system, the transfer of judges who have gone against the wishes of the executive branch and the unfair practice of settling cases involving offences such as rape or sexual violence against women and children "amicably". Those concerns are compounded by shortcomings in the justice system, such as a shortage of resources, including a dearth of judges and a lack of basic training for them; delays in processing cases; and a failure to enforce some court decisions. The "amicable" settlement of criminal cases undermines people's trust in the judicial system and encourages people to resort to mob justice. Finally, while taking note of the National Forum on the Justice System, held in August 2013, the Committee finds it regrettable that the Forum's final report has not been published (arts. 12, 13 and 15).

**The State party should amend the law governing the composition of the High Council of the Judicature (Conseil supérieur de la magistrature) to ensure the Council's independence and impartiality. The State party should also adopt all other measures necessary to ensure the judiciary's independence, including the selection of judges through a competency-based selection process, career progression dependent solely on objective, merit-based assessments of their performance and guaranteed their security of tenure. Judicial authorities found to be responsible for corruption or abuse of power should be punished. The State party should also build up the justice system's human-resource capacity in both quantitative and qualitative terms and should provide judicial authorities with better training in order to restore people's trust in the justice system and thereby dissuade them from resorting to mob justice. The State party should make the report of the National Forum on the Justice System public and act upon its recommendations.**

### **Training**

14. While taking note of the replies provided by the State party, the Committee remains concerned about the inadequate training of State officials and other relevant actors on the provisions of the Convention. This is particularly the case with the Burundian National Police and the National Intelligence Service, members of the judiciary, prison staff and doctors dealing with cases of torture and ill-treatment (arts. 2, 10 and 16).

**The State party should ensure that basic vocational training for officials of the Burundian National Police and the National Intelligence Service, members of the judiciary (including judges and lawyers) and medical and prison staff systematically includes modules on the provisions of the Convention, the 1999 Istanbul Protocol, techniques for investigating torture and ill-treatment and international human rights protection standards. Such training should involve the study of specific cases and should also focus on gender-specific violence. The State party should also carry out assessments on a regular basis, in order to measure the effectiveness and impact of the training provided.**

### **Conditions of detention**

15. The Committee is alarmed at the appalling conditions of detention in places of deprivation of liberty. It deplores, in particular: the high levels of prison overcrowding; the failure to separate male prisoners from female prisoners, adults from minors and persons awaiting trial from those already sentenced; the shortage of beds and sleeping space; the poor sanitary conditions; the dilapidated state of the facilities; prisoners' inadequate and unbalanced diet; and the lack of health care. It further deplores the death of 263 inmates, inter-prisoner violence and the sexual violence against women and minors perpetrated by other inmates and guards. Lastly, the Committee is concerned about the continuing practice, in the State party, of detaining patients in hospital for non-payment of fees (arts. 6, 11, 12 and 16).

**The State party should, as a matter of urgency, reduce the prison population by, among other things, paroling prisoners, introducing community service as a non-custodial measure, restricting the use of pretrial detention and, with the assistance of civil society representatives, considering other alternatives to detention. The State party should also establish the office of sentence enforcement judge and take prompt action to ensure that prisoners are separated on the basis of age, sex and detention regime. The State party should take the necessary action, as a matter of urgency, to put an end to the practice of detaining patients in hospital for non-payment of fees.**

### **Situation of refugees and asylum seekers**

16. While taking note of the information provided by the State party in its written replies regarding the measures taken to ensure that the rights of asylum seekers are respected, the Committee remains concerned at information to the effect that the process for determining refugee status is not in line with the relevant international standards and that persons have been returned to the border without being able to file an application for asylum (art. 3).

**The State party should ensure that all asylum seekers are able to file applications for asylum and to enjoy their fundamental rights, including the right to appeal a negative decision, during the corresponding consideration process, in accordance with the relevant provisions of the Convention. Officials responsible for processing asylum cases should receive specific training on this subject.**

**Universal jurisdiction**

17. The Committee is concerned about the implications of the provisions contained in article 10 of the new Criminal Code in the light of the State party's explanation thereof in paragraphs 51 and 52 of its report. According to those provisions, anyone committing acts of torture abroad, whether of Burundian nationality or not, will be prosecuted for his or her acts in Burundi only if torture is a criminal offence in the country where the acts occurred. The Committee draws the attention of the State party to its obligations under article 5 of the Convention (art. 5).

**The State party should amend its Criminal Code in order to ensure that Burundian courts have jurisdiction to try anyone for an act of torture committed in a third country, regardless of whether that country has made torture a criminal offence or not. The State party should also enact legislation giving its courts universal jurisdiction over torture.**

**Redress and rehabilitation for victims of torture**

18. While taking note of the fact that article 289 of the new Code of Criminal Procedure provides for the compensation of victims of torture, the Committee expresses its concern at the failure to apply this provision, in violation of article 14 of the Convention (art. 14).

**The State party should establish the legislative and structural framework necessary for ensuring that victims of torture receive full compensation, in accordance with article 14 of the Convention and as set out in the Committee's general comment No. 3.**

**Mechanism for monitoring places of deprivation of liberty**

19. The Committee is concerned at the delay in setting up or designating a national preventive mechanism against torture, as required under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (art. 11).

**The State party should initiate a participatory and inclusive process to designate or set up an independent and effective national preventive mechanism against torture as soon as possible, in accordance with the guidelines established by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The State party should ensure that the mechanism has the necessary human and financial resources for it to operate effectively and independently. The State party should also ensure that civil society organizations enjoy free access to places of deprivation of liberty and can make recommendations to the authorities.**

**Independent National Human Rights Commission**

20. While welcoming the efforts made by the State party in establishing the Independent National Human Rights Commission in 2011 on a solid legal basis that gives it broad powers, the Committee is concerned because the independence and credibility of this national institution are being threatened by the failure to establish a participatory, transparent process for renewing the Commission's membership. The Committee also notes with regret the insufficient resources placed at the Commission's disposal (arts. 2, 4, 10, 11 and 12).

**The State party should ensure the full independence and credibility of the Independent National Human Rights Commission, in particular by establishing a fair and transparent procedure for renewing the Commission's membership. The Committee also encourages the State party: (a) to pursue its efforts to provide the Commission with the financial, human and material resources needed to allow it to**

fully discharge its mandate, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles); and (b) to ensure that the Commission's recommendations are implemented.

#### **Transitional justice**

21. The Committee takes note of the adoption by the State party of the Truth and Reconciliation Commission Act but notes with regret the slowness with which the Commission is being established and deplores the fact that the selection procedure for commissioners is not participatory or inclusive (arts. 12 and 14).

**The Committee encourages the State party to set up this transitional justice mechanism as soon as possible on a participatory and inclusive basis and to ensure that it is open to all components of civil society, including non-governmental organizations working in the field of human rights.**

#### **Political violence**

22. The Committee is concerned at:

(a) The restrictions on the right of assembly and demonstration imposed by law enforcement bodies and reports of cases involving the violent suppression of demonstrations resulting in the excessive use of force by the authorities, for example during the protests of March 2014;

(b) The serious human rights violations perpetrated by a youth group (referred to as the *Imbonerakure*) with close ties to the Government, including: the harassment of political opponents; the disruption of public meetings, acts of intimidation, arbitrary arrests and arbitrary detention and other acts of violence; and the use of so-called "amicable" arrangements for settling disputes. The Committee is deeply concerned by reports that the Government is providing this group with weapons and training (arts. 2, 12, 14 and 16).

#### **The State party should:**

(a) **Take urgent measures to ensure that the perpetrators of any human rights violation are immediately punished, regardless of their status. Those responsible for such violations should be prosecuted and, if found guilty, sentenced appropriately; the victims of such violations should be awarded due compensation and assisted with their rehabilitation;**

(b) **Investigate the *Imbonerakure*, their links to the Government, including the provision of weapons, and their actions, with a view to ensuring full compliance with the Convention.**

#### **Discrimination based on sexual orientation**

23. The Committee is concerned at the fact that homosexuality is an offence under the Criminal Code and at reports of homosexuals being subject to threats to their physical integrity, persecution and acts of violence (art. 16).

**The State party should decriminalize homosexuality and take all necessary measures to effectively protect homosexuals from threats and any form of violence (CCPR/C/BDI/CO/2, para. 8); and, in accordance with the relevant provisions of the Convention, investigate any cases involving violations of their physical integrity.**

**Cooperation with United Nations mechanisms**

24. The Committee welcomes the decision of the State party to extend a standing invitation to United Nations special procedures mandate holders. However, the Committee notes with regret the delays affecting the submission of initial and periodic reports to the treaty bodies, the excessive amount of time taken by the State party to respond to special procedures requests regarding visits and information on individual cases, and its failure to follow up the recommendations made by the treaty bodies, particularly with regard to individual complaints (arts. 2, 12, 14 and 16).

**The State party should, among other things, take effective action to submit its periodic reports in a timely manner by setting up a permanent national mechanism tasked with the coordination, submission and follow-up of such reports; act upon the recommendations of the mechanisms of the United Nations; respond in a timely manner to requests by special procedures mandate holders to visit the country; and provide information requested by special procedures and treaty bodies regarding communications and act upon their recommendations.**

**Data collection**

25. The Committee notes with regret the absence of comprehensive, disaggregated data on complaints, investigations, prosecutions, convictions and penalties imposed in respect of acts of torture and ill-treatment attributed to State agents or on means of redress provided to victims or their families.

**In order to evaluate the implementation of the Convention at the national level and assess the extent of the practice of torture and the impact of the measures taken in that regard, the State party should, on a regular basis, collect and publish reliable and up-to-date data, disaggregated by sex, ethnicity, age, location and type of place of deprivation of liberty, on the complaints relating to cases of torture and ill-treatment received during the reporting period, the corresponding investigations, prosecutions, convictions and penal or disciplinary sanctions imposed and any redress and compensation awarded to victims.**

**Other issues**

26. The State party is encouraged to ratify, as soon as possible, the International Convention for the Protection of All Persons from Enforced Disappearance, the two Optional Protocols to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the Agreement on the Privileges and Immunities of the International Criminal Court and the Kampala amendments to the Rome Statute.

27. The State party is requested to ensure the wide dissemination of the report that it has submitted to the Committee and the Committee's concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

28. The Committee thanks the State party for its willingness to continue the dialogue beyond the interactive dialogue and requests it to provide information by 28 November 2015 on the follow-up given to the recommendations contained in paragraphs 11 (a), (b) and (d) and 22 (b).



29. The State party is invited to submit its third periodic report by 28 November 2018. To this end, the Committee invites the State party to agree, by 28 November 2015, to use its optional reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's response to this list of issues will then constitute the next periodic report to be submitted under article 19 of the Convention.

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