



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

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

Second periodic report due in 2008

Burundi^{*}, ^{**}, ^{***}

[18 April 2012]

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- * The initial report submitted by the Government of Burundi was published under symbol CAT/C/BDI/1 and was considered by the Committee at its 730th and 733rd meetings, held on 9 and 10 November 2006 (CAT/C/SR.730 and 733). For its consideration of the report, see document CAT/C/BDI/CO/1.
 - ** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.
 - *** The annex to this report has not yet been submitted by the State party despite numerous requests by the Secretariat.

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I. Introduction

1. From the moment of its creation in 1948, the United Nations has worked to guarantee the basic principles of human rights, namely dignity, liberty and equality.
2. Eliminating torture was then one of the main challenges to overcome in order to ensure adequate protection for all against torture and other cruel, inhuman or degrading treatment or punishment. Universally applicable standards were adopted and then needed to be enshrined in international declarations and conventions. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations General Assembly on 10 December 1984 and entered into force on 26 June 1987; 26 June is now the International Day in Support of Victims of Torture.
3. The Convention requires ratifying States to take substantive measures to prevent torture within their borders and prohibits them from returning anyone to their country of origin if they run the risk of being tortured there. The Convention established the Committee against Torture, which is responsible for its implementation in practice and to which all signatory States must report on their treatment of this international instrument in domestic law.
4. Burundi ratified the Convention on 31 December 1992. It submitted its initial report to the Committee in accordance with article 19 of the Convention, and presented it in November 2006 – 13 years late as Burundi was going through a sociopolitical crisis that prevented it from fulfilling its obligations to the Committee against Torture. The dialogue between the Committee and the Burundian delegation resulted in conclusions and recommendations for Burundi to implement in order to address the Committee's concerns.
5. It is with that in mind that Burundi has now drafted the first of its periodic reports on the Convention. It deals with the Committee's recommendations article by article; in addition, a validation workshop was held to enable the interministerial drafting team to include the concerns and recommendations of Burundian civil society and of international NGOs working in Burundi.
6. This report is in four parts: an introduction, general information on Burundi, implementation of the Committee's recommendations and a conclusion.
7. The report was drafted with financial and material support from the Swiss cooperation agency, the OHCHR Burundi Office and the United Nations Integrated Office in Burundi (BINUB).

II. General information

A. Description of Burundi

Physical

8. Burundi is a central African country and has just joined the East African Community. It is a landlocked country, with a surface area of 27,834 km², 27,000 km² of which is land. To the north lies Rwanda, to the south and east the United Republic of Tanzania, to the west the Democratic Republic of the Congo. Burundi is divided into 17 provinces, 129 municipalities and 2,908 *collines*. It has a tropical climate with two main seasons, one long rainy season and a dry season of just over three months.

9. The language spoken by the whole population and used in primary education is Kirundi. The language of administration is French. Other languages, such as English and Swahili, are learned in school and spoken by a small portion of the population.

10. The latest population census (2008) put the population at 8,038,618, of which 4,110,751 (51 per cent) were women. The capital, Bujumbura, is the most densely populated city. The population of Burundi is very young, with children and young people accounting for 60 per cent. The population density is 297 per km² and Burundi has:

- An annual demographic growth rate of 3 per cent;
- A fertility rate of 6.3 children per woman;
- Life expectancy at birth of less than 44 years.

According to the Constitution, Burundi is a secular country. Freedom of religion is guaranteed and accordingly, the Catholic, Protestant and Muslim faiths are accepted.

Political

11. Before colonization, Burundi was a monarchy, ruled by “divine right” by the Ganwa dynasty. It was colonized by Germany before the First World War, and after the Second World War by Belgium as a mandated trusteeship territory, until independence on 1 July 1962. Not long after independence, Burundi went through a prolonged period of recurring internal crises, including:

- The assassination on 13 October 1961 of Prince Louis Rwagasore, hero of national independence;
- A succession of fratricidal crises and civil wars of a genocidal nature in 1965, 1969, 1972, 1988, 1991 and 1993;
- These culminated in the assassination, on 21 October 1993, of the first democratically elected President, Ndadaye Melchior, hero of democracy in Burundi. After that, Burundi was plunged into a long civil war lasting more than 10 years, which ended in a first phase of peace with the signing of the Arusha Peace and Reconciliation Agreement for Burundi on 20 August 2000, followed by a 36-month transition divided into two periods of 18 months each;
- During the second period of transition, the keynote of the second phase was the signing of the political and ceasefire agreements between the Government of Burundi and the former armed political movements and parties, the most decisive of these being the political agreement and the Forces Technical Agreement between the Government and the Conseil national pour la défense de la démocratie-Forces pour la défense de la démocratie (CNDD-FDD) on 16 November 2003. This led to the latter’s admission, having transformed itself into a political party, to the country’s institutions (executive, parliament, diplomatic corps, and local and parastatal administrations). This process culminated in the adoption by referendum, on 18 March 2005, of a Constitution inspired by the principles of balance set forth in the Arusha Agreement, and the holding of free, transparent and democratic elections in June 2005, which established the institutions that now run the country. Even the last remaining armed political movement, the Parti pour la libération du peuple Hutu-Front national de libération (PALIPEHUTU-FNL), has now laid down its weapons and is participating in the national institutions.

Economic and social

12. Until 1992 Burundi enjoyed sustained growth, with estimated annual rates of 4.3 per cent on average between 1980 and 1991. The budget deficit was less than 5 per cent of

GDP and foreign aid averaged US\$ 300 million. From 1.9 per cent in 1992, the inflation rate rose to 31.1 per cent in 1997, falling to 24.3 per cent in 2000, 8.3 per cent in 2004 and 2.7 per cent in 2007. Since 1993, when the sociopolitical crisis began, the nation's wealth has shrunk by an average of 3 per cent per year and in 2002 the overall fall in production was put at more than 20 per cent. Development assistance to Burundi, chiefly humanitarian aid, was more than US\$ 300 million in 1999. Thus the Burundian economy is still essentially founded on arable and livestock farming, in which archaic methods such as hoeing and prestige breeding are still in use. Agriculture is at the mercy of vagaries of climate that do not help production, and Burundi is one of the five poorest countries in the world.

B. Legislative and institutional human rights framework

1. Government mechanism for the promotion and protection of human rights

13. As regards human rights, ever since independence Burundi has been seen as a State in which massive violations constantly occur. The repeated crises mentioned above, which have cast a pall over the country and claimed many victims, are evidence of this. Until the early 1990s there were no State institutions to explicitly address human rights issues. Only with the wave of democratization that washed over African institutions in the 1990s, and above all in response to the demands of donors, did attention begin to be paid to human rights questions. In April 1992, for the first time in Burundi, a Human Rights Centre was set up under the Ministry of Justice. Later, this became the Centre for the Promotion of the Rights of the Human Person and Prevention of Genocide and was moved to the Ministry with responsibility for human rights.

14. In July 1993, after elections that June, a Ministry of Welfare, Human Rights and the Advancement of Women, headed by a woman, was set up (Decree No. 1/100/2002 of 10 July 1993). Since 1993 there has always been a Ministry with responsibility for human rights among the ministerial departments.

15. The responsibilities of this Ministry include:

- Designing government policy on human rights and helping implement it;
- Promoting and defending human rights in cooperation with the other ministries and public and private organizations concerned;
- Coordinating human rights activities;
- Designing and promoting a programme of education in peace, human rights, tolerance and democratic values, in cooperation with other partners;
- Designing and implementing a programme for the prevention of genocide and the eradication of the ideology of genocide, in cooperation with the other national and international partners.

16. Although not in conformity with the Paris Principles, a Governmental Commission on Human Rights, which will become the Independent National Commission on Human Rights, was set up in 2000 by Decree No. 120/VP1/002/2000 of 11 May 2000.

2. Institutional and legislative framework

17. Burundi has ratified and/or acceded to a number of regional and international human rights instruments. Most of these instruments form an integral part of the Burundian Constitution of 18 March 2005 under article 19, which stipulates: "The rights and duties proclaimed and guaranteed by, inter alia, the Universal Declaration of Human Rights, the international covenants on human rights and the rights of peoples, the Convention on the

Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi. These fundamental rights may not be subject to any restriction or derogation, except in certain justifiable circumstances in the general interest of the protection of a fundamental right.”

3. Status of ratification of international legal instruments by Burundi and submission of reports

18. Burundi has ratified numerous human rights conventions. The following may be mentioned by way of illustration:

(1) The International Covenant on Civil and Political Rights, which was adopted on 16 December 1966, entered into force on 23 March 1976 and was ratified by Burundi on 14 March 1990. The periodic report is currently being prepared;

(2) The African Charter on Human and Peoples’ Rights, which was adopted on 27 June 1981 and ratified by Burundi on 28 July 1989. No report on implementation has so far been produced; the initial report is currently being prepared;

(3) The Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted on 9 December 1948 and entered into force on 12 July 1996. Burundi acceded to it on 22 July 1996. No report to date;

(4) The OAU (AU) Convention Governing the Specific Aspects of Refugee Problems in Africa, which was adopted on 10 September 1969 and entered into force on 20 June 1974. It was ratified by Burundi on 31 October 1975. No report to date;

(5) The Convention on the Political Rights of Women, which was adopted on 20 December 1952 and entered into force on 7 July 1954. It was ratified by Burundi on 31 December 1992. No report to date;

(6) The Convention on the Rights of the Child, which was adopted on 20 November 1989 and entered into force on 2 September 1990. The initial report was produced in 1997 and presented to the Committee on the Rights of the Child. Burundi’s follow-up to the Committee’s conclusions, recommendations and observations is described in the first periodic report, which has been available since 2005 and has been transmitted to the Committee;

(7) Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), which was adopted on 8 June 1977 and entered into force on 7 December 1978. It was ratified by Burundi on 6 November 1993. No report to date;

(8) Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), which was adopted on 8 June 1977 and entered into force on 7 December 1978. It was ratified by Burundi on 6 November 1993. No report to date;

(9) The International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted on 21 December 1965 and entered into force on 4 January 1969. It was ratified by Burundi on 12 September 1977. No report to date;

(10) The Convention on the Elimination of All Forms of Discrimination against Women, which was adopted on 18 December 1979 and entered into force on 3 September 1981. It was ratified by Burundi on 4 April 1991. The initial report was produced in January 2001 and presented to the Committee. The follow-up to the conclusions, observations and recommendations is described in the first periodic report, which was produced in November 2005 and presented in April 2008;

(11) The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, concluded at Ouagadougou on 10 June 1998. It was ratified by Burundi on 27 June 2000;

(12) The African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa in July 1990. It was ratified by Burundi on 11 August 2000. No report to date;

(13) The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted by the United Nations General Assembly on 26 November 1968. Burundi acceded to the Convention on 16 June 2000. No report to date;

(14) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, which was ratified by Burundi by Act No. 1/15 of 18 January 2005. No report to date.

4. Status of dissemination of the Convention and methodology for the preparation of the report

19. The Convention has not yet been translated into the national language. However, all ministerial departments, through their human rights focal points, are fully informed about the Convention. During the sessions organized by the Ministry with responsibility for human rights, the human rights focal points received training on the main texts and conventions that Burundi is party to. This training has also been offered to other civil society groups that play an important role in promoting and protecting human rights, and a team set up to support the drafting of reports for several conventions has already received training in this area.

20. Pending the establishment of a standing interministerial committee for the drafting of initial and periodic country reports on the conventions ratified by Burundi, a 17-member ad hoc interministerial body drawn from the Office of the First Vice-President of the Republic and the ministries with responsibility for human rights, foreign affairs, justice, the interior, labour and social security, and good governance has been set up. It is this body that, in cooperation with national and international human-rights partners such as civil society, national and international NGOs, certain United Nations agencies, the OHCHR Burundi office and BINUB, drafted Burundi's report on the basis of existing documentation on the subject and discussions and surveys in the field.

21. In order to facilitate travel for the members of this body, the Swiss cooperation agency, through the OHCHR Burundi office provided resources for communications and mobility. This is an important example of cooperation, solidarity and support that deserves to be highlighted.

22. Before adoption and referral to the Ministry of Foreign Affairs, this report was the subject of broad consultation with all these partners in focused interviews and at a national validation workshop that took place in December 2009.

III. Status of implementation of the Committee's recommendations

Article 1

Definition of torture

23. The right not to be subjected to torture is affirmed in the Universal Declaration of Human Rights, article 5: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

24. Act No. 1/10 of 18 March 2005 on the Constitution of the Republic of Burundi includes a definition of torture and states in article 25 that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

25. The new revised Criminal Code promulgated on 22 April 2009 explicitly includes a definition of torture consistent with article 1 of the Convention.

26. Provisions criminalizing acts of torture and imposing proportionate criminal penalties are set forth in articles 205 to 209 in the new Criminal Code.

27. Sentences under these articles range from 10 years’ imprisonment to life imprisonment, depending on aggravating circumstances.

28. The preliminary draft code of criminal procedure should be adopted and harmonized with the Criminal Code now in force, so as to enable anyone who claims to have been subjected to torture to apply to the courts to punish the perpetrator.

29. Note that, before the new Criminal Code was adopted, torture was punished as an offence related to assault and battery and actual bodily injury under articles 146 to 150 of the old Criminal Code. Now the definition is clear and the penalties for offences specified in articles 205 to 209 are minimum sentences.

Article 2

Legislative, administrative and judicial measures

30. In the draft code of criminal procedure, the Government of Burundi provides for the establishment of a compensation fund for torture victims. Perpetrators are, for the most part, State officials; the State must therefore compensate victims and may take indemnity action against the officials when they cannot provide adequate compensation for the victims, who are entitled to the fullest possible physical, psychological, social and financial rehabilitation.

31. Torture is not an offence prosecuted on complaint, but rather one that the competent authorities are obliged to prosecute *ex officio*, as soon as they receive information to suggest that acts of torture have been committed.

32. The national and international texts that have been adopted contain more than enough information for a judge to be able to rule on a case of torture. The provisions are directly applicable and can be invoked before the courts since there is no statutory exception.

Article 3

Expulsion, refoulement and extradition

33. The legal provisions relating to expulsion, refoulement and extradition are set forth in Burundian legislation:

- Act No. 1/03 of 4 February 2008, as amended by Act No. 1/32 of 13 November 2008 and implementing Ordinance No. 530/442 of 4 April 2009. This Act, as amended, addresses the concerns of asylum seekers including stateless persons. Articles 19, 78 and 79 of the Act prohibit the refoulement or expulsion of asylum seekers to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion;

- Close collaboration with the Office of the United Nations High Commissioner for Refugees (UNHCR) in Burundi regarding the treatment of asylum seekers, which reinforces the Convention.

In addition, Burundi has signed two extradition treaties as part of its bilateral and multilateral cooperation – one with the United Republic of Tanzania on 27 April 1988, the other with the Economic Community of the Great Lakes Countries (CEPGL), comprising Rwanda, Democratic Republic of the Congo and Burundi. The treaty signed on 27 April 1988 with the United Republic of Tanzania stipulates that in criminal cases the parties undertake to grant the extradition of anyone accused or convicted as a principal or accomplice in 1 of the 30 offences listed in the agreement, including torture.

34. Article 4 of the treaty stipulates that the request for extradition shall be made by the Ministry of Foreign Affairs of the requested State.

35. Furthermore, a draft treaty on judicial assistance and extradition is currently being developed by legal experts of the Tripartite Plus Joint Commission (Democratic Republic of the Congo, Rwanda and Uganda, plus Burundi). In this draft treaty, perpetrators of torture are listed among the people who can be extradited.

36. On the question of the refoulement of Rwandans, in August 2009 more than 300 Rwandans fled their country and arrived in Kirundo and Ngozi, in the north of Burundi. Based on personal contacts between Rwandan and Burundian neighbours, this sizeable group settled among the Kirundo population, mainly in the municipality of Bugabira.

37. Some people from this group have sought asylum. The Ministry of the Interior carried out a case-by-case analysis and in late October 2009 the Advisory Commission on Foreigners and Refugees declared the majority of these asylum applications unfounded. Therefore, 103 members of the group returned to Rwanda and no one was granted asylum.

38. The Government, through the Ministry of the Interior, plans to contact those who are scattered among the population in order to listen to them, support them and, when possible, return them to their homes.

39. Burundi also hosts more than 2,000 Congolese refugees who are currently in Bwagiriza refugee camp in the province of Ruyigi, where they are being supported by the UNHCR Burundi office.

Article 4 Criminalization of torture

40. At the international level, to completely discourage torture Burundi has ratified the Convention and has developed domestic legal texts to prevent and punish acts of torture, notably:

- The Constitution of Burundi of 18 March 2005, article 19. International instruments ratified by Burundi, including the Convention against Torture, are an integral part of the Constitution;
- The new Criminal Code of Burundi, promulgated on 22 April 2009, prescribes penalties in articles 205 to 209. In this Code, sentences for acts of torture range from 10 years' to life imprisonment, depending on aggravating circumstances. From a legal point of view, therefore, there has been significant progress in comparison to the previous Criminal Code (arts. 118 to 150), which treated acts of torture like other ordinary law offences such as assault and battery and bodily injury.

Article 5

Territorial jurisdiction

41. Under article 4, the State party is required to define torture and other cruel, inhuman or degrading treatment or punishment as criminal offences.

42. Under article 5, the State party is further obliged to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in its territory or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the victim is a national of that State if the State considers it appropriate.

This is normal jurisdiction.

43. Under article 5, paragraph 2, each State party shall take the necessary measures to establish its jurisdiction where the alleged offender is under its jurisdiction and it does not extradite them pursuant to article 8. This is universal jurisdiction.

44. Under paragraph 3, the Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

45. As a signatory State, Burundi must establish jurisdiction in order to meet its obligations under the Convention.

46. What legislative measures have been taken in Burundi, then, to put into effect the provisions of article 5 of the Convention?

47. Under article 25 of Act No. 1/10 of 18 March 2005 on the Constitution of Burundi, “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”.

48. Act No. 1/05 of 22 April 2009 amending the Criminal Code includes the concept of torture for the first time and provides for prison sentences ranging from 10 years to life.

49. Under article 9 of the new Criminal Code, “offences committed on board or against boats, ships, trains or aircraft registered in Burundi or registered abroad and operating in Burundi shall be punished in accordance with Burundi criminal law”.

50. Under article 10:

“Any crime or offence committed outside the national territory by a Burundian or by a foreigner shall, subject to extradition agreements, be punishable under Burundian criminal law if the perpetrator is in Burundi or if the victim is of Burundian nationality and the offence is punishable under the law of the country where it was committed.

“For offences other than those relating to the counterfeiting of the seals of State and national currency, or to acts of torture, terrorism, genocide, crimes against humanity and war crimes, prosecution and trial of offences committed abroad are subject to submission of a complaint by the aggrieved party or an official complaint from the Government of the country where the offence was committed.

“The jurisdiction of Burundian courts in respect of genocide, crimes against humanity and war crimes does not depend on whether such crimes are punishable under the law of the country where they were committed or on extradition agreements.”

51. Thus, in addition to jurisdiction in the classic sense, Burundi law allows the exercise of universal jurisdiction for acts of torture committed outside Burundi.

52. The victim must, however, be of Burundian nationality and the acts constituting the offence must be punishable under the law of the country where the offence was committed.

53. The general thrust of the Convention being to break down and eliminate impunity for perpetrators of acts of torture and their accomplices, Burundi, like every other State party, is obliged to either try or extradite perpetrators, particularly as any State party that has ratified a convention undertakes to protect any individual on its territory and has an obligation to apply that convention in good faith.

54. This means that a suspect who is on Burundian territory and has not been extradited to a State with jurisdiction under the Convention should be prosecuted without regard to their nationality or the victim's nationality or the place where the offence was committed.

55. Thus Burundi has made significant progress in this regard, even though improvements are still needed to bring it fully into line with the Convention.

Article 6

Arrest and detention of persons charged with acts of torture

56. According to article 6, paragraph 1:

- The State party shall take steps to ensure the detention and presence of anyone suspected of having committed acts of torture on its territory;
- Custody and other measures shall be as provided in national law;
- They may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

57. Under paragraph 2, the State shall immediately make a preliminary inquiry into the facts.

58. Under paragraph 3, any person so detained may communicate with the nearest appropriate representative of the State of which they are a national, or, in the case of a stateless person, with the representative of the State where they usually reside.

59. Under paragraph 4, the State is obliged to inform any States referred to in article 5 that may wish to exercise their jurisdiction.

60. Under article 6, Burundi is required to detain anyone suspected of having committed acts of torture and to take any other legal measures necessary to ensure their presence, in accordance with the law.

61. Under article 39, paragraphs 1 and 2, of the Constitution, "no one shall be deprived of their liberty except in accordance with the law. No one shall be charged, arrested, detained or tried except under a law promulgated before the acts of which they are accused took place."

62. Article 40 of the Constitution provides that "anyone accused of an unlawful act shall be presumed innocent until their guilt has been legally established in a public hearing during which they have been provided with all requisite guarantees of due process".

63. Article 71 of the Code of Criminal Procedure provides that the accused may not be placed in pretrial detention unless there is sufficient proof of guilt and the acts of which they are accused appear to constitute an offence punishable by law with at least 1 year's imprisonment.

64. The draft bill to amend the Code of Criminal Procedure may shorten the time limits presently applied to investigation and police custody. In addition, whereas at present the criminal file is referred to the public prosecutor immediately after the report on custody, it is suggested that the prosecutor should be informed using the speediest means of communication.

65. The State of Burundi has made remarkable progress in incorporating some of the relevant provisions of the Convention into its legal system, and it must now make a greater effort in the near future to fill the odd remaining gaps in order to be able to try acts of torture allegedly committed by a suspect present in any territory under Burundian jurisdiction, and also take all legal measures necessary to ensure their detention and their presence at trial, in accordance with article 6 of the Convention.

Article 7

Trial or extradition of persons suspected of acts of torture

66. Generally speaking, the Constitution of Burundi fully incorporates basic human rights instruments, as can be clearly seen from article 19, whereby:

“The rights and duties proclaimed and guaranteed inter alia by the Universal Declaration of Human Rights, the international human rights covenants, the African Charter on Human and Peoples’ Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child shall form an integral part of the Constitution of the Republic of Burundi.

“These fundamental rights may not be subject to any restriction or derogation, except in justifiable circumstances in the general interest or for the protection of a fundamental right.”

67. In this way the Government of Burundi has shown its firm commitment to human rights, taking account of article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which establish that no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.

68. As to the trial or extradition of those suspected of acts of torture (Convention, art. 7), since the new Criminal Code now defines torture as an offence and consequently punishable under Burundian law, anyone accused of torture may be tried under articles 8, 9 and 10 of the Code, subject to any extradition agreements Burundi may have signed with other countries:

- Article 8 states: “Any offence committed on Burundian territory by a Burundian or a foreigner shall, subject to international conventions on diplomatic and consular immunity, be punishable under Burundian criminal law. Diplomatic and consular immunity do not apply in cases of genocide, crimes against humanity or war crimes.”
- Article 9 states: “Offences committed on board or against boats, ships, trains or aircraft registered in Burundi or registered abroad and operating in Burundi shall be punishable in accordance with Burundian criminal law.”
- Article 10 states: “Any crime or offence committed outside the national territory by a Burundian or by a foreigner shall, subject to extradition agreements, be punishable under Burundian criminal law if the perpetrator is in Burundi or if the victim is of Burundian nationality and the offence is punishable under the law of the country where it was committed. For offences other than those relating to the counterfeiting

of the seals of State and national currency, or to acts of torture, terrorism, genocide, crimes against humanity and war crimes, prosecution and trial of offences committed abroad are subject to submission of a complaint by the aggrieved party or an official complaint from the Government of the country where the offence was committed.

69. “The jurisdiction of Burundian courts in respect of genocide, crimes against humanity and war crimes does not depend on whether such crimes are punishable under the law of the country where they were committed or on extradition agreements.”

70. In this regard, Burundi has signed extradition agreements with some countries, as follows:

- Convention on Extradition signed with the United Republic of Tanzania on 27 April 1988.

71. In the Convention signed with Tanzania, torture is not explicitly listed or identified among the offences for which extradition may be granted. However, since Burundian law deems it an offence it must be treated as grounds for extraditing anyone suspected of torture:

- Convention on extradition signed with the Economic Community of the Great Lakes Countries (CEPGL), which comprises Burundi, Rwanda and the Democratic Republic of the Congo;
- Draft convention on judicial cooperation and extradition currently being developed by legal experts from the Tripartite Plus Joint Commission (Democratic Republic of the Congo, Rwanda and Uganda, plus Burundi). In this draft, perpetrators of torture are among those who may be extradited.

Article 8

Definition of torture as an offence in extradition treaties

72. The following recommendation has been made under article 8 of the Convention:

- 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 offences under 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;
- The new Criminal Code, like the preliminary draft of the code of criminal procedure, contains new provisions on torture but makes no reference to the principle mentioned by the Committee, to the effect that the Convention may be invoked as a legal basis for extradition. In that regard there has been no legislative or administrative progress, although the prohibition of torture is absolute. The State should treat the Convention as a legal basis for extradition, since it is a party to the Convention.

73. In practice, enquiries to date have not revealed any case of extradition for torture within the strict definition of the term.

Article 9

Mutual judicial assistance between States parties

74. Burundi makes extradition contingent on the existence of an extradition treaty with the requesting State. It is recommended that the State party take legislative and administrative measures to ensure that the Convention can be invoked as a legal basis for extradition.

75. Extradition is not yet covered by specific legislation. There are two extradition treaties, one with the United Republic of Tanzania, the other with CEPGL (Rwanda, Democratic Republic of the Congo and Burundi).

76. A draft convention on judicial cooperation and extradition is currently being developed by legal experts from the Tripartite Plus Joint Commission (Democratic Republic of the Congo, Rwanda and Uganda, plus Burundi).

77. Perpetrators of torture are among those who may be extradited. The new Criminal Code and the preliminary draft of the code of criminal procedure, contain new provisions on torture.

78. No reference is made, however, to the principle mentioned by the Committee, to the effect that the Convention may be invoked as a legal basis for extradition.

79. In that regard there has been no legislative or administrative progress, although the prohibition of torture is absolute. The State should treat the Convention as a legal basis for extradition, since it is a party to the Convention.

80. Certain measures have been taken to combat torture using the Constitution (arts. 21 and 25):

Article 21. Human dignity is respected and protected. Any violation of human dignity is punishable under the Criminal Code.

Article 25. Every woman and man has the right to life, security of person and physical integrity. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment.

81. In addition, the Criminal Code, which has just been amended, is very clear (arts. 205 and 208):

Article 205. Anyone who subjects another person to torture or other cruel, inhuman or degrading treatment shall be liable to 10 to 15 years' imprisonment and a fine of 100,000 to 1 million francs.

Article 208. No exceptional circumstances of any kind, including a state of war or threat of war, internal political unrest or any other public emergency, may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment. An order from a superior officer or a public authority may not be invoked as a justification for torture.

Article 10

Education and information regarding the prohibition against torture

82. The Government of Burundi receives assistance from the United Nations Integrated Office in Burundi (BINUB), Training Unit, Human Rights and Justice Division, which for the last three years has been running courses — including trainer training — for the police, the National Intelligence Service and the Army.

83. Thus there is still no manual on interrogation techniques that are prohibited as contrary to the Standard Minimum Rules for the Treatment of Prisoners. Law-enforcement personnel and the general public are little by little being sensitized to violence against women and children, by means of seminars and conferences on this widespread problem, organized by the Centre for the Promotion of the Rights of the Human Person and Prevention of Genocide, of the Ministry with responsibility for human rights.

84. NGOs play a full and active part in the training of law-enforcement personnel: to name but a few, *Avocats sans frontières* (Lawyers without Borders), RCN Justice et Démocratie (NCR Justice and Democracy) and the Association burundaise pour la protection des droits humains et des personnes détenues (Burundian Association for the Protection of Human Rights and Detained Persons – APRODH), and not forgetting BINUB and the OHCHR Burundi office.

85. Without doubt they have made an invaluable contribution to the training of law-enforcement personnel. However, the State must now devise training and awareness-raising programmes of its own and provide appropriate funding to make it possible to hold regular courses underpinned by a manual on investigation techniques.

86. Awareness-raising workshops for the police and the army have been held in several provinces:

- Cankuzo: 295 police officers (2007–2008);
- Ngozi: 120 police officers (2008–2009);
- Bubanz: 248 soldiers (2008–2009);
- Bujumbura: 152 soldiers (2008–2009).

87. Through the Ministry of Human Rights and Gender, the Government has also organized training workshops in Gitega for provincial and municipal human rights observers from all over the country, and awareness-raising workshops for administrators in the provinces of Ruyigi, Kirundo, Makamba, Bujumbura Rural and Cibitoke.

Article 11

Supervision of interrogation, detention and imprisonment

88. Police custody. The preliminary draft amended code of criminal procedure should contain new provisions to meet the Committee's request:

- The criminal investigation officer must inform the family of the person in custody, or any other interested party, of the action taken and the place of custody;
- Before questioning, the individual is to be informed of all their rights, including the right to remain silent if they are suspected of an offence.

89. The right to speak to a lawyer and a physician of one's choice, or an independent physician, in the first hours of custody, as well as access to legal aid for those with limited means, should be explicitly mentioned in the draft.

90. The Government would like to make provision in the preliminary draft of the code of criminal procedure for assistance of counsel for minors aged under 18, in preliminary inquiries, investigations, prosecutions and trials.

91. According to the Code of Criminal Procedure, the maximum period of custody is seven days, which may be extended once on the authority of the public prosecutor. This is certainly a lengthy period and it should be reduced in the preliminary draft amended code of criminal procedure.

92. There are many reasons why the maximum length of police custody is exceeded, one of them being the difficulties of transport faced by the police officers looking into the offence. It is the same when the time comes to take the accused and the case file from the place of custody to the public prosecutor's office, and the prosecutor faces exactly the same problem when visiting places of detention. It is more serious in the interior, where police stations are a very long way from prosecutors' offices. The Government is grateful for the cooperation of partners such as BINUB, APRODH, Avocats sans frontières and the Burundi League of Human Rights (ITEKA), in accompanying prosecutors in their visits to police cells.

Conditions of detention

93. The Government acknowledges that detention centres are overcrowded. This is due in part to crime levels, which are still high, to the fact that there are not enough prisons, and to the age of the buildings.

94. In order to ease the pressure, the provisions of article 75 of the Code of Criminal Procedure, on the release of prisoners after one year where the charges against them carry a prison sentence of not more than 5 years, will need to be strictly applied. Article 75 states: "The order authorizing pretrial detention is valid for 30 days, including the day of issue. Once this period has elapsed, pretrial detention may be extended by a reasoned decision on a month-by-month basis, for as long as required by the public interest.

95. "However, pretrial detention may not exceed 12 months if the act appears to constitute an offence for which the punishment provided for by law does not exceed 5 years' imprisonment.

96. "Once this (12-month) period has elapsed, the superior of the judge handling the case shall order provisional release at the request of either the person concerned or the prison governor.

97. "If, without good reason, the investigating judge fails to bring the accused before the pretrial detention judge, the investigating judge is liable to disciplinary and possibly criminal sanctions. Extensions shall be ordered in accordance with the conditions and time limits provided for in article 74."

98. A welcome measure was Presidential Decree No. 100/360 of 22 December 2006 on clemency, which made it possible to release some 2,000 convicted prisoners.

99. The Government also understands the need for a special juvenile justice system with specialist courts, and for new prisons, particularly where none exist, i.e., in the provinces of Makamba, Cankuzo, Kirundo, Karuzi, Mwaro, Cibitoke and Bujumbura Rural.

100. The Government regrets that, for example, the police cells of the main town of Makamba province are used for the temporary detention of individuals from other municipalities pending transfer to the prison at Rumonge.

101. The Government received funds from the German cooperation agency GTZ to renovate the central prison in Rutana, which now has wings for men, women and children. There were 300 prisoners there as of 11 November 2009, including 10 women and 3 minors.

102. In those provinces where new police stations have been built with financial support from BINUB, detention conditions are good, as are the police working conditions (Rutana and Makamba provinces).

103. As of 10 November 2009 there were 45 detainees in police custody in Mwaro, including 2 minors aged under 18.

104. On the question of widespread sexual violence against women and children in places of detention, sexual violence in places of detention is a reality. The prison authorities have set up a system to deal with cases of this kind: officers known as “generals” receive victims’ complaints, interview the perpetrators and report to the prison authorities, who then take the decision to place the perpetrators in a punishment cell. This is an administrative measure, and it should be reinforced by criminal proceedings.

Supervision of places of detention

105. The only mechanism for supervision of places of detention in Burundi is purely judicial. The prosecution service is required to inspect places of detention, the police and prisons regularly. In practice inspections are not done regularly because of the lack of transport.

106. There are also no forensic physicians trained in detecting the sequelae of torture. Investigating officers and members of the prosecution service turn to State medical practitioners in order to determine whether torture has taken place.

107. Human rights organizations such as the International Committee of the Red Cross (ICRC), Amnesty International, Christian Action for the Abolition of Torture (ACAT) and ITEKA state that they conduct inspections without any problems.

Article 12

Investigations into acts of torture

108. With regard to investigations into acts of torture:

(1) Proceed to a prompt, impartial and thorough investigation where there are grounds to believe that an act of torture has been committed. Since the promulgation of the new Criminal Code, which defines torture and makes it an offence, no cases of torture have been brought before the national courts;

(2) Domestic provisions on acts of violence. The Criminal Code punishes acts of violence as follows:

- Offences against the person.

Intentional homicide (arts. 210–218)

- Life imprisonment for intentionally causing another’s death or for killing in preparation for, or to facilitate, the commission of another offence (art. 211);
- Same penalty for murder by poisoning (art. 214);
- 1–20 years’ imprisonment and a fine of 100,000–1 million Burundi francs (FBu) for the administration of substances liable to cause death or seriously affect health (art. 215);
- Life imprisonment for transmission of an incurable disease (art. 217).

109. The above penalties are minimum penalties (art. 218).

Intentional bodily injury (arts. 219–223)

- 2–8 months’ imprisonment and/or a fine of FBu 50,000–200,000 (art. 219, para. 1);
- 1 month–2 years’ imprisonment and a fine of FBu 200,000 if the injury is premeditated (art. 219, para. 2);

- 2–10 years' imprisonment and a fine of FBu 50,000–200,000 if the injury results in illness or permanent incapacity to work, loss of function of an organ or serious mutilation, or the injury is to a pregnant woman (art. 220);
- The prison terms under articles 219 and 220 shall be doubled if the injury is to the parent, spouse, or child aged under 18 of the perpetrator, or any other person living in the same house as the perpetrator, or any other relative by blood or by marriage, up to the fourth degree (art. 221);
- 10–20 years' imprisonment and a fine of FBu 100,000–500,000 for mutilation of the body or an organ, etc. (art. 222);
- 5–20 years' imprisonment and a fine of FBu 100,000 if the injury causes death, even where there was no intent to kill (art. 223).

Assault (art. 224)**Abduction (arts. 244–245)**

- Offences against the family.

Abortion (arts. 505–511)**Offences against children (arts. 512–525)**

- 2–5 years' imprisonment and a fine of FBu 10,000–20,000 for inducing a child to commit an unlawful act or an act likely to put their health, morals or development at risk (art. 518);
- 3–5 years' imprisonment and a fine of FBu 100,000–500,000 for the use, procurement or offering of a child for prostitution, for the production of pornographic material or for pornographic performances (art. 519);
- 5–10 years' imprisonment and a fine of FBu 20,000–50,000 for a transaction involving the transfer of a child to another party against remuneration or a consideration of any other kind (art. 520);
- Same penalty for the use of a child in sexual activities against remuneration or a consideration of any other kind (art. 521);
- 3–5 years' imprisonment and a fine of FBu 50,000–100,000 for the use of a child in work likely to harm their health, safety or morals (art. 522).

Offences against marriage (arts. 526–531)

- Adultery (arts. 526–529);
- Polygamy and polyandry (art. 530);
- Extramarital cohabitation (art. 531).

Offences against family morals (arts. 532–537)

- Incest (art. 532);
- Family abandonment (arts. 533–534);
- Domestic violence (arts. 535–537).

Offences against public morals (arts. 538–567)

- 5–15 years' imprisonment and a fine of FBu 50,000–100,000 for rape by means of violence, serious threats or force (art. 555);
- 8 days' imprisonment and/or a fine of FBu 10,000–50,000 for marital rape (art. 554);
- 15–20 years' imprisonment and a fine of FBu 50,000–200,000 for rape of a minor under the age of 18 (art. 556);
- 1 month–2 years' imprisonment and a fine of FBu 100,000–500,000 for sexual harassment (art. 563).

110. The International Conference on the Great Lakes Region (ICGLR) Protocol on the Prevention and Suppression of Sexual Violence against Women and Children has been ratified by Burundi.

111. This is 1 of the 10 protocols that make up the Pact on Security, Stability and Development in the Great Lakes Region, and it addresses the specific needs of women in the region.

112. One of the Protocol's aims is to establish a legal framework to prosecute and punish the perpetrators of crimes of sexual violence. These crimes are not subject to any statute of limitations, and severe penalties are encouraged. Those found guilty must undergo social rehabilitation. If they should flee into a member State, the State concerned has a duty to arrest and extradite them. The Protocol further states that victims must obtain reparation from the perpetrator.

113. The Protocol recommends additional social measures to assist victims.

114. National legislations and strategies need to be aligned with the provisions of the Protocol. An ICGLR model law was drafted in Nairobi in September 2006 to facilitate the member States' work.

Challenges to the suppression of sexual violence

115. The Burundian Government identifies the following challenges to the suppression of sexual violence:

- Some individuals are reluctant to report cases of sexual violence because it has traditionally been taboo in Burundi;
- The length of time taken to complete forensic examinations of the victim;
- Problems adducing evidence;
- A medical examination report can impede an investigation;
- The insolvency of the perpetrators.

116. To address these challenges, the Ministry with responsibility for gender and human rights regularly carries out awareness campaigns to encourage victims of sexual violence to bring a complaint.

117. In 2007, 19 out of the 33 recorded cases of sexual violence, or 57.38 per cent, were brought to trial.

118. In 2008, 30 out of 62 cases, or 48.39 per cent, were brought to trial.

119. In 2007, 7 out of the 21 cases recorded at the Bujumbura court of major jurisdiction, or 33.33 per cent, were brought to trial.

120. In 2008, the same court closed 8 out of the 23 recorded cases, or 34.78 per cent.

121. Between January and August 2009, the Bubanza court of major jurisdiction closed 27 cases of rape.

Article 13

Victim's right to complain

122. Article 13 states that the alleged victim has the right to complain and be protected.

123. Significant and commendable progress has recently been made in Burundi, although numerous shortcomings persist including the delay in revising the Code of Criminal Procedure.

124. Despite this, there are grounds for satisfaction, as the Criminal Code was revised and promulgated on 22 April 2009. The Code unequivocally includes provisions on the criminalization of acts of torture and other cruel, inhuman or degrading treatment or punishment, that delineate and explicitly define torture and make it punishable under criminal law, in accordance with articles 205–209 of the Code.

125. Article 13 of the Convention specifies that the alleged victim has the right to complain and be protected.

126. With the explicit definition of torture and its incorporation and integration into Burundian national criminal law, under which it is now a punishable offence, victims of torture have acquired the right to complain and be protected. The Criminal Code categorizes victims based on whether or not they are minors, on their age, on any aggravating circumstances and on the applicable punishment.

127. No one can disregard or fail to notice the benefits stemming from the integration of torture and provisions on its punishment into the revised Criminal Code of 22 April 2009.

128. By way of example, the training seminars or workshops for officers of the National Police of Burundi, which aim to create a community police force with professional competence in human rights — i.e., one that will protect civilians — have helped improve the conditions of arrest and of police custody.

Article 14

Victim's right to obtain redress

129. This article stipulates the right to adequate redress/compensation and rehabilitation.

130. This matter is still pending because the Code of Criminal Procedure has not yet been revised. As a result, not a single claim for adequate redress/compensation and full rehabilitation has been settled. The only registered case is that of Salvator Nsabiraho, from Kayanza, which has been referred to the prosecution service in Kayanza for investigation, and the three police officers charged have been arrested and are currently being questioned.

131. In theory, given that torture is defined with reference to agents of the State who act on its behalf, it is the State which must make good the harm caused by its agents. The crisis that rocked Burundi for over 15 years did not leave any sector unscathed. The State had promised to establish a compensation fund for victims of torture.

132. As Burundi emerges from the crisis, the State is doing everything it can to establish this fund and swiftly complete the revision of the Code of Criminal Procedure.

133. These two instruments, the Criminal Code and the Code of Criminal Procedure, will provide an essential guarantee of the rights of torture victims and, by extension, a proper administration of justice.

Article 15

Value of statements obtained through torture

134. “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

135. Since the promulgation of the new Criminal Code, there have not been any more cases of statements being obtained through torture.

136. Regarding existing administrative and judicial measures, article 27 of the Code of Criminal Procedure now in force stipulates that “if it is found or proven that confessions of guilt have been obtained under duress, they are declared null and void”; this will be further strengthened by provisions in the preliminary draft that complement the previous dispositions. The preliminary draft stipulates that confessions of guilt and any other information obtained under torture, duress or any other unfair means shall be declared null and void along with any resulting evidence.

137. It also stipulates that the trial court has the authority to declare null and void any part of the proceedings before it.

138. Once these provisions are in place and applied, it will no longer be possible to rely, directly or indirectly, on confessions of this kind as evidence.

Article 16

Prohibition of other acts constituting cruel, inhuman or degrading punishment or treatment

Protection for those reporting torture or ill-treatment from intimidation, reprisals and threats

139. There have been no reported cases of intimidation or persecution of associations working to combat torture or other cruel, inhuman or degrading treatment or punishment. Christian Action for the Abolition of Torture (ACAT), the Burundian Association for the Protection of Human Rights and Detained Persons (APRODH) and Avocats Sans Frontières report good cooperation with State authorities.

140. Visits to places of detention by those reporting torture are also authorized by State authorities.

Detention in hospital

141. Regarding patients, including children, who are not able to pay bills and continue to be detained in hospital, the Ministry of National Solidarity, Human Rights and Gender takes joint responsibility with the hospitals for vulnerable persons, and regularly settles these cases, as the table below demonstrates:

<i>Year</i>	<i>Number of (accepted) cases assisted/referrals issued</i>
2006	2 074
2007	1 275
2008	1 081
2009	1 301

142. The Ministry also carries out inspections of hospitals in the interior to free those detained because they cannot pay.

143. In general, there is no special fund to assist impoverished people of this kind, so the General Directorate for Solidarity uses the heavily indebted poor country (HIPC) fund, which is a grant for returnees, disaster victims and displaced persons; however, the sustainability of these funds is uncertain. The Government of Burundi has drafted a national policy on social protection that will provide support for such cases of poverty.

IV. Conclusion

144. The status of human rights in Burundi has been greatly affected by the 15-year civil war, the consequences of which included the destruction of social, moral and human values. As a result, some sections of the population, especially those directly involved in the conflict, lost their moral bearings. Unfortunately, these groups include agents of the State who are violating human rights, including the Convention against Torture.

145. As such, the main challenges facing Burundi in implementing articles 1 to 16 of the Convention against Torture are:

- The lack of specific funds for the rehabilitation and compensation of victims of torture (physical, moral and financial rehabilitation among others);
- Extradition law. Burundi has not signed enough extradition treaties with other countries. In the meantime, Burundi resorts to INTERPOL;
- The continued persistence of torture, as found by civil society organizations (ACAT: 13 instances in 2009; see annex.

146. Despite the shortcomings, the Government is committed to fulfilling its obligations to promote and protect human rights. The following steps have already been taken:

- The Government of the Republic of Burundi adopted the new Criminal Code on 22 April 2009, incorporating the definition of torture as it exists in the Convention against Torture. Furthermore, it is presently revising the Code of Criminal Procedure to bring it into line with the new Criminal Code. The Government has also introduced into the Criminal Code appropriate provisions on the punishment of torture and other cruel, inhuman or degrading treatment or punishment;
- Through the Ministry responsible for human rights and gender, in 2009 the Government organized training and awareness-raising for local administrations (human rights training for 34 provincial and 129 municipal observers, awareness-raising for officials, magistrates and criminal investigation officers) in order to reinforce:
 - Respect for individual and collective rights and freedoms;
 - The prohibition of torture;
 - The elimination of torture in all its forms, etc.

147. Lastly, other measures to reinforce the rule of law in general and respect for human rights in particular, are part of the priority agenda of the Government in cooperation with NGOs and civil society so that torture can be eliminated in Burundi once and for all.

Bibliography

1. Universal Declaration of Human Rights.
 2. Act No. 1/10 of 18 March 2005 on the Constitution of the Republic of Burundi.
 3. Act No. 1/05 of 22 April 2009 on the Criminal Code.
 4. Act No. 1/15 of 20 July 1999 amending the Code of Criminal Procedure.
 5. Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.
 6. Revised Criminal Code of 29 April 2009.
 7. Act No. 1/32 of 13 November 2008 on asylum and the protection of refugees in Burundi.
 8. Ordinance No. 530/442 of 7 April 2009 implementing Act No. 1/32 of 13 November 2008 on asylum and the protection of refugees in Burundi and on the procedures for asylum requests.
 9. Ordinance No. 530/443 of 7 April 2009 implementing Act No. 1/32 of 13 November 2008 on asylum and the protection of refugees in Burundi and on the composition, organization and operation of the National Commission for Foreign Nationals and Refugees and the Appeals Committee.
 10. Convention on extradition and mutual judicial assistance in criminal matters between the United Republic of Tanzania and the Republic of Burundi, signed on 27 April 1988.
 11. Presidential Decree No. 100/360 of 22 December 2006.
 12. Dar es Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region.
 13. Statement by Ms. Concilie Rutamuceru on the status of gender-based violence prevention, reparation and elimination.
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