



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

Distr.: General
3 December 2013
English
Original: French

Committee against Torture
Fifty-first session

Summary record of the first part (public)* of the 1184th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 6 November 2013, at 10 a.m.

Chairperson: Mr. Grossman

Contents

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

Initial report of Burkina Faso

* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.1184/Add.1.

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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)*

Initial report of Burkina Faso (CAT/C/BFA/1)

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 that her Government considered the fight against torture a priority. Torture and other cruel, inhuman or degrading treatment or punishment were totally prohibited under article 2 of the Constitution. Moreover, a number of laws and regulations prohibited and punished torture and related practices. The disruption of public order or the exceptional circumstances provided for in the Constitution could not be invoked to justify torture. Several law enforcement officials had been prosecuted and sentenced for acts of torture or ill-treatment. In the Justin Zongo case, a student who had died as a result of ill-treatment by police officers, three officers had been convicted of acts of torture and sentenced to between 8 and 10 years' imprisonment. A bill defining, preventing and punishing torture and related practices had recently been submitted to the Government for adoption. The definition of torture contained therein was in line with that enshrined in the Convention. The penalties prescribed varied from 1 year's to life imprisonment and/or a fine of 300,000 to 1,500,000 CFA francs. As explained in detail in the report submitted to the Committee, the Criminal Code and the Code of Criminal Procedure included provisions that guaranteed the rights of detainees. With regard to civil action for redress, the victims of acts of torture could either join the criminal proceedings as a civil party claiming compensation or bring the case directly to the civil court. When the acts in question could be attributed to an agent of the State, the State guaranteed redress.

3. Her Government attached great importance to training and raising the awareness of the security forces as a means of preventing torture. To that end, conferences on the Convention were held every year for students at the police and military academies, and training was organized for police officers. Furthermore, Burkina Faso had introduced a new national human rights plan for the period 2013–2022, which emphasized the importance of training law enforcement officials, health personnel and prison staff on the provisions of the Convention.

4. Efforts had been undertaken to make conditions in places of detention more humane. Thus, between 2003 and 2011, 14 new prisons had been built. Specialized teaching staff had been placed at the disposal of all remand and correctional centres, and substantial improvements had been made in the area of health and in facilities and equipment. Various measures had been taken to combat overcrowding in prisons, including the introduction of community service and measures to individualize penalties. The average rate of occupancy of prisons had fallen from 172 per cent in 2009 to 144.2 per cent in 2012 and was set to fall further thanks to the measures taken. The National Human Rights Commission, the public prosecutor, the Ministry for Human Rights and a number of civil society organizations visited places of detention with the aim of preventing torture. It should also be noted that the law strictly prohibited acts of violence against detainees.

5. Lastly, domestic legislation only allowed a person to be expelled, returned or extradited when there were guarantees in place to ensure that they would not be subjected to torture.

6. **Mr. Gaye** (Country Rapporteur) said that several positive developments in Burkina Faso should be highlighted, including its adhesion to numerous international human rights instruments, the imposition of a moratorium on the death penalty and the fact that the report

submitted to the Committee had been prepared in consultation with civil society. In that regard, it should be made clear which civil society actors had been consulted.

7. As to article 1 of the Convention, the Committee could only welcome the fact that the bill defining, preventing and punishing torture and related practices aimed, *inter alia*, to fill the serious gap left by the absence from domestic legislation of provisions reflecting the definition of torture enshrined in the Convention. However, the minimum prison sentence of 1 year provided for therein was not severe enough for an offence as serious as torture. He requested the delegation to comment on that matter; to indicate whether the provisions of the Convention could be invoked directly before the domestic courts pending the adoption of the bill; and, if so, to give examples of cases in which they had been invoked.

8. With regard to the implementation of article 2, paragraph 1, of the Convention, the question arose whether the provisions of the Code of Criminal Procedure relating to police custody were really able to prevent torture, in view of the fact that a person could be detained for 3 days without being allowed to contact a relative or consult a lawyer, a period which could be extended to 5 days. The Committee was of the opinion that the need to keep the investigation confidential did not justify denial of the right to consult a lawyer. Similarly, a person in police custody could only see a doctor after three days. Furthermore, Act No. 17-2009 concerning the punishment of organized crime provided for a custody period of up to 2 weeks, which was very long and could lead to many abuses. It should be specified whether the concept of organized crime was clearly defined in the law. The measures intended to guarantee the rights of detainees thus had a number of shortcomings, which seemed to tally with the information provided by NGOs to the effect that the security forces in the State party commonly resorted to torture and ill-treatment. The feeling of impunity among the members of those forces appeared to be growing, as attested by the brutality with which demonstrations were suppressed and the mutinies of soldiers, who directly attacked members of the public. The Committee had been struck by the reports describing how soldiers had ransacked the Ouagadougou courthouse after members of the Armed Forces had been sentenced for indecent behaviour. How had the authorities reacted to those events?

9. In relation to article 2, paragraph 3, the report indicated that all police officers were required to follow the instructions of their superiors, except when the order issued was manifestly illegal and would gravely jeopardize the public interest. However, the Committee considered that the illegality of an order should in itself be sufficient to justify a refusal to carry it out, and that it would appear important (a) to introduce a provision that expressly permitted a law enforcement official to refuse to carry out an order that was illegal, and (b) to supplement that provision with measures to protect them against reprisals.

10. As to the implementation of article 3, it should be made clear which authority took the decision to expel a person; what judicial remedies were available to the persons concerned; and whether those remedies had suspensive effect. The Committee would also like to receive information on the procedure for determining refugee status, the proportion of requests for that status that were accepted, and the treatment extended to refugees in general. According to information before the Committee, the problems faced by refugees included the fact that: it was difficult for the parents of refugee children to obtain a substitute birth certificate; the review body provided for by the law on refugees had not yet been established; and children from neighbouring countries were exploited and vulnerable to trafficking. In that connection, the Committee would like to receive additional information on the criminal proceedings instituted and sentences handed down in cases of human trafficking.

11. With regard to the implementation of article 4, non-governmental sources highlighted the fact that the State party had promised on several occasions to fill the gaps in its criminal legislation, particularly the fact that torture did not constitute a stand-alone

offence, a promise that had still not been honoured. That deficiency was surely related to the persistent use of torture by the State party's security forces. In that connection, he mentioned a number of cases involving a suspicious death, including: that of Mr. Mamadou Bakayoko, a taxi-driver who had been shot dead while in the custody of the gendarmerie; that of Mr. Ignace Ouedraogo and Mr. Lamine Ouedraogo, who had both died while in police custody; and that of the journalist Mr. Norbert Zongo, a high-profile case of which the Committee would like to know the outcome. There was also a great deal of information pointing to the fact that journalists were frequently the victims of harassment and violence. The slowness with which the Zongo case was being dealt with seemed to highlight the deficiencies of a judiciary which had been heavily criticized and in which the public no longer had confidence. The delegation's comments on those matters would be welcome.

12. **Mr. Domah** (Country Rapporteur) recalled that each State party must ensure that the principle of the total prohibition of torture was systematically taught to police officers, soldiers, prison staff and health professionals. Welcoming the fact that Burkina Faso organized a series of conferences on the Convention, he asked who had participated and what topics had been covered. He would also like to know whether there was a dedicated centre for training all judicial staff. Did law enforcement officials and all other officials who had direct contact with victims of acts of torture or ill-treatment in general receive special training? Had the important measures taken by the State party to combat harmful traditional practices, such as genital mutilation, led to a change in attitudes? Did the Prytanée militaire du Kadiogo — the national military academy — now come under the jurisdiction of the Ministry of Education? Noting with concern the high level of overcrowding in prisons, he asked whether there was a national action plan to combat that phenomenon. Moreover, urgent measures should be taken to ensure that accused persons were held separately from convicted persons.

13. Did the State party plan to update its legislation relating to persons deprived of their liberty? Paragraph 66 of the report indicated that, due to the confidential nature of the preliminary police investigation, domestic legislation did not permit the intervention of a lawyer at that stage. That argument was inadmissible, as lawyers were part of the justice system and could not be considered as mere third parties. He requested the delegation to outline the activities carried out by the National Human Rights Commission since 2000, as it appeared not to have all the means necessary to discharge its functions. Had measures been taken to give effect to article 2 of the Convention, under which an order issued by a hierarchical superior could not be invoked to justify torture? He would also welcome more specific information on the use of complaints mechanisms by the victims of acts of torture or ill-treatment.

14. Had measures been taken under article 13 of the Convention to protect the complainant and witnesses in cases involving torture? Had the courts that had convicted police officers for acts of torture or ill-treatment also ordered measures of redress? Could the delegation provide examples of cases in which the domestic courts had rejected confessions on the grounds that they had been obtained by means of torture? What measures had been taken to promote women's access to the justice system and what was the age of majority for women? Lastly, was there a compensation fund for children who had become disabled as a result of a road accident, of whom there were reportedly many in the country?

15. **Ms. Sveaass** welcomed the frankness with which some questions had been treated in the report and would like to know what practical measures the State party planned to take in order to address the worrying problem of overcrowding in prisons. Paragraph 69 of the report indicated that, due to the lack of available space, the separation of adult and juvenile detainees was not observed. Could the Government not consider prescribing non-custodial penalties for minors in order to remedy that problem? She would welcome more detailed

information on the characteristics of the future national preventive mechanism against torture and, in particular, on visits to places of detention. More information on the so-called “red” zones where the right to demonstrate and other human rights were apparently restricted would also be useful.

16. **Mr. Bruni** asked when the bill defining, preventing and punishing torture and related practices would be ready. Welcoming the State party’s ratification of the Optional Protocol to the Convention against Torture, he noted that, to date, no national preventive mechanism had been established and would like to know whether urgent measures would be taken to remedy that shortcoming. The high level of overcrowding in prisons should prompt the authorities to issue non-custodial penalties such as community service. Information on the fate of the 10 persons who were reportedly still on death row would also be welcome. Given that Burkina Faso had not imposed capital punishment for 20 years, was it not time to abolish it altogether?

17. **Mr. Mariño Menéndez** said he would like to know whether Burkina Faso had established its competence to institute criminal proceedings against foreigners accused of acts of torture or ill-treatment. Could the State party consider modifying the status of the National Human Rights Commission so as to designate it as the national preventive mechanism? He requested the delegation to provide more details of the cooperation between Burkina Faso and the Office of the United Nations High Commissioner for Refugees, particularly with regard to the Malian refugees.

18. **Ms. Gaer**, noting that untried prisoners accounted for half of the prison population, asked whether they had access to a lawyer and, if so, at what stage. Was there a mechanism for monitoring detention conditions? Was the delegation in possession of statistical data on the sentences or disciplinary penalties imposed on police officers convicted of acts of torture or ill-treatment? Were the officers accused of having committed such acts suspended with immediate effect? The Committee had received reports that the death rate of detainees was quite high. Were those deaths investigated systematically and were they linked to acts of torture? Paragraph 89 of the report indicated that victims of acts of torture or ill-treatment committed by public officials “may” seek redress before the domestic courts. It would be useful to know whether redress had actually been granted.

19. **Ms. Belmir** said that she welcomed the frankness and honesty with which the delegation had presented the report and would like to know why Burkina Faso had not accepted the recommendation made during its universal periodic review to take the necessary legislative, administrative and financial measures to ensure the independence of the judiciary (A/HRC/24/4). She would also like to know whether steps were taken to combat the spread of certain diseases in prison. Noting that the period for which an individual could be held in police custody could be extended to 5 days “in time of war”, she recalled that, even in exceptional circumstances, States were bound to respect a “core of fundamental human rights”.

20. **The Chairperson**, speaking as a member of the Committee, asked when the bill defining torture would be ready. He wished to know whether the general ban on the use of physical force enshrined in the Criminal Code only applied to certain law enforcement officials. The Committee had received reports that, despite the efforts made to address overcrowding in prisons, two to four prisoners continued to die each week owing to the conditions in which they were being held. If that was true, were measures being considered to remedy that situation? It would also be useful to know whether the police training manual prepared with the help of the Danish Institute for Human Rights had been completed and whether Burkina Faso envisaged making the declaration provided for under article 22 of the Convention. What penalties were incurred by companies in the mining sector that allegedly employed children? Lastly, it would be useful to know more about

solitary confinement. Was it an administrative or judicial measure? Could it be appealed against? Was it applicable to minors or persons with mental disabilities?

21. **Mr. Gaye** welcomed the efforts made by the State party to combat certain harmful traditional practices. However, he did not fully understand whether domestic legislation expressly criminalized the practice of female genital mutilation and requested clarification on the subject.

The first part (public) of the meeting rose at noon.