



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### 112th session

#### Summary record of the 3101st meeting

Held at the Palais Wilson, Geneva, on Thursday, 9 October 2014, at 10 a.m.

*Chairperson:* Sir Nigel Rodley

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*The meeting was called to order at 10.10 a.m.*

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

*Second periodic report of Burundi (continued) (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. Chanet** said that better regulating the state of emergency did not require amending the Constitution. It might be sufficient to adopt a law, insofar as the Covenant, article 4 of which stated that there were rights from which no derogation could be made, was incorporated into the national law of the State party.
3. She noted that if a journalist, acting in the context of his or her duties, derogated from the provisions of the Press Act, the State party could not simply state that the Act must be applied, if it constituted a threat to freedom. The State party must consider whether the Act was consistent with the Covenant, including whether it fell within the scope of the possible derogations to the principles enunciated in the Covenant, and whether its application was itself consistent with the Covenant.
4. **Mr. Flinterman** asked the delegation to comment on Ministerial Order No. 620/613 of 7 June 2011 of the Ministry of Basic Education, article 9 of which stated that homosexuality was one of the grounds for dismissal of students.
5. **Ms. Majodina**, referring to a report published in 2013 by a commission charged with investigating cases of extrajudicial executions and torture in Burundi, which had concluded that murders had occurred but that they did not constitute extrajudicial executions, asked the delegation how the State party defined extrajudicial executions in its legislation. Most of the cases of extrajudicial executions that had occurred between 2010 and 2012 had not been resolved. What was the status of the investigations into those cases? Noting that the State party had ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, she asked why the Burundian authorities had not set up a national mechanism for the prevention of torture. She asked whether the training given to law enforcement officers specified the investigative methods to be applied in cases of alleged torture.
6. **Mr. Salvioli** (Country Rapporteur) said that transposition of the Covenant into national law would be necessary and would allow judges to apply its provisions more directly. He asked the delegation to comment on reports that the vice-president of the ad hoc committee responsible for selecting candidates for the Independent National Human Rights Commission, who was an opposition member, had stepped down from the ad hoc committee because of a disagreement regarding the process for appointing Commission members. He also asked whether the percentage of the national budget allocated to the Commission had declined. Referring to the State's responsibility for the conduct of its officials, he recalled the situation of Pierre Claver Mbonimpa, a defender of human rights who had been persecuted because of his statements in the press. He also inquired how the Government of Burundi regulated and controlled the operations of the Imbonerakure militia, which had ties with the Government and committed acts that could be classified as human rights violations. He noted that in the rare cases where militia members were arrested for their acts, they were released in a matter of days. Lastly, he requested information on the situation of albinos, who were, for example, kidnapped for the purpose of organ trafficking.
7. **The Chairperson** pointed out that the term "extrajudicial execution" did not appear in the Covenant. The Covenant protected the right to life, and the deprivation of the right to

life by Government agents, or by other persons with the consent of the Government, constituted a violation of article 6 of the Covenant. The Committee would like to hear from the delegation on the issue, and to have an explanation of why sex between consenting adults of the same sex had been criminalized in the Criminal Code in April 2009.

8. **Ms. Niragira** (Burundi) said, concerning the state of emergency, that the Burundian authorities could consider adopting a law incorporating the relevant provisions of the Covenant. Journalists and human rights defenders could not be harassed or threatened in connection with activities performed as part of their duties. Journalists could be prosecuted only if they violated the Press Act, the reason being the need to preserve public order. Ministerial Order No. 620/613 was an order for implementing school regulations, which defined how students should behave in school and forbade the infringement of decency standards. The Order did not apply only to gay and lesbian students. The term “extrajudicial execution” did not appear in Burundian law. Burundi intended to comply with the provisions of the Covenant and was working to prevent violations of the right to life. In particular, all homicides were investigated. In addition, a national mechanism for the prevention of torture was being established.

9. **Ms. Nziroera** (Burundi) said that the human rights, peace education and reconciliation branch of the Ministry of Solidarity, Human Rights and Gender held regular training sessions for police officials and judges on methods for investigating allegations of torture. As a result of the training, the number of reported cases of torture in the State party had fallen sharply.

10. **Ms. Niragira** (Burundi) said that the Criminal Code, the Code of Criminal Procedure, the Code of Civil Procedure, the Code of Judicial Organization and Competence and other laws contained provisions of the Covenant relating to human rights. If it appeared that a key provision of the Covenant was not incorporated into national law, that would be easy to remedy. The budget of the Independent National Human Rights Commission was shrinking, like those of other institutions, owing to the lack of financial resources of Burundi, which was seeking support in that regard from the international community. There were no militias in Burundi. The Imbonerakure were young people who helped maintain security in the country. Anyone who broke the law, whether or not a member of the Imbonerakure, was prosecuted and convicted. The Government had taken severe measures against the perpetrators of harassment and other attacks against albinos and had adopted extensive measures to protect that group, which was now no longer a victim of human rights violations. Homosexuality had been declared a crime because Burundian society was not yet able to tolerate that type of behaviour, and one must give it time to adapt. She asked the Committee to be understanding in that regard.

11. **Mr. Rodríguez-Rescia** replied that the Human Rights Committee had a mandate to ensure implementation of the Covenant and respect for human rights, including the rights of lesbian, gay, bisexual and transgender persons. He reiterated the request by the Committee that the State party provide statistics on cases of human trafficking, particularly for the purposes of forced labour and sexual exploitation, and that it state the number of investigations, prosecutions and convictions in such cases and the number of cases in which compensation had been offered to victims. He asked whether the State party had a database for gathering all information about trafficking cases in order to better combat the phenomenon. Saying that in his view the vagueness of the definition of trafficking in articles 242 and 243 of the Criminal Code made it more difficult to combat trafficking, he asked whether Burundi had ratified the Additional Protocol to the United Nations Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children, article 3 of which defined in detail the acts that constituted trafficking; what was the status of the draft amendments to the Criminal Code’s trafficking-related provisions; and when the advisory and monitoring

committee on human trafficking would start work, and whether it would have sufficient resources at its disposal.

12. He asked what steps Burundi was taking to combat the corporal punishment of children at home and in schools. Regarding the juvenile justice system, he stressed the need for a proper structure with specialized units, and asked whether the child protection bill contained provisions on juvenile justice and the treatment of minors in prison. He also asked the delegation to indicate the age of criminal responsibility because, although it had stated that under articles 29 and 30 of the Criminal Code of 2009 children under the age of 15 were not criminally responsible, the Committee had received reports of 13-year-old children being held criminally responsible.

13. **Mr. Flinterman** said he was concerned that under the Criminal Code the appearance before the judge must take place no later than 15 days after the issuance of the arrest warrant, and that, moreover, according to certain reports, the appearance sometimes occurred only after several months. He noted that according to article 9 of the Covenant “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power” and that in the Committee’s jurisprudence “promptly” usually meant “within 48 hours”. He asked the delegation to specify the maximum length of time that a person could be detained before being brought before a judge, and to give concrete examples of sanctions applied for exceeding the statutory period of 15 days.

14. He had been surprised to read in the replies of Burundi to the list of issues (CCPR/C/BDI/Q/2/Add.1) that the implementation of the decree on presidential pardons and of a ministerial order had significantly reduced the prison population, when in fact overcrowding had continued to worsen in 2014. As its main cause appeared to be the number of people in pretrial detention, he asked whether Burundi used, or planned to use, alternatives to pretrial detention. He also asked whether it was true that Pierre Claver Mbonimpa was still in prison despite being more than 60 years old and having met the requirements for being released. He invited the delegation to state what measures had been taken to ensure that, in prisons, persons in pretrial detention were separated from convicted persons, women from men and children from adults. It was regrettable that the delegation had not provided concrete data on deaths in prison.

15. **Ms. Waterval** said that the Committee invited Burundi to consider withdrawing its reservations to the 1951 Convention relating to the Status of Refugees and encouraged it to grant citizenship to children born on Burundian soil who would otherwise be stateless as their parents were themselves stateless or of unknown nationality, or were foreigners and could not transmit their nationality to their children born outside their country of nationality. The Committee also encouraged Burundi to continue its efforts to resettle displaced persons.

16. **Ms. Majodina** asked what role the excessive length of judicial proceedings played in the ever-increasing backlog of cases to which the State party referred in annex 2 of its replies to the list of issues. Noting that Burundi had stated in its second periodic report that the President of the Republic, “guarantor of the independence of the judiciary”, was assisted in that task by the Judicial Service Commission, she asked the delegation to describe any measures recently taken to provide the Council with the financial resources it needed and ensure in practice the independence of the judiciary.

17. **Mr. Salvioli** reiterated the questions in paragraphs 21 to 23 of the list of issues (CCPR/C/BDI/Q/2) on the measures taken to safeguard freedom of expression, assembly and association, questions to which the delegation had not replied in detail. He repeated the request for detailed information on the general prohibition of media coverage of the Gatumba attack of September 2011. As there were reports of impediments to the exercise by political parties of their right of assembly, he asked whether it was true that since 2009

the State had not authorized any demonstrations by associations denouncing attacks on human rights.

18. As homosexuality was an offence under the Criminal Code of Burundi, he asked whether it was possible to create associations for the defence of lesbian, gay, bisexual or transgender persons. He noted that Burundi had not replied to the Committee's questions about legislative and practical measures taken to abolish corporal punishment of children and about planned measures to establish a system of juvenile justice, and he asked the delegation to elaborate on those issues. In addition, more detailed information on the participation of representatives of civil society in the preparation of the periodic report would be welcome, as the information provided on that subject by civil society did not dovetail with that given by the State party in its report.

19. **Ms. Chanet** asked whether inmates had access to a lawyer as soon as they were placed in police custody, or only during the ensuing investigation.

20. **Mr. Zlătescu** noted that recently many journalists had been arrested and questioned and had been intimidated because of their activities, including Patrick Niyonkuru, Hassan Ruvakuri and Willy Abagenzinikindi. He also cited reports by Amnesty International according to which members of Imbonerakure, the youth league of the National Council for the Defence of Democracy – Force for the Defence of Democracy (CNDD-FDD), the ruling party in Burundi, had committed serious acts of violence against persons perceived as opponents and exerted control over the police and local governments, with the agreement of the State.

21. **Mr. Shany** requested more information on the community service programme and the measures taken to ensure that participation in it was voluntary. He invited the delegation to comment, in the light of articles 8 and 12 of the Covenant, on reports that roadblocks had been put in place for the duration of the programme.

22. **The Chairperson** announced that the meeting would be briefly suspended to allow the delegation of Burundi to prepare its replies to Committee members' questions.

*The meeting was suspended at 11.45 a.m. and resumed at 12.15 p.m.*

23. **Ms. Niragira** (Burundi) said that her delegation would not revert to the issue of homosexuality, which had already been covered extensively. The Government of Burundi had adopted a law on preventing and combating trafficking and on protecting victims and had developed for its implementation an action plan that provided for the establishment of an advisory committee. To prevent child trafficking, families were encouraged to send their children to school. All trafficking cases reported to the authorities were prosecuted under the relevant provisions of the Criminal Code. Burundi had ratified the United Nations Convention against Transnational Organized Crime in 2010.

24. A ministerial order prohibited corporal punishment in schools, and awareness-raising workshops for teachers had enabled progress to be made in that area. In addition, when a child was assaulted at home, a complaint could be lodged by the child or by a neighbour. The National Children's Forum enabled children to discuss their rights and to voice their grievances to the Government. A national policy to protect children's rights had been adopted to address issues such as the plight of street children. A rehabilitation centre for minors, currently being built, would provide rehabilitation and training to minors so that they would not return to prison. The age of criminal responsibility had been raised from 13 years to 15 years.

25. The deadline for bringing a detainee before a judge was now 15 days, the first 7 days of which represented the maximum duration of custody. The aim was to reduce the duration of custody, in accordance with article 9, paragraph 3, of the Covenant. The new Code of Criminal Procedure had entered into force only in 2014, and it was too early to assess the

impact of the new time limits. Although no case of the limits' being exceeded had yet occurred, any such incident would, of course, be punished. The Government of Burundi lacked the necessary financial resources to build facilities that would ensure the separation of women from men, of adults from children, and of the accused from the convicted in all the country's prisons, as well as a reduction in prison overcrowding. Presidential pardons and the use of parole nevertheless helped to alleviate overcrowding, and community service would be introduced as an alternative sentence to imprisonment. A prisoner whose pretrial detention was extended could lodge an appeal before a judge. Human rights defender Pierre Claver Mbonimpa had been released provisionally for health reasons but was still subject to prosecution.

26. Continuing efforts were being made to register all internally displaced persons. With the large number of voluntary returns, the problem was diminishing. Her delegation would convey to the Government of Burundi the Committee's recommendation that it withdraw its reservation to article 26 of the 1951 Convention relating to the Status of Refugees.

27. **Ms. Ndayiziga** (Burundi) said that delays in court proceedings could be caused by several factors such as the complexity of the case or the delaying tactics of the parties, not just by judges. In the event of a long delay, a complaint could be lodged.

28. **Ms. Niragira** (Burundi) said that competitive recruitment drives had been organized to recruit more judges. The Government wished to expand legal aid, which was currently reserved for the poor because of the limited resources available for it, and would need the support of its international partners in order to do so. With regard to the Press Act and the obligation of journalists to reveal their sources to a judge when public order or State security was at stake, the practice was common worldwide. The situation regarding freedom of expression in Burundi was among the best in Africa. In response to allegations that no demonstrations had been allowed since 2009, she said that all requests that complied with the law were approved. However, events organized jointly by entities with differing interests could pose more problems. The ban on disseminating information about the incidents at the Gatumba camp had been instituted only once the investigation had begun, so that the judicial process could proceed without interference. Associations defending the rights of homosexuals needed the approval of the competent authorities to conduct official activities and organize demonstrations. She invited any associations that wished to do so to take the necessary steps. A lawyer could be present as an ordinary spectator during the deposition of a person taken into police custody and during the person's appearance before the investigating judge. Only once the investigation had officially begun could the lawyer communicate with his or her client. She was not aware of cases in which people had been prosecuted for evading community service. There was no law to that effect, and Burundians participated voluntarily in such work. The conference on the judicial system had resulted in several recommendations to strengthen the independence of the judiciary, including the recruitment of judges through a competitive process.

29. **Ms. Nzirorera** (Burundi) said that the reports submitted to treaty bodies were established on the basis of data collected in the field, mainly from civil-society organizations, and were subject to validation meetings in which all stakeholders participated.

30. **Ms. Niragira** (Burundi) thanked the members of the Committee for the dialogue that had taken place, and for raising their concerns. She reaffirmed her Government's commitment to cooperating with the Committee and to implementing the Covenant, with the help of the international community.

31. **The Chairperson** said that the Committee was aware of the difficulties that the State party had experienced. She noted that no inter-ethnic massacre had taken place in the region since the events of 1994. That notwithstanding, perpetrators of politically motivated

murders must be prosecuted and convicted, especially when they were members or associates of the bodies wielding power and enforcing the law. Significant steps must be taken to end impunity, and the Committee would welcome further information on prosecutions and investigations relating to such incidents. Article 9, paragraph 3, of the Covenant stated that anyone detained must be brought “promptly” before a judge. The 15-day deadline mentioned by the delegation did not meet that requirement. In addition, the function of the lawyer during the first 15 days of detention should not be reduced to that of a mere witness. Regarding prison overcrowding, which in some establishments was as high as 300 per cent and caused deplorable living conditions and hygiene, it was not enough to lament the lack of resources for the construction of new facilities; the authorities must take strong measures. It was difficult to be optimistic about the situation of homosexuals in Burundi given that homosexuality had been declared a crime in 2009. In that regard, it would be helpful to provide the Committee with the text of Ministerial Order No. 620/613 so that it could examine its actual content. Finally, regarding alleged hostility towards journalists, the information available to the Committee painted a very different picture from that described by the delegation. In particular, the Committee would welcome details of the continuing prosecution of Pierre Claver Mbonimpa.

*The meeting rose at 1.10 p.m.*