



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

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Committee against Torture

Fifty-third session

Summary record of the 1262nd meeting

Held at the Palais Wilson, Geneva, on Tuesday, 11 November 2014, at 10 a.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Second periodic report of Burundi (CAT/C/BDI/2; CAT/C/BDI/Q/2 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Burundi took places at the Committee table.*
2. **Mr. Nsanze** (Burundi), referring to question 1 of the list of issues, said that the use of the term “among others” in article 19 of the Burundian Constitution showed that the article was not exhaustive in its protection of human rights. A Burundian court could, under article 19, cite the provisions of the Convention in interpreting the law and delivering judgement. The Criminal Code contained the definition of torture set out in the Convention and, as amended in 2009, it had criminalized torture and related offences. Moreover, article 25 of the Constitution provided for the total prohibition of torture. In addition, article 4 of Act No. 1/004 of 8 May 2003 relating to the crime of genocide, crimes against humanity and war crimes included torture in that category. There were thus no circumstances in which torture was permissible. The relevant articles of the Criminal Code were implemented: a number of cases had come before the military courts and three other investigations had been opened into allegations of extrajudicial executions or torture. Provisions against torture had also been included in the Military Criminal Code.
3. The Independent National Human Rights Commission had been set up in accordance with Act No. 1/04 of 5 January 2011. It had extensive powers of investigation and free access to all sources of information. It could also request assistance from the police and other State services, and possessed sufficient human and financial resources. It carried out visits to prisons and police detention cells with a view to ensuring the observance of human rights by officers in charge of prisoners and organizing awareness-raising and training workshops for State officials in a position to commit torture.
4. Criminal prosecutions had been instituted against alleged perpetrators of acts of torture, including Dédit Niyirera and Michel Nurweze, alias Rwembe, who was also alleged to have committed other offences. The Commission was considering the case of a number of young people killed in the town of Kanyosha. It had found that the trials of the following persons mentioned in the Human Rights Watch report were already under way: Dédit Niyirera, Médard Ndayishimiye, Oscar Nibitanga, Pasteur Mpangaje, Célestin Mwina, Wilson Ndayishimiye, Jean-Baptiste Bigingo, Pascal Ndikumana, Albert Ntiranyibagira, Jeanine Nahimana, who was named as Jeanine Ndayishimiye in the Human Rights Watch report, and Arthémon Misigaro, named as Arthémon Manirakiza in the same report.
5. A file had been opened on the murder of Audace Vianney Habonarugira, and Michel Nurweze had been prosecuted in the case of Léandre Bukuru. The defendant had been acquitted, but the public prosecution service had appealed against the judgement. The same applied to the case of Salathiel Cishahayo against police officer J. Bosco Cishahayo, who had been tried for attempted murder. There were no other cases of complaints of torture or ill-treatment in Burundi.
6. With regard to the allegation of acts of torture made by Déogratias Niyonzima, the investigation of the case had not been completed, owing to his failure to cooperate or provide preliminary information. The claimant had subsequently gone abroad and the case was pending. In the case of Saïdi Ntahiraja, the sentence of 10 years’ penal servitude imposed by the court martial had been upheld by the Military Court. The Government considered that the complainant’s claim of torture was unfounded, since he and his associates had initially been prosecuted for plotting a military conspiracy. The alleged acts of torture therefore needed to be the subject of a specific complaint by him. To general

surprise, he had not, on leaving prison following a pardon, made any application in that regard. The allegations of torture made by Boniface Ntikarahera had been lodged with the public prosecution service, but the victim had unfortunately disappeared. The case of Etienne Nizigiyimana had been transferred by the Bujumbura Appeal Court to the *tribunal de résidence* (local court). The victim had subsequently lodged a complaint with the Committee against Torture, although proceedings in the local court had already started again and the search for co-perpetrators had been under way. A man named Nyamoya had been detained in order to obtain information concerning the suborning of witnesses in the case of the murder of Kassi Manlan, a World Health Organization representative in Burundi, but had subsequently been released on bail.

7. In addition to articles 39 and 40 of the Constitution, article 95 of the Code of Criminal Procedure guaranteed the right to a defence. The Code also laid down the time limit within which a defendant must be brought before a judge. As to violence against women, there was a whole range of enactments and measures, and a zero-tolerance statement had been made by the President against gender-based sexual violence and impunity. That had led to the submission in June 2013 of a bill on the prevention, protection and suppression of gender-based sexual violence, which was currently before parliament; the establishment of special courts to deal with such violence, which addressed such cases speedily; the appointment of focal points on gender-based violence in prosecutor's offices and the higher courts; the revision of the Criminal Code and Code of Criminal Procedure to strengthen the provisions relating to the perpetrators of such violence; the establishment of the Gender Sectoral Group, which coordinated action against gender-based violence; the appointment of gender focal points in provincial and local offices of the Criminal Investigation Department and the provision of training in combating gender-based violence; the establishment of the Humura Centre, a national shelter for victims of gender-based violence, which had been operating since July 2012; and the establishment of the national forum for women in 2013. Domestic violence continued to be governed by articles 535 to 537 of the Criminal Code.

8. Act No. 1/03 of 4 February 2008 on Refugees and Asylum had been replaced by Act No. 1/32 of 13 November 2008, under which Burundi extended protection to a foreigner whose life or freedom was threatened in his or her own country or who had been exposed to inhuman or degrading treatment. Article 20 of the Act provided that no asylum seeker could be returned to a territory where his or her life or freedom was at risk. Torture was a form of threat to a person's life, so clearly Burundi could not return an asylum seeker under such circumstances. The Committee had been given a summary of the statistics of the Office for Refugees and Stateless Persons. The extradition agreement with Tanzania provided that, where a person had already been charged or convicted, the requesting country must provide tangible evidence of his or her guilt. Mutual judicial assistance could be refused if the request related to offences considered by the requested party to be of a political or similar nature.

9. With support from the United Nations and civil society bodies, such persons as district administrators, judges, Criminal Investigation Department officers, prison officials and members of the National Intelligence Service were given training in awareness-raising. The Centre for the Promotion of Human Rights and Prevention of Genocide also conducted training activities. More general training was given to the security forces and defence forces, including an introduction to human rights, international humanitarian law, leadership and discipline. No training for medical personnel in techniques for screening physical or psychological acts of torture was available.

10. Detention sometimes exceeded the approved time limits owing to the complexity of a case, delays in gathering and producing evidence or the difficulty in transporting witnesses from police stations to public prosecutors' offices. The Government was,

however, working with its partners, including the United Nations Office in Burundi, the Burundian Association for the Protection of Human Rights and Detained Persons, the Burundi League of Human Rights, the International Committee of the Red Cross and *Avocats sans frontières*, to visit places of detention and suggest measures that could be taken. Pretrial detention was sometimes extended in order to prevent reoffending or the imposition of pressure on witnesses or victims. Other factors were the fear that the alleged perpetrator would contact his accomplices, the need to protect a perpetrator against a public outcry and the possibility that a perpetrator might escape. Pretrial detention could be extended by several months in particularly serious cases or where public opinion led the courts to decide to keep a person in detention in the public interest.

11. A number of measures had been taken to reduce the prison population. Under a decree of 25 June 2012, various categories of prisoner — those serving sentences of 5 years or less, pregnant or breast-feeding women, persons suffering from an incurable illness and persons aged over 60 or under 18 — had been given a presidential pardon, while other sentences had been halved. Some detainees had been provisionally released before trial. In other cases, persons who had served a quarter of their term had been provisionally released, prisoners' files had been reviewed and alternatives to imprisonment had been adopted. At the end of 2013, the proportion of persons held in pretrial detention had been 51.4 per cent; in the first quarter of 2014, there had been 3,834 pretrial prisoners and 4,072 convicted prisoners out of a total prison population of 8,075. In late October 2014, the number of prisoners in all prisons had stood at 7,393. Women were separated from men and adults from children in three prisons: Rumonge, Riyigi and Ngozi. The Government was continuing its efforts to extend those conditions to the other eight prisons in the country.

12. The Independent National Human Rights Commission was mandated to inspect places of deprivation of liberty and, in 2013, it had registered 10 allegations of torture, of which 8 had been determined to constitute human rights violations. To prevent secret detention, Burundi had opened public prosecutors' offices in 129 districts.

13. The Truth and Reconciliation Commission had been established pursuant to Act No. 1/18 of 15 May 2014, and selection of its members was under way. The Special Tribunal for Burundi would be set up following the publication of the Commission's report. The Government had ordered a study of the protection of witnesses and victims, which had been approved in September 2014. Acts of torture were criminally prosecuted and victims could appeal to the courts. If victims were not satisfied with a judgement, they could appeal to national and international human rights institutions. A number of Burundian nationals had already appealed to the Committee against Torture. In response to allegations of torture made by certain organizations in Burundi, the Government had undertaken inquiries into specific cases, including those of Michel Nurweze, Patrice Mazoya, Guillaume Magorwa, Major Kabuhungu, J. Bosco Nsabimana, Joseph alias Ndomboro, Gérard Ndayizeye and Gétrie Niyinzigamye. Disciplinary sanctions had been imposed on those persons and others might be imposed shortly.

14. The new Code of Criminal Procedure made provision for the creation of a compensation fund for victims of torture and work was continuing on the mechanism for its implementation. In the meantime the State was obliged to compensate victims. State officials accused of having committed torture were treated in the same way as perpetrators of other offences. Burundi had no infrastructure for the rehabilitation of torture victims.

15. A national centre to assist victims of sexual violence had been established in July 2012. It worked with existing private centres with the aim of ensuring the psychological, social and medical rehabilitation of victims. Thanks to recent legislation, an emergency project relating to sexual and gender-based violence and women's health was about to be launched in the Great Lakes Region. Following recent legislation, further protection,

reparation and compensation measures for victims and witnesses of torture and ill-treatment would gradually be introduced.

16. The new Code of Criminal Procedure had been disseminated among all law enforcement officials. Police officers had also been taught that torture was in any case ineffective because statements obtained through torture would be inadmissible as evidence in court.

17. The Government allowed both national and international human rights defenders free access to places of detention. Although conditions there were still inadequate, work was under way to improve facilities and raise the standard of prisoners' food, accommodation and sanitary facilities. The phenomenon of detention in hospitals had all but disappeared.

18. A ministerial order prohibiting corporal punishment in schools had been issued and awareness-raising campaigns had been organized and had led to a perceptible reduction in the number of cases of inhuman treatment of schoolchildren. The issue of children in detention was a priority and the creation of a juvenile justice system formed part of government policy for the period 2011–2015. A new Criminal Code had been adopted, embracing the principles laid down in the Convention on the Rights of the Child; a child protection code was imminent; and special juvenile court divisions had been established throughout the country. Modules on children's rights had been included in training programmes for police and judicial officers.

19. The incident of 8 March 2014 had been attributable to an unauthorized demonstration. Police had been taken by surprise by the level of violence and had been obliged to use their weapons in order to rescue two of their colleagues.

20. The Optional Protocol to the Convention against Torture had been ratified without reservation in September 2013. Public information programmes had been launched as part of national efforts to increase security in relation to critical infrastructure. Anti-terrorism efforts were ongoing, with the support of Interpol, and a law against money-laundering and the financing of terrorism had been passed in 2008.

21. **The Chairperson** thanked the representative of Burundi and observed that his statement went some way towards making up for the tardy submission of the replies to the list of issues.

22. **Mr. Gaye** (Country Rapporteur) noted that Burundi, unlike most States parties appearing before the Committee, did not have any members of the Government in its delegation. He asked to be provided with the definition of torture and its penalties as contained in the Criminal Code, and requested clarification of the fact that, according to the periodic report, the 2005 law promulgating the Constitution also included a definition of torture. Did that mean that two legal definitions existed?

23. Currently, judges did not invoke the Convention by name in their rulings but referred to article 19 of the Constitution. Would it not be simpler to allow them to apply the Convention directly or to pass new legislation incorporating the provisions of the Convention? He asked to be provided with examples of decisions in which the Convention had been applied.

24. He asked for information about the number of cases of torture reported in Burundi and about the outcome of any prosecutions that had ensued. When determining sentences for torture, were there any objective criteria judges could follow or did they simply use their own discretion? He wished to know when the body set up to examine the treatment of torture in the Military Penal Code, which was incompatible with international standards, would complete its work.

25. The fact that Burundi had given the Independent National Commission on Human Rights the means to be effective was commendable and further financial and human resources should be placed at the Commission's disposal. It was important to ensure that not all members of the newly formed Truth and Reconciliation Commission were from the Government; representatives from civil society must be included as well. He noted positive developments in police training and praised the State party for new measures protecting subordinates who refused to carry out illegal orders from a superior officer.

26. A commission of inquiry established by the Prosecutor General to examine allegations of torture had resulted in 14 trials but the United Nations Office in Burundi had reported over 100 cases of human rights violations, including torture and extrajudicial executions. The Committee had received information to the effect that many of the senior police officers involved in those cases were at liberty. Could the delegation provide the Committee with more information on the matter? He asked for more comprehensive statistics on cases of torture, given that cases other than those mentioned by the State party had been brought to the attention of the Committee by Special Rapporteurs and others. The delegation should also supply the Committee with specific information about the cases of Audace Vianney Habonarugira and Leandre Bukuru, among others.

27. The Committee had received no response to its query about persons who had been acquitted but remained in detention due to administrative delays. The 15-day limit for holding suspects in police custody was too long and efforts should be made to reduce it to a more reasonable length of time, such as 48 hours. He wished to know whether any undocumented migrants were being held in Burundi.

28. **Ms. Belmir** (Country Rapporteur) welcomed the human rights training initiatives instituted by the State party. General and specific training, also involving the Independent National Commission on Human Rights, was made available to law enforcement officials, the military, administrative officials and medical staff. Nonetheless, there was a lack of basic training for judges and the police. Training for doctors was likewise insufficient and did not include the Istanbul Protocol. A lot remained to be done to ensure that such training had an effective impact on the reduction of torture.

29. Despite the fact that in the new Code of Criminal Procedure the deadlines for both police custody and pretrial detention were unduly long, they were reportedly often exceeded for reasons that were unjustifiable. It would appear that many fundamental guarantees were not in place in the State party, including properly maintained detention registers, safe and hygienic conditions of detention, timely processing of cases, separate detention areas for women, men and juveniles, and legal arrests by qualified police officers. She wished to know what steps were being taken to remedy those problems and to re-establish the rule of law.

30. The Committee would appreciate updated details of measures that were being taken to punish the perpetrators of extrajudicial killings, some cases of which dated back to 2005. She requested information on the case of three Italian nuns who had allegedly been raped and murdered in the State party in September 2014, and on other cases that had been reported in the press but not mentioned in the State party report or by the delegation. It would be useful to know to what degree the Government exerted pressure on the judiciary and what fate befell judges who acted independently. She asked what steps judges took to ensure that statements made in court had not been obtained through torture, especially in the light of reports that the police continued to use torture to extract confessions. The Committee would welcome information on the steps being taken to improve the reportedly deplorable detention conditions in the State party and to abolish detention for those who could not afford to pay their hospital bills. She wished to know what measures the State party planned to put in place for the rehabilitation of victims of ill-treatment, particularly women victims of sexual violence.

31. **Mr. Tugushi** requested additional information on the reports of worshippers who had been arbitrarily arrested, beaten and, in the case of nine, killed by the police in Businde, Kayanza province, on 12 March 2013. While the police commander and several other officers had been arrested, they had later been released pending further investigations. It would be useful to have an update on those cases and to know whether any of those involved had been punished. The Committee would also appreciate the delegation's comments on the apparent bias of the police, who often carried out acts of political persecution. The persecution of sexual minorities was also of great concern, in terms of both the criminalization of homosexuality, and the persecution that individuals suffered in their families, in their communities and at the hands of the police. He asked whether the State party planned to repeal the law criminalizing homosexuality and to take further measures to protect sexual minorities.

32. **Mr. Domah** asked which authority was responsible for law enforcement officials, particularly as the police and other law enforcement agencies appeared to condone the activities of militias that attacked human rights defenders. It would be useful to know whether the public had faith in the justice system or whether the general perception was that the system was used to uphold the power of the ruling party. He wished to know how the State party ensured the independence of the judiciary in law and in practice, and what steps were taken to ensure that the appointment of magistrates and judges was impartial. He asked for the delegation's comments on reports that judges who acted impartially were often transferred to remote parts of the country.

33. **Mr. Zhang Kening** asked whether the State party planned to reduce the maximum period of police custody from the current seven days provided for in the new Code of Criminal Procedure. He requested an update on the situations that had resulted in non-observance of the maximum length of police custody, as mentioned in paragraph 92 of the periodic report.

34. **Mr. Modvig** asked whether NGOs could visit places of detention, including without prior notification. Could they speak with inmates privately and consult all documentation? He asked whether the State party had its own independent visiting mechanisms. He requested additional information on the results of the monitoring of prison conditions, particularly whether there had been dialogue between those who had visited places of detention and the appropriate authorities, what recommendations had been made and how the authorities had responded to those recommendations.

35. **Ms. Gaer** noted that the Special Adviser of the Secretary-General on the Prevention of Genocide had visited the State party twice in 2014 and had recommended that an independent investigation should be held into the allegations by the United Nations official Paul Debbie that the Government had distributed weapons to the youth wing of the ruling National Council for the Defence of Democracy-Forces for the Defence of Democracy (CNDD-FDD) party, the Imbonerakure. She asked whether any such investigation had been launched or any action taken regarding that allegation. She would welcome the delegation's comments on a report from Amnesty International alleging that the Imbonerakure had been responsible for perpetrating human rights abuses, attacking and even killing political opponents with impunity, and that its members were armed and trained by the Government.

36. **The Chairperson** requested data on the number of complaints received by the Independent National Commission on Human Rights, the nature of the alleged offences, the recommendations the Commission made and the Government's response to those recommendations. He wished to know what steps were being taken to prevent domestic violence. He asked how many deaths in detention there had been and what investigations had been carried out into those deaths. In the light of reports of persecution and even killing of women and children accused of having mystical powers, the Committee would welcome details of the training provided to law enforcement officials in that regard, and data on

investigations into such cases and their results. He would appreciate additional information on the provisions regulating pretrial detention in the new Criminal Code. He asked what steps had been taken to investigate and punish the perpetrators of the 34 recorded cases of extrajudicial killings by police or military personnel in 2013, as only 3 people appeared to have been prosecuted for those crimes to date. He drew the State party's attention to the fact that the revised Criminal Code was not in line with article 15 of the Convention concerning the use in legal proceedings of statements which had been obtained as a result of torture.

37. **Mr. Bruni** noted that, while prison overcrowding was certainly less dramatic than previously, the situation remained of grave concern. It would be useful to know what measures the Government planned to take in that regard. He asked what progress had been made in establishing a national preventive mechanism, in accordance with the provisions of the Optional Protocol to the Convention against Torture, particularly since the one-year deadline for its establishment had now expired.

38. **Mr. Nsanze** (Burundi), referring to the observation that his delegation contained no members of the Government, said that he had been Minister for Foreign Affairs and International Cooperation from 2009 to 2011 and that another member of the delegation was a former Minister of Justice.

The meeting rose at 12.05 p.m.