



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the second periodic report of Burundi\*

1. The Human Rights Committee considered the second periodic report of Burundi (CCPR/C/BDI/2) at its 3100th and 3101st meetings (CCPR/C/SR.3100 and 3101), held on 8 and 9 October 2014. It adopted the following concluding observations at its 3126th meeting held on 27 October 2014.

#### A. Introduction

2. The Human Rights Committee welcomes the second periodic report of Burundi, which was submitted 17 years after its due date. The Committee takes note of the information presented therein and expresses its satisfaction with the high-level delegation sent by the State party and with the dialogue that took place between the delegation and the Committee concerning the implementation of the Covenant. The Committee wishes to thank the State party for its written replies (CCPR/C/BDI/Q/2/Add.1) to the list of issues (CCPR/C/BDI/Q/2), which have been supplemented by the delegation's replies during the dialogue and by additional responses provided in writing.

#### B. Positive aspects

3. The Committee welcomes the fact that the Criminal Code of 2009 abolished the death penalty.

4. The Committee welcomes the ratification of the following international instruments:

(a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2007;

(b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2008;

(c) The Convention on the Rights of Persons with Disabilities, in 2014;

(d) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, in 2014;

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\* Adopted by the Committee at its 112th session (7–31 October 2014).



(e) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2013.

## **C. Principal areas of concern and recommendations**

### **Incorporation of the Covenant into national law and application of the Covenant by national courts**

5. While observing that article 19 of the Constitution of the State party makes reference to a number of human rights treaties, the Committee however notes that the provisions of the Covenant have not been directly applied or invoked by the State party's courts (art. 2).

**The State party should ensure that all the provisions of the Covenant are given full effect in its national legal order. The State party should take the necessary steps to raise awareness of the Covenant among judges, lawyers and prosecutors in order to ensure that its provisions are taken into account before and by the national courts.**

### **Ratification of the Optional Protocols to the Covenant**

6. The Committee takes note of the fact that the State party has informed it that draft instruments of ratification for the two Optional Protocols to the Covenant are being processed.

**The Committee encourages the State party to ratify the two Optional Protocols to the Covenant as soon as possible.**

### **The Independent National Human Rights Commission**

7. The Committee is concerned by reports that two members of the National Human Rights Commission were recently appointed by a majority of the representatives of the governing party and in the absence of representatives of opposition parties, as this type of procedure does not contribute to the Commission's effective independence. It is also concerned by the successive reductions in the Commission's budget (art. 2).

**The State party should take the necessary steps to ensure the genuine, full independence of the Commission and to provide it with sufficient resources to enable it fully to carry out its mandate in accordance with the Paris Principles.**

### **Discrimination based on sexual orientation**

8. The Committee is concerned by reports that homosexuals are faced with threats to their physical integrity, intimidation and discrimination in various spheres of life. In particular, the Committee is concerned by the fact that homosexuality is defined as an offence in the Criminal Code; the fact that, pursuant to article 9 of Ministerial Order No. 620/613 of 7 June 2011 of the Minister of Basic Education, students considered to be homosexuals may be barred from their schools; and the obstacles faced by homosexuals seeking to found associations (arts. 2, 17, 22 and 26).

**The State should decriminalize homosexuality; amend the ministerial order of the Minister of Basic Education in order to forestall its discriminatory application to young homosexuals; remove any de jure or de facto obstacle to or any restriction on the establishment of associations by homosexuals; and take all necessary steps to provide effective protection for homosexuals from threats to their physical integrity and from discrimination of any kind.**

**Non-discrimination, equality between men and women**

9. The Committee is concerned by the stigmatization of persons with albinism and by threats to and attacks on their physical integrity (arts. 2 and 26).

**The State party should continue its efforts to protect persons with albinism against all forms of discrimination, including attacks on their physical integrity, and should find lasting solutions that will give persons with albinism access, without discrimination, to health care, social services, employment and education.**

10. While welcoming that the State party has established a 30 per cent minimum quota for women in elected political posts, the Committee is concerned by the fact that there are so few women representatives in public affairs at the provincial and local levels and in all other spheres (arts. 3 and 25).

**The State party should continue its efforts to ensure increased representation of women in public affairs by, inter alia, ensuring the enforcement of the applicable legislation and encouraging women to run for elective office. It should also take measures to increase the number of women in decision-making positions in all other areas.**

11. The Committee is concerned by the fact that men and women are not treated equally with regard to inheritance, matrimonial regimes and bequests. It also notes that article 88 of the draft Personal and Family Code still provides for different minimum ages of marriage for men and women (arts. 2, 3, 23 and 26).

**The State party should amend the Personal and Family Code so that it sets the same minimum age of marriage for men and women, in accordance with international standards. It should adopt the bill on inheritance, matrimonial regimes and bequests and make sure that it is in full compliance with the Covenant. The State should, in addition, conduct public awareness campaigns to help bring about a change in traditional attitudes that hinder women's ability to exercise their fundamental human rights.**

**Domestic violence**

12. The Committee notes with concern the persistence of domestic violence in the State party despite the measures that it has recently adopted in that regard. The Committee is also concerned by the lack of statistics on the extent of violence against women and on the impact of awareness-raising campaigns in this regard; the lack of sufficient social services and shelters for victims of domestic violence; and the lack of information on complaints, investigations and prosecutions, convictions and penalties imposed on the perpetrators of domestic violence (arts. 3, 7 and 26).

**The State party should: ensure that the relevant provisions of its Criminal Code are effectively enforced and expedite the passage of the bill on the prevention of gender-based violence and the punishment of perpetrators of such violence; facilitate the filing of complaints of domestic violence and protect women from any form of reprisal and any form of social stigmatization; ensure that cases of domestic violence are investigated thoroughly and that the perpetrators are brought to justice; ensure that law enforcement officials receive sufficient training to enable them to handle domestic violence cases properly and that the number of shelters is sufficient and that they have qualified staff and the necessary financial resources; and conduct public information campaigns to raise awareness of the harmful effects of violence against women.**

**Extrajudicial killings**

13. The Committee is concerned by reports that a large number of people were killed, some of them by members of the security and defence forces, particularly in the aftermath of the 2010 elections, and that investigations leading to the apprehension, prosecution and punishment of the perpetrators have not been carried out in all cases (art. 6).

**The State party should take all necessary and effective measures to combat impunity by systematically and promptly carrying out impartial, effective investigations in all cases of alleged arbitrary deprivation of the right to life in order to identify and prosecute the suspected perpetrators and, if found guilty, punish them and see to it that the victims' families receive appropriate compensation. The State party should strengthen human rights training and, in particular, instruction regarding the provisions of the Covenant, for security and defence forces.**

**Prohibition of torture and ill-treatment**

14. The Committee is concerned by reports that many people have been subjected to torture by members of the police, defence and security forces and intelligence services. It is also concerned by claims that the persons responsible enjoy impunity and notes that information on cases of torture dealt with by the courts has not been forthcoming. The Committee is concerned by the fact that an effective mechanism is not in place for receiving and investigating allegations of torture by the police and defence forces. It is also concerned about the obstacles that prevent victims from filing complaints, including the fear of retaliation. The Committee notes with concern that courts admit as evidence confessions that have been obtained by torture (arts. 7 and 14).

**The State party should prevent torture from being practised in its territory and ensure that allegations of torture and ill-treatment by the police, security and defence forces and intelligence services are thoroughly investigated, and ensure that suspected perpetrators are prosecuted and, if found guilty, duly punished, and that victims are properly compensated and offered rehabilitation services. The State party should establish an independent mechanism for investigating complaints of torture or ill-treatment at the hands of members of police or security forces or the intelligence services and facilitate the filing of complaints by the victims. The State party should also ensure that law enforcement officials continue to receive training in the investigation of cases of torture and ill-treatment by integrating the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1999 (known as the Istanbul Protocol) into all training programmes for such officials. The State party should ensure that confessions obtained under torture are systematically rejected by the courts.**

**Corporal punishment**

15. The Committee notes with concern that corporal punishment is still used in some schools and in the family (arts. 7 and 24).

**The State party should take practical steps, including legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage the use of non-violent forms of discipline instead of corporal punishment and should conduct public information campaigns to raise awareness about its harmful effects.**

**Human trafficking**

16. The Committee notes with concern the persistence of human trafficking in the State party, in particular for purposes of sexual exploitation, labour exploitation or exploitation as beggars, and notes with regret the lack of accurate information on the scope of the

phenomenon and the absence of specific legislation on trafficking or a national plan of action for combating it. It notes that, according to information supplied by the State party, there have been no convictions for human trafficking and that the cases involving human trafficking are still under investigation (art. 8).

**The State party should take steps to prevent and combat human trafficking, in particular by adopting the specific law and plan of action currently in preparation. It should also carry out investigations into all cases of human trafficking, prosecute the suspected perpetrators and, if they are found guilty, impose appropriate sentences on them and take the necessary steps to see to it that the victims receive appropriate compensation. Lastly, it should conduct public awareness campaigns on human trafficking and strengthen links with neighbouring countries in order to combat trafficking effectively.**

#### **Police custody, pretrial detention and basic legal guarantees**

17. The Committee is concerned that the seven-day period during which a person may be held in police custody, which may be extended once, is too long. The Committee is also concerned about the disproportionate use of pretrial detention, which results in excessive and abusive periods of detention exceeding the legal limit in the cases of a large number of people. It is concerned that basic legal guarantees, in particular the obligation to inform persons of their rights, the right to have access to a lawyer and a doctor, the right to communicate with family members and to be brought promptly before a judge, are often not respected. The Committee is also concerned by reports that the legality of detention is not regularly monitored, and it deplores the breakdown in communication between the prosecutor's office and the prison service, which results in persons being held in custody even after release orders have been issued (arts. 9, 10 and 14).

**The State party should amend the Code of Criminal Procedure in order to align it with the Covenant by setting the allowable period of police custody at 48 hours; specify the duration of pretrial detention and ensure that it is adhered to; and take steps, as a matter of urgency, to address the situation of persons who have been in pretrial detention for years. The State party should also systematically ensure that persons held in police custody or pretrial detention are informed of their rights and that the basic legal safeguards mentioned above are in place. Lastly, it should ensure that release orders issued by the courts are acted upon so that people can regain their freedom as soon as possible.**

#### **Conditions of detention**

18. The Committee notes with concern that conditions of detention remain unsatisfactory in nearly all prisons in the State party. It is particularly concerned by the very high rate of overcrowding and by reports of insufficient hygiene, inadequate medical care and the poor quality and irregular provision of food to inmates. The Committee is also concerned about the fact that there is no separation of adults from children, men from women or accused persons from convicted persons in places of detention. It notes with regret the lack of an appropriate, effective mechanism for receiving complaints from detainees (arts. 9 and 10).

**The State party should step up its efforts to improve the living conditions and treatment of persons held in custody and continue to take steps to address overcrowding in prisons in accordance with the Standard Minimum Rules for the Treatment of Prisoners. It should introduce a genuine policy on the use of non-custodial penalties. The State party should ensure that an effective mechanism is set up to receive and process complaints filed by detainees while maintaining their confidentiality. It should take the necessary steps to separate prisoners by age, sex and**

**custodial status. The State party should ensure that effective and regular visits are paid to places of detention and should establish a national mechanism for the prevention of torture as soon as possible.**

#### **Administration of justice and fair trial**

19. The Committee is concerned about the numerous failures and shortcomings in the State party's judicial system, in particular the insufficient number of judges and prosecutors, the shortage of resources, the courts' serious backlog of cases and the lack of independence of the judicial branch owing to interference from the executive branch in the administration of justice. It is also concerned by the fact that not all due process guarantees are made available, in particular access to legal counsel at the various stages of judicial proceedings and legal assistance (art. 14).

**The State party should take all necessary steps to ensure the independence of the judiciary. It should also strengthen measures designed to ensure access to justice, ensure that everyone is afforded all the legal safeguards, in law and in practice, including the right to be assisted by a lawyer in the course of criminal proceedings, and should foster conditions conducive to a fair trial. In addition, it should furnish the justice system with appropriate human and financial resources so that it can operate properly and should provide legal assistance to persons accused of criminal offences.**

#### **Freedom of expression, assembly and association**

20. The Committee is concerned about: (a) article 20 of the Press Act of 4 June 2013, which provides for a broad exception to provisions for the protection of journalists' sources in cases involving national security, public order, defence secrets and the physical or mental integrity of one or more persons; (b) articles 18 and 19 of the Press Act, which restrict the range of subjects that journalists may cover; and (c) articles 59, 60 and 61 of the Press Act, which provide for criminal prosecution in the event of a violation of articles 18 and 19 and heavy fines for the media. The Committee is also concerned about reports of threats, including physical threats, and acts of harassment and intimidation being directed by the police and security forces at journalists and human rights defenders. In addition, the Committee is concerned about the new law on public demonstrations, whose general wording, and specifically use of the term "public order", could serve as the basis for an arbitrary interpretation that could give rise to a prohibition on demonstrations. In this regard, the Committee takes note with concern of reports that political parties and other groups have been prohibited from demonstrating in the State party and that demonstrators have been intimidated and harassed. Lastly, the Committee is concerned by the numerous obstacles and impediments to the exercise of the freedom to form associations (arts. 19, 21 and 22).

**In the light of the Committee's general comment No. 34 (2011) on freedom of opinion and expression, the State party should revise its legislation to guarantee that any restriction on press and media activities is in strict compliance with article 19, paragraph 3, of the Covenant. It should also revise its legislation with a view to removing excessively heavy fines and any provision for the criminal prosecution of journalists who cover certain subjects. It should, in addition, take the necessary steps to ensure that journalists and human rights defenders are protected from threats and intimidation, to give them the freedom they need to carry out their work and to investigate, prosecute and convict persons who harass, threaten or intimidate them. The State party should revise its legislation to remove any unnecessary restriction on freedom of assembly and any obstacles to the exercise of the freedom to form associations.**

21. The State party should widely disseminate the Covenant, its two optional protocols, the second periodic report, the written replies it has provided in response to the list of issues drawn up by the Committee, and these concluding observations in order to raise awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The Committee suggests that the report and the concluding observations be translated into the official languages of the State party. The Committee also requests the State party, when preparing its third periodic report, to consult extensively with civil society and non-governmental organizations.

22. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, within a year's time the State party should provide relevant information on the action it has taken in response to the recommendations made by the Committee in paragraphs 7, 12, 13 and 17 of these concluding observations.

23. The Committee requests the State party to provide specific, up-to-date information in its next periodic report, which is due by 31 October 2018, on the action it has taken in response to all the recommendations and on its application of the Covenant as a whole.

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