



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

Distr.
GENERAL

CAT/C/BDI/CO/1
15 February 2007

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE
Thirty-seventh session
6-24 November 2006

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

BURUNDI

1. The Committee considered the initial report of Burundi (CAT/C/BDI/1) at its 730th and 733rd meetings, held on 9 and 10 November 2006 (CAT/C/SR.730 and 733), and, at its 745th meeting, held on 20 November 2006 (CAT/C/SR.745), adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Burundi, which is in conformity with the Committee's guidelines for the preparation of initial reports, but regrets that the report was submitted 13 years late. The Committee notes with satisfaction the frankness with which the State party acknowledges the gaps in its legislation relating to the elimination and prevention of torture. It also appreciates the effort made by the State party to identify the corrective steps needed. The Committee also welcomes the constructive dialogue that was held with the high-level delegation sent by the State party, as well as the replies to the questions raised during the dialogue.

B. Positive aspects

3. The Committee welcomes the signing, on 7 September 2006, of the ceasefire between the Government and the National Liberation Forces, which ended the armed conflict that has ravaged Burundi for almost 13 years.

4. The Committee takes note of the statement made by the delegation of the State party concerning the planned revision of the Criminal Code, and its intention to include in the Code provisions criminalizing acts of torture and other cruel, inhuman or degrading treatment, including violence against women and children. The Committee also welcomes the delegation's announcement that the Code of Criminal Procedure will be reviewed in 2007.

5. The Committee welcomes the establishment of the Ministry of Solidarity, Human Rights and Gender, the Government Commission on Human Rights and the Centre for the Promotion of Human Rights and the Prevention of Genocide.

6. The Committee takes note of the announcement made by the delegation that the State party plans to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

7. The Committee welcomes the announcement by the delegation of the State party concerning the recent ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, as well as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

C. Subjects of concern and recommendations

8. While it welcomes with satisfaction the planned revision of the Criminal Code, which should contain a definition of torture, as announced by the delegation of the State party, the Committee is concerned at the lack of provisions in the Criminal Code in force containing an explicit definition of torture and criminalizing torture, in accordance with articles 1 and 4 of the Convention. The Committee is also concerned at the lack of clarity with regard to the status of the Convention in Burundi's domestic law, and the fact that the Convention is not invoked before the competent judicial and administrative authorities (arts. 1 and 4).

The State party should take urgent measures to include in its Criminal Code a definition of torture that is in conformity with article 1 of the Convention, as well as provisions criminalizing acts of torture and imposing criminal penalties proportionate to the gravity of the acts committed. The State party should also clarify the status of the Convention in its domestic law in order to enable all persons who claim to have been subjected to torture to invoke the Convention before the competent judicial and administrative authorities.

9. While it welcomes the planned reform of Burundi's judicial system, which was announced by the delegation of the State party, the Committee notes with concern that the current provisions of the Code of Criminal Procedure relating to police custody do not explicitly refer to the notification of rights, including the presence of a lawyer from the first hours in police custody and the medical examination of persons held in police custody. The Committee is also concerned at the lack of provisions on legal aid for disadvantaged persons. Moreover, the Committee is concerned at the length of police custody, which can last as long as 14 days, a period that is not in keeping with the generally accepted international norms on the subject.

Finally, the Committee is deeply concerned at reports that there have been several hundred cases of illegal detention owing to the fact that persons were held in police custody longer than the period authorized by law (arts. 2 and 11).

The State party should amend the provisions of the Code of Criminal Procedure relating to police custody in order to ensure the effective prevention of violations of the physical and mental integrity of persons held in police custody, including by guaranteeing their right to habeas corpus, the right to inform a close relation and the right to consult a lawyer and physician of their choice or an independent physician during the first hours in police custody, as well as access to legal aid for the most disadvantaged persons.

The State party should, in addition, bring the practice of pretrial detention into conformity with the international standards relating to a fair trial and should ensure that the trial takes place within a reasonable time.

10. The Committee is alarmed at reports that torture is a widespread practice in the State party. According to these reports, which were not challenged by the delegation of the State party, several hundred cases of torture were registered between July 2005 and July 2006. Moreover, the Committee is deeply concerned at reports received concerning a high number of forced disappearances, arbitrary arrests and incommunicado detentions, the main perpetrators of which are allegedly officials of the National Intelligence Service. In this regard, the Committee is concerned at the dual mandate of the National Intelligence Service, which is responsible for State security and is also active in criminal investigation, since this entails the risk that the Service might be used as a means of political repression (art. 2).

The State party should take effective legislative, administrative and judicial measures to prevent all acts of torture and all ill-treatment in any territory under its jurisdiction, including by ensuring that military personnel are not in any way involved in the arrest and detention of civilians. The State party should take steps, as a matter of urgency, to bring all places of detention under judicial control and to prevent its officials from making arbitrary arrests and engaging in torture. It should also include in its domestic legislation a provision clearly stipulating that an order from a superior officer or a public authority may not be invoked as a justification of torture.

Moreover, the State party should clarify, as a matter of urgency, the mandate of the National Intelligence Service within the framework of the ongoing reform of the judiciary in order to prevent any use of the Service as a means of political repression and ensure that its officials do not engage in criminal investigation.

11. The Committee is alarmed at reports of large-scale sexual violence against women and children by State officials and members of armed groups, as well as at the systematic use of rape as a weapon of war, which constitutes a crime against humanity. In this regard, according to information received, a large number of victims of rapes were identified between October 2005 and August 2006. Moreover, the Committee is deeply concerned at the apparent impunity

enjoyed by the perpetrators of such acts. The Committee is also concerned at the extrajudicial or amicable settlement of rape cases, including by the administrative authorities, when emphasis is placed on practices such as marriage between rapist and victim (arts. 2, 4, 12 and 14).

The State party should take vigorous measures to eliminate the impunity enjoyed by the perpetrators of acts of torture and ill-treatment, whether they are State officials or non-State actors; conduct timely, impartial and exhaustive inquiries; try the perpetrators of such acts and, if they are found guilty, sentence them to punishment commensurate with the gravity of the acts committed; and provide adequate compensation to the victims. Moreover, the State party should guarantee that victims have access to the means required for their fullest possible rehabilitation.

The State party should take the necessary measures to include in its Criminal Code a provision criminalizing acts of violence, including domestic violence and sexual violence, and especially rape, in accordance with article 4 of the Convention.

12. The Committee is concerned at the judiciary's de facto dependence on the executive, which poses a major obstacle to the immediate institution of an impartial inquiry when there are substantial grounds for believing that an act of torture has been committed in any territory under its jurisdiction. In this regard, the Committee is concerned at the decision of the Attorney-General overruling the Supreme Court's decision to release on bail the seven persons, including the former transitional President, Mr. Domitien Ndayizeye, who were being held for attempting a coup.¹ The Committee is also concerned at reports that several of the detainees have been tortured. Lastly, the Committee is concerned at the fact that the Attorney-General is able, in certain circumstances, to influence judicial decisions (arts. 2 and 12).

The State party should adopt effective measures to guarantee the independence of the judiciary in accordance with the relevant international norms. The State party should also conduct an immediate and impartial inquiry pursuant to reports that several of the persons detained for allegedly attempting a coup were subjected to torture. The State party should also fulfil its obligation to respect the decisions of the Supreme Court.

13. The Committee takes note of the delegation's announcement that the State party intends to raise the age of criminal responsibility from 13 to 15 years. The Committee is nevertheless concerned at the absence of a juvenile justice system, and at the fact that children are often subject to the same procedures as adults. In this regard, the Committee notes with concern that a child accused of a criminal offence is obliged to wait for a very long time before being tried and that the length of pretrial detention for children often exceeds the length of the maximum prison terms that they could receive if found guilty (art. 2).

¹ Report of the Secretary-General to the Security Council on the United Nations Operation in Burundi (UNOB), S/2006/842, paras. 15-18, 25 October 2006.

The State party should take the necessary measures to raise the minimum age of criminal responsibility in order to bring it into line with the generally accepted international norms on the subject. The State party should also guarantee the proper functioning of a juvenile justice system by treating minors in a manner appropriate to their age, in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (the Tokyo Rules).

14. The Committee takes note of the Asylum Bill, prepared with the assistance of the Office of the United Nations High Commissioner for Refugees, which establishes a national commission for refugees with the authority to provide refugees and asylum-seekers with legal and administrative protection. The Committee also takes note of the statement by the delegation that only refugees and asylum-seekers wishing to return voluntarily to their country of origin are invited to do so. The Committee is nevertheless concerned that in June 2005, some 8,000 Rwandan asylum-seekers were returned to their country of origin. Moreover, the Committee is concerned that, since the State party does not have an extradition system, asylum-seekers or refugees from Rwanda and the Democratic Republic of the Congo could be returned to their countries of origin even though they risk being subjected to torture (art. 3).

The State party should take legislative and any other necessary measures to prohibit the expulsion, return or extradition of persons to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture, in accordance with article 3 of the Convention. The State party should also guarantee absolute respect for their physical and mental integrity. In addition, the State party should take the necessary measures to adopt legislation on the protection of stateless persons in order to protect them from expulsion, return or extradition.

15. The Committee notes that Burundi makes extradition contingent on the existence of an extradition treaty. The Committee is nevertheless concerned by the fact that the State party, when it receives a request for extradition from another State party with which it has no extradition treaty, does not invoke the present Convention as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention (art. 8).

The State party should take appropriate legislative and administrative measures to ensure that the present Convention can be invoked as a legal basis for extradition in respect of the crimes enumerated in article 4 of the Convention, when it receives a request for extradition from another State party with which it has no extradition treaty, while at the same time observing the provisions of article 3 of the Convention.

16. The Committee is concerned at the inadequacy of training for law enforcement personnel, which fails to focus on the elimination and prevention of torture. Moreover, the numerous allegations of acts of torture and cruel, inhuman or degrading treatment received by the Committee testify to the limited scope of such training (art. 10).

The State party should:

- (a) Organize regular training for law enforcement personnel, including police and prison administration staff, in order to ensure that they all have a thorough understanding of the provisions of the Convention and are aware that violations are not acceptable and will be investigated, and that the perpetrators are liable to prosecution. All such personnel should be given specific training in methods of detecting torture. This training should also be accessible to physicians, lawyers and judges;**
- (b) Prepare a manual listing methods of questioning that are prohibited and contrary to the Standard Minimum Rules for the Treatment of Prisoners, as well as the fundamental principles governing the treatment of prisoners, including the obligation to keep a bound registration book with numbered pages containing information on each prisoner's identity, the reasons for his or her detention and the authority therefore, and the day and hour of his or her admission and release;**
- (c) Ensure that law enforcement personnel and members of the armed forces, as well as the general public, are aware of the prohibition on sexual violence, in particular against women and children;**
- (d) Encourage the involvement of non-governmental organizations active in the field of human rights protection in the training of law enforcement personnel.**

17. The Committee has taken note of the announcement by the delegation of the State party that the Government of Burundi has obtained assistance from the European Union in improving conditions of detention and bringing them into line with international standards. However, the Committee remains deeply concerned at the appalling detention conditions prevailing in Burundi, which amount to inhuman and degrading treatment. Such conditions include overcrowding, lack of food and medical care that puts lives at risk, poor hygiene and a shortage of material, human and financial resources. The treatment of prisoners remains a matter of concern for the Committee, in particular the fact that minors and women are not segregated from adults and men respectively, and that those awaiting trial are not segregated from convicted prisoners, except in Ngozi prison, where the men's quarters are separate from the women's and children's quarters (arts. 11 and 16).

The State party should adopt practices that are in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners. It should also take immediate steps to reduce overcrowding in prisons, including through the release of first-time offenders or suspects held in connection with petty offences, particularly if they are under 18 years of age, and the construction of new prison facilities.

The State party should also ensure that minors and women are segregated from adults and men respectively, and that those in pretrial detention are segregated from convicted prisoners. The State party should also ensure that women prisoners are guarded exclusively by female prison staff.

18. The Committee is deeply concerned about the widespread sexual violence against women and children, particularly in places of detention (art. 11).

The State party should establish and promote an effective mechanism for receiving complaints of sexual violence, including in custodial facilities, investigating these complaints and providing victims with psychological and medical protection and care. The State party should consider adopting a national plan of action to eradicate violence against women and children.

19. The Committee is concerned at the lack of systematic and effective monitoring of all places of detention, notably through regular unannounced visits by national inspectors and a mechanism for legislative and judicial monitoring. The Committee is also concerned at reports that non-governmental organizations have limited access to places of detention (art. 11).

The State party should consider establishing a national system to monitor all places of detention and follow up on the outcome of such systematic monitoring. It should also ensure that forensic doctors trained in detecting signs of torture are present during such visits. The State party should also strengthen the role of non-governmental organizations in this process by facilitating their access to places of detention.

20. The Committee is deeply disturbed at reports of the murder of several people suspected of being supporters of the National Liberation Forces between November 2005 and March 2006, including Ramazani Nahimana, Jean-Baptiste Ntahimpereye and Raymond Nshimirimana. According to information received, those responsible for the murders are agents of the National Intelligence Service (art. 12).

The State party should inform the Committee in writing of steps taken to institute a prompt and impartial investigation of these murders and to punish the perpetrators, in accordance with article 12 of the Convention.

21. The Committee takes note of the negotiations under way between the State party and the United Nations with regard to the implementation of the recommendation of the assessment mission dispatched by the Secretary-General to Burundi in May 2004, adopted by the Security Council in resolution 1606 (2005) and aimed at creating a truth commission of mixed composition and a special chamber within Burundi's court system. The Committee is nevertheless concerned at the absence of impartial inquiries to establish the individual responsibility of perpetrators of acts of torture and cruel, inhuman or degrading treatment, a situation that fosters a general climate of impunity. The Committee is also concerned at the absence of any measures to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation following the lodging of a complaint or the provision of evidence, as a result of which there have been very few complaints of acts of torture or cruel, inhuman or degrading treatment (arts. 12 and 13).

The State party should take urgent steps to combat impunity, in particular by establishing transitional justice mechanisms, in particular a truth and reconciliation commission and a special court, as recommended by the Security Council in its resolution 1606 (2005).

The State party should inform all persons under its jurisdiction, clearly and unequivocally, that it condemns torture and ill-treatment. It should take effective legislative, administrative and judicial measures to ensure that all allegations of torture and cruel, inhuman or degrading treatment will be the subject of prompt investigation, followed as appropriate by prosecution and punishment. All persons under suspicion of torture should be suspended from duty for the duration of the inquiry if it would place the investigation at risk for them to remain in their posts. In addition, the State party should take the necessary steps to shed light on the Gatumba massacre and punish those responsible.

22. The Committee is concerned at the system of assessing the appropriateness of prosecution, which leaves State prosecutors free to decide not to prosecute perpetrators of acts of torture and ill-treatment involving law enforcement officers or even to order an inquiry, which is clearly in conflict with the provisions of article 12 of the Convention (art. 12).

The State party should consider introducing an exception to the current system of assessing the appropriateness of prosecution in order to conform with the letter and spirit of article 12 of the Convention and to remove all doubt regarding the obligation of the competent authorities to institute, systematically and on their own initiative, impartial inquiries in all cases where there are substantial grounds for believing that an act of torture has been committed.

23. The Committee takes note of the announcement by the delegation of the State party that a department to assist torture victims has been created within the Ministry of Solidarity, Human Rights and Gender. It also notes the State party's intention to set up a compensation fund for torture victims with assistance from the international community. The Committee is nevertheless concerned at the absence to date of any measures to compensate victims of torture in judicial practice in Burundi. The Committee is also concerned at the failure to provide victims, including child soldiers, with the means to exercise the right to the fullest possible physical, psychological, social and financial rehabilitation (art. 14).

The State party should take urgent steps to facilitate the establishment of a compensation fund for victims of torture. The State party should also provide victims, including child soldiers, with the means to exercise their right to the fullest possible rehabilitation, including physical, psychological, social and financial rehabilitation.

24. While the Committee notes with satisfaction that, under article 27 of the Code of Criminal Procedure, "if it is found or proven that confessions of guilt have been obtained under duress, they are declared null and void", it is disturbed at the Supreme Court ruling of 29 September 2002 to the effect that "a confession is ... merely one piece of evidence that must be corroborated by other evidence", which could lead to the acceptance of confessions obtained under torture provided that they are corroborated by other evidence (art. 15).

The State party should take the necessary legislative and administrative measures to ensure that any statement that is found to have been made as a result of torture may not be directly or indirectly invoked as evidence in proceedings, in accordance with article 15 of the Convention.

25. The Committee notes with concern allegations of reprisals, serious acts of intimidation and threats against human rights defenders, particularly those who report acts of torture and ill-treatment (arts. 2 and 16).

The State party should take effective steps to ensure that all persons reporting torture or ill-treatment are protected from intimidation and from any unfavourable consequences that they might suffer as a result of making such a report. The Committee encourages the State party to strengthen its cooperation with civil society in its efforts to prevent and eliminate torture.

26. The Committee is concerned at reports that hospitalized patients, including children, who are unable to pay their medical expenses are detained in hospitals for several months until they are able to pay. The Committee is alarmed at the conditions under which such patients are held, particularly the fact that they are denied food and medical treatment (art. 16).

The State party should take urgent steps to release persons detained in hospitals, in accordance with article 16 of the Convention and article 11 of the International Covenant on Civil and Political Rights, to which Burundi is a party, and which states that “no one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation”.

27. The Committee encourages the State party to continue to request technical cooperation from the Office of the United Nations High Commissioner for Human Rights in Burundi and from the United Nations Integrated Office in Burundi, which is to replace the United Nations Operation in Burundi on 1 January 2007.

28. The State party should provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity and gender, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials, and on the related investigations, prosecutions and criminal and disciplinary sanctions. Information is further requested on measures taken to compensate and provide rehabilitation services for the victims.

29. The Committee is encouraged to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

30. The State party is encouraged to disseminate widely the reports submitted by Burundi to the Committee and the latter's conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

31. The Committee requests the State party to provide, within one year, information on measures taken in response to the Committee's recommendations, as contained in paragraphs 9, 10, 19, 20, 21, 23 and 25 above.

32. The State party is invited to submit its second periodic report on 31 December 2008.
