



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

Distr.: General
12 November 2013

Original: English

**Committee against Torture
Fifty-first session**

Summary record of the 1187th meeting

Held at the Palais Wilson, Geneva, on Thursday, 7 November 2013, at 3 p.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 3.05 p.m.

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

Initial report of Burkina Faso (continued) (CAT/C/BFA/1; HRI/CORE/BFA/2012)

1. *At the invitation of the Chairperson, the delegation of Burkina Faso took places at the Committee table.*

2. **Ms. Nigna Somda** (Burkina Faso) said her Government was aware that much remained to be done in order to align national legislation with international human rights instruments. The adoption of the bill on torture had been delayed not by a lack of political will, but by the Government's commitment to involve all stakeholders in the process. A previous version of the bill had been presented in 2012, but had been withdrawn after complaints from civil society organizations that they had not been sufficiently consulted. Another national consultation workshop had been held and the technical committee for the vetting of bills had approved the new text, including the establishment of an anti-torture observatory. The penalty for acts of torture would range from 1 year's immediate imprisonment to rigorous imprisonment for life with the added possibility of a fine, depending on the seriousness of the offence. It was hoped that the National Assembly would adopt the bill in early 2014.

3. Torture was prohibited under the police code of conduct. Moreover, police officers were obliged to take steps to protect the life and health of any individual in their custody whose condition required special care. Officers who witnessed prohibited acts were liable to disciplinary sanction if they failed to stop them or report them to the competent authorities. Any order to commit an act of torture or ill-treatment was illegal and the code of conduct permitted subordinates to refuse to obey such an order. All complaints of torture at the hands of law enforcement officials were investigated. Officials who were found guilty were liable to disciplinary sanctions in addition to criminal prosecution. For example, police officers had been sentenced to imprisonment in the case of Justin Zongo and two correctional officers had been convicted of ill-treatment of a detainee in a short-stay prison. Over 560 military personnel and 135 police officers had been discharged following the 2011 mutinies.

4. Exceptional circumstances could only be invoked if the State was in imminent and serious danger and could not ensure its safety as a result of a state of siege, emergency or crisis. None of those situations could be used to justify torture. The military courts had jurisdiction over ordinary offences committed by military personnel or civilian contractors on military premises, as well as military offences.

5. The Code of Criminal Procedure set out the terms of police custody. Prosecutors could, ex officio or upon request by detainees' families, appoint a doctor to conduct an examination at any time during custody. A medical examination was compulsory when custody lasted more than 72 hours. Families of detainees had the right to be informed of any action taken regarding their relatives. Her Government was aware of certain shortfalls, such as the involvement of defence counsel in police investigations, but the Code was being reviewed to make the necessary amendments.

6. The Organized Crime Act had been adopted during a surge in crime when it had been necessary to take drastic measures to protect and reassure the general public. There was no specific programme relating to the rights of victims and witnesses, but the law did provide for confidential reporting of offences, for example through one of three toll-free phone lines. Moreover, the Government had set up a compensation fund for victims of political violence suffered since 1961; a total of 5 billion CFA francs had been paid from

that fund to over 475 individuals. Justin Zongo's family had turned down the offer of compensation.

7. The national human rights institution, established in 2001, had been found in breach of the Paris Principles. Accordingly, a law had been enacted in 2009 to reform the institution, whose remit included visits to detention centres and the investigation of complaints, except those relating to classified information, national security or foreign policy. The new members had been appointed and sworn in, but they could still run for political office. There was still a financing issue – namely, that the institution was contingent on the budget of the Ministry of Human Rights and Citizen Participation, because it had been set up mid-financial year. It should be allocated its own budget in 2014.

8. Burkina Faso had a history of hosting refugees and was a party to a number of international and regional conventions on that question. Act No. 042/2008 defined the concept of a refugee and established the National Refugee Commission, as well as mechanisms for determining refugee status. Requests for refugee status were considered by a committee, whose decisions were appealable. The members of the committee, had been appointed and sessions had been scheduled; however, none had yet taken place because the committee had been wholly occupied by the massive influx of Malian refugees. Under the Act, certain groups could be awarded refugee status *prima facie*, a provision that had already been invoked for 50,000 individuals, including 35,000 Malians. The National Refugee Commission cooperated with a number of international agencies to respond effectively to the arrival of thousands of refugees. For example, two schools had been built for child refugees, birth certificates had been issued and a department had been set up to promote the integration, and even employment, of refugees.

9. Under the law, extradition was ordered by presidential decree on the recommendation of the Court of Appeal's indictment division and could be appealed before the Court of Cassation. Extradition could not be ordered if the offence in question did not carry a prison sentence under Burkina Faso law. Extradition requests must be accompanied by a judgement, sentencing order or arrest warrant, including the detailed facts of the case. Expulsion orders were administrative measures and could be appealed on grounds of abuse of authority. The law did not provide for universal jurisdiction over offences that had not been committed by a Burkina Faso national or against a Burkina Faso national abroad or not committed on national territory. However, foreigners who had committed acts of torture and habitually resided in Burkina Faso could be extradited.

10. Providing statistics on the number of military, police and health-care personnel who had received training in the Convention, she said that human rights education was a permanent fixture of the strategic plans and policies of the Ministry of Human Rights. Post-training evaluations had found significant behavioural changes in participants and a comprehensive impact assessment was included in the Ministry's annual workplan for 2014. The projected compilation (supported by the Danish Institute for Human Rights) of a human rights handbook for use in police academies had unfortunately not been completed. However, a guide was being prepared by the police forces subordinate to the Ministry of Territorial Administration and the Ministry of Security and would be completed shortly.

11. Prison overcrowding was an issue of overriding concern. Accordingly, more than 14 new short-stay prisons had been built, and the penalty of community service and the principle of personalization of penalties had been introduced. Minors, women and men were held in separate quarters. Minors were not automatically sent to prison since social reintegration centres had been established for children in conflict with the law. Unannounced prison visits were conducted by the Ministry of Human Rights, human rights NGOs and charities, while the public prosecutor's office conducted scheduled inspections.

12. Measures had been taken for the protection, repatriation and socioeconomic reintegration of child victims of trafficking. For example, a study had been conducted on the needs of child victims; several thousand child victims had been identified and helped to return to their families; 450 had received vocational training or gone back to school; and hundreds of families had been helped to find income-generating activities. A bilateral anti-trafficking agreement had recently been concluded between the first ladies of Burkina Faso and Côte d'Ivoire, and a bill prohibiting the sale of children, child prostitution and child pornography had been adopted by the Government. Furthermore, the Criminal Code prohibited any action or behaviour detrimental to child development, such as begging, rape and incitement to immorality. Corporal punishment was explicitly banned and the courts did not hesitate to impose the relevant penalties on teachers found guilty of offences against children.

13. Kadiogo Military Academy was a secondary school open to all children who had a primary school-leaving certificate and had passed a medical examination. The costs associated with attendance were entirely covered by the State. More than 5,000 applications had been received for the current academic year for a total of 60 places and the academy had students from 15 African countries. Although it came under the aegis of the Ministry of Defence, the teachers were appointed by the Ministry of Education, which also drew up the curriculum. Graduates were free to enter or not enter the armed forces; the academy was in no way a training centre for child soldiers.

14. Institutional and legislative measures had been taken to combat female genital mutilation, including the establishment of a national committee and three hotlines for reporting cases. Both the Constitution and the Criminal Code guaranteed the right to protection from physical or mental injury, and the offence of causing genital injury incurred 3 months' to 6 years' imprisonment and a fine, or 5 to 10 years' imprisonment if the injury led to death. The prevalence of genital mutilation among girls born before 1988 had been over 55 per cent but had plummeted to 5 per cent among those born since 2002.

15. Tackling violence against women was a Government priority and a bill on the question had been submitted to parliament. In addition to raising awareness, a ministry had been set up to address gender issues and a national gender policy had been adopted. Forced marriage was prohibited under the Criminal Code, while the practices of levirate and sororate marriage were being abandoned.

16. Unfortunately, older women often tended to be socially excluded on suspicion of witchcraft. A bill to protect the rights of older persons, including the prohibition and punishment of all forms of social exclusion, had been submitted to parliament. In the meantime, the traditional authorities had strongly urged the population to stop the practice and some women had benefited from social reintegration services.

17. The Government was concerned about protecting human rights defenders, whose activities came under Act No. 10/92/ADP on freedom of association. In fact, a meeting had been held on the subject in 2012. The Ministry of Human Rights worked closely with some 300 civil society organizations and had institutionalized an annual meeting with them. The preparation of the report had been an inclusive and participatory process with a strong civil society contribution.

18. Her Government had ratified the optional protocols to a number of United Nations instruments recognizing the authority of treaty bodies to receive individual complaints, and would consider making the relevant declaration under article 22 of the Convention against Torture in due course.

19. A moratorium on executions had been in effect since 2007, although the relevant statutory provisions remained in force and could in theory be invoked. The Government had launched consultations in 2011 with a view to abolishing the death penalty. Consensus

had yet to be reached, but the Government continued to lobby decision makers, traditional authorities and other actors; a meeting had been scheduled with the standing committee on legal affairs of the National Assembly; and a statement on the question would be published in newspapers in mid-November.

20. Legal aid was available to anyone who could demonstrate an inability to pay for their defence in administrative, commercial, civil and criminal suits. Foreign nationals were also entitled to legal aid, provided that there was a reciprocity agreement with their country of origin and that they were habitual residents of Burkina Faso. Each regional court had a legal aid board — consisting of representatives of the judiciary, the legal profession, Government and civil society — which ruled on requests for aid within one month. In 2013, the legal aid fund had reached 100 million CFA francs.

21. Solitary confinement was not employed in prisons or detention facilities in Burkina Faso. Measures had been taken to overcome delays in complying with reporting obligations under the various United Nations human rights treaties ratified by her country. Its initial report to the Human Rights Committee had been submitted in April 2012, and the Government was currently awaiting notification of the date on which its interactive dialogue with that Committee would be held. It had not yet acceded to the Convention on the Reduction of Statelessness; however, it was taking measures to prepare for accession, in keeping with the recommendations issued following its second-cycle report under the universal periodic review process.

22. Under Act No. 22 of 21 October 1997 on freedom of assembly and public demonstration, prior authorization must be obtained in order to hold public meetings or demonstrations. If circumstances warranted, as when the itinerary of a demonstration passed the premises of a government institution, authorization could be refused.

23. Summarizing the main events in the Norbert Zongo case, she said that the case had been prosecuted in accordance with the applicable laws. The judicial system offered everyone the possibility of ensuring the protection of their rights. Public ignorance and misunderstanding of the judicial branch were among the reasons why it was continually subjected to widespread criticism.

24. Measures taken by the Government to respond to that criticism included the following: the organization of a national forum on the judicial system in 1998; the adoption of a national strategy and action plan for judicial reform in 2000; and the implementation of an updated plan of judicial reform in 2007. In 2010, a national policy on justice had been adopted, its aims being to strengthen the role of justice and to make it a key factor in the democratization and development of the country. Among the main components of the policy were capacity-building, improving access to justice, more effective enforcement of criminal law, strengthening prison administration and increasing the level of civil registration. Despite those efforts, many difficulties remained, including an inadequate and dilapidated judicial infrastructure, insufficient human and financial resources, problems concerning court administration and the inadequacy of existing legislation.

25. In May 2013, the participants in the National Forum on Civic Responsibility had recommended the organization of national consultations on the justice system that would bring together all relevant stakeholders in order to assess the current functioning and organization of the system and make proposals and recommendations for its improvement. As could be seen from those examples, her Government was doing its utmost to bolster the rule of law.

26. **Mr. Gaye** (Country Rapporteur) said that the Committee was fully aware of and understood the difficulties faced by Burkina Faso in implementing the Convention, given the fact that it was one of the world's least developed countries. He welcomed the announcement of plans to adopt a bill on the definition and punishment of torture, which

was one of the most important initial steps a State party could take in giving effect to the Convention. However, that bill proposed a 1 year minimum prison sentence for an act of torture, which was too light given the seriousness of such an act.

27. With regard to the prevention of torture of suspects in police custody, he asked whether a suspect could ask to be examined by a doctor, in particular a doctor of his or her choice. It would be preferable for the Criminal Code to stipulate expressly that suspects were entitled, from the moment they were taken into custody, to inform their relatives of their situation.

28. He requested additional information concerning the powers of the National Human Rights Commission, in particular its authority to make recommendations following prison visits. He enquired whether any mechanisms were in place to ensure that law enforcement officials who refused to comply with manifestly illegal orders from a superior did not suffer reprisals, for example, in relation to their career development. He wished to know whether an appeal against an expulsion order, on the grounds of abuse of power, had a suspensive effect.

29. He would welcome information on the number of recent cases in which an individual had been tried and convicted for the offence of trafficking. The delegation should also shed further light on reports that the enforcement of certain provisions of the Personal and Family Code could potentially result in statelessness. He wished to know how many applications for refugee status in Burkina Faso had been rejected during the period covered by the report. Lastly, he reiterated his request for information concerning allegations of torture and suspicious deaths that had occurred in police custody, which he had cited at the previous meeting with the State party.

30. **Mr. Domah** (Country Rapporteur) said that it was important for the State party to translate into tangible results its many good intentions in the area of combating torture. There were a number of measures it could take that did not depend on having substantial resources, including inculcating a culture of respect for the prohibition against torture and promoting a change in attitudes.

31. He requested a full account of the various academies and training programmes that had been set up to educate lawyers, judges and judicial personnel. Did the Government work with any international partners in implementing such programmes? It would be useful to have more practical evidence of the State party's intentions to enhance the performance of the National Human Rights Commission. He enquired whether a witness protection system had been set up and if so, which law made provision for that protection. He requested an explanation for the large number of children who were injured or killed in traffic accidents, and asked what steps would be taken to remedy that situation. He wished to know the State party's legal position concerning the inadmissibility as evidence of confessions extracted under torture.

32. **Mr. Bruni** asked which institution had jurisdiction to investigate allegations of torture in circumstances in which the National Human Rights Commission was barred from doing so, such as those involving military secrets or national security threats. He asked for examples of specific cases, including details on prosecutions and convictions, in which an official had issued an illegal order to a subordinate who had refused to carry it out. He requested an explanation as to why the victim's family in the Zongo case had refused an offer of compensation. Lastly, he wished to know whether the Government intended to make the declaration under article 22 of the Convention.

33. **Mr. Mariño Menéndez** reiterated his previous question concerning the scope of military jurisdiction to try criminal acts committed by civilians. He asked for confirmation that the Government intended to set up both a national preventive mechanism, in keeping with its obligations under the Optional Protocol to the Convention, and a National Human

Rights Commission. He wished to know whether any plans were under way to abolish or limit the practice of polygamy and how that practice was regulated.

34. **Ms. Sveaass** asked whether the Government and the civil society organizations that had participated in the preparation of the initial report had held discussions concerning the way those organizations would handle any criticism of the Government they might feel compelled to make. She wished to know how many victims of torture or ill-treatment had effectively used the procedure for obtaining reparation for those acts, and enquired whether police training programmes had been expanded to include health professionals, who were required not only to detect but also treat torture victims. She requested details concerning the treatment and rehabilitation services offered to women victims of domestic or other violence and refugees exposed to trauma.

35. **Ms. Gaer** said that she would like to know whether allegations that the guards of a former Government minister, Mr. Jérôme Traoré, had beaten a Mr. Adma Kima in February 2012 had been investigated. She asked whether soldiers accused of raping 25 women had been tried and, if so, with what outcome.

36. **Ms. Belmir** said that she would like the delegation to comment on allegations by the association of judges concerning interference by the Government in the administration of justice. She would also like to know what the authorities were doing to improve infrastructure and transport in order to allow the more timely transfer of crime suspects from places of pretrial detention to the courts. It appeared that only limited resources were allocated to dealing with the growing number of children living in the streets.

37. **The Chairperson** asked whether the delegation could comment on allegations that up to four detainees died each week because of the appalling conditions in the Ouagadougou short-stay prison and correctional facility. The Committee was aware that escape attempts from the facility had been made by inmates who had called for improved conditions and asked to be brought before court more promptly. He asked what the authorities had done to improve the situation since riots there in 2012. He would like to know how the State party intended to handle the case of Mr. Moussa Dadis Camara, who had escaped to Burkina Faso from Guinea after being accused of involvement in a massacre allegedly carried out under his command in Conakry in September 2009. Under articles 6 and 7 of the Convention, the State party was obliged to try or to extradite him. He also asked whether the establishment of a telephone helpline as part of a programme to combat corruption had been successful.

38. **Ms. Nigna Somda** (Burkina Faso) said that the State party was not competent to put Mr. Camara on trial and that to date it had received no request for his extradition. In order to address bottlenecks in the justice system, more courts were being built closer to short-stay prisons and the latter were being better equipped with transport to facilitate the transfer of suspects to court. Her delegation was unaware of reports that up to four detainees died in custody every week and viewed them with scepticism. The telephone helpline was one of several measures that had been taken to combat corruption and monitor public administration; they were bearing fruit.

39. Penalties for torture and ill-treatment under new legislation would reflect the seriousness of the offence, and so sentences of as little as 1 year would be possible for less serious offences. Persons held in custody were at liberty to notify family members. A medical examination could be requested by detainees, family members or the prosecution service at any time. Under forthcoming amendments to the Code of Criminal Procedure, the role of the suspect's lawyer would be reinforced to ensure his or her presence during the preliminary investigations. Amendments to a range of legislation were being examined by the Council of Ministers in order to bring it more into line with the provisions of the Convention. The use of evidence and confessions obtained under torture was prohibited.

Military courts heard cases involving military personnel only. Several people had been tried and convicted on charges of trafficking in persons in Burkina Faso.

40. The National Human Rights Commission had been established by Presidential Decree in 2001. However, to bring it into line with the Paris Principles, it had been re-established by an act of parliament in 2009. The Commission was free to use funds allocated by the Ministry of Human Rights as it saw fit. It played a consultative role vis-à-vis the Government and one of its prime functions was to make recommendations in its annual report. It was also responsible for launching inquiries into allegations of torture. An observatory would be established to deal exclusively with the matter of torture and carry out inquiries in areas to which the Commission had no access, such as combat zones.

41. Civil society was flourishing and the Government worked actively with NGOs, frequently helping to finance their activities. Civil society organizations were fully at liberty to express their views and conduct their activities openly. Parliament was considering a bill on human rights defenders. Referring to the Zongo family, who had refused compensation stating that it would not bring back their son, she said that the Government could not oblige anyone to accept compensation.

42. The State party did not have a witness protection programme, but victims and witnesses of torture could testify anonymously. A law enforcement or security official who witnessed acts of torture could report them to a superior, but there was no formal mechanism for ensuring that such an official suffered no career repercussions. Her Government would give due consideration to the Committee's suggestions in that regard.

43. The authorities could not prevent people from giving up their nationality in an attempt to acquire that of another State, even if as a result they became stateless. Persons who had been naturalized as citizens of Burkina Faso could be deprived of that citizenship if they committed serious crimes. There had only been one case of an asylum seeker being refused refugee status in the State party since 2003.

44. Police and security officers, medical staff, judges, civil society representatives, and religious and community leaders all benefited from education programmes enabling them to become better acquainted with the Convention. The National Civil Service and Judiciary Training College provided members of the legal profession with continuing education opportunities that included human rights training. It was difficult to understand assertions by certain Committee members that the full implementation of the Convention required no financial resources. Training, education and awareness-raising all required funding, as did the organization of visits to monitor conditions in prisons.

45. The Ministry of Education was responsible for the teaching and curriculum in the PMK military boarding school. The Ministry of Defence was responsible for its administration and questions of discipline. Applications to attend the elite school usually far exceeded available places. Awareness-raising campaigns were regularly conducted to improve drivers' knowledge of the rules of the road. Street children involved in traffic accidents were either covered by the driver's insurance or received State assistance. The matter of street children in general was a difficult one; the Government was working with NGOs to provide such children with shelter and vocational training. A proposal to hold another general assembly of the judiciary was being examined by the Council of Ministers. The intervention by Government ministers in the case of Dambina Sékou and the confiscation of gold in his possession had not constituted an assault on the independence of the courts, and the gold had been returned to its rightful owner.

46. Polygamy with the consent of all concerned parties was permitted under the law and was a national custom, albeit in decline. Female victims of domestic violence received health care and information. The Government and NGOs were doing a great deal to raise

the profile of the issue among the general public. An association of women lawyers also ran a help centre for such women. One difficulty was encouraging women to report cases.

47. **Ms. Ouedraogo** (Burkina Faso) said that the justice authorities could not investigate unsubstantiated reports of torture. Inquiries had been made into the cases cited by Mr. Gaye and they had been found not to involve acts of torture.

The meeting rose at 6 p.m.