



# International Covenant on Civil and Political Rights

Distr.: General  
13 October 2014

Original: English

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## Human Rights Committee 112th session

### Summary record of the 3100th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 8 October 2014, at 3 p.m.

*Chairperson:* Sir Nigel Rodley

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

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Second periodic report of Burundi (CCPR/C/BDI/2; CCPR/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. **Ms. Niragira** (Burundi), introducing her country's second periodic report (CCPR/C/BDI/2), cited a number of examples of legislative and institutional measures Burundi had taken since the submission of its previous report, including the following: the establishment of the Independent National Commission on Human Rights, the Office of the Ombudsman, the Independent National Electoral Commission; the National Commission on Land and Other Properties and the National Office for the Protection of Refugees and Stateless Persons; the decriminalization of press offences; the abolition of the death penalty; the raising of the age of criminal responsibility from 13 to 15 years; the criminalization of rape, torture, war crimes, crimes against humanity and genocide; the drafting of a national human rights policy and plan of action; and the construction of two rehabilitation centres for minors.
3. Human rights training programmes for security and defence officers had been initiated, and guidelines had been drawn up for members of the judiciary on ensuring respect for human rights when processing cases. A policy creating itinerant judges had been established to dispense community justice, and "focal point" judges had been appointed in civil courts to monitor cases involving gender-based violence. More than half the prison population had benefited from clemency measures, and prison visits were conducted on a regular basis.
4. Pursuant to the quota set out in the Constitution, more than 30 per cent of parliamentarians and government ministers were women. The Batwa community was also represented in both chambers of parliament and in other government institutions. Trafficking in women and children was prohibited by law, and human rights associations could file complaints on behalf of victims of sexual violence. The Government had recently launched a study to determine whether there was a need for a law on inheritance, matrimonial property regimes and gifts.
5. Despite the significant progress made, some human rights violations still occurred, including murders, gender-based violence and other violations stemming from land disputes. In conclusion, she summarized her Government's written replies to the list of issues (CCPR/C/BDI/Q/2/Add.1).
6. **Mr. Salvioli** (Country Rapporteur) said that it was regrettable that the periodic report was 17 years overdue. While the report included useful information on the situation with regard to legislation and institutions, the Committee wished to know more about the practical implementation of the Covenant rights in Burundi. Given that the Covenant had been incorporated into national law through article 19 of the Constitution, it was surprising that neither the report nor the written replies contained any examples of cases in which the Covenant had been invoked by the courts. He asked if the delegation could provide any examples of such cases or of cases in which the courts had cited the Committee's jurisprudence or concluding observations.
7. While he welcomed the fact that the State party was prepared to ratify the Second Optional Protocol to the Covenant, he wished to know whether it also intended to ratify the first Optional Protocol, which gave the Committee competence to examine individual communications.

8. He wished to know the extent to which civil society organizations participated in the selection of members of the National Commission on Human Rights. According to information before the Committee, two commissioners had recently been elected solely by the political party in power, as parliamentary candidates from the opposition party, who disagreed with the procedures followed, had withdrawn from the elections. He asked how the Commission's neutrality could be ensured in such circumstances. Noting that the Commission was not provided with sufficient resources, he wished to know what percentage of the Commission's work was funded through the regular State budget as opposed to international cooperation, and he wondered how the Commission could be expected to carry out its work effectively with a budget that was decreasing from year to year.

9. **Mr. Flinterman** asked, in relation to questions 3, 4 and 5 of the list of issues, what legislative or administrative measures had been taken to deal with discrimination. He welcomed the recent ratification of the Convention on the Rights of Persons with Disabilities but noted that no information had been given on court rulings relating to complaints of discrimination against disabled persons and wondered whether the Human Rights Commission dealt with such complaints. If not, what body was competent to do so?

10. He commended the honesty of the reply given in paragraph 16 of the State party's replies, but recalled that the full implementation of legislation against discrimination on the grounds of sex or race invariably involved a change of mindset. He therefore welcomed the fact that no one had been convicted of homophobic offences, but to do nothing was not an option. Lesbian, gay, bisexual and transgender (LGBT) persons faced constant discrimination even by government officials and it seemed that no one had been prosecuted for such acts of discrimination. Priority should therefore be given to making all officials aware of the importance of the principle of non-discrimination and a decree issued by the Department of Education legitimizing the expulsion of students engaging in same-sex activities should be withdrawn. Legislation criminalizing homosexuality should be amended.

11. He commended the existence of a quota for women in public life, which had resulted in the fact that 32 per cent of members of the National Assembly were women, as were nearly half the Senate. Women were also well represented in local government and he noted that 4 of the 11 members of the Truth and Reconciliation Commission were women. However, only 3 of 18 provincial governors were women and all the highest posts in Government were held by men. He wondered what action was being taken to rectify the situation.

12. He noted that the Nationality Code had been amended to enable women to transfer Burundian nationality to their children, but, according to the information before him, it was more complicated for women to do so than for men. He requested further details on the planned amendments to family legislation, particularly with regard to the need for a woman's consent to her marriage to be obtained, which, in his view, was a self-evident proposition. He asked the delegation to elaborate on any possible changes in society that it foresaw as a result of such amendments to the legislation.

13. **Mr. Rodríguez-Rescia** said, in relation to questions 6 and 7 of the list of issues, that he regretted that little information had been provided in the report, which meant that the Committee could not analyse either the positive or the negative aspects of the human rights situation in Burundi. Some sources claimed that progress had been made, but that was not demonstrated in the country's report. In particular, he asked what the State party was doing to protect rights that could never be suspended, even in a state of emergency. Article 19 of the Constitution, to which the delegation had referred, dealt only with such issues as the suspension of Parliament, but made no mention of the right to life, the prohibition of torture or slavery, freedom of religion and freedom of speech. The protection of such rights might

be implicit, but, if there was no legal text assuring such rights, he suggested that the law should be amended correspondingly, in line with article 4, paragraph 2, of the Covenant.

14. He asked what measures were being taken to ensure that action against terrorism did not affect other rights. The delegation had said that the Government was working to prevent the funding of terrorism, but he wondered what practical steps had been taken. He was informed that the police and the judiciary were clamping down on activists of every kind. In particular, journalists were being accused of being terrorists, though no evidence was produced to support such allegations. It seemed that the journalist Hassan Ruvakuki had been detained simply because he had interviewed a rebel group. Although he had been released after 15 months' detention and had appealed against his sentence, an unfortunate precedent had been set. Such incidents constituted an attack on freedom.

15. **Ms. Waterval** noted that the State party had established a Gender Cluster Group on violence against women and that a bill on the prevention of gender-based violence had been before Parliament since June 2013. She wondered how soon the bill would be enacted. The report contained no data on how complaints about such violence were dealt with or on what measures were taken to educate the perpetrators. She wondered whether there were any programmes aimed at changing attitudes. The report also contained no information on reparation for victims of violence. She noted that the Humura and Seruka centres provided shelters for battered women and asked how many other such shelters existed in Burundi. She also asked whether marital rape was punishable.

16. She asked whether the Ad Hoc Inquiry Commission investigating killings and torture had produced any results. As the delegation had said, the country's Attorney General had not denied that killings had taken place but he had said that they could not be categorized as extrajudicial executions. She requested the delegation to tell the Committee whether anyone had been brought to justice for such crimes.

17. She commended the establishment of the Truth and Reconciliation Commission but wondered what the procedure was for the appointment of members and whether it had its own budget. She requested more information about the Commission's human and financial resources. She noted that the Special Tribunal for Burundi would not be set up until the Commission had finished its work, in order to prevent interference between the two bodies, but she feared that the establishment of the Tribunal would be unduly delayed, because the Commission was likely to be in operation for a long time. Lastly, she urged the State party to finalize the important legislation on the protection of witnesses.

18. **Ms. Majodina** said that the question of extrajudicial executions was a long-standing concern of the Committee's, going back to the State party's first report, and it seemed that there were still no remedies available. She noted that the perpetrators of lynchings carried out over land disputes had been punished, but there had been a surge in extrajudicial executions, mostly of Hutus, following the 2010 elections. Although the number of such killings had diminished in 2012, the Government had mostly failed to take effective action. Exceptionally, two commissions of inquiry had been set up following the killings in Gatumba, but the delegation had said that the killings that had occurred did not constitute extrajudicial executions. She asked how the State party's interpretation was consistent with international law standards. It appeared that most of the cases that had occurred between 2010 and 2012 were unresolved and she asked what their current status was. In that connection, she asked what mandate the Truth and Reconciliation Commission had, especially with regard to compensation and reparation.

19. She noted, in relation to question 10 of the list of issues, that torture was prohibited, but the report contained no information on the number of complaints received. She therefore asked whether Burundian legislation contained a definition of torture in line with article 1 of the Covenant. According to some non-governmental organizations (NGOs),

torture was used by some judicial officers. She also asked what legislative and administrative measures were in place to prevent torture. Where torture did occur, a prompt investigation should be carried out, followed by prosecution. She was dismayed that, in the case of Michel Nurweze, a deputy commissioner of the police on trial for attempted murder and torture, the defendant had been sentenced to only 3 months' imprisonment, despite the gravity of the charge, because two witnesses had refused to testify in the absence of protection. Although the prosecution had lodged an appeal, an opportunity to set a precedent for bringing torturers to justice had been lost. Where prosecutions did take place, punishments seemed to be very lenient and she requested the delegation to comment on the matter. She asked whether the State party intended to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and whether officials were given any kind of training or provided with the guidelines set out in internationally recognized instruments. In that connection, she asked whether Burundi was a signatory of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines) of 2005.

*The meeting was suspended at 4.45 p.m. and resumed at 5.10 p.m.*

20. **Ms. Niragira** (Burundi) apologized for the late submission of the State party's report. The delay had been due to the various conflicts and crises experienced by the country, including the assassination of the President in 1994.

21. Responding to the criticism that her delegation had failed to provide an adequate answer to the question regarding article 2 of the Covenant, she explained that, as all judicial decisions were predicated on the Criminal Code, the Code of Criminal Procedure and the Code on the organization and jurisdiction of the judiciary, which in turn rested on the Constitution, article 19 of which incorporated the Covenant, all judicial decisions were therefore necessarily consistent with the Covenant. For that reason, it was impossible to cite specific examples of cases where the courts had directly applied the Covenant, or had used it as an aid to interpret domestic law. By way of a general example, she said that, since no law on succession had yet been passed, the courts relied on the relevant provisions of the Covenant in order to protect the rights of women and girls in land disputes. Burundi was prepared to ratify both Optional Protocols to the Covenant.

22. Many members of the Independent National Commission of Human Rights were representatives of civil society. In fact, the Chairman of the Commission was a priest and hence a member of civil society. The members of that Commission were selected in a transparent manner by an ad hoc committee of deputies of the National Assembly, including some from the Opposition. The vice-chairman of that committee was actually a member of an opposition party, the Front for Democracy in Burundi. The Act setting up the Commission had been highly commended by the international community and had been found to comply with the Paris Principles.

23. It was unfortunately true that the budget of the Independent National Commission of Human Rights was shrinking, because the State budget was decreasing owing to the country's financial problems. In order to implement the Covenant, Burundi would as ever have to turn to its technical and financial partners for assistance.

24. The bodies responsible for handling complaints of discrimination and inequality were primarily civil society associations. Those brought cases to the attention of the Independent National Commission of Human Rights, the Ombudsman and the Ministry of National Solidarity, Human Rights and Gender, which were then competent to refer them to the courts. Individuals could also lodge such complaints with the judiciary.

25. A change in mindset would be needed in order to decriminalize homosexuality. Burundian society was not yet ready for such a new way of thinking, although a discussion

of the matter was under way and would undoubtedly result in a more progressive attitude in the future. There was no ordinance banning homosexuals and lesbians from attending school or being employed in the civil service. They were not identified as such or treated differently.

26. The 30 per cent quota of women on representative bodies mentioned in paragraph 31 of the State party's report had been set under the Arusha Peace and Reconciliation Agreement and by the Constitution. It applied only to elective office. Provincial governors and municipal administrators were not elected. An administrative reform was, however, introducing a new gender policy on appointments. Burundi already had two women provincial governors. That was progress compared with the past. Municipal administrators were selected from among municipal councillors. The previous Electoral Code had been silent with regard to the 30 per cent quota as far as municipal councillors were concerned, but under the 2014 Electoral Code that quota would also apply to municipal councillors. It was therefore to be hoped that the country would soon have some female municipal administrators. Between 2005 and 2007 the President of the National Assembly and the second Vice-President of the Republic had been women. She hoped that, in the future, some of the most senior representatives of the county would again be women.

27. A new Family Code was being prepared by a committee and would be submitted to the Council of Ministers in the very near future. The discriminatory provisions contained in the old code would be thoroughly amended. Civil society was involved in the discussions surrounding those amendments. Burundian women automatically passed on their nationality to their children. The committee which she had mentioned in her introduction had been responsible for reading the draft report on a Bill on the law of succession, the matrimonial property system and dispositions by will, not the draft Family Code.

28. It was true that the Constitution said little about the observance of non-derogable rights under the Covenant during a state of emergency. She therefore undertook to pass on the Committee's recommendations in that respect.

29. Human rights defenders and journalists were protected from arrest and prosecution if they abided by the law. If they infringed the law, it was necessary to prosecute them as individuals in order to safeguard public order. The prosecution measures had to comply fully with the law and the individual must have the opportunity to plead his or her case. As far as she knew, no one had been prosecuted solely because he or she was a human rights defender or a journalist.

30. The Bill to combat gender-based violence, which had been presented to the National Assembly the previous year, would soon be read and adopted. The parliamentary committee studying the Bill had taken the time to hold a wide exchange of views with civil society and experts in order to have a firm basis for the numerous amendments which would be proposed. She regretted that she was unable to supply any statistics on cases of violence against women, although such violence did exist. The country's partners had therefore been asked for help in putting in place arrangements to collect such data. The courts had heard a number of cases related to violence against girls and women. She undertook to supply the Committee with the relevant details. Burundi did have a national strategy to combat gender-based violence, which was strongly supported by the United Nations Development Fund for Women (UNIFEM) and other United Nations agencies. That strategy had resulted in the setting up of one government centre and two private centres offering victims of sexual violence medical and psychological treatment, as well as financial and legal assistance. Those centres also took legal action against the perpetrators of such violence by rapidly referring cases to special fast-track chambers of the courts. The World Bank and the United Nations were helping Burundi to set up regional centres to assist victims of gender-based violence. Marital rape was an offence under the Criminal

Code and could be prosecuted subject to the filing of a complaint with the judicial authorities.

31. The Ad hoc Inquiry Commission established by the State Prosecutor was competent to investigate allegations of torture. After a two-month inquiry into cases of torture and killings which had taken place before and during the elections of 2010, six perpetrators had been arrested and were currently in prison. She would provide additional information in writing in response to that question.

32. The Truth and Reconciliation Commission had not yet been convened. The 11 members, including 4 women, would be appointed according to the same procedure as that followed for the Independent National Commission of Human Rights. An ad hoc parliamentary committee comprising members of the Government and the Opposition was screening more than 800 candidates. It would shortlist 33 from whom the 11 members would then be chosen. The 11 members would recruit additional human resources who would operate at regional level. As the commission's budget was inadequate, Burundi would be seeking the financial support of its partners in the international community. The question of setting up a special court would not be broached until the Government, Parliament and the United Nations had finished studying the report of the Truth and Reconciliation Commission. The Government and the United Nations had agreed that it would be best to start with a non-judicial transitional justice mechanism before establishing a special court, in order not to hamper the reconciliation process or hinder the fight against impunity. A Bill on the protection of victims and witnesses had been drafted with a view to implementing not only the Act on the Truth and Reconciliation Commission but also other pieces of legislation, such as the Criminal Code and the Anti-corruption Act.

33. The mandate of the Truth and Reconciliation Commission was to determine the truth with regard to events between independence in 2002 and the year 2008, when the last rebel group had ceased its operations, to facilitate the payment of compensation to victims, to promote reconciliation and to help to establish the same perception of the country's history nationwide.

34. The Government did not lack the political will to deal with extrajudicial killings. On the contrary, it took determined action to promote and protect human rights and to implement the Covenant. For that reason, the country's prisons were full of alleged or actual murderers and torturers. No State officials were instructed by the Government to engage in murder or torture. If they did commit such crimes, they would be prosecuted and punished in accordance with the law. Similarly, if members of the youth league of the CNDD-FDD committed gross violations of human rights, they, like any other young citizens, would be prosecuted and imprisoned.

35. She would supply information in writing on the number of complaints of torture. A national mechanism to combat torture was being set up. The Independent National Commission of Human Rights and the Ombudsman could also receive complaints of torture and initiate legal action with a view to the prosecution of those guilty of that crime. The definition of torture in Burundi was consonant with that contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, because it had been copied and pasted from the Convention. The State party had already ratified the Optional Protocol to that convention. The training of law-enforcement officers coupled with the fact that victims were no longer afraid to testify was the reason for the decreasing number of torture cases.

36. As she did not know the outcome of the case in Gitega, where a police commissioner had been tried for murder, she would find out the requisite information and pass it on to the Committee when she returned to Burundi.

*The meeting rose at 6.05 p.m.*