

TREATY BODY MONITOR

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COMMITTEE AGAINST TORTURE 37TH SESSION BURUNDI, INITIAL REPORT

Information submitted to the Committee.....	1
Themes and Issues	2
Implementation and domestic legal framework	2
Detention and the Prison System.....	3
Non-refoulement.....	4
National Intelligence Service.....	4
Violence against women	4
Other Issues	4
Conclusions and next steps	5

Information submitted to the Committee

Burundi submitted its initial report to the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Committee) regarding its implementation of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention)*.¹ The report was due in 1994. However, the Committee acknowledged Burundi's difficult situation as a consequence of continued conflict and expressed understanding for the delay. It promised to keep these circumstances in mind when making decisions regarding submission for further reports. The Burundian delegation was headed by Ms Françoise Ngendahayo, the Minister for National Solidarity, Human Rights and Gender.² The written report treats each article of the Convention separately, and ends with a number of conclusions and next steps planned by the State party. This Treaty Body Monitor report identifies the main issues focused on by the Committee.

Before hearing the State report, the Committee held a closed session with NGOs. The Organisation Mondiale Contre la Torture (OMCT) together with a number of Burundian NGOs submitted an alternative report. In the briefing, the present NGOs raised a number of concrete cases of torture, to which the Committee returned

¹ CAT/C/BDI/I, 13 March 2006. The State report is available at <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/BDI/I&Lang=E>. There was no list of issues prepared, and therefore no written answers are available so far.

² The delegation also included the Ambassador of Burundi to the United Nations in Geneva, the Director General for human rights and education in peace, and the Director for legal affairs in Burundi. However, both the report and the replies were presented by Ms Ngendahayo.

when questioning the State party. There was also information provided with regards to the generally unsatisfactory conditions of detention, as well as to the situation of women and children.³

Themes and Issues ⁴

Implementation and domestic legal framework

The Burundian government delegation said that despite the destruction of social and moral values as a consequence of the war, the government has made efforts to reduce the occurrence of torture and cruel, inhuman or degrading treatment. A number of measures had been initiated for that purpose, in particular the drafting and revision of several laws, the process of ratification of the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, the establishment of the Ministry for National Solidarity, Human Rights and Gender, as well as training courses for prison staff.

The Committee criticised the lack of a definition of torture in Burundian domestic legislation. The delegation admitted that while Burundi officially endorses the definition contained in the Convention, their criminal code does not define torture, nor is torture as such criminalised. In practice, torture is treated as an ‘aggravating circumstance’ and pursued on the basis of ‘infliction of bodily harm’. The Committee including its two rapporteurs on Burundi, Mr Guibril Camara and Mr Fernando Mariño Menendez, paid particular attention to this issue. Mr Camara said it was fundamental for Burundi to establish a place for international instruments in its national law and asked if the Convention was directly applicable. The Minister said that even though the the Convention is not directly applicable, in practice it is applied by the courts; this fact was shown by people being condemned for torture. Nevertheless, she agreed on the need to codify this practice and acknowledged the lack of specific laws against torture. In her replies Ms Ngendahayo said that the revised *Criminal Code* will attempt to remedy the situation by not only defining torture, but also cruel, inhuman and degrading treatment.⁵ In addition to the revised *Criminal Code* and *Criminal Procedure Code*, the Minister announced the intention to incorporate provisions regarding torture in the *Prison System Act*, the *Genocide Act* and the *Regulations governing the Judicial Police of the State Counsel’s Office*. The Minister also expressed Burundi’s wish to make provisions for the protection of complainants and witnesses as well as to address the issue of rehabilitation and compensation, and the procedures for victims to obtain it.

Both country rapporteurs underlined that the legislation prohibiting torture must not only cover physical torture (which is the case as long as torture is prosecuted under the category of ‘bodily harm’), but needs to extend to psychological and mental torture. The Committee drew the delegation’s attention to the obligation States have to initiate investigations into cases of torture. Mr Camara said that given the lack of a domestic legal basis, prosecutors in Burundi did not have a clear incentive to investigate cases of torture.

Concerning the recent conclusion of a cease fire agreement between the government and one of the armed groups, the Committee expressed its hope for increased stability in Burundi. Some Committee members referred to Security Council Resolution 1606 and asked if there was a political timetable to implement it.⁶ A

³ For details, see the joint report by Action des Chrétiens pour l’Abolition de la Torture au Burundi (ACAT-Burundi), Association des Femmes Juristes du Burundi, Ligue Burundaise des Droits de l’homme (Iteka) and Organisation Mondiale contre la Torture (OMCT). The report is available at http://ohchr.org/english/bodies/cat/docs/ngos/omctburundi_fr.pdf. There was written information (not presented at the session) by Amnesty International (http://ohchr.org/english/bodies/cat/docs/ngos/Amnesty_International_briefing_on_Burundi.doc) and Global Initiative (http://ohchr.org/english/bodies/cat/docs/ngos/Briefing_from_global_initiative.doc).

⁴ Press releases from all of the Committee’s meetings can be found on the UNOG website at http://www.unog.ch/unog/website/news_media.nsf.

⁵ The minister said that a draft version was already available.

⁶ S/RES/1606, 20 June 2005. The resolution in particular expresses the need to end the climate of impunity, and supports the idea of a Truth Commission and a Special Chamber within the court system of Burundi. It is available at <http://daccessdds.un.org/doc/UNDOC/GEN/N05/391/59/PDF/N0539159.pdf?OpenElement>.

member also enquired if there was an amnesty law being considered as a result of the cease fire agreement; he cautioned that such a law could undermine the effectiveness of the legal system, by granting impunity to perpetrators of grave crimes.

Detention and the Prison System

The Committee enquired about the protection of detained persons, in particular their right to legal counsel and the existence of a public legal aid system. The delegation said that any detainee has the right to a lawyer from the time of arrest.⁷ A Committee member drew attention to the fact that apparently the visits by the United Nations (UN) to prisons had been suspended in 2006. The delegation did not directly answer this question, but said that magistrates are responsible for visiting the places of detention. This system of magistrates inspecting prisons seems to have some shortcomings, in particular the lack of independence in monitoring. Ms Ngendahayo also mentioned institutionalised visits which take place by the Ministry for Public Security⁸ and by the human rights defenders office. The visits by the Ministry suffer from a lack of resources and objectivity. Visits are also carried out by ACAT-Burundi.⁹

Of particular concern to the Committee was the practice of 'preventive detention'. According to the minister, preventive custody may last up to 7 days, unless the Public Prosecution Service (PPS) decides to extend the period up to a maximum of 14 days. The Committee said that while there is no clear international standard on this issue, efforts at establishing such a standard show that the usual period does not exceed 48 hours and goes hand in hand with extensive monitoring requirements. In its replies, the Burundian delegation promised to reduce the maximum duration of custody to 48 hours in the course of revising the *Criminal Procedure Code*, scheduled for 2007.

The Committee asked if male and female, adult and minor, as well as convicted persons and those on remand were effectively separated in prisons. This was of particular concern with regards to sexual violence in prisons; Committee member Ms Gaer asked for details about complaints lodged and investigations being carried out. The delegation responded that only one prison facility (Ngozi) had separate wings for male and female prisoners. Other members of the Committee raised the failure of the Burundian justice system to conform with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), especially concerning the age limit for criminal liability.¹⁰ They also asked if there is a special prosecutor to investigate cases of sexual violence involving children. The delegation replied that there had been efforts to provide new prisons up to international standards, especially for minors and children.

Some Committee members noted concern about overcrowding and the sanitary conditions in prisons generally, and said that this could constitute cruel, inhuman or degrading treatment. The delegation said that it had received funding from the European Union for the modernisation of the prison administration and to improve detention conditions.

Referring to a recent report by Human Rights Watch, the Committee expressed concern about the practice of detaining patients in hospitals who are unable to pay for the medical care they receive.¹¹ Ms Ngendahayo referred to the dilemma the Burundian health system was facing.¹² She announced a number of measures to alleviate this situation, in particular free treatment granted to children under five years of age and to women giving birth.

⁷ This right was introduced through a recent law. Previously, lawyers were only involved at the trial stage, but not during the time of arrest and investigation.

⁸ Which is the Burundian Ministry of the Interior.

⁹ As stated in the NGO report and in the NGO Briefing.

¹⁰ Specifically, the age limit for criminal liability which is currently set at 13 was criticised by the Committee. The new *Criminal Code* will raise the age limit to 15. The Beijing Rules are available at http://www.unhcr.ch/html/menu3/b/h_comp48.htm.

¹¹ The report was not officially submitted to the Committee. It is available at <http://hrw.org/reports/2006/burundi0906>.

¹² As an illustration, she said that Burundi has one doctor for 500'000 people.

Non-refoulement

The Committee enquired about the fate of those Rwandan refugees apparently expelled by the Burundian authorities.¹³ Ms Ngendahayo explained that the returning refugees had done so on a voluntary basis. She explained that the *National Asylum Law* which would regulate the status of these persons was not in operation, but is expected to enter into force in 2007. Despite this law not being operational, some of the refugees had been granted asylum. Ms Ngendahayo also thanked the Committee for drawing attention to the special needs of stateless persons.

National Intelligence Service

A question arose with regard to the National Intelligence Service (NIS). It is responsible for the collection of data in order to protect the state security of Burundi. It can also carry out police functions and arrest people. According to the State report, the NIS is one of the main institutions involved in cases of torture. The Committee repeatedly expressed concern about this situation. Mr Mariño said the NIS seemed to have a dual mandate and be responsible for political oppression; it needed to be reformed, monitored and made accountable to the judiciary. Mr Camara asked if NIS officers could be sanctioned by the PPS; the delegation confirmed this with reference to ongoing cases. The delegation agreed that the NIS had too many prerogatives and specifically asked for recommendations on how to curb its power.

Violence against women

The Committee raised a number of questions related to violence against women. It asked if there is a system in place to prevent reprisals against women who speak out against violence and if there are provisions for post-trauma counselling in cases of forced marriage or gender based violence. The delegation replied, pointing out that Burundi had undertaken efforts to eliminate discrimination against women. In particular, the *National Matrimonial Code* will be available as of 2 December and it is thought this will address some of these issues. In addition, the President of Burundi in a statement made on 8 March 2006 explained that the *Constitution* applies equally to men and women. Currently, the government is conducting a study with the support of the United Nations Development Program (UNDP) to devise next steps to be taken in these areas. The Committee followed-up on this issue in their second round of questions by asking how the State intended to train law personnel on gender issues. The Minister responded that the General Department on Promotion of Gender Issues was coordinating this task.

The Committee was extremely concerned with the use of rape as a weapon of war in the armed conflict in Burundi. Ms Gaer suggested a threefold plan to combat this including, the prevention, instruction, and if needs be punishment of members of the armed forces; the protection of potential victims; and, the prosecution of those responsible, in authority or command of those who commit or tolerate such abuses. She asked if there was a plan of action for prosecution of such crimes. Responding to these concerns, the delegation said that there was a plan of action, again in collaboration with UNDP, but it had been delayed. The delegation noted the recommendations, and explained that it had already conducted training seminars and that training for police officer in human rights was needed.

Other Issues

¹³ See NGO report, at 45

The Committee enquired about the level of independence Burundian judges enjoy, and asked for detailed information on this matter in order to be in a position to assist the country with their recommendations. Mr Camara expressed his surprise at the fact that investigating judges can be held criminally liable for failing to bring accused before the pre-trial judge. He feels that this undermines the independence of the judiciary.

The Committee briefly addressed the question of protection of human rights defenders, and asked the delegation to comment on available NGO information regarding cases of harassment against NGOs and individuals.

In reference to the prohibition of the use of evidence obtained through torture, the delegation referred to a supreme court judgement which prohibits such evidence from being used in court. However, a Committee member pointed out that this particular decision is ambiguous since it says that “a confession is not proof in itself, but merely a piece of evidence that must be corroborated by other evidence”. The Committee felt this could be construed so that evidence extracted through torture could be used if supported by other evidence.

Turning to concrete cases, some Committee members asked about further information on a massacre which had taken place at Gatumba. The delegation responded by saying that it had issued a report which attributed the responsibility for the massacre to members of the armed movement PALIPEHUTU-FNL.

The Committee members also raised a number of individual cases and asked for more information on the relevant proceedings, which was partially provided by the delegation.

Conclusions and next steps

Both the Committee and the delegation from Burundi seemed satisfied with the constructive dialogue that was held. Several Committee members commended the delegation for its honesty in both the written and oral presentation. The Chairman of the Committee, Mr Andreas Mavromatis, repeatedly expressed his appreciation for the delegations attitude, especially in relation to the delegation’s request for guidance. Mr Camara asked the delegation to submit the replies in written form, in particular concerning the individual cases that had been raised. Ms Ngendahayo said that such information would be forthcoming.

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