



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

Distr.: General
14 June 2019
English
Original: French
English, French and Spanish only

Committee against Torture

List of issues in relation to the second periodic report of Burkina Faso*

Issues identified for follow-up in the previous concluding observations

1. In its previous concluding observations (CAT/C/BFA/CO/1, para. 31¹), the Committee requested the State party to provide information on the follow-up given to the following recommendations (as contained in paras. 10, 11, 12 and 18): (a) to put in place legal safeguards for detainees and strengthen current safeguards; (b) to ensure that effective and impartial investigations are conducted promptly; and (c) to prosecute persons suspected of committing torture or ill-treatment and punish those found guilty. The Committee regrets that the State party has not provided this information despite the reminder it was sent on 8 December 2014 by the rapporteur on follow-up to concluding observations. It considers that the recommendations contained in paragraphs 10, 11, 12 and 18 of the previous concluding observations have not yet been fully implemented (see paras. 5, 6, 15, 21, 23, 26 and 27 below).

Articles 1 and 4

2. Given that article 2 of Act No. 022-214/AN of 27 May 2014 on the prevention and punishment of torture and related practices reproduces the definition of torture contained in article 1 of the Convention and that it defines related practices as acts or omissions that constitute cruel, inhuman or degrading treatment or punishment without amounting to torture, please indicate whether the justice system distinguishes between the penalties for acts of torture and those for related practices.

3. In the light of the Committee's previous concluding observations (para. 9) and article 317 of the Criminal Code, please clarify whether domestic legislation recognizes the inapplicability of the statute of limitations to the offence of torture when it does not constitute a crime against humanity and to civil actions for redress.

* Adopted by the Committee at its sixty-sixth session (23 April–17 May 2019).

¹ Unless otherwise indicated, the paragraph numbers in parentheses refer to the Committee's previous concluding observations.



Article 2²

4. With reference to article 3 of Act No. 022-214/AN and the legal provisions extending the guarantee of the right of subordinates to refuse to execute an order from their superior officers that would result in a contravention of the Convention, please provide information on the establishment of a mechanism to protect subordinates from reprisals as recommended in the Committee's previous concluding observations (para. 20).

5. In the light of the Committee's previous concluding observations (para. 11) and the State party's position as outlined in its second periodic report,³ please clarify whether the State party has reconsidered its position with a view to reducing the 5-day maximum for police custody set out in the Code of Criminal Procedure for ordinary offences and the maximum of 15 days, extendable by 10 days, for offences relating to organized crime. Please describe the measures taken or planned to guarantee the implementation of circular No. 2013-5018/MATS/DGPN/DPJ of 5 December 2013, since police custody is reported to last, in practice, 7 to 36 days, during which detainees are allegedly tortured.

6. With reference to the information in the State party's second periodic report,⁴ please indicate the legislative timeline for finalizing the review of the Code of Criminal Procedure in order to align it with international instruments on fundamental legal safeguards. In this connection, please outline the measures taken to guarantee, in law and in practice, from the outset of deprivation of liberty, the right of detainees:

(a) To be informed of their rights, the reasons for their arrest and the charges against them in a language they understand;

(b) To have access to a lawyer from the time of arrest, in keeping with regulation No. 05/CM/UEMOA, and access to legal aid, specifying whether this aid is provided at all stages of criminal proceedings and to all disadvantaged persons;

(c) To contact the person of their choosing to inform them of their place of detention;

(d) To have all the details of their arrest immediately and systematically entered in centralized registers in all places of detention, specifying how the registers are monitored;

(e) To be informed of the possibility of undergoing a free medical examination by an independent doctor or one of their choosing when they request it, not only when the prosecutor deems it necessary. Please specify whether there is a mechanism by which medical staff can report any signs of torture or ill-treatment identified during a medical examination to an independent investigating authority without suffering reprisals.

7. Given that Act No. 022-2014/AN provides for the establishment of the National Observatory for the Prevention of Torture and that two draft implementing decrees have been prepared,⁵ please indicate the steps being taken to make the mechanism operational as rapidly as possible. Please also indicate the measures taken to:

(a) Strengthen the independence of the National Observatory and make the procedure for selecting its members more transparent;

(b) Allocate sufficient resources for the National Observatory to fully discharge its mandate.

² The points raised under article 2 can also be raised under other articles of the Convention, in particular article 16. As established in paragraph 3 of the Committee's general comment No. 2 (2007) on the implementation of article 2 by States parties, the obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and to prevent other cruel, inhuman or degrading treatment or punishment under article 16 (1) are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture. In practice, the definitional threshold between ill-treatment and torture is often not clear. See also section V of the same general comment.

³ CAT/C/BFA/2, para. 54.

⁴ *Ibid.*, paras. 43–50.

⁵ *Ibid.*, para. 68.

8. With reference to Act No. 001-2016/AN of 24 March 2016, which expands the powers of the National Human Rights Commission, and to the Decree of 9 March 2017 on the organization and functioning of the Commission, please inform the Committee of when the new Commission will be established. In addition, please indicate the measures taken to: (a) ensure its independence and provide it with a separate budget to allow it to function properly, as recommended in the Committee's previous concluding observations (para. 15); and (b) request accreditation for the Commission from the Global Alliance of National Human Rights Institutions. Please provide annual statistical data, disaggregated by age group (minor/adult), sex and ethnicity or nationality of the victim, on the number of complaints of torture and ill-treatment received by the Commission since the previous concluding observations were issued and on any *ex officio* investigations and their outcomes. Since the Commission conducted visits to places of deprivation of liberty in 2016,⁶ please indicate the number of annual visits and the action taken in response to the Commission's recommendations. Please clarify whether the Commission's reports are public.

9. In the light of the Committee's previous concluding observations (para. 26), the information contained in the State party's second periodic report⁷ and the persistence of acts of mob justice by armed vigilante groups known as "Kogleweogo", which are involved in maintaining internal security, please:

(a) Provide information on the measures taken to assign responsibility for internal security to a civilian police unit and to disarm armed groups and individuals who do not officially belong to the security forces;

(b) Provide annual statistical data for the reporting period on the number of complaints, investigations, prosecutions, convictions and penalties imposed on persons found guilty of acts of mob justice, including beatings, lashings, abductions and murders, specifying the number of cases involving the participation, consent or acquiescence of public officials.

Article 3

10. Please provide annual statistical data for the period since 2014, disaggregated by sex, country of origin and age of persons seeking asylum, on the number of:

(a) Registered asylum applications;

(b) Successful applications for asylum, refugee status or other forms of humanitarian protection, specifying how many were accepted on the grounds that the applicants had been tortured or were at risk of torture if returned or expelled;

(c) Persons extradited, expelled or returned, and to which countries;

(d) Appeals against expulsion decisions and return or expulsion orders set aside by the National Refugee Commission or the courts, as appropriate, on the grounds that the applicants had been tortured or were at risk of torture if returned or expelled.

11. In the light of the Committee's previous concluding observations (para. 25) and information provided in the State party's second periodic report,⁸ please indicate whether persons subject to an expulsion, return or extradition order are informed of their right to apply for asylum and to appeal the order and of the deadlines to apply for asylum or appeal the rejection of an asylum application or an expulsion, return or extradition order. Please also indicate whether the State party has taken steps to ensure that asylum seekers have, in all cases, access to the services of an independent qualified lawyer and an interpreter, free of charge, throughout asylum proceedings.

12. Please indicate whether there are any mechanisms or protocols for the prompt identification and referral of asylum seekers in a vulnerable situation, such as victims of torture, trafficking or violence against women, and if these mechanisms provide for an

⁶ *Ibid.*, para. 89.

⁷ *Ibid.*, paras. 130–131.

⁸ *Ibid.*, paras. 124–129.

independent medical examination. Please also indicate the steps taken to ensure that minors who are unaccompanied or have become separated from their families and victims of torture or trauma who apply for asylum are treated in accordance with their needs.

13. Please indicate the number of persons who have been extradited, expelled or returned by the State party since 2014 after receiving diplomatic or equivalent assurances, as well as the cases in which the State party has made such assurances. Please describe the minimal content of such assurances, indicating whether they were given or received, and the other monitoring measures that are put in place in such cases.

Articles 5 to 9

14. In the light of the Committee's previous concluding observations (para. 13) and article 11 of Act No. 022-2014/AN, please explain what procedural steps have been taken in the Moussa Dadis Camara case since his indictment on 8 July 2015.⁹ Please indicate whether the State party has rejected, for any reason, a request from another State for the extradition of an individual suspected of having committed torture and whether it has initiated criminal proceedings against such an individual as a result. If so, please provide information on the status and outcome of such proceedings.

15. With reference to the information provided in the State party's second periodic report,¹⁰ please assure the Committee that the extradition treaties the State party has entered into apply only to cases where the individuals subject to an extradition order are not at risk of torture or ill-treatment and cannot be sentenced to death in the country of destination. Please also indicate whether all the extradition treaties Burkina Faso has signed with other States parties to the Convention provide for torture as an extraditable offence. In addition, please provide information on:

(a) The cases in which the State party agreed to extradite persons suspected of having committed acts of torture or related offences, such as attempted torture and complicity or participation in torture;

(b) The cases involving the offence of torture in which a request for mutual legal assistance was made or received by Burkina Faso and the outcome of these requests.

Article 10

16. In the light of the Committee's previous concluding observations (para. 27) and the information in the State party's second periodic report on the training in the prevention and punishment of torture provided to the investigative police, judges, lawyers, gendarmes, registrars and the police between 2014 and 2016,¹¹ please provide updated information, specifying whether the training is compulsory or optional, how frequent it is, the percentage of officials who have received it and the training plans for those who have not. Please clarify whether the training programmes specific to the National Civil Service and Judiciary Training School include a component on the Convention. Please provide the same information with regard to the training offered since 2014 to members of the armed forces, prison personnel, immigration and border officials, forensic doctors and medical practitioners working with detainees concerning:

(a) The provisions of the Convention;

(b) Non-coercive investigation techniques and the principle that force should be used only as a last resort;

(c) The rules governing the right to asylum and the identification of victims of torture, trafficking or gender-based violence among asylum seekers;

(d) Training in the detection of physical and psychological signs of torture and ill-treatment based on the standards set out in the Manual on the Effective Investigation and

⁹ Ibid., para. 60.

¹⁰ Ibid., para. 19.

¹¹ Ibid., paras. 21, 41, 62 and 63.

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

17. Regarding the information provided by the State party on follow-up and evaluation workshops,¹² please clarify whether the State party continuously assesses the effectiveness of the various training programmes.

18. With reference to article 151 of the Constitution, whereby international treaties ratified by Burkina Faso prevail over domestic laws, please provide specific examples of cases where the Convention was directly invoked or applied before the criminal courts.

Article 11

19. With reference to the Committee's previous concluding observations (para. 19) and the information provided by the State party on conditions of detention,¹³ please provide:

(a) A full overview of places of detention in the State party, indicating the year of construction and any renovations and refurbishments. Please also provide annual statistical data, for the period since 2014, disaggregated by place of detention, sex, age group (minor/adult) and nationality of the detainee (national/non-national), on the capacity and occupancy rate of all places of detention, specifying the number of remand and convicted prisoners, as well as trends in the overall occupancy rate since 2016;

(b) Information on the measures planned to ensure the separation of remand prisoners from convicted prisoners and of minors from adults in police stations,¹⁴ as well as data on the number of places of deprivation of liberty where they are not yet held separately;

(c) Information on the effectiveness of the measures taken to ease overcrowding in prisons, specifying the available alternatives to pretrial detention and the measures taken to ensure that these are applied more frequently. For example, please provide annual data, disaggregated by age group (minor/adult), on the application of: (i) alternatives to pretrial detention, including for juveniles in conflict with the law;¹⁵ (ii) alternatives to imprisonment, including for juveniles;¹⁶ and (iii) sentence adjustments. Please also provide updated information on the status of prison renovation and construction projects and on the plans to reduce overcrowding at, inter alia, the short-stay prison and correctional facility in Ouagadougou;

(d) Updated information on the status of projects to improve the accommodation, hygiene and sanitation conditions in places of detention and on the measures envisaged to overcome the difficulties stemming from the insufficient budget allocation for food, running water and access to health care for all prisoners;

(e) Information on the steps taken to ensure that every detainee can enjoy at least one hour of physical exercise outdoors each day, to set up a prison education programme and to facilitate access to vocational training, work, recreation and cultural activities;

(f) Information on medical examinations conducted at detention centres, including whether they enable the detection of physical and psychological signs of torture and ill-treatment and whether they are systematically carried out upon admission.

20. Please provide annual statistical data, for the period since 2014, disaggregated by place of deprivation of liberty and by victims' ethnicity or nationality, on the number of deaths in detention, specifying the cause of death, and the number of persons injured or killed as a result of acts of violence or negligence in places of detention, specifying whether the perpetrator was an official or another inmate. Please also provide detailed information on the outcomes of the investigations into these deaths and injuries, on any convictions and criminal and disciplinary penalties, specifying the length of any prison sentences, and on

¹² Ibid., paras. 134–135.

¹³ Ibid., paras. 22 and 77–88.

¹⁴ Ibid., para. 111.

¹⁵ Ibid., para. 115.

¹⁶ Ibid., para. 117.

the redress awarded to the victims or their beneficiaries. In particular, please inform the Committee of the outcome of the investigations into:

(a) Allegations of the extrajudicial execution of three prisoners during an attempted escape and the torture and ill-treatment of other prisoners by prison guards with support from the gendarmerie on the night of 30 October 2014 at the short-stay prison and correctional facility in Ouagadougou;

(b) The deaths of Rasmané Kouanda and Bertrand Bouda at the short-stay prison and correctional facility in Ouagadougou owing to a lack of water and oxygen;

(c) The deaths of Salif Bokoum, in April 2016, and Yéro Sidibé, in May 2016, following their arrest and detention by the local gendarmerie in Dédougou.

21. Given that, pursuant to article 39 of Act No. 010-2017/AN of 10 April 2017 on the prison system, the terms and procedures for solitary confinement are laid out in internal prison regulations, please:

(a) Give the maximum duration, in the rules and in practice, of placement in solitary confinement or in a punishment cell;

(b) Indicate whether this measure can be applied to children and persons with a psychosocial disability;

(c) Indicate whether all places of detention keep a register of disciplinary sanctions and how the proportionality of such sanctions is monitored;

(d) Provide annual statistics, for the period since 2014, disaggregated by prison, on the number of appeals against placements in solitary confinement and their outcome;

(e) Describe the accommodation in solitary confinement and punishment cells.

Articles 12 and 13

22. With reference to the Committee's previous concluding observations (para. 12) on cases of death in detention and to information in the State party's second periodic report,¹⁷ please provide updated information on the outcome of the investigations into the deaths of Romuald Tuina, Ouedraogo Ignace, Ouedraogo Lamine, Halidou Diande, Arnaud Some and Mamadou Bakayoko. Please indicate what criminal and disciplinary sanctions were imposed on the two gendarmes from the Soaw gendarmerie station for physically abusing two suspected livestock rustlers in 2015.¹⁸

23. In the light of article 16 of Act No. 022-2014/AN, please provide annual data, for the period since 2014, disaggregated by type of offence, sex, age group (minor/adult) and ethnicity of the victim, on:

(a) The number of complaints received by prosecutors or by any other competent authority, or of investigation reports, regarding offences such as the attempted or actual commission of acts of torture or ill-treatment, or complicity or participation in such acts, by or with the consent or acquiescence of public officials;

(b) The number of such complaints that led to a criminal or disciplinary investigation;

(c) The number that have been dismissed;

(d) The number that resulted in prosecution;

(e) The number that led to a conviction;

(f) The criminal and disciplinary sanctions that were imposed, specifying the length of any prison sentences.

24. Given that the internal oversight unit of the Office of the Director General of the National Police is responsible for investigating any allegation of torture involving a police

¹⁷ Ibid., para. 58.

¹⁸ Ibid., para. 40.

officer,¹⁹ please clarify how the State party ensures that there is no hierarchical or institutional relationship between alleged perpetrators of torture and investigators. Please indicate which internal oversight body is competent to investigate cases of alleged torture or ill-treatment committed by prison personnel and members of the military. In cases where there are strong reasons to believe that a complaint of torture or ill-treatment is well founded, please specify whether the suspected perpetrator is automatically suspended from duty or transferred during the investigation.

25. With reference to the Committee's previous concluding observations (para. 19) and the information in the State party's second periodic report,²⁰ please outline the steps that will be taken to ensure the confidentiality and independence of the mechanism for the submission of complaints of torture and ill-treatment by persons deprived of their liberty. With reference also to article 15 of Act No. 022-2014/AN, please indicate the steps taken to ensure the protection of complainants and witnesses from any ill-treatment or intimidation.

Article 14

26. With reference to the Committee's previous concluding observations (para. 18) and article 17 of Act No. 022-2014/AN, please provide information on the rehabilitation programmes for victims of torture and ill-treatment, the resources allocated to these programmes and the extent of collaboration in this domain with specialized non-governmental organizations.

27. Please provide annual statistical data on redress and compensation measures, including means of rehabilitation, ordered by the courts and actually provided to victims of torture or ill-treatment or their families since 2014. This information should include the number of:

- (a) Applications for State compensation for torture and ill-treatment;
- (b) Applications time-barred due to the courts' inaction;
- (c) Successful applications and the amounts awarded in these cases.

Article 15

28. With reference to article 10 of Act No. 022-2014/AN, on the inadmissibility of statements obtained under torture, and to reports of detainees being tortured to obtain confessions or information useful to an investigation, please describe the measures taken to ensure that the courts give full effect to the principle that evidence obtained through torture is inadmissible. Please also provide statistical data, for the period since 2014, on the number of: (a) cases in which detainees have alleged that their confessions were extracted through torture; (b) cases in which confessions have been declared inadmissible; and (c) complaints of this kind that have been investigated and the outcomes of those investigations, including the sentences handed down to those found guilty and the redress and compensation granted to victims. Please clarify whether investigations have been opened into the allegations of torture made by former members of the Presidential Security Service during their trial in 2015 and, if so, what the outcomes were.

Article 16

29. With reference to reports of excessive use of force and extrajudicial executions by the military during counter-terrorism operations on the border with Mali on 9 June 2017 and to the June 2016 report of the commission of inquiry, which recommended the prosecution of 31 individuals for using lethal force against protesters during the popular uprising in October and November 2014, resulting in 28 dead and 625 injured, please clarify whether investigations have been launched, and, if so, what their outcomes were, whether arrest warrants or extradition requests have been issued and whether legal action has been initiated. In addition, please provide data, for the period since 2014, disaggregated by type of offence and the victim's sex, age group and ethnicity, on: (a) the number of

¹⁹ Ibid., para. 56.

²⁰ Ibid., para. 87.

complaints concerning excessive use of force by public officials; (b) how many of those complaints led to a criminal or disciplinary investigation; (c) how many were dismissed; (d) how many resulted in prosecution; (e) how many led to a conviction; and (f) the criminal and disciplinary sanctions that were imposed, specifying the length of any prison sentences, including sentences handed down to those found guilty, and the redress and compensation granted to victims. Please outline the results of the investigations into the assault against some 40 truck drivers who were protesting in Tenkodogo on 1 August 2017 and the assault against journalist Guezouma Sanogo on 12 May 2017.

30. In the light of article 12 of Act No. 039-2017/AN of 27 June 2017, on the protection of human rights defenders, which provides for protection from torture and related practices, extrajudicial execution, arbitrary arrest and detention, enforced disappearance, death threats, harassment, defamation and false imprisonment, please describe the steps taken since the adoption of the Act to ensure their effective protection. In addition, please provide statistical data, for the period since 2014, on the number of complaints concerning the aforementioned offences committed against members of civil society, the outcome of the ensuing investigations, the number of convictions and the sentences handed down in cases ostensibly linked to the activities of human rights defenders or to their reporting of human rights violations.

31. With reference to the Committee's previous concluding observations (para. 21) and the information in the State party's second periodic report,²¹ including the adoption of Act No. 061-2018/CNT of 6 September 2015 on the prevention and punishment of violence against women and girls and redress and support for victims, please provide updated information on the measures taken to address all forms of violence against women in situations involving acts or omissions by public officials or other persons acting on behalf or on the instruction of the State. In particular, please provide:

(a) Annual statistical data covering the reporting period on the number of complaints, investigations, prosecutions, convictions and penalties handed down to persons belonging to the above categories who were found guilty of criminal behaviour in connection with traditional practices that are harmful to women and girls, including female genital mutilation, and on the redress provided to the victims;

(b) Annual statistical data on the number of complaints concerning the various forms of violence against women and girls allegedly committed by persons belonging to the above categories and on the number of convictions, specifying the nature of the penalties imposed on the perpetrators and the redress provided to the victims;

(c) Information on the protection and medical, psychological and legal assistance provided to victims;

(d) The current capacity of shelters for victims, specifying whether it is sufficient to meet demand.

32. With reference to the Committee's previous concluding observations (para. 22) and the information in the State party's second periodic report²² regarding in particular the adoption of a number of laws, please provide updated information on the steps taken to address violence against children in situations involving acts or omissions by public officials or other persons acting on behalf or on the instruction of the State. Specifically, please provide:

(a) Information on the establishment of a State monitoring, assistance and follow-up mechanism to prevent the further exploitation of street children, talibé and garibou children;

(b) Updated information on State-run awareness-raising campaigns on the harmful effects of begging, exploitation and corporal punishment on children.

²¹ Ibid., paras. 96–102.

²² Ibid., paras. 103–110.

Other issues

33. Please indicate whether the State party is considering accepting the competence of the Committee under article 22 of the Convention.
