



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

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## Committee against Torture

### Concluding observations on the second periodic report of Burkina Faso\*

1. The Committee against Torture considered the second periodic report of Burkina Faso (CAT/C/BFA/2) at its 1788th and 1791st meetings (see CAT/C/SR.1788 and 1791) and adopted the present concluding observations at its 1810th meeting, held on 28 November 2019.

#### A. Introduction

2. The Committee welcomes the submission of the second periodic report of the State party. The Committee also commends the State party for its replies to the list of issues (CAT/C/BFA/Q/2/Add.1), which were, however, submitted late.

3. The Committee appreciates the constructive dialogue held with the State party's multidisciplinary delegation, which it thanks for the replies and additional information provided.

#### B. Positive aspects

4. The Committee welcomes the ratification by the State party of nearly all United Nations human rights instruments and of most of their optional protocols.

5. The Committee welcomes the legislative, administrative and other measures taken by the State party to give effect to the Convention, including the adoption of:

- (a) Act No. 040-2019/AN of 29 May 2019 on the Code of Criminal Procedure;
- (b) Act No. 025-2018/AN of 31 May 2018 on the Criminal Code;
- (c) Abolition of the death penalty, by removing it from the arsenal of penalties under the 2018 Criminal Code;
- (d) Act No. 022-2014/AN of 27 May 2014 on the prevention and punishment of torture and related practices;
- (e) Act No. 001-2016/AN of 24 March 2016 on the establishment of the National Human Rights Commission, and associating the national preventive mechanism for torture with the Commission;
- (f) Act No. 010-2017/AN of 10 April 2017 on the prison system in Burkina Faso;
- (g) Act No. 039-2017/AN of 27 June 2017 on the protection of human rights defenders in Burkina Faso;

\* Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).



- (h) Organic Act No. 050-2015/CNT of 25 August 2015 on the status of judges;
- (i) Act No. 061-2015/CNT of 6 September 2015 on the prevention and punishment of violence against women and girls and on reparations and support for victims;
- (j) Constitutional Act No. 072-2015/CNT of 5 November 2015 amending the Constitution and making it possible for citizens to bring cases before the Constitutional Council;
- (k) Act No. 081-2015/CNT of 24 November 2015 on the General Civil Service Regulations, which allows public officials to disobey an order from a superior when the order is unrelated to an official mission or manifestly unlawful, or when executing the order would constitute a criminal offence;
- (l) The national programme to combat child labour at gold-panning sites and artisanal quarries in Burkina Faso for the period 2015–2019;
- (m) Act No. 074-2015/CNT of 6 November 2015 on the establishment, responsibilities, composition, organization and functioning of the High Council for Reconciliation and National Unity;
- (n) Act No. 015-2014/AN of 13 May 2014 on the protection of children who are in conflict with the law or are at risk;
- (o) Act No. 011-2014/AN of 17 April 2014 on the suppression of the sale of children, child prostitution and child pornography;
- (p) The national strategy for the prevention and elimination of child marriage 2016–2025; and
- (q) The national strategic plan to promote the elimination of female genital mutilation in Burkina Faso 2016–2020.

## C. Principal subjects of concern and recommendations

### Pending follow-up issues from the previous reporting cycle

6. In its previous concluding observations (CAT/C/BFA/CO/1, para. 31), the Committee requested the State party to provide information on the implementation of the following recommendations: (a) the introduction or strengthening of legal safeguards for detainees; (b) the prompt instigation of impartial and effective investigations; and (c) the initiation of proceedings against suspects and sentencing of perpetrators of acts of torture or ill-treatment, which were recommendations contained in paragraphs 10, 11, 12 and 18 of the document. The Committee regrets that the State party has not provided this information, despite the reminder sent to it on 8 December 2014 by the rapporteur on follow-up to concluding observations. The Committee is of the view that the recommendations set out in paragraphs 10, 11, 12 and 18 of its previous concluding observations have not yet been fully implemented. These points are covered in paragraphs 10, 14, 16 and 28 of the present document.

### Definition and criminalization of torture

7. While recalling its previous concluding observations (para. 8), the Committee welcomes the adoption of Act No. 025-2018/AN on the Criminal Code, as well as Act No. 022-2014/AN on the prevention and punishment of torture and related practices, that take up a definition of torture in line with article 1 of the Convention, make it a separate offence and provide for penalties appropriate to the grave nature of such acts. However, the Committee notes with concern that the non-applicability of the statute of limitations for prosecution and sentencing is only applicable in cases of torture carried out as part of genocide or crimes against humanity (Criminal Code, art. 317) (arts. 1 and 4).

8. **The Committee invites the State party to adopt the necessary provisions, in the Criminal Code and Act No. 022-2014/AN, to explicitly exclude application of the statute of limitations for the crime of torture.**

### **Fundamental procedural safeguards**

9. The Committee notes with appreciation the new Code of Criminal Procedure, which enshrines a number of fundamental safeguards, including the right of detainees to be informed of their rights and to be assisted by a lawyer during police investigations, and which establishes oversight of police custody by judicial bodies. However, the Committee regrets the absence of a provision explicitly establishing the right of detainees to be examined by an independent physician or a physician of their choice, without conditions, as such examinations are subject to the discretion of the prosecutor. The Committee is also concerned about the excessive length of police custody (72 hours, extendable for another 48 hours if authorized by the prosecutor for ordinary crimes: article 252-4 of the Code of Criminal Procedure, and that the time limits for police custody can be extended for up to 120 hours with the authorization of the prosecutor or the investigating judge (Code of Criminal Procedure, art. 251-22). The Committee further notes that, despite the recommendations it made in its previous concluding observations, the maximum period of 15 days, extendable by 10 days, has remained applicable, specifically for terrorism or organized crime (Act No. 017-2009/AN of 5 May 2009 and art. 515-15 of the Code of Criminal Procedure). This is all the more problematic because such extensions entail limitations of fundamental guarantees; there is no requirement to bring the detainee before a court. Lastly, the Committee notes with concern the lack of compliance, in practice, with fundamental legal safeguards during arrest and detention (art. 2).

10. **The Committee, recalling its previous concluding observations (para. 11), recommends that the State party:**

(a) **Include, in the Code of Criminal Procedure, the right to have medical examinations without conditions and in full confidentiality, carried out by qualified medical personnel promptly upon arrival at a police station, detention centre or prison, and to have access to an independent physician or a physician of one's choosing, on request; and**

(b) **Reduce the maximum length of police custody, ensuring that its renewal is limited to duly justified exceptional circumstances and respects the principles of necessity and proportionality, and providing for judicial review of the legality of the detention.**

### **Pretrial detention**

11. While noting the safeguards introduced by the Code of Criminal Procedure, which limit pretrial detention to a maximum of 2 years for minor offences and 4 years for criminal offences, and which establish judicial oversight (arts. 261–79 ff. of the Code of Criminal Procedure), the Committee is concerned about reports of the systematic use of detention pending trial. In particular, the Committee is concerned that individuals apprehended in the fight against terrorism are reportedly subjected to long periods of pretrial detention before they are brought before a judge. Thus, since 2016, more than 700 persons have reportedly been detained on suspicion of committing terrorist acts and are awaiting trial. The Committee is also concerned that insufficient use is made of alternatives to pretrial detention (art. 2).

12. **The State party should:**

(a) **Provide for effective oversight of the practice of pretrial detention, ensuring that it complies with the provisions establishing its maximum duration, that its use is as short as possible and is exceptional, necessary, and proportionate;**

(b) **Actively promote, within the prosecution service and among judges, the use of alternatives to pretrial detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(c) **Review the case files of all detainees in pretrial detention and immediately release all persons who have already been in detention for periods exceeding the maximum sentences carried by the offences of which they stand accused; and**

(d) **Expedite trials of terrorism cases, and to do so, provide the counter-terrorism unit with the human, material and financial resources necessary to investigate and prosecute cases within a reasonable time.**

#### **Allegations of torture and ill-treatment and their investigation and prosecution**

13. While welcoming the adoption of article 10 of Act No. 022-2014/AN, which stipulates that “any statement obtained as a result of torture or related practices cannot be used as evidence in any proceedings, except to establish the responsibility of the offender”, the Committee remains concerned about allegations of torture and ill-treatment of individuals by the police or gendarmerie during their arrest, transport, custody and interrogation, with the aim of extracting confessions from them. The Committee further notes with concern that the obligation to carry out an investigation when there are sufficient grounds to believe that an act of torture has been committed is not applicable to allegations of cruel, inhuman or degrading treatment or punishment, which are nonetheless punishable under Act No. 022-2014/AN. Article 16 has thus not been incorporated into the State party’s legislation. Lastly, the Committee is concerned about the lack of legal proceedings undertaken in response to multiple allegations of abuse, torture and ill-treatment and excessive use of force by the police during the popular uprising of 2014; the failed coup attempt of 2015; and the Yirgou events of January 2019, which resulted in several deaths and displaced hundreds of persons. In this regard, the Committee regrets the lack of implementation of the recommendations made by the National Human Rights Commission following an investigation conducted jointly with the High Council for Reconciliation and National Unity (arts. 2, 4, 12, 13 and 16).

14. **Reiterating the recommendations it made in its previous concluding observations (para. 10), the Committee urges the State party to clearly reaffirm the absolute prohibition on torture by publicly condemning the practice of torture and raising awareness and disseminating the content of Act No. 022-2014/AN and the 2018 Criminal Code. The State party should also:**

(a) **Ensure that the competent authorities routinely launch an investigation whenever there are reasonable grounds to believe that an act of torture has been committed and see to it that suspects are duly brought to justice and, if they are found guilty, receive sentences commensurate with the seriousness of their acts;**

(b) **Expedite the investigations opened into the social and political unrest of 2014 and 2015 and promptly finalize the investigation into the abuses committed in Yirgou in January 2019, providing a legal aid mechanism for victims and a victim and witness protection mechanism;**

(c) **Put in place an independent, effective and confidential complaints mechanism that is accessible to victims, at all police custody facilities and all prisons, and ensure that complainants and victims are protected from any reprisals;**

(d) **Compile and disseminate up-to-date statistics on the complaints filed, investigations conducted, prosecutions initiated and convictions handed down in cases of torture; and**

(e) **Amend Act No. 022-2014/AN so that it includes an obligation for the competent authorities to carry out an investigation whenever there are reasonable grounds to believe that cruel, inhuman or degrading treatment or punishment has been committed in any territory under their jurisdiction.**

#### **Impunity**

15. The Committee is deeply concerned about the fact that Act No. 026-2018/AN of 1 June 2018 on the general regulations for intelligence in Burkina Faso, in article 18, provides for the exemption from punishment of “intelligence officers who, in carrying out their missions, commit crimes that are absolutely necessary in order to ensure the effectiveness of the mission or to ensure their own safety or that of other persons associated with the fulfilment of that mission”. The Committee is of the view that this vague provision might not only foster abuses, but could also promote impunity, by granting immunity to intelligence officers who commit acts of torture or ill-treatment (arts. 2, 4, 12 and 13).

16. **The State party should ensure that no immunity is granted to intelligence officers who have committed acts of torture or ill-treatment.**

#### **Actions of non-State armed groups**

17. The Committee is deeply concerned about the actions of the self-defence militias known as “Koglweogo”, some of whose members reportedly carry out illegal arrests and detention, murder and acts of torture and ill-treatment. The Committee notes with concern that, while making such self-defence groups subordinate to the police, Decree No. 2016-1052, which sets out the conditions for the public’s participation in the implementation of neighbourhood policing, formally recognizes the participation of these “self-defence” groups in the campaign against insecurity, by assigning them a role for monitoring the security situation, collecting intelligence and even carrying out arrests. The Committee considers that these armed groups, by acting in such a capacity, are de facto acting as agents of the State (arts. 2, 12 and 16).

18. **Recalling its general comment No. 2 (2007) on the implementation of article 2 by States parties, in which it established that States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law, the Committee urges the State party to:**

(a) **Stop delegating the sovereign prerogatives that are exclusively incumbent upon it, or otherwise encouraging or supporting non-State armed groups to carry out missions to maintain security;**

(b) **Establish a mechanism to identify and monitor the actions of the Koglweogo;**

(c) **Strengthen the presence and the manpower of the national security and defence forces, as necessary; and**

(d) **Continue to investigate and prosecute alleged perpetrators of abuse, torture and ill-treatment, and, if they are found guilty, sentence them to appropriate penalties, providing reparation for victims.**

#### **Combating terrorism and organized crime**

19. While noting with concern the resurgence of terrorist attacks perpetrated in the territory of the State party, particularly in the Sahel region, the Committee is concerned about reports that specialized counter-terrorism units operating freely under the state of emergency that is in effect in 14 of the country’s provinces, including the Groupement des forces antiterroristes (Association of Counter-terrorism Forces), reportedly carry out arbitrary arrests and acts of torture during large-scale cordon-and-search operations to punish presumed terrorists and their accomplices or family members and to extract confessions from them (arts. 2, 11, 12 and 16).

20. **The State party should ensure that its counter-terrorism measures and legislation are in conformity with the Convention’s prohibitions against torture and ill-treatment, and that all allegations of torture and ill-treatment of persons accused of involvement in terrorist acts or organized crime are promptly, impartially and effectively investigated and that the perpetrators are prosecuted and duly punished.**

#### **Conditions of detention**

21. While welcoming the adoption of Act No. 10-2017/AN on the prison system in Burkina Faso, which includes the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Committee remains seriously concerned about the persistence of conditions of detention that amount to ill-treatment in the majority of detention centres in the country. The Committee is concerned in particular about the appallingly unhygienic conditions, poor sanitation and lack of adequate food, as well as the lack of medical care, at remand prisons and correctional institutions, and also in pretrial detention holding cells at gendarmerie and police stations. The Committee also regrets the lack of effective separation of categories of detainees and alarming prison overcrowding, that is approaching 400 per cent of capacity, at remand prisons and

correctional institutions in Ouagadougou and Bobo-Dioulasso. It is also concerned about the conditions of detention of women who are accompanied by infants and young children and are held at the Ouagadougou short-stay prison and correctional facility. Lastly, the Committee is very concerned about the deaths of 11 prisoners detained on the night of 14 to 15 July 2019 at the anti-drug unit in Ouagadougou, in circumstances that remain to be determined (arts. 2, 11 and 16).

22. **The Committee urges the State party to quickly finalize the investigation opened on 15 July 2019 by the chief prosecutor in the Ouagadougou *Tribunal de grande instance* (court of major jurisdiction) so as to determine responsibilities and prosecute and punish those responsible for the deaths of the 11 persons detained by the anti-drug unit. Recalling the recommendation it made in its previous concluding observations (para. 19), the Committee urges the State party to take all necessary measures to bring the conditions of detention at all places of deprivation of liberty into line, in practice, with the Nelson Mandela Rules, in particular, to:**

(a) **Allocate a sufficient budget to the prison reform policy and improve material conditions of detention, ensuring that detainees have access to adequate and sufficient food, adequate health care and decent sanitary conditions;**

(b) **Close the Bobo Dioulasso remand prison, built in 1947, which is impossible to renovate, despite the work already undertaken;**

(c) **Step up its efforts to reduce prison overcrowding, first and foremost by effectively applying existing alternatives to detention, such as reduced sentencing, judicial supervision or community service;**

(d) **Ensure that persons in pretrial detention are separated from convicted persons and that both categories are treated in a manner that is in accordance with their legal status;**

(e) **Strengthen judicial supervision of conditions of detention;**

(f) **Adopt effective measures to prevent deaths in detention and measures for the protection of mothers and children in detention; and**

(g) **Guarantee that the National Human Rights Commission, non-governmental organizations and the future national mechanism for the prevention of torture have unhindered access to all places of detention, including through unannounced visits, and that they are able to speak with prisoners in private.**

#### **National Human Rights Commission**

23. While welcoming the efforts made to establish the National Human Rights Commission, and specifically the appointment of its members, the fact that a number of visits have been carried out to places of deprivation of liberty and the improvement of the Commission's financial independence, the Committee regrets that the Commission is not yet fully operational and that it has not obtained accreditation with the Global Alliance of National Human Rights Institutions, despite the Committee's recommendation to that effect. Lastly, noting the report that the National Human Rights Commission has received no allegations of torture or ill-treatment since the Committee issued its last concluding observations, the Committee is concerned that perhaps the Commission's complaints mechanism is ineffective and not well known and also that victims and their families are not protected against reprisals (art. 2).

24. **The Committee recommends that the State party:**

(a) **Continue its efforts to ensure that the members of the National Human Rights Commission are fully independent, both from a personal and institutional standpoint, by providing the Commission with adequate and predictable human and material resources to enable it to fully perform its duties as a national institution and as the national preventive mechanism in an independent, impartial and effective manner;**

(b) **Request accreditation for the National Human Rights Commission from the Global Alliance of National Human Rights Institutions;**

(c) **Raise public awareness of the National Human Rights Commission's complaints mechanism through the use of publicity, information and education; and**

(d) **Provide the National Human Rights Commission with mechanisms and procedures to ensure that witnesses and victims of human rights violations, including torture, are effectively protected against any ill-treatment or intimidation as a consequence of their complaints or any evidence they give.**

#### **National mechanism for the prevention of torture**

25. While taking note of the fact that the Government is currently considering a preliminary bill that would establish a national mechanism for the prevention of torture under the National Human Rights Commission, the Committee regrets that, since the State party's accession in 2010 to the Optional Protocol to the Convention, and the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2017, the State party has still not established such a mechanism (arts. 2 and 11).

26. **The State party should speed up the establishment of the national preventive mechanism and ensure that it has a prevention mandate that is in line with the Optional Protocol and has the necessary independence, staff, resources and budget to effectively carry out its mandate.**

#### **Redress**

27. The Committee welcomes article 518-6 (3), of the Code of Criminal Procedure, which provides that, notwithstanding any criminal proceedings, the State has the obligation to provide victims with redress, and also the compensation granted by the State party to victims of the popular uprising of 2014 and the failed coup attempt of 2015, but it regrets that there is no specific rehabilitation programme for victims of torture that includes all the forms of redress covered by article 14 of the Convention (art. 14).

28. **The State party should:**

(a) **Take the necessary legislative and administrative measures to ensure that victims of acts of torture and ill-treatment have access to effective remedies and can obtain redress, including in cases where the perpetrator has not been identified;**

(b) **Conduct a comprehensive assessment of victims' needs and ensure that specialized rehabilitation services are promptly available; and**

(c) **Provide detailed information on cases in which victims of torture and ill-treatment have had access to effective remedies and obtained redress, and provide the Committee with this information with the submission of the next periodic report.**

#### **Follow-up procedure**

29. The Committee requests the State party to provide it, by 6 December 2020 at the latest, with information on its follow-up to the Committee's recommendations concerning the Koglweogo, conditions of detention and the national preventive mechanism (see paras. 18 (a), 22 (a) and 26, above). In that context, the State party is invited to inform the Committee about the measures it is planning to take, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

#### **Other issues**

30. The Committee invites the State party to consider the possibility of ratifying the main United Nations human rights instruments to which it is not yet a party and welcomes its commitment to provide timely responses to the recommendations of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment following its mission to Burkina Faso from 3 to 9 December 2017.

31. The State party is requested to disseminate the report submitted to the Committee and the present concluding observations widely, in appropriate languages, through official websites, the media and non-governmental organizations, and to inform the Committee about its dissemination efforts.

32. The Committee requests the State party to submit its next periodic report, which will be its third, by 6 December 2023 at the latest. To that end, it invites the State party to agree, by 6 December 2020, to use the simplified reporting procedure, whereby the Committee sends the State party a list of issues prior to submission of its periodic report. The replies of the State party to the list of issues will constitute its third periodic report under article 19 of the Convention.

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