



**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**

Initial reports of States parties due in 1994

Addendum

BURUNDI*

[7 July 2005]

* 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.

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Introduction

1. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted and opened for signature, ratification and accession by the General Assembly of the United Nations in its resolution 39/46 of 10 December 1984. It entered into force on 26 July 1987, in accordance with article 27 of the Convention. Article 27 states that the Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. Burundi ratified the Convention on 31 December 1992 and deposited its instruments of ratification with the Secretary-General of the United Nations on 18 February 1993. Under the terms of article 19 of the Convention, Burundi ought to have produced an initial report on the measures it had taken to give effect to the Convention by 31 December 1993, one year after ratification. Burundi should then have submitted periodic or supplementary reports every four years on any new measures taken and such other reports as the Committee might request. In short, Burundi should have produced a periodic report in 1997 and 2001 and should submit another in 2005. Unfortunately no report has been produced to date. In this initial report, an attempt will be made to provide both information of a general nature and information in relation to articles 1 to 16 of the Convention. This information covers the entire period since ratification.

3. One of the reasons for this late submission is the crisis Burundi has been experiencing since 21 October 1993; a succession of Governments since 1994 have been unable to restore a sustainable and permanent peace. Moreover, it is common knowledge that this period has been characterized by political instability, as evidenced by the various socio-political events which have punctuated Burundian politics since the 1993 crisis. These can be summarized as follows:

21 October 1993	Assassination of President Melchior Ndadaye
1994-1995	Kajaga-Kigobe-Novotel negotiations
1995	Government Convention
25 July 1996	Return to power of President Buyoya
August 1998	Partnership for peace between the Government and the National Assembly
August 2000	Signature of the Arusha Peace and Reconciliation Agreement for Burundi
November 2001	Formation of the transitional government of national unity provided for in the Arusha Agreement
February 2002	Setting up of a transitional national assembly and senate
December 2002	Ceasefire agreement

April 2003	Handover of presidential power for the second phase of the transition
November 2003	Signature of the overall ceasefire agreement with the Pierre Nkurunziza wing of the National Council for the Defence of Democracy - Forces for the Defence of Democracy (CNDD-FDD) armed movement, followed by the latter's participation in the transitional institutions

4. It has been virtually impossible to produce reports on the implementation of the Convention against Torture during the above-mentioned period. Yet hope of a sustainable and permanent peace was rekindled with the signature of the ceasefire agreement between the Burundian Government and the Pierre Nkurunziza wing of CNDD-FDD and the latter's participation in the transitional institutions. This hope is steadily growing. The Agathon Rwasa wing of the Party for the Liberation of the Hutu People - National Liberation Forces (PALIPEHUTU-FNL) is, however, still fighting. The Government invites it to join the others at the negotiating table in order to build a safe and hospitable Burundi for everyone.

5. In fact, with the healthier political climate, Burundi can now begin to think more calmly about strategies and policies for rebuilding the country, reviving an economy that has been severely tested by the war, and consolidating peace and national reconciliation. Such a context makes it possible to honour certain commitments such as the preparation of reports on the international conventions ratified by Burundi, including the Convention against Torture.

GENERAL INFORMATION

Description of Burundi

6. Burundi is a landlocked country in Central Africa with a surface area of 27,834 square kilometres. It belongs to the African Great Lakes region by virtue of its history, geography and economy. It is bordered by the following countries:

- (a) To the north, Rwanda;
- (b) To the west, the Democratic Republic of the Congo; and
- (c) To the south and east, the United Republic of Tanzania.

7. Burundi lives mainly from agriculture and animal husbandry. Its industry is still at the embryonic stage. The national language is Kirundi. Its people are called Burundians. Burundi is not only one of the poorest countries in the world, but also one of the most densely populated. Its population is now put at 7.02 million. Population growth works out at approximately 2.1 per cent per annum, with an average of 6.3 births per woman. It is estimated that 92 per cent of the working population live in rural areas and earn their livelihood from agriculture.

Basic development indicators**8. Burundi in figures:****Population**

Total population	7.02 million (2002 estimate)
Population under 15 years of age	45.8 per cent
Degree of urbanization	8 per cent
Population growth rate	2.1 per cent per annum
Crude fertility rate	6.3 children per woman
Life expectancy at birth	47.6 years
Proportion of males	48.3 per cent

Economy

Gross domestic product (GDP) per inhabitant	US\$ 90
Exports/GDP	6.2 per cent
Gross domestic investment rate (per cent GDP)	11.9 per cent
Primary/secondary/tertiary	36 per cent/17 per cent/ 37 per cent
Outstanding external debt/GDP	208 per cent
Servicing of due external debt/exports of goods or non-factor services (GNFS)	87 per cent

Poverty and Human Development Index (HDI)

Incidence of rural poverty	68.8 per cent
Incidence of urban poverty	66.6 per cent
World ranking according to HDI	171st out of 175 countries

Ministry of Development Planning and Reconstruction, *National Report on Human Development in Burundi*, Bujumbura

Health

Infant mortality rate	129 per 1,000 live births
Mortality rate of children under the age of 5	169 per 1,000 live births
Maternal mortality rate	750 per 100,000 live births
Immunization coverage	66.7 per cent
No. of persons per doctor	26,000
Public health expenditure/GDP	0.65 per cent

Education

Gross primary-school enrolment rate	71.1 per cent
Gross primary-school enrolment rate of girls	62.0 per cent
Primary-school dropout rate	10.5 per cent
Gross secondary-school enrolment rate	10.4 per cent
Gross higher-education enrolment rate	1.2 per cent
Adult literacy rate	42.1 per cent

Food security

Agricultural production (per cent GDP)	26 per cent
Daily caloric intake per person as a percentage of requirements	75 per cent
Cereal imports	3.9 million tonnes
Food aid	US\$ 15.4 million

Brief political history

9. Burundi has been independent since 1 July 1962. Before then, it was a monarchy, with kings by “divine right” from the *Ganwa* dynasty. Burundi was colonized by Germany before the First World War. Between the end of the First World War and independence in 1962, it was held by Belgium (under a mandate and a trusteeship). A few years later, in 1966, the monarchy was overthrown and a republic was set up. Between 1966 and 1993, Burundi experienced three successive republics interspersed with military coups d’états, before the country’s institutions began to be democratized.

10. After the La Baule summit, Burundi embarked on a democratization process which is unfortunately proving difficult to consolidate owing to the war which has been raging in the country for almost 10 years.

Human rights situation

11. Since it attained independence in 1962, the country has been seen as a State in which massive violations of human rights constantly occur. The repeated crises (1965, 1972, 1988 and 1993), which have cast a shadow over the country and caused many deaths and victims, are evidence of this. There is no doubt that 1993 marked the beginning of a serious crisis that has not yet ended; war is depriving many Burundian citizens of the right to life.

Torture and other cruel, inhuman or degrading treatment or punishment: current situation

Torture

12. According to surveys carried out in detention centres and information provided by human rights defenders, the following methods of torture have been used by the police, the army, the gendarmerie and the security (intelligence) services working for public authorities (communes, districts, etc.):

- (a) Beatings with sticks or whips;
- (b) Physical mutilation or amputation (causing physical injuries, loss of teeth, etc.);
- (c) Beatings with clubs;
- (d) Stabbing with bayonets or knives;
- (e) Kicks by individuals wearing boots;
- (f) Kneeling for long periods of time on bottle tops;
- (g) Standing for long periods of time on bricks;
- (h) Beatings with iron reinforcing rods;
- (i) Being bound with rope;
- (j) Beatings with rifle butts;
- (k) Being burned with cigarettes (cigarette butts);
- (l) Electric shocks;
- (m) Being stabbed with needles;
- (n) Being whipped with electrical wire;
- (o) Blindfolding;
- (p) Handcuffing;

- (q) Exposure to the sun;
- (r) Blinding light;
- (s) Hammer blows;
- (t) Denial of food;
- (u) Denial of medical care when seriously wounded or ill;
- (v) Psychological torture (insults, threats, solitude, isolation, witnessing torture of another person).

13. Such treatment is especially common in secret or remote locations, and involves: the Special Investigation Brigade (BSR); the army's fighting battalions and other combat units housed in the camps in Kamenge; the Bujumbura gendarmerie strike group; the Kigobe public security police; and the national intelligence service. The incidents of torture reported in prisons often take place during the preliminary investigation or at the place of arrest (hills held by the military and high-crime areas).

Cruel, inhuman or degrading treatment or punishment

Principal human rights violations in prisons

14. The principal violations of prisoners' human rights are:

- (a) Arbitrary arrest and detention;
- (b) Kidnapping;
- (c) Overcrowding;
- (d) The number of remand prisoners awaiting trial is higher than the number of convicted prisoners actually serving a sentence;
- (e) Long periods of pretrial detention;
- (f) Slow trials;
- (g) Individuals deprived of their freedom who seem to have been forgotten by the system;
- (h) Impunity for the perpetrators of crimes;
- (i) Lack of food and poor quality of food;
- (j) Poor conditions (lack of space, ventilation, rest areas, etc.);
- (k) Dirty cells;
- (l) Extrajudicial execution of individuals assumed to be guilty, and vigilantism;

- (m) Failure to observe the 14-day limit on police custody;
- (n) Failure to follow the rules of criminal procedure;
- (o) Ill-treatment;
- (p) Failure to separate different categories of detainees;
- (q) Unlawful detention of minors;
- (r) Limits on the right to parole;
- (s) Failure to follow the minimum rules relating to detention.

15. The lack or shortage of judges in State counsel's offices and of judicial police officers in the communes and brigades delays investigations and prolongs the length of time spent in police custody. Other irregularities occur during the transfer of detainees. Even if an order confirming detention has been issued in due and proper form, owing to a lack of transport, the legal limits on police custody are frequently greatly exceeded. Such problems are much more common in provinces where there are no prisons, such as Cibitoke, Cankuzo, Makamba, Kirundo, rural Bujumbura and Mwaro.

Detention centres and the situation in prisons

Detention centres

16. The main detention centres are:

- (a) Mpimba central prison (Bujumbura);
- (b) Ngozi men's detention centre;
- (c) Gitega detention centre;
- (d) Ruyigi prison;
- (e) Rutana prison;
- (f) Muyinga prison;
- (g) Rumonge prison;
- (h) Ngozi special detention centre for women and minors;
- (i) Burrui prison;
- (j) Muramvya prison;
- (k) Bubanza prison.

Situation in prisons as at 31 October 2003

Prison	Capacity	Population	Number of remand prisoners		Number of convicted prisoners		Minors		Infants	Escapees
			Male	Female	Remand	Convicted	Remand	Convicted		
Bubanza	100	101	44	-	57	-	2	1	-	-
Bururi	100	206	150	4	49	1	5	3	2	-
Gitega	400	1 485	742	12	709	22	7	11	10	1
Mpimba	800	2 507	1 231	24	1 204	33	21	63	15	3
Ngozi (M)	400	2 140	1 841	-	299	-	-	-	-	-
Rumonge	800	516	200	3	301	8	-	-	4	-
Muramvya	100	251	138	4	106	3	2	1	-	-
Muyinga	300	336	189	11	132	2	3	-	2	4
Ngozi (F)	250	70	-	25	-	31	11	2	14	-
Ruyigi	300	175	61	5	105	1	4	4	3	1
Rutana	100	277	122	2	152	1	2	1	-	-
Total	3 650	8 074	4 718	90	3 114	102	57	86	50	9
			Total: M + F = 4 718 + 90 = 4 808 or 59.5%		Total: M + F = 3 114 + 102 = 3 216 or 40%		Total: 57 + 86 = 143 or 2%		0.5%	0.1%

**Situation in prisons since the establishment of the national commission
on issues relating to prisoners, up to the end of November 2003**

Prison	Population as at 27 November 2003		Inmates proposed for parole, June 2002 to November 2003	Inmates granted parole, June 2002 to November 2003	Inmates granted provisional release, June 2002 to 27 November 2003	Prisoners released (release order, completion of sentence or acquittal), June 2002 to 27 November 2003
Ngozi (M)	2 128	Remand: 1 834 Convicted: 294	477	144	134	196
Muramvya	270	Remand: 140 Convicted: 130	154	39	40	46
Muyinga	355	Remand: 205 Convicted: 150	149	59	88	104
Rumonge	508	Remand: 194 Convicted: 314	242	27	68	39
Ngozi (F)	57	Remand: 27 Convicted: 30	34	10	13	15
Gitega	1 491	Remand: 753 Convicted: 738	352	88	159	218
Bururi	211	Remand: 157 Convicted: 54	37	57	115	84
Bubanza	95	Remand: 41 Convicted: 54	116	42	62	28
Ruyigi	167	Remand: 55 Convicted: 112	78	42	140	99
Rutana	274	Remand: 120 Convicted: 154	236	90	96	101
Mpimba	2 503	Remand: 1 265 Convicted: 1 238	797	160	567	1 435
Total	8 059	Remand: 4 791 Convicted: 3 268	2 573	758	1 482	2 365

Table showing cumulative totals by category of offence and by prison (as at end of November 2003)

Prison	Offence					
	Perpetration or conspiracy to perpetrate a massacre, looting or wilful destruction		Murder		Aggravated theft	
	Remand	Convicted	Remand	Convicted	Remand	Convicted
Mpimba	85	306	162	272	411	249
Ngozi (M)	1 139	52	228	40	187	143
Rumonge	-	29	4	130	104	68
Gitega	458	359	7	14	183	227
Ruyigi	-	15	13	5	30	61
Muramvya	2	9	6	0	86	61
Rutana	5	-	1	6	51	99
Ngozi (F)	3	3	1	5	7	3
Bururi	-	-	16	4	64	27
Bubanza	-	1	2	1	18	21
Muyinga	2	2	2	7	101	64
Total	1 694	776	442	484	1 242	1 024

17. The information provided above is indicative of the situation regarding cruel, inhuman or degrading treatment or punishment. The following paragraphs contain concrete examples.

18. As of 31 October 2003, with the exception of Rumonge, Bubanza and Ngozi women's prisons, which house more or less the number of prisoners they were built for, prisons, including remand prisons, were overcrowded, some by up to five times their planned capacity. Ngozi men's prison, for example, with a theoretical capacity of 400 prisoners, housed 2,140, while the Mpimba central prison, planned for 800 prisoners, housed 2,507, or three times its capacity.

19. Bururi prison had 206 prisoners, double its capacity of 100; there were three times more remand prisoners than convicted prisoners.

20. Gitega remand prison had 1,485 prisoners, nearly four times its capacity of 400.

21. Rumoge remand prison, built for 100 prisoners, housed 251.

22. Rutana remand prison, built for 100 prisoners, housed 277.

23. Overall, the prison system, with a theoretical capacity of 3,650 prisoners, actually housed 8,074. It is easy to imagine the difficult conditions in which these individuals are living. Moreover, it takes an unreasonably long time before cases actually come to trial and the number of remand prisoners (60 per cent of the total) is far greater than that of convicted prisoners (40 per cent).

24. Prisoners who should be eligible for parole are often not released. Of 2,573 prisoners proposed for parole, only 758, or approximately one third, were actually granted it, in spite of the overcrowding in the prisons.

25. In other places of detention, such as police, gendarmerie, municipal or district holding cells, conditions usually do not meet even the minimum standards for detention centres.

26. Many prisoners are accused of offences arising out of the October 1993 crisis. Such offences continue to be committed to the present day in spite of the Government's efforts to put an end to them.

27. The most common offences are:

- (a) Murder;
- (b) Breaches of national security;
- (c) Involvement in or planning a massacre;
- (d) Membership of and/or complicity with an armed group;
- (e) Massacres;
- (f) Loss of a weapon;
- (g) Homicide;

- (h) Rape;
- (i) Arson;
- (j) Sale of prohibited drinks;
- (k) Property fraud;
- (l) Illegal possession of a weapon;
- (m) Witchcraft;
- (n) Wilful destruction;
- (o) Breach of national solidarity;
- (p) Looting;
- (q) Criminal association;
- (r) Poisoning and infanticide by women;
- (s) Aggravated theft, armed robbery, etc.

28. This situation explains the increase in the prison population and the overcrowding in prisons.

National legal framework and the prohibition of torture

Domestic legislation

29. Even prior to ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Burundi's domestic legislation contained provisions relating to torture. In practice, perpetrators of torture are prosecuted and punished for offences under ordinary law, such as assault occasioning actual bodily harm, as provided for in articles 145 to 150 of the Criminal Code.

30. In addition to the Criminal Code and the new Code of Criminal Procedure, other regulations and legislation apply to the police, armed forces and judges:

- (a) Military Criminal Code (Decree-Law No. 1/6 of 4 April 1981);
- (b) Municipal Act (Decree-Law No. 1/011 of 8 April 1989);
- (c) Judicial Police Officers' Statute;
- (d) Judges' Statute (Act No. 1/100 of 29 February 2000);
- (e) Regulations relating to the armed forces;
- (f) Regulations relating to the judicial police of the State Counsel's Office and the public security police and their internal rules and regulations (Ministerial Order No. 530/156 of 9 May 1986 and Decree No. 100/184/91 of 9 December 1991 respectively);

(g) Certain provisions of the internal rules and regulations of penal institutions and their code of ethics, which to some extent limit the use of torture.

31. Article 28 of the Transitional Constitution of Burundi implicitly recognizes that torture takes place in Burundi, since it states: “No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

32. In addition to this constitutional provision, which recognizes the de facto existence of torture in Burundi and formally prohibits it, legal protections against torture in Burundi are contained mainly in the Criminal Code and the Code of Criminal Procedure. The former predates Burundi’s ratification of the Convention against Torture whereas the latter was adopted long after ratification.

33. The Criminal Code does not adequately deal with the issue of torture because torture has not yet been made a criminal offence. Victims of torture therefore have no sound legal basis for taking action through the courts with a view to obtaining compensation and damages.

International legal instruments ratified by Burundi

34. Burundi ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 31 December 1992. It has also ratified:

(a) The International Convention on the Elimination of All Forms of Racial Discrimination;

(b) The Convention on the Rights of the Child;

(c) The Geneva Convention relative to the Protection of Civilian Persons in Time of War; and

(d) The International Covenant on Civil and Political Rights.

National, administrative and judicial civil-society institutions

35. In addition to the ministries of justice, defence, the interior and public security and their various agencies, Burundi has established the Ministry of Institutional Reforms, Human Rights, and Relations with Parliament. This ministry, in addition to pursuing its traditional mission of promoting, protecting and defending human rights, has established two national human rights institutions, namely: (a) the Government Commission on Human Rights and the Centre for the Promotion of Human Rights and the Prevention of Genocide, which are responsible for day-to-day efforts to defend, protect and promote human rights.

36. The transitional National Assembly and the Senate likewise have commissions responsible for human rights issues, which support the executive branch’s efforts in this area.

37. The Government’s efforts are supplemented by those of human rights organizations such as the Burundi League of Human Rights (IEKA), the Burundi Association for the Defence of Prisoners’ Rights (ABDP), the Burundi Association for the Protection of Human Rights and Detainees (APRODH), and the Burundi League against Torture (LBCT).

Prosecution of torture and other cruel, inhuman or degrading treatment or punishment

38. Although few complaints of torture have been filed with the justice system since ratification of the Convention, some cases of the use of torture, whether by administration officials, the national security services, the police, the gendarmerie or the armed forces, have been prosecuted. These cases include the following:

Gendarmerie and army

Military Registry (RAM) case No.	Name	Rank	Offence	Sentence
1. 073/97/V.S	H.A.	A/officer	Assault and battery	1 year and 6 months' imprisonment
2. 131/97/S.G	N.D.	A/officer	Murder	2 years' imprisonment
3. 052/98/ND.C.	S.S.	A/officer	Assault and battery	5 years' imprisonment
4. 062/98/NY.G	N.D.	Private	Assault and battery	20 years' imprisonment
5. 083/98/ND.C	M.A	Non-commissioned officer	Murder	15 years' imprisonment
6. 075/98/S.G	N.J.	Private	Assault and battery	4 years' imprisonment
7. 186/98/S.G	N.S	Non-commissioned officer	Assault and battery	Decision not to prosecute
8. 20/99/S.D	B.C.	Officer	Torture and abuse of authority	Decision not to prosecute
9. 071/99/G.G	H.O.		Assault occasioning actual bodily harm	Case closed, death of offender
10. 96/99/S.D	K.A.	Private	Assault and battery	5 years' imprisonment
11. 105/99/NJ.B.	S.P.	Officer	Assault and battery	2 years and 5 months' imprisonment
12. 130/99/NY.G.	N.J.	Non-commissioned officer	Assault and battery	2 months' imprisonment
13. 018/2000/NY.G.	M.J.C.	Officer	Assault and battery	Decision not to prosecute

Military Registry (RAM) case No.	Name	Rank	Offence	Sentence
14. 034/2000/S.D.	N.F.	O/officer	Manslaughter	Decision not to prosecute
15. 105/2000/ND.C.	M.J.B.		Assault and battery	-
16. 02/2001/S.D.	S.C.		Assault and battery	-
17. 022/2001/S.D.	N.A.		Assault and battery	-
18. 058/2001/S.D.	N.D.		Assault and battery	-
19. 135/2001/NC.J.	B.		Assault and battery	Decision not to prosecute
20. 136/2001/NC.J.	H.V.	Officer	Assault and battery	Decision not to prosecute
21. 153/2001/S.D.	N.E.		Assault and battery	Decision not to prosecute
22. 156/2001/S.D.	S.	Non-commissioned officer	Premeditated murder	Decision not to prosecute
23. 240/2001/NC.J.	B.		Murder	-
24. 241/2001/NC.J.	B.	Private	Assault and battery	1 year's imprisonment, suspended
25. 276/2001/NZ.J.	H.L.	Officer	Assault and battery	Decision not to prosecute
26. 175/2002/ND.L.	B.		Assault and battery	Decision not to prosecute
27. 095/96/B.E.	R.R.	Non-commissioned officer	Assault and battery causing death	5 years' imprisonment
28. "	K	Private		2 years' imprisonment
29. "	N.	Private		5 months' imprisonment

Administration and police

Name	Position	Offence	Sentence
1. H.G.	Formerly of the municipality of Butezi	Murder	Life imprisonment
2. N.D.	Formerly of the municipality of Matongo	- Assault and battery causing death (2 cases) - Assault and battery - Arbitrary arrest	Case closed due to lack of witnesses for the prosecution Trial under way
3. N.L.	Municipal police officer in Butaganzwa	Aggravated assault and battery	Fine of 10,000 Burundi francs
4. N.J.	Judicial police officer, State Counsel's Office, Bujumbura	Assault and battery causing death	10 years' imprisonment
5. M.G.	Judicial police officer, State Counsel's Office	Aiding and abetting assault and battery causing death	5 years' imprisonment

Note: For convenience, only the initials are given under "Name". For more details, see file.

INFORMATION IN RELATION TO ARTICLES 1 TO 16 OF THE CONVENTION

Article 1: Definition of torture

39. "For the purposes of this Convention, the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

40. "This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application."

41. There is no definition of torture as such in Burundian legislation. In practice, perpetrators of torture are prosecuted and punished for offences under ordinary law, such as occasioning actual bodily harm, as provided for in articles 146 to 150 of the Criminal Code. However, having ratified the Convention against Torture, Burundi recognizes and accepts the definition contained therein.

Article 2: Legislative, administrative, judicial and regulatory measures against torture

42. “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
43. “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
44. “An order from a superior officer or a public authority may not be invoked as a justification of torture.”
45. Legislative, administrative, judicial and regulatory measures have been taken to combat torture. Burundi ratified the Convention against Torture on 31 December 1992 and deposited its instruments of ratification with the Secretary-General of the United Nations on 18 February 1993. In addition to the Convention, other legal texts designed to combat and punish acts of torture are in place. These include:

The Constitution

46. The Transitional Constitution of the Republic of Burundi of 28 October 2001 contains a number of provisions which prohibit acts of torture, particularly articles 15, 17, 18, 19, 21 and 22:
- (a) Article 15: The rights and duties proclaimed and guaranteed by the Charter of National Unity, the Universal Declaration of Human Rights and the international conventions relating to human and peoples’ rights are part of this Transitional Constitution;
 - (b) Article 17: The human person is sacred and inviolable. The State has the absolute obligation to respect and protect all persons;
 - (c) Article 18: Human dignity must be respected and protected;
 - (d) Article 19: No one shall be subjected to arbitrary arrest by the State or its organs;
 - (e) Article 21: Every woman and every man has the right to life, security of person and physical integrity;
 - (f) Article 22: Personal liberty is inviolable. Restrictions may be imposed on this liberty only in accordance with the law.

The Criminal Code

47. Acts of torture are punishable under articles 145 to 150 and 153 of the Burundian Criminal Code.

(a) Article 145: Those who use torture or commit acts of barbarity in the execution of the crimes defined in this section shall be liable to the death penalty;

(b) Article 146: Anyone who intentionally commits an assault shall be liable to imprisonment of eight days to six months and/or a fine of 1,000 to 5,000 francs.

48. If the assault is premeditated, the offender shall be sentenced to one month's imprisonment or a fine of 2,000 francs:

(a) Article 147: If the assault has caused illness or incapacity to work, or if it has resulted in the full loss of function of an organ or a serious mutilation, the punishment will be two to five years' imprisonment and a fine not exceeding 10,000 francs;

(b) Article 148: The prison sentences provided for in articles 146 and 147 may be doubled if the assault was committed against an ascendant or a child under the age of 13;

(c) Article 149: Anyone who intentionally mutilates another person's body or one of his or her limbs or organs, or renders the limb or organ unable to carry out its function, or leaves a person unable to work or with a disability or a permanent mental illness, or who seriously and permanently disfigures a person, shall be punished by a prison sentence of 5 to 10 years and a fine not exceeding 50,000 francs;

(d) Article 150: Where an assault committed intentionally but without intent to cause death nonetheless causes death, the perpetrator shall be sentenced to between 5 and 20 years' imprisonment and a fine not exceeding 10,000 francs;

(e) Article 153: Anyone who engages in deliberate acts of violence shall be liable to a prison sentence of up to seven days and/or a fine of up to 1,000 francs, provided that they have not injured or hit anyone, particularly those who intentionally, but without the intention of causing injury, throw any object at a person that might disturb or dirty the person.

Code of Criminal Procedure

(a) Article 27: The officers of the Public Prosecution Service ensure strict observance of the legal rules which authorize restrictions on personal liberty, particularly those relating to detention and custody.

Police custody

49. Article 64 of the Code of Criminal Procedure provides that once the operations which warrant remanding a person in police custody have been completed, and in any case once the legal time limit for remand in police custody has expired, the detained person must be either brought before the public prosecutor or released, and a report must be transmitted immediately to the public prosecutor.

50. The detainee must be brought before the public prosecutor before the legal time limit for police custody has expired, and the case file must be handed over at the same time.

Pretrial detention

51. Article 75 of the Code of Criminal Procedure provides that 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.

52. 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 five years' imprisonment.

53. Once this period has elapsed, the superior of the judge handling the case orders provisional release at the request of either the person concerned or the prison governor.

54. If the investigating judge fails, without good reason, to bring the accused before the pretrial detention judge, he or she is liable to disciplinary and possibly criminal sanctions.

The Military Criminal Code

55. The Military Criminal Code is regulated by Decree-Law 1/8 of 17 March 1980. Article 1 of the Code states: "Without prejudice to the prosecution of acts which constitute offences under ordinary law, international war crimes are punishable in accordance with the provisions of this Code":

(a) Offences under ordinary law and offences related to the laws and customs of war and to international conventions on war are taken into account in this article;

(b) There are no other provisions expressly relating to torture in the Military Criminal Code;

(c) However, the Criminal Code is applicable to the military, which implies that offences related to the crime of torture are punished in accordance with the provisions of the Criminal Code.

Act No. 1/004 of 8 May 2003 punishing the crime of genocide, crimes against humanity and war crimes

56. According to article 4 (c) (paras. (a) and (b)) of this act, genocide includes violations of the right to life and physical integrity, notably murder in all its forms, mutilation, cruel treatment and torture, as well as violations of the dignity of the person, particularly humiliating and degrading treatment.

Act No. 1/016 of 22 September 2003 on the prison system

57. Article 3 of this act stipulates that: "Detainees must, without exception and at all times, be treated with humanity, respect and the dignity inherent in the human person. They are particularly protected against all forms of torture and cruel, inhuman or degrading treatment."

58. Article 36 specifies that: "Each year detainees shall receive a prison uniform of suitable clothing. This clothing should in no way be degrading or humiliating."

59. Article 42 provide as follows: “The detained person is authorized to address a request or complaint with regard to the manner in which he or she is treated to the prison administration, the judicial authority or any other competent authority.”

60. Article 45 adds: “Pregnant women must not suffer any form of discrimination and are protected from all forms of violence and exploitation.”

61. Article 63 stresses the following: “All prison governors or wardens guilty of acts of torture or cruel, inhuman or degrading treatment shall be subject to disciplinary and criminal proceedings.”

Regulatory instruments

Armed forces

62. The three sets of Armed Forces Regulations - Nos. 11, 33 and 36 - cover issues relating to discipline, the code of conduct for members of the armed forces, and missions and their execution. They provide for punishment for members who breach these regulations.

Armed Forces Regulations No. 11

- (a) These deal specifically with discipline and the rights and duties of members of the armed forces;
- (b) Members of the armed forces have a duty to:
 - (i) Act in accordance with the principles of public international law, including by treating prisoners and defenceless persons with humanity;
 - (ii) Act, even in their private lives, with such dignity as to inspire greater respect for their authority and the corps to which they belong.

Armed Forces Regulations No. 33

- (a) These list disciplinary offences as well as punishment and disciplinary measures;
- (b) Offences include firing without orders and using a bayonet (except as permitted under the relevant regulations);
- (c) These regulations deal with combat and security missions and set out the ways and means of accomplishing them.

Police

Rules of procedure of the judicial police of the State Counsel's Office

63. Ministerial Ordinance No. 530/156 of 9 May 1996 allows officers of the judicial police to refuse to carry out an order to perform a clearly illegal act. Officers of the judicial police must not only refuse, but also protest, if a superior gives an order to carry out a reprehensible act such as torture.

Article 3: Expulsion, refoulement and extradition

64. “No State Party shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

65. “For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

66. Legal provisions relating to extradition, refoulement and expulsion are contained in Burundian legislation. Extradition is authorized only to the extent provided for by law.

67. No Burundian national may be extradited unless he or she is being prosecuted by an international criminal court for the crime of genocide, war crimes or other crimes against humanity.

68. At the level of bilateral and multilateral cooperation, Burundi has signed extradition conventions with the United Republic of Tanzania and with its fellow members of the Economic Community of the Great Lakes Countries, Rwanda and Zaire (now the Democratic Republic of the Congo):

(a) Under the 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, the parties undertake to grant the extradition, in accordance with the circumstances and conditions stipulated in the agreement, of anyone accused or convicted as a principal or accomplice in one of the 30 offences listed in the agreement, including torture;

(b) Article 4 of that convention stipulates that the request shall be made by the Ministry of Foreign Affairs of the requested State;

Article 8: (a) Provides that extradition shall not be granted if the offence for which it is requested is considered by the requested State as a political offence or a similar act;

(b) The same applies if the requested party has good reason to think that a request for extradition in relation to an offence under ordinary law has been submitted with the objective of prosecuting or punishing a person on the grounds of race, religion, nationality or political opinions. The same applies to mutual judicial assistance.

69. Under article 1 of the judicial convention between the Republic of Burundi, the Rwandese Republic and the Republic of Zaire, signed on 21 June 1975, the States parties undertake to provide mutual judicial assistance in the area of extradition of accused or convicted persons in accordance with the provisions of this convention. An extraditable offence is one that incurs a minimum prison sentence of six months.

70. The convention excludes political offences. Article 5 stipulates that nationals may not be extradited.

71. The protocol to the convention of 21 June 1975 concerning mutual judicial assistance in criminal matters between the member States of the Economic Community of the Great Lakes Countries, signed on 8 May 1982, covers the exchange of criminal records and information between the parties.

72. The principle of non-refoulement of refugees to countries where they are at risk of torture is covered by the United Nations Convention relating to the Status of Refugees and the Organization of African Unity (OAU) Convention governing the Specific Aspects of Refugee Problems in Africa, to which Burundi is a party.

Article 4: Criminalization of acts of torture

73. “Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

74. “Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature:”

(a) The Burundian Criminal Code deals with acts of torture and the penalties for such acts in articles 118-150;

(b) Articles 8-11 of the Criminal Code deal with the offence of attempted torture;

(c) Article 8: An attempt is punishable when the will to commit the offence has been demonstrated by observable acts that constitute the beginning of the execution of the act and that were suspended or failed in their purpose only because of circumstances outside the control of the perpetrator;

(d) Article 9: An attempt shall be punishable with the same penalty as the act itself;

(e) Article 10: An attempt to commit an offence shall not be punishable, except where special provision has been made to the contrary, if criminal intent is an element of the offence;

(f) Article 11: An attempt that has no prospect of success is punishable with a penalty half as severe as the penalty for a failed attempt.

Complicity

75. Articles 68 and 71 of the Criminal Code deal with complicity.

Article 68: The following shall be considered accomplices to an offence: anyone who, while not directly participating in the offence and even though his or her assistance may not be essential:

(a) By gift, promise, threat, abuse of authority or power, or criminal subterfuge or artifice, incites or gives instructions for the commission of the act;

(b) Procures weapons, instruments or any other means used in preparing, facilitating or committing the act;

(c) Knowingly aids or abets by any means the perpetrator(s) of the act in preparing, facilitating or committing the act;

(d) Having full knowledge of their criminal behaviour, habitually provides lodgings, shelter or a meeting place to one or more criminals involved in robbery or acts of violence that threaten State security;

(e) Through statements at meetings or in public places, or through writings or documents that are sold or distributed, put on sale or displayed in public places or meetings, or by posters or signs visible to the public, directly incites the perpetrator(s) to commit the act;

(f) Conceals or aids and abets criminals in the circumstances provided for in article 218 of the Criminal Code, which states that anyone who in whole or in part receives items removed, misappropriated or obtained by criminal means shall be liable to a prison sentence of between six months and five years and/or a fine of 2,000 to 10,000 francs.

76. Article 71 deals with the penalties for accomplices.

77. The text of article 71 is as follows.

78. Except where specific provisions establish other penalties, co-principals and accomplices shall be punished as follows:

(a) Co-principals shall be liable to the penalty established by law for principals;

(b) Accomplices shall be liable to a penalty not exceeding half the penalty they would have incurred if they had been principals;

(c) In cases where the penalty laid down by law is death or life imprisonment, the penalty for an accomplice shall be, respectively, 20 or 10 years' imprisonment.

Article 5: Territorial jurisdiction

79. "Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:

(a) When the offences are committed in any territory under its jurisdiction 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 that State considers it appropriate.

80. "Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.

81. “This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.”

82. Burundian legislation recognizes the principle of territorial jurisdiction. Article 3 of the Criminal Code states that “anyone who commits an offence shall be, subject to the provisions of the international conventions on diplomatic and consular immunities, punishable in accordance with the law”. This means that any individual who commits an offence in Burundian territory will be punished in accordance with Burundian law.

83. Article 4 of the Criminal Code states that: “Any offence committed abroad which is punishable under Burundian law by more than two months’ imprisonment may be prosecuted and tried subject to the legal provisions relating to extradition. Prosecution may only be initiated at the request of the Public Prosecution Service.”

84. Article 5 of the Criminal Code defines the conditions under which Burundian courts are competent to try offences committed abroad against an individual and for which the maximum punishment under Burundian law is at least five years’ imprisonment. Before proceedings can be instituted, the victim must file a complaint or the competent authority of the country where the offence was committed must file a formal complaint. However, in cases not involving breaches of State security, or counterfeiting of State seals or national currencies, prosecution shall be waived if the accused proves that he or she has served his or her sentence, or has been pardoned or amnestied. Except in the case of offences involving State security or counterfeiting of national currencies, the prosecution proceeds only if the accused is in Burundi.

Article 6: Arrest and detention of individuals accused of committing acts of torture

85. “Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

86. “Such State shall immediately make a preliminary inquiry into the facts.

87. “Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

88. “When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.”

89. Any person accused of acts of torture may be arrested and detained. The provisions relating to police custody are set out in articles 60 and 62 of the Code of Criminal Procedure.

90. Article 62 states that “police custody entails restrictions on the freedom to communicate”. The individual in custody nevertheless has the right to inform any interested person of his situation. The decision on whether or not to allow the individual in custody to communicate with an individual or authority is taken on a case-by-case basis by the judicial police officer responsible for the decision to take that individual into custody or by the judge under whose authority the officer is acting.

91. Upon expiry of the legal time limit for custody, the detainee must be brought before the public prosecutor or released, and a report on the detainee’s release must be transmitted immediately to the public prosecutor (article 64 of the Code of Criminal Procedure).

92. The conditions relating to pretrial detention are set out in articles 71 to 91 of the Code of Criminal Procedure.

93. Article 71 provides that the accused may not be placed in pretrial detention unless there is sufficient proof of guilt and the acts of which the individual is accused appear to constitute an offence punishable by law with at least one year’s imprisonment.

94. The accused must be brought before a judge within two weeks of issuance of the provisional arrest warrant (articles 72 and 73 of the Code of Criminal Procedure).

95. Once this deadline has passed, the accused or the warden of the penal institution may appeal to the competent court for a ruling on the pretrial detention, without prejudice to any disciplinary measures that might be taken against the negligent investigating judge (articles 72 and 74 of the Code of Criminal Procedure).

96. Article 73 states that “a judge from the competent court shall rule on the pretrial detention within 48 hours of receiving the appeal, unless the accused requests an extension of no longer than the same period to prepare his or her arguments”.

97. The period of pretrial detention may not exceed 12 months if the act in question constitutes an offence for which the penalty provided for by law does not exceed five years’ imprisonment.

98. Upon expiry of this deadline, the hierarchical superior of the judge responsible for the case shall order the individual’s provisional release as requested by the individual or the warden of the penal institution.

99. If the investigating judge, without reasonable justification, neglects to bring the accused before the judge responsible for pretrial detention, he or she may be subject to disciplinary measures or criminal prosecution.

100. During the pretrial phase, the accused has the right to legal counsel.

101. Article 92 of the Code of Criminal Procedure provides that an individual accused of an offence shall benefit from all the guarantees necessary to ensure his or her right to a defence, including legal counsel.

102. The accused may communicate with his or her counsel and receive assistance in drafting correspondence and preparing evidence for the defence.

103. The Public Prosecution Service or a judge may request the assistance of an interpreter, translator, expert witness or doctor (article 97 of the Code of Criminal Procedure).

Article 7: Trial or extradition of individuals accused of committing acts of torture

104. “The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

105. “These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

106. “Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.”

107. The prosecution and extradition of individuals suspected of committing acts of torture are provided for in the law. Any individual suspected of committing acts of torture shall be prosecuted in accordance with the Criminal Code and the Code of Criminal Procedure.

108. The Burundian courts are competent to try any offence committed in Burundian territory, irrespective of the perpetrator’s nationality.

109. Individuals suspected of committing acts of torture have the benefit of all the guarantees of a fair and equitable trial (assistance of legal counsel from the pretrial phase onwards, the right to appeal, etc.) at all stages of the proceedings.

110. Burundi makes extradition conditional on the existence of a treaty of extradition; it currently has extradition treaties with the United Republic of Tanzania and the countries of the Economic Community of the Great Lakes Countries.

Article 8: Criminalization of acts of torture in extradition treaties

111. “The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

112. “If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

113. “States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

114. “Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.”

115. Acts of torture are criminalized in the extradition treaties Burundi has concluded with neighbouring countries. However, Burundi makes extradition conditional on the existence of a treaty.

116. Acts of torture are extraditable under the extradition conventions Burundi has already concluded with some countries.

117. Thus, in the extradition convention between Burundi and the United Republic of Tanzania, of the 30 offences which may give rise to extradition, 4 are related to acts of torture: (1) rape, (2) kidnapping, (3) arbitrary detention and (4) attack causing physical injury (intentional wounding or inflicting physical injury).

118. The same applies to the extradition convention between Burundi and the countries of the Economic Community of the Great Lakes Countries in which all offences punishable by a prison sentence of more than six months are extraditable. Under the Burundian Criminal Code, most acts of torture are punishable by a prison sentence of more than six months, and are therefore extraditable under the aforementioned convention.

Article 9: Mutual judicial assistance between States parties in all proceedings relating to acts of torture

119. “States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.

121. “States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.”

122. Burundi and its neighbouring countries (the United Republic of Tanzania, Rwanda and the Democratic Republic of the Congo) afford one another mutual judicial assistance. Indeed, Burundi has signed two conventions and a protocol on mutual judicial assistance and extradition, namely:

(a) A 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, and another with the countries of the Economic Community of the Great Lakes Countries;

(b) The judicial protocol of 21 June 1975 on day-to-day mutual assistance in criminal matters between the member States of the Economic Community of the Great Lakes Countries.

Article 10: Education and information regarding the prohibition of torture

123. “Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

124. “Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.”

125. Education and information regarding the prohibition against torture are available; following the adoption of the Constitution of March 1992, a centre for the promotion of human rights was established under Decree-Law No. 1/012 of 18 April 1992.

126. In June 1993, the Ministry of Human Rights and Institutional Reform was established by Decree No. 100/004 of 11 February 1994.

127. In the area of human rights, the ministry and the centre are primarily involved in the development of policy, promotion, awareness-raising and the protection of human rights and the prevention of genocide.

128. In May 2000, a government commission on human rights was established under Order No. 120/VP1/002 of 11 May 2000 of the First Vice-President of the Republic. This commission is responsible for:

(a) Following up and examining cases of human rights violations committed in Burundi by both State organs and individuals, and suggesting appropriate remedies;

(b) Receiving complaints and advising victims of human rights violations;

(c) Investigating cases of human rights violations and providing or arranging for judicial assistance for victims of human rights violations;

(d) Submitting recommendations, suggestions, proposals and reports on the human rights situation to the Government;

- (e) Helping to train local committees to promote and protect human rights and raising awareness among the public and the authorities of the need for better protection of human rights;
- (f) Organizing the follow-up to national and international reports on human rights;
- (g) Raising awareness nationally and internationally of the Government's efforts to ensure respect for human rights.

Article 11: Measures for monitoring interrogations, detention and imprisonment with a view to preventing acts of torture

129. "Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."

130. Measures for monitoring interrogations, detention and imprisonment with a view to preventing acts of torture include monitoring the duration and conduct of police custody and monitoring the activities of judicial police officers.

131. With regard to custody, article 58 of the Burundian Criminal Code provides that it may not exceed seven days, counted by the hour, unless the Public Prosecution Service decides that it is essential to extend it, in which case the maximum duration is twice that period.

132. Article 61 of the Code states that any placement in custody must be the subject of a report by the judicial police officer in charge, who must record, in addition to his family name, given name, office and rank, the identity of the detained person, the date, time and place of the questioning, the nature of and reasons for detention, the circumstances in which the detained person was brought before the officer and informed of his or her rights and allowed to exercise them, the date and time of the end of detention and its duration, and the action taken upon its termination. The police record must also specify the location or locations of the custody.

133. The Code also states that the police report must be presented for signature to the detained person, who may request that his or her comments be added. If he or she does not want to, or cannot, sign, the police report must mention this refusal or inability and the reasons for it. If the person agrees to sign but does not know how to write, the signature may be replaced by any other sign or mark of personal identification commonly considered to be equivalent. These provisions are applicable to the various signatures required of the detained person by law. The original of the police report is sent to the public prosecutor, and a copy is kept on file. Article 61 also stresses that the above-mentioned explanations may be included in the detained person's deposition. The duration of the interrogations of the person in custody and the length of the rest periods separating them must also be recorded.

134. Article 63 provides that once the investigation of a person in custody has established that serious corroborating evidence justifies formal charges, the alleged offender may no longer be examined in custody, which must be terminated, and must be brought before the public prosecutor without delay.

135. Article 64 states that the actual referral to the public prosecutor must take place before the expiry of the legal deadline for custody and that the records of the proceedings must be handed over at the same time. If the accused is brought before the investigating judge upon termination of custody, the latter must immediately question him or her and decide whether to release him or her or issue an arrest warrant. The appearance before a judge must take place within 15 days of the issuance of the provisional arrest warrant.

136. Article 92 provides that the alleged offender shall enjoy all the requisite guarantees to ensure the right to a defence, including the assistance of legal counsel. The alleged offender may at any time request to be informed of the seriousness of the charges he or she is facing.

137. The Public Prosecution Service is responsible for monitoring the work of judicial police officers.

138. According to article 3 of the Code of Criminal Procedure, it is the task of judicial police officers to report the offences which they are responsible for investigating, to deal with accusations, complaints and reports of such offences and to record the time and place at which they were committed, as well as proof and circumstantial evidence incriminating or exonerating the alleged offender, suspect or accused.

139. Article 5 states that the police reports must be sent directly to the local public prosecutor, who forwards them, where appropriate, to the regional or competent Public Prosecution Service at the court that is competent to hear the case by reason of its location or the nature of the offence.

140. Article 11 requires the judicial police officer to notify without delay the officer of the Public Prosecution Service, to whom he sends the police report on the offence and the summonses addressed to the alleged offender (fine and confiscation).

141. Article 22 stipulates that the Public Prosecution Service shall direct and monitor the activities of public servants who are officials or officers of the judicial police.

142. When the officers of the Public Prosecution Service find that detention or custody is arbitrary or illegal, they must take all necessary measures to terminate it immediately. If the evidence gives reason to believe that a criminal or disciplinary offence, or both, have been committed, they must initiate the necessary proceedings or, where appropriate, refer the matter to the competent authorities. If it is found or proven that confessions of guilt have been obtained under duress, they are declared null and void (article 27 of the Code of Criminal Procedure).

143. Article 27 of the Code of Criminal Procedure states that officers of the Public Prosecution Service shall ensure strict compliance with the legal regulations authorizing restrictions on individual freedom.

Article 12: Investigation of acts of torture

144. “Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

145. The Public Prosecution Service is the authority concerned by this article. Article 171 of the Criminal Code stipulates that “if the person who has been abducted, arrested or detained has been subjected to physical torture, the offender shall be punished with ten to twenty years’ imprisonment. If the torture has resulted in death, the offender shall be sentenced to life imprisonment or death”.

146. Thus, when the Public Prosecution Service finds evidence of an act of torture or when it is requested to do so by the victim or a third party, it may, if it regards prosecution to be appropriate, open an investigation and refer the case to the competent court for a trial.

Article 13: Victim’s right to complain to the competent authorities

147. “Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

148. The torture victim’s right to complain to the competent authorities is guaranteed. There are two ways in which the victim of an act of torture, or the victim of any other criminal offence, can ensure that the perpetrator is prosecuted:

(a) A private prosecution: this procedure consists of summoning the accused directly before the trial court without a preliminary hearing;

(b) A judicial investigation: criminal proceedings are brought by the Public Prosecution Service, which demands that the law be applied (Code of Criminal Procedure, article 22).

Article 14: Victim’s right to obtain redress

149. “Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

150. “Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.”

151. A victim's right to obtain redress for injury is set out in article 132 of the Code of Criminal Procedure, which stipulates that: "When acts of torture are proven and the accused has been convicted, the victim shall be entitled to redress commensurate with the injury suffered. Similarly, in the event of a malicious prosecution, the complainant shall be ordered to pay damages if the party concerned so requests."

Article 15: Value of statements obtained through torture

152. "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."

153. A provision to this effect is contained in article 125 of the Code of Criminal Procedure, which states that: "Except for official reports to which the law attaches particular probative value, the judge shall assess the evidential weight to be given to them." Article 27 of the Code specifies that when it is found or proven that confessions of guilt have been obtained under duress, they are null and void. It follows from these two provisions that the court is bound only by statements made during a hearing. On 26 September 2002, the full Supreme Court established a clear principle in this respect: "Today a confession is not proof in itself, but merely one piece of evidence that must be corroborated by other evidence, especially when the confession has been obtained in the pre-trial phase and is retracted before the court."

Article 16: Prohibition of other forms of cruel, inhuman or degrading treatment or punishment

154. "Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

155. "The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion."

156. Burundian legislation prohibits other forms of cruel, inhuman or degrading treatment or punishment through several legal texts, including the Transitional Constitution of 2001, which lays down the following in article 22: "Personal liberty is inviolable. Restrictions may be imposed on this liberty only in accordance with the law. Anyone deprived of liberty shall be treated with humanity and the respect inherent in human dignity." Article 28 of this basic law states that "No one may be subjected to torture or to abuse or cruel, inhuman or degrading treatment." Article 29 of the same text adds that: "No one may be subjected to arbitrary interference with their private life, family, domicile or correspondence, nor to attacks on their honour and reputation. House searches or visits to a person's domicile may not be ordered except as provided for by law."

157. Privacy of correspondence and communication is guaranteed in the forms and on the conditions determined by law.

158. Articles 171 and 172 of the Criminal Code provide for fairly severe penalties for persons who infringe individual freedom: “The penalty may be doubled when the arrest or abduction has been carried out with the assistance of a uniform or regulation badge, or imitation thereof, under a false name or on a false order of a public authority. The same penalty shall apply if the arrest or abduction has been carried out with the assistance of a means of motorized transport or if the victim’s life has been threatened. If the person who has been abducted, arrested or detained has been subjected to physical torture, the offender shall be punished with ten to twenty years’ imprisonment.”

159. If the torture has resulted in death, the penalty shall be increased to life imprisonment or death. The same shall apply if a ransom has been demanded for the person who has been abducted, arrested or detained. The same penalty shall be applicable to anyone who has abducted, arrested or detained, or arranged for the abduction, arrest or detention of, any persons whatsoever in order to sell them as slaves, or who has used persons under their authority for that purpose.

160. The Burundian Criminal Code also covers and punishes: defamation and attacks on a person’s reputation; infringements of individual rights guaranteed by laws, decrees, ordinances or orders; insults, innuendo and slanderous accusations; infringements of the sanctity of the home, the privacy of correspondence or freedom of religion; and rape.

CONCLUSION

161. The drafting of this initial report has enabled us to pinpoint gaps in Burundian legislation with regard to the prevention of torture.

162. Quite apart from the fact that torture is not even defined in Burundian legislation, it has not yet been made a criminal offence under Burundian criminal law. It is merely an aggravating circumstance in the crimes of homicide and intentional bodily injury (cf. articles 145 and 147 of the Criminal Code). There is a need for a national law defining torture as a crime in order to implement the Convention against Torture, which has been ratified by Burundi.

163. The main challenge facing Burundi in respect of the implementation of articles 1 to 16 of the Convention is the absence of a specific law against torture and other cruel, inhuman or degrading treatment or punishment.

164. Not only must the Criminal Code and Code of Criminal Procedure be revised and updated, provisions on this subject must also be incorporated in the Prison System Act, the Genocide Act, the Regulations governing the Judicial Police of the State Counsel’s Office, and other relevant regulations.

165. The same is true of the other provisions contained in articles 1 to 16 of the Convention.

166. There is a shortage of remedies in the legal arsenal for punishing and preventing the crime of torture and obtaining redress. For example:

- (i) No provision has been made for measures to protect the complainant and witnesses;
- (ii) Burundian legislation does not lay down clear and precise procedures for obtaining rehabilitation and compensation; legislative provision for rehabilitation programmes for victims of torture (physical, mental and financial rehabilitation) is even less clear.

167. As for the law on extradition, it is clear that Burundi has signed too few conventions on extradition with other countries, although it can, in the meantime, avail itself of the services of Interpol.

168. Even though, by ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Burundi de facto recognizes the provisions on preventing and punishing torture contained in the Convention, it needs to incorporate them into domestic law. Essentially, three things need to be done:

- (a) Torture must be defined as a criminal offence;
- (b) The Code of Criminal Procedure and other relevant regulations must be revised and updated;
- (c) Victims of torture must be given the opportunity to obtain redress and adequate compensation.

169. The Government of Burundi would therefore encourage victims of torture to lodge complaints, despite the deficiencies of the law, and calls on the Public Prosecution Service to be more vigilant in preventing and punishing the crime of torture and other cruel, inhuman or degrading treatment and punishment.
