



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

Distr.: General
16 June 2011

Original: English

Committee against Torture

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

Initial reports of States parties due in 2010

Rwanda*

[8 April 2011]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

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Abbreviations

ASF	Advocates without Borders
CCP	Code of Criminal Procedure
CLADHO	Collectif des Ligues et Associations de Défense des Droits de l'Homme
DRC	Democratic Republic of Congo
EDPRS	Economic Development and Poverty Reduction Strategy
FACT/RWANDA	Forum of Activists Against Torture in Rwanda
ICRC	International Committee of the Red Cross
JPO	Judicial Police Officer
LDF	Local Defence Force
LDGL	Ligue des Droits de la Personne dans la Région des Grands lacs
LIPRODHOR	Ligue pour la Promotion des Droits de l'Homme au Rwanda
MIGEPROF	Ministry of Gender and Family Promotion
MINAFFET	Ministry of Foreign Affairs and Cooperation
MINIJUST	Ministry of Justice
NCHR	National Commission for Human Rights
NPPA	National Public Prosecution Authority
NPS	National Prisons Service
O.G.	Official Gazette
PP	Public Prosecution
PPO	Public Prosecutor Officer
PRI	Penal Reform International

I. General information

A. Introduction

General information

1. Rwanda has a surface area of 26,338 km² with a population estimated at around 11 million inhabitants, composed of 51.7 per cent women and 48.3 per cent men. The population density is 395 inhabitants per km² while the physiological density is 556 inhabitants per km². The population increases by about 2.8 per cent annually. The gross domestic product (GDP) per capita rose from 206 USD in 2002 to 541 USD in 2010. The economy is mainly based on agriculture, which employs 85 per cent of the country's households but accounts for only about 37 per cent of the GDP. GDP increased by 11.2 per cent in 2008.¹ Rwanda aspires to be a middle-income country by the year 2020. It is important to note that the genocide that took place in Rwanda in 1994 negatively impacted the social fabric of the society as well as other social amenities, such as infrastructure. It is against this backdrop that the Government of Rwanda embarked on a programme of rebuilding itself, enhancing principles of rule of law, strengthening respect of human rights and bringing about national unity and reconciliation.

2. The Rwandan State is a sovereign, democratic, social and secular Republic, recognizing the multi-party system of government. The three branches of government (legislative, executive and judicial) are separate and independent from one another, but are all complementary.

3. In its preamble, the Rwandan Constitution reaffirms adherence to the principles of human rights as contained in the United Nations Charter as well as in the basic international instruments concerning the protection of human rights. The second chapter of the Rwandan Constitution, from article 10 to article 52, provides for the fundamental rights of the person as contained in the Universal Declaration of Human Rights.

4. Rwanda has effectively ratified the eight main human rights instruments and most of their additional protocols. Many other international and regional conventions on human rights have been ratified by Rwanda or are in the process of ratification. Once ratified, treaties and conventions all are integrated into domestic law. According to the Constitution (Articles 189 and 190), ratified treaties have supremacy over organic and national laws. Rwanda has withdrawn all reservations on international human rights treaties.

5. Rwanda has developed programmes to address socio-economic transformation. These programmes are included in strategic plans commonly called Vision 2020 (long term) and the Economic Development Strategy and Poverty Reduction, or EDPRS (short term). These strategic plans were developed in the context of responding to the wishes of Rwandans on their future, common identity, unity and inclusiveness and economic welfare.

6. The general policy of promoting human rights remains a priority for all institutions across different sectors. These policies are oriented towards the promotion of human rights and equality and justice for all, especially in education, health, welfare, women's rights, children's rights and rights of persons with disabilities.

7. It is important to note that the genocide that occurred in Rwanda in 1994 socially and economically affected Rwanda and damaged its entire infrastructure. Before and during the genocide, severe physical and mental sufferings were intentionally inflicted on Tutsi

¹ Universal Periodic Review (UPR), Official report, MINAFFET, October 2010, p. 1.

and moderate Hutu by public servants and other persons acting in an official capacity, including *Interahamwe* militias. The authorities also instigated members of general the population to participate in the genocide. Acts of violence, such as rape, sexual torture, genital mutilation, massacres and violations of physical integrity, were systematically directed against the Tutsis.

8. The Rwandan government has initiated a programme to rebuild the country by putting in place mechanisms to strengthen the rule of law, respect and enforce human rights and achieve unity and reconciliation.

Methodology and general consultative process

9. The preparation of this report was coordinated by the cross-institutional working group responsible for preparing reports on the implementation of treaties to which Rwanda is party. This group is composed of people from the following institutions: MINAFFET, MINIJUST, MIGEPROF, the Ministry of Health, the Ministry of Education, Ministry of Public Service and Labour, the Ministry of Internal Security, the Ministry of Local Administration and the NCHR.

10. A questionnaire was prepared by the working group and sent to various institutions to collect information on the implementation of the Convention against Torture, which Rwanda has ratified. The preparation of this report followed a participatory approach through wide stakeholder consultation, involving information from the ground, interviews with representatives of public institutions responsible for implementation of the Convention and civil society organizations working for the promotion and protection of human rights in Rwanda. Documentary research and validation in workshops provided additional information included in this report, while the observation of guidelines on the Convention against Torture reporting oriented the canvas.

B. General legal framework under which torture and other cruel, inhuman or degrading treatment or punishment is prohibited

The Constitution

11. In its preamble, the Constitution of the Republic of Rwanda provides that the Rwandan Government is committed to complying with, upholding and enforcing fundamental and constitutional principles, including building a State devoted to social justice and the welfare of the population.² It also provides that a human being is sacred and inviolable. The State and all public administration organs have the absolute obligation to respect, protect and defend all people.³ Every person has the right to physical and mental integrity. No person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment.⁴

The Criminal Code

12. The current Penal Code includes the punishment of physical torture in its Articles 316 and 388 but does not establish acts of torture as an autonomous offence. In practice, the perpetrators of torture are prosecuted under common law offences against persons, such as homicide and various kinds of physical harm and assault contained in the Penal Code's

² Article 8 of the Constitution of 4 June 2003.

³ Article 10, Constitution of 4 June 2003.

⁴ Article 15, paragraphs. 1 and 2, *idem*.

Articles 310 to 395.⁵ For example, on April 14, 2007, the Higher Instance Court of Rusizi sentenced JPO X to a term of one-year imprisonment for inflicting blows that resulted in injuries to a detainee in custody at the Rusizi police station.⁶ The conviction was based on the offence of intentional physical injury, contained in article 319 of the Penal Code.

The development of a new Penal Code

13. Since the country's reconstruction began after the 1994 genocide, Rwanda has undergone several successive reforms. Legislative reform was undertaken in 2004, followed by reform of the judiciary system. It was therefore necessary to reform the Penal Code to make it consistent with the objectives included in the strategic plan documents for development and access to equality and justice for all, notably Vision 2020 and EDPRS.⁷ It is within this context that the Chamber of Deputies of Parliament recently adopted a draft organic law on a new Penal Code.

14. Article 204 of the new Penal Code fully adopts the content of article 1 of the Convention against Torture on the definition of torture and ill treatment.⁸ Article 205 provides penalties in these terms: Any person who has inflicted torture upon another shall be punished by imprisonment of six months to five years. If the result of the torture is an incurable disease, permanent disability, loss of use of an organ or serious mutilation, the penalty shall be imprisonment of 10 to 20 years. If the torture causes the death of the victim, the penalty is life imprisonment. If the perpetrator is a JPO, a prosecutor or a public official in charge of security, the highest penalty provided by criminal law will be applied.

Other legal texts

15. The CCP establishes the procedure to be followed throughout the course of criminal proceedings and prohibits the use of torture to obtain evidence or confessions of the alleged perpetrators of a crime, whatever it is. This code offers sufficient guarantees for the rights of persons arrested or detained, including a medical examination, access to a lawyer and contact with any person of his or her choice, including members of his or her family. This code lays down rules on the length of police custody. These rules are mandatory and strictly applied.

16. Article 6 of the law on evidence and its production provides that it is forbidden to tie, beat, torture, brainwash or resort to any cruel or degrading methods to extort a confession from a party or testimony from witnesses.⁹ These forms of evidence are prohibited under the law and have no legal effect before a judge.¹⁰

17. Article 20 of the law on the rights and protection against violence of children envisages that a child should not be subjected to torture or to cruel, inhuman or degrading treatment.¹¹

⁵ Penal code, established by the Decree-law No. 21/77 of 18 August 1977, as modified and completed up-to-date.

⁶ *Source*: Rwanda, National Commission for Human Rights (NCHR), Inquiries Department.

⁷ Explanatory note of the organic law related to the new penal code, MINIJUST, 2010.

⁸ Article 204, Draft Organic Law related to the new penal code adopted by the Chamber of Deputies in its plenary session of 15 May 2010.

⁹ Article 5 of the Law No. 15/2004 of 19 July 2004 relating to the evidence and its production, O.G. No. special of 19 July 2004.

¹⁰ Article 8 Law No. 15/2004 of 19 July 2004, relating to evidences and its production.

¹¹ Law No. 27/2001 of 28 April 2001 relating to rights and protection of child against violence, O.G. No. 23 of 1 December 2001.

18. Article 27 of the law on the prevention and punishment of violence against woman prohibits sexual torture and establishes a penalty of life imprisonment with special provisions.¹²

19. The law on the establishment of *Gacaca* courts (No. 16/2004, of 19/06/2004) as modified criminalizes perpetrating, aiding or abetting acts of torture, rape, acts of torture against sexual organs. Penalties depend on whether the perpetrator pleads guilty or not guilty.

20. The Labour Code prohibits any form of violence or harassment that directly or indirectly has an effect on the workplace. The resignation of the victim of such violence or harassment is seen as unfair dismissal. In these cases, the victim is entitled to damages.¹³

21. Article 40 of the law on the creation, organization and general competence of the National Police (No. 09/2000, of 16/06/2000) envisages that any use of force by police must be reasonable and proportional to the aim pursued.

22. Article 23 of the law establishing the NPS (No. 38/2006, of 25/09/2006) stipulates that “the prisoner must be treated with dignity and respect for human rights. He or she is especially protected against any sort of torture, cruel, inhuman or degrading treatment”.¹⁴

23. Article 15 of the law establishing the LDF (No. 25/2004, of 19/11/2004) provides that a member of the force who is guilty of excessive and illegal use of force during arrests may be held accountable administratively, civilly and criminally.

24. Article 2 of the law on the sentence of life imprisonment (No. 32/2010, of 22/09/2011) stipulates that this sentence is imposed on persons convicted of crimes like recurring acts of torture or inhuman treatment leading to death, murder with degrading acts on the body, genocide and other crimes against humanity, acts of terrorism resulting in the death of persons, sexual abuse of children, sexual torture and organizing groups of criminals.

25. Article 28 of the Presidential Decree on the general status of the National Police (No. 155/01 of 31/12/2002) stipulates that any police officer, regardless of rank or function, must perform consciously the mission which is assigned to him or her and show politeness and dignity in his or her relations with his or her superiors, colleagues, subordinates and the public. He or she must also communicate with the public, serve as a good example for the population regarding security and respect for human rights, avoid any conduct that would undermine the dignity of the service and public confidence with respect to the latter and have knowledge of regulations and guidelines. He or she has the duty to be impartial and refrain from any discrimination based on social status, ethnicity, political opinion, religion or any other personal interest.

26. Article 8 of the Instructions of the Minister of Internal Security relating to the conditions of detention, the provision of food and detainee visits (No. 09/08, of 16/06/2008) provides that no prisoner should be subjected to torture or other abuse or cruel, inhuman and degrading treatment.

International instruments relating to torture ratified by Rwanda

27. Rwanda has ratified many conventions on human rights, including several that prohibit the use of torture and ill treatment. In addition to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Rwanda is party to the

¹² Law No. 59/2008 of 10 September 2008, O.G. No. 24 of 6 April 2009.

¹³ Articles 9–11 of the Labour Code, O.G. No. special of 27 May 2009.

¹⁴ Law No. 38/2006 of 25 September 2006 establishing the NPS, O.G. No. special of 23 October 2006.

International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Second Optional Protocol abolishing the death penalty; the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women; the African Charter on the Rights and Welfare of the Child; the Convention on the Elimination of All Forms of Discrimination against Women and its Additional Protocol; the Convention on the Political Rights of Women; the Convention on the Rights of the Child and its protocols; the Convention on the Prevention and Punishment of the Crime of Genocide,¹⁵ the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; the 1926 Convention on Slavery, as amended by the Protocol of 7 December 1953; the Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking of Persons, Especially Women and Children; the Convention on the Rights of Persons with Disabilities; the Geneva Conventions and Additional Protocols; and the International Convention Against the Taking of Hostages.

28. Article 190 of the Constitution provides that "Treaties or agreements duly ratified or approved have, upon publication in the official journals, an authority superior to that of organic laws and ordinary laws, except in the case of non-compliance by one of the other parties". Thus, the prohibition of torture is a constitutional principle from which there can be no derogation under any circumstances. Furthermore, Article 15 puts an absolute ban on torture, stating that "No person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment."

The invocability of the Convention against Torture in national courts

29. Since Rwanda has ratified the Convention, its invocation in the courts and administrative courts is permitted. The parties at trial and especially lawyers may invoke the provisions of international conventions. For example, in case No. RS/INconst/Crim.0002/08/CS, the lawyer of Mr. X asked the Supreme Court to declare unconstitutional and delete article 4 of Organic Law No. 31/2007 of 25 July 2007 concerning the punishment of life imprisonment. The lawyer argued that the Article in question was contrary to Sections 7 and 10 of the International Covenant on Civil and Political Rights, especially as regarding the prohibition of torture and other cruel, inhuman or degrading treatment.¹⁶

Institutional framework for the protection of human rights

30. For the protection of human rights, numerous mechanisms have been put in place, including the NCHR, the Office of the Ombudsman, the NPS, the National Commission for Unity and Reconciliation, the Houses of Access to Justice, the Observatory on Child Rights and the Office of Monitoring on Gender. All these institutions have a legal obligation to protect citizens from acts of torture and ill treatment. To these institutions, we add the Courts and Tribunals, Parliament (Chamber of Deputies and Senate, which have internal committees in charge of investigating human rights abuses), the National Police, the NPPA and MIGEPROF, which is responsible for implementing national policies to protect women, children and other vulnerable persons, such as those living with disability.

31. Civil society organizations are active in protecting human rights, including the prevention and the protection of acts of torture and other cruel, inhuman or degrading

¹⁵ Reservations issued by Rwanda to article 9 have been removed by Presidential Order No. 48/01, of 5 September 2008.

¹⁶ Supreme Court, Judgment of 29 June 2008, Archives. Rwanda had not ratified yet the convention against torture and other cruel, inhuman or degrading treatments or punishment.

treatment. We can mention: FACT / RWANDA, LDGL, ASF, PRO-FEMME TWESE HAMWE, CLADHO, LEGAL AID FORUM ... The presence of the liaison offices of organizations such as Amnesty International and the International Service for the Red Cross is also very important to the protection of human rights and prevention of acts of torture or ill treatment.

II. Information in relation to each substantive article of the Convention (arts. 1–16)

Article 1

Definition of torture

32. The Penal Code of 1977 does not define torture as a separate offence. Under this code, torture is treated as an aggravating factor. This means that anyone who uses torture or barbaric acts during the execution of his or her crime, whatever it is, may be punished as though he or she committed murder.¹⁷ This rule may apply to all offences. As part of the implementation of the Convention, the new Penal Code is set to contain the full content of article 1 of the Convention.

Article 2

Prevention of acts of torture

Measures taken according to article 2, paragraph 1

33. Articles 10 and 15 of the Constitution prohibit acts of torture. Article 10 provides that “The human person is sacred and inviolable. The State and all public administration organs have absolute obligation to respect protect and defend all persons.” Article 15 states that “Every person has the right to their physical and mental integrity. No one shall be subject to torture, physical abuse or cruel, inhuman or degrading treatment.”

34. Concrete measures have been taken to prevent all acts of torture related to the duration of arrest. Paragraphs 1 and 2 of article 18 of the Constitution provide that “every person’s liberty is guaranteed by the State. No one shall be subject to prosecution, arrest detention or punishment on account of any act or omission which did not constitute a crime under the law in force at the time it was committed”. The CCP specifies the procedure that the entire criminal process must follow, from the investigation by JPOs until the final judgment. The CCP organizes the protection of the person prosecuted, in order to maintain both his or her mental or physical integrity and respect for his or her rights. The CCP lays down the principle that “The suspect is entitled to be free during the time of investigation”. For investigation reasons or for security measures, a suspect may be put in custody pending investigation or, in exceptional circumstances, be put in preventative detention, according to the rules provided by the law.¹⁸ The duration of arrest may never exceed 72 hours at the level of judicial police, and seven days at the level of preliminary inquiries. At this level, the PPO in charge of the case shall take the suspect before the nearest competent judge to decide on the pre-trial detention, if he or she decides to pursue the investigation.¹⁹ In the event of continued detention of a person after an order authorizing release on bail or a

¹⁷ Article 316, Penal code.

¹⁸ Article 87 of CCP, liberty is the principle, whereas detention is exception.

¹⁹ Article 96 of CCP.

decision of his or her innocence, or any violations of the criminal procedure rules concerning the duration and place of detention, violators will be punished.²⁰

35. Children below the age of 12 cannot be held in detention centres meant for criminal suspects, except for exceptional reasons or for the necessities or purposes of investigation. The JPO or the PPO in charge of the investigation of a case must use all diligence to ascertain the personality of the child and the appropriate means of his or her rehabilitation and welfare (arts. 184 to 192 of the CCP).²¹

36. Rules related to detention in a secret place have been put in place. Article 40 of the CCP provides that when a person is placed under arrest by the police, he or she shall not be detained in any place other than the detention centre available for that matter and located within the area where the National Police or Military Police office is located. Soldiers and their accomplices shall be held near the office of Military Prosecution.

37. Article 18, paragraph 3, of the Constitution provides that a person arrested or detained shall be informed of the nature and cause of charges, and that the right to defence is absolute at all levels and degrees of all proceedings before administrative, judicial and other decision-making organs. More than the classical defence system where only an individual witness for a suspect, *Gacaca* offers a model where the voice of the population can be relied on to help judges reach decisions, rather than that of single witnesses, as is the case with classical courts. Article 29 of the Organic Law No. 16/2004, of 18/06/2004, obliges every Rwandan to participate in the process of court hearing by testifying against or testifying for. In other words, the population participates in the hearing process by helping the bench of judges with relevant information on the case at issue. *Gacaca*, like any other classical court system, offers a very effective opportunity for defence.

38. In its preamble, the CCP provides that “penal cases must be held in public audience, be fair, impartial, comply with the principle of self defence, provide an opportunity for cross examination, treat litigants equally in eyes of the law, be based on legally obtained evidence and be rendered without any undue delay”.²² Article 37 provides that any person arrested has the right to be informed of the charges against him or her and to contact his or her lawyer or any other person. Any person detained may retain a lawyer of his or her choice. If a detainee is not able to get one, he or she may ask to be given one by the Chair Person of the Bar Association. Under Article 39, the detainee can decide whether or not to accept the appointed lawyer. Article 60 of the law governing the Kigali Bar Association creates an office of consultation and defence in charge of legal aid assisting poor people.²³ To solve the ever-present problem of legal representation, a civil society-initiated forum for legal aid called “Legal Aid Forum” has been set up. This forum brings together over 33 human rights organizations and works to grant legal aid to the poor — victims of injustice, violence, torture or cruel, inhuman or degrading treatment.²⁴ In practice, these mechanisms give detainees access to necessary assistance in their defence. Detainees also have the right to a medical examination and to contact their families.

39. The Penal Code criminalizes violations of the physical integrity of the person (arts. 310 to 395) and provides particular sanctions when violations are caused by members of the public force who have illegally or arbitrarily arrested or detained the person claiming the

²⁰ Articles 88 and 89 of CCP as modified up to date.

²¹ The GR has put in place the Rehabilitation centres for delinquent children, notably GITAGATA and WAWA centres. In these centres children have all the rights for minor’s young children.

²² Article 1, paragraph 2 of CCP, review of 22 April 2006, O.G. No. special of 27 May 2006.

²³ Article 34 of the Law No. 3/97 of 19 March 1997 relating to convention of Bar in Rwanda.

²⁴ The weekly Legal Aid, are organised throughout the country, advocate are recruited to assist minors and poor ... every year.

violation. Articles 388 to 390 criminalize violations of individual liberty, especially kidnapping and arrest or arbitrary detention by violence, trickery or threats. Paragraph 4 of Article 388 states that “if the kidnapped, arrested or detained person undergoes physical torture, the guilty person shall be sentenced to life imprisonment.”

40. In order to protect citizens against torture, the State has put in place laws punishing more specific acts of violence as well as torture and ill treatment. There is a law setting up prosecution for offences constituting the crime of genocide, a law related to the protection of the child, a law related to protection of women against violence, and particular statutes for civil servants including a code of conduct. Article 5, point 10, of the law punishing genocide²⁵ includes among its constitutive acts crimes against humanity, inhuman acts causing intentionally great sufferings or terrible violations to physical integrity or to physical or mental health. Article 6 of the same law provides that when a crime against humanity is preceded by inhuman and degrading treatment, the latter constitutes an aggravating circumstance. The punishments provided by these texts ranges from six months to life imprisonment with special provisions.

41. Derogation from these provisions is never permitted, even in times of emergency or in response to terrorism.

42. These measures have been effective, as there has been a decrease of crimes related to violation of physical integrity and violence against women and children.²⁶

Measures taken according to article 2, paragraph 2

43. The adherence by Rwanda to fundamental principles of human rights, including through provisions of its internal law system, does not give room for derogation from guarantees offered to citizens of protection against acts of torture, even during exceptional circumstances such as internal political instability, war, state of emergency or any other situation. The fact that Rwanda has ratified the Convention against Torture and that it may be directly applied by internal courts is a further guarantee of non-derogation even in emergency situations. Authorization of torture in exceptional circumstances would be unconstitutional with regard to article 15 of the Constitution, which formally prohibits the use of torture in all cases.

44. Article 23 of the law relating to creation and organization of NPS provides that “the person jailed must be treated in dignity and in respect of human rights. He or she is particularly protected against any form of torture, other cruel, inhuman or degrading treatments”. Rwanda has respectively ratified the convention on the treatment of prisoners of war and the convention on protection of civilians during war.²⁷ It has also adopted a law punishing genocide, crimes against humanity and war crimes. The implementation of independent institutions devoted to protection of the human rights, including the National Commission for the Human Rights and the Office of the Ombudsman, as well as the presence of non-governmental organizations and an active, independent investigative press, bolster protection guarantees during emergencies.

²⁵ Law No. 33 bis/2003 of 6 September 2003 repressing genocide crime, crime against humanity and war crime.

²⁶ MININTER, Report of 14 May 2010 addressed to the Prime Minister on the evolvement of gender based criminality and rapes on minors.

²⁷ Through the communication of 21 March 1964, addressed to the Switzerland Federal Council and received on 5 May 1964, the Government of Rwanda declared to be related by Geneva Convention of 12 August 1949 for the fact of their ratification by Belgium on 13 September 1952, with effect from 1 July 1962 date of accession to independence.

Measures taken according to article 2, paragraph 3

The order of a superior manifestly illegal

45. In Rwandan law, criminal responsibility is personal.²⁸ Regarding respect of administrative hierarchy, article 48, paragraph 2, of the Constitution, provides that any citizen has the right to defy orders received from his or her superior authority if the orders constitute a serious and manifest violation of human rights and public freedom. The provisions of article 229 of the Penal Code specifically provide that order of a superior or a public authority cannot be justification for a crime. That article reads: “When a Public Officer gives orders contrary to a law or regulation, and if he/she justifies that he/she acted according to the orders of his/her chiefs, the latter will not be sanctioned but the chiefs having given the orders shall be sanctioned”. However, if the illegality of the act is a blunder or manifest, the subordinate having executed the order shall be considered as accomplice, the cause of justification provided on the previous paragraph (art. 229, para. 2, of the Penal Code) shall not be applied. This penal code provision clearly states that the order of a superior manifestly illegal cannot be referred to, to justify torture.

46. Article 18 of the law punishing genocide, crimes against humanity and war crimes (No. 33 bis/2003, of 06/09/2003) stipulates that no interest can justify these crimes. A suspect’s official status during a crime does not exonerate him or her from criminal responsibility and is not a reason for him or her to get the benefit of extenuating circumstances. Furthermore, a superior may be held responsible for the acts of his or her subordinate even if he or she did not order the subordinate to commit the illegal acts. This Article reads: “The fact that one of the acts proscribed by this law has been committed by a subordinate does not disengage the superior authority of his/her criminal responsibility if he/she knew or had reasons to know that the subordinate was ready to commit this act or committed it and the superior hierarchical authority did not take necessary and reasonable measures to prevent this act from being committed or punish the actors, and inform the competent organs. The fact that the accused acted on order of his or her Government or on order of his or her superior does not spare him/her from criminal responsibility if, manifestly, the order could lead to one of the acts proscribed by a criminal law.”

47. Article 11, point 3, of the Ministerial Order instituting regulation, sanctions and disciplinary proceedings in the National Police (No. 004/05, of 22/12/2005) provides that subordinates shall not execute orders that are contrary to the law.²⁹

Article 3

Prohibition of expulsion, removal or extradition

48. The legislative measures have been taken according to the prescription of article 3 of the Convention. The legal provisions related to expulsion, removal and extradition are provided in Rwandan legislation. Extradition is only authorized within limits provided by law and in conformity with conventions and international uses (art. 15 of the Penal Code). A law on extradition is being adopted in the Parliament. Article 8 of Organic Law No. 37/2007, on the abolition of the death penalty, provides that if a state requests extradition of a suspect and the offence for which the suspect is accused is punishable by death in the requesting State, the Rwandan Government will only agree to extradition if the requesting

²⁸ Article 17 of the Constitution.

²⁹ In O.G. of 1 February 2006, 45th year, No. 3, p. 56.

State provides formal assurances that the death penalty will not be applied. No Rwandan can be extradited abroad.³⁰

49. Article 25 of the Constitution recognizes asylum in conformity with international law and conventions that Rwanda has ratified, especially the Convention Relating to the Status of Refugees³¹ and its 1967 Protocol and the AU Convention Governing Specific Aspects of Refugee Problems in Africa.³² Those conventions are applicable domestic law by the fact that they have been ratified, especially to the prescriptions of articles 189 and 190 of the Rwandan Constitution. In adopting the conventions, Rwanda committed itself to implementing the prescriptions of articles 32 and 33 of the 1951 Convention, namely prohibition of expulsion, removal and extradition of a person to a State where he or she risks being tortured or persecuted.

50. The ratification of the Convention shows the will of Government of Rwanda to conform itself to prescriptions governing protection of people against expulsion or extradition to states where they risk being tortured. No foreigner has been subject to expulsion, removal or extradition so far to a country where there are serious reasons to believe that they risk being subjected to torture. At the level of judicial cooperation among States, Rwanda has signed extradition conventions with the United Republic of Tanzania, Kenya and Uganda (the countries of the East African Community) and with Burundi and the Democratic Republic of Congo (the countries of the Great Lakes Regions).

51. Article 18 of the law relating to immigration and emigration (No. 17/99, of 16/8/1999) as modified and completed up to date, provides that the Minister of Internal Security by motivated Order may expel from Rwandan territory any undesirable foreigners or who, through their presence or conduct, compromise or threaten to compromise tranquility or public security.

52. Rwandan law provides possibilities of administrative or judicial appeal in decisions of expulsion, removal or extradition. Any foreigner who is subjected to expulsion or prohibition of stay may appeal the decision to the President of the Republic, in two days time from the ministerial Order notification, either by missive letter duly signed or through a proxy holder. Under Article 19 of the aforementioned law, the President of the Republic shall come to a decision on the matter within 12 days of receiving the request.

53. The High Court has jurisdiction over administrative decisions in violation of substantive or procedural rules from the levels of Province to the President of the Republic. The court is competent to examine actions seeking nullification of administrative decisions related to lack of jurisdiction or abuse of authority.³³ The Code determining the organization, functioning and jurisdiction of courts provides that competent courts can examine administrative decisions taken by the State organs in the course of their duties.

54. Article 17 of law on refugees³⁴ stipulates that when an asylum seeker is not satisfied with the decision of the Refugees National Council, he or she may inform the High Court within 15 working days following the notification of refusal. The asylum seeker has the right to stay in Rwanda until the day of the Court's decision. The High Court also assesses

³⁰ Article 25 of the Constitution.

³¹ D.L. No. 29/79 of 22 October 1979, O.G. No. 22 of 15 November 1976, p. 666. Reserve by Rwanda on article 26 was authorized to be cancelled by law No. 28/2008 of 23 July 2008.

³² D.L. No. 30/79 of 22 October 1979, O.G. No. 22 of 15 November 1979, p. 667.

³³ Article 93, point 1° of the Law determining Organization, Functioning and Jurisdiction of Courts, O.G. special No. of 10 September 2008.

³⁴ Law No. 34/2001 of 5 July 2001 modified and completed by law No. 29/2006 of 20 July 2006, O.G. No. 15 of 1 August 2006.

the legality of decisions. It may overturn decisions or give damages to repair any prejudice.³⁵

55. The National Commission for the Human Rights regularly organizes training sessions on themes related to human rights, including the rights of refugees and foreigners who stay in Rwanda.³⁶ Through a broadcast show on Radio Rwanda a particular emphasis has been put on the theme of refugee rights and the problems refugees face.³⁷ NCHR is a member of Refugees National Council.

Article 4 Criminalization of acts of torture, attempt, complicity and provided penalties

56. In the framework of the implementation of the Convention, article 204 of the law project relating to the new Penal Code recapitulates word-for-word the Convention terms concerning the definition of torture and other cruel, inhuman or degrading treatment or punishment. Article 205 provides penalties of six months imprisonment at a minimum and life imprisonment with special provisions (with isolation) at a maximum.

57. Concerning statutes of limitations for prosecutions, Rwanda's position is that it is better to establish the difference between acts of torture committed in the framework of law governed by the Penal Code on one hand, and acts of torture committed in the framework of genocide, war crimes and crimes against humanity on the other hand. In the first case, the provisions of article 4 of the CCP are applied. This Article provides that, except in cases of murder and offences against the rights of the child which are not expired, the statutes of limitations for criminal prosecutions are as follows:

- A period of ten years for felonies
- A period of three years for misdemeanors
- A period of one year for petty offences

58. Offences related to torture carry a statute of limitations of 10 years, since they are felonies. Offences falling under genocide, crimes against humanity and war crimes are have no statute of limitations, in accordance with the convention on genocide, war crimes and crimes against humanity that Rwanda ratified³⁸ and the internal law relating to genocide punishment. Article 20 of this law provides that the proceedings as well as the penalties pronounced for genocide, war crimes and crimes against humanity are not prescribed.³⁹

59. It is impossible to determine exactly how many cases apply anti-torture provisions. This is due to the fact that the Penal Code does not set up torture as an autonomous offence, so courts and tribunals cannot describe an act of torture as an offence of torture. Thus, any judgments rendered fall within the category of offence relating to violations of physical integrity.

³⁵ Article 94 of the Law determining Organization, Functioning and Jurisdiction of Courts.

³⁶ 1,941 Security agents, Administrative authorities, soldiers, LDF, Criminal Investigation Police, had been trained on human rights as well as refugees and stateless rights. *Source*: National Commission for Human Rights, Annual reports 2007–2008.

³⁷ “Uburenganzira iwacu” (the right at home): the title of the weekly broadcast of National Commission for Human Rights (NCHR) on Radio Rwanda, NCHR, Annual report, 2007.

³⁸ Rwanda became member by Decree law No. 8/78 of 12 February 1975, O.G. of 10 May 1975. p. 230.

³⁹ Law No. 33 bis/2003 of 6 September 2003 repressing genocide, crime against humanity and war crime. O.G. No. 21 of 1 November 2003.

60. Any lapse from duty by the PP, on honor or dignity, constitutes a disciplinary fault that, according to its seriousness, may be sanctioned by one of the penalties that may lead to temporary suspension or dismissal (art. 44 of the code of conduct of the NPPA).⁴⁰ The rules and regulations of the National Police set up the duties and prohibitions and determine the sanctions, which include dismissal.⁴¹ Prison guards guilty of a disciplinary fault may be dismissed from their jobs according to the rules contained in the particular statute on prison guards (art. 18 of the law creating the NPS).⁴² In cases of torture those sanctions may be applied without excluding penal sanctions.

61. The law relating to punishment for genocide and related crimes in Rwanda also discusses the penalties to be applied for grave torture. In particular, the perpetrators of acts of sexual torture are punished severely. The law related to the protection of children and the law related to the protection of women against violence provide penalties up to life imprisonment with special provisions (isolation). In absence of specific texts, article 316 of the Penal Code provides serious penalties for all perpetrators who commit torture or acts of barbarism, no matter who they are. In such cases, the offender is given the same punishment as for murder. Paragraph 4 of article 388 of the Penal Code, related to violations of the liberty of a person, stipulates that “When the kidnapped, arrested or detained person has been subjected to corporal torture, the guilty person shall serve life imprisonment”.

Article 5

Territorial jurisdiction in criminal matters

62. The principle of territoriality in criminal matters is set up by article 6 of the Penal Code as follows: “Any offence committed on Rwandan territory by Rwandans or foreigners is punished according to Rwandan law”. As applied here, Rwandan territory includes land space, river space, lake space and air space within the limits of Rwanda’s borders and onboard aircrafts and boats registered in Rwanda. The accomplishment of the principal act in Rwanda confers jurisdiction onto Rwandan courts, even if certain constitutive elements of the crime have been realized out of the country. This is true regardless of the nationality of the actor. The jurisdiction to decide the principal fact is extended to all facts of complicity or co-actions perpetrated outside of the Republic of Rwanda, even by foreigners.

63. According to article 13 of the Penal Code, offences committed by a foreigner outside of Rwanda can be adjudicated by a Rwandan court only in two situations: when the crime or offence is against State security and when the crime is of forging State stamps or national currency. In this case the guilty person may be prosecuted according to the provisions of Rwandan law as if the crime or the offence has been committed in Rwanda. To make these measures effective, Rwanda has set up competent courts to adjudicate international or cross-border crime. The High Court in particular is competent to adjudicate those offences at the first level. The most recent case is about the extradition from Rwanda to Belgium of Guy Theunis, a Belgian arrested in Rwanda for incitement to commit genocide and negationism.

⁴⁰ Law No. 22/2004, O.G. No. special of 1 September 2004.

⁴¹ Article 7 of Ministerial Order No. 004/05 of 22 December 2005 instituting sanctions, regulations and disciplinary procedure in the National Police.

⁴² In 2005 the Director of MULINDI military prison had been dismissed from his duties for having mistreated detainees. In 2009, More than 100 prison Guards had been sacked out for misbehaviour in accomplishing their duties.

64. The High Court is competent to decide on prosecution against everyone — including foreigners, associations and Rwandan or non-foreign, non-governmental organizations — of international or cross-border crime, especially torture, cruel, inhuman or degrading treatment, genocide, crimes against humanity, war crimes, negationism and revisionism of genocide, incitement, mobilization, assistance, facilitation, or any other form of participation, either directly or indirectly in committing the crimes specified in this paragraph (Article 90 of COCJ),⁴³ whether committed in Rwanda or out of Rwanda.

Article 6

Arrest and detention of any person suspected to have committed an act of torture waiting for penal or extradition proceedings

65. If the act of torture took place in Rwanda, the provisions related to the organization and jurisdictions of courts as well as those related to penal proceeding are applied. These are mainly about rules related to arrest and preventative detention in preliminary inquiries. The person suspected shall benefit from the guarantees provided by those codes. Any person accused of acts of torture may be arrested and detained. The conditions in which a person is arrested or detained preventatively are provided by the CCP in its articles 37 to 40 for arrest and articles 93 to 100 for preventative detention. The person arrested has the right to inform any person of their choice of the measures taken against them.

66. If the accused is a foreigner, he or she has the right to inform the diplomatic authorities of his or her country. The jailed expatriate shall receive, in a language he or she understands well, an explanation of the laws governing detainees. He or she has right to exchange information with a diplomatic representative of his or her country residing in Rwanda. If the detained expatriate is of a country that has no representation in Rwanda, is a refugee or is a stateless person, he or she may, after approval from the Minister, solicit the assistance of another country's representatives or of an international organization of his or her choice, provided the entity agrees (art. 54 of the law establishing the NPS).⁴⁴

67. Rwandan law does not exclude other interested States from exercising their competence over a matter. Rwanda will inform them of the circumstances within which measures have been taken. They may exercise their own competence, through Interpol (of which Rwanda is a member), judicial cooperation or extradition treaty.

68. The competent authorities in charge of detention and investigation in cases of torture are the JPOs, PPOs, NCHR staff, and Ombudsman's Office staff. Courts and Tribunals are in charge of conducting trials related to torture. MINIJUST, MINAFFET and the Ministry of Internal Security collaborate on extradition cases. As for the Guy Theunis case, all those provisions of national law have been applied and the concerned has been extradited on formal request by Belgium.

Article 7

Judgment in cases of non-extradition of a person suspected to have committed an act of torture

69. Article 7 of the Convention against Torture provides that Rwandan courts shall, in cases of non-extradition of the accused, adjudicate any serious offence related to criminal

⁴³ Law determining Organization, Functioning and Jurisdictions of Courts, O.G. No. special No. of 10 September 2008.

⁴⁴ Article 34 No. 38/2006 of 25 September 2006 of law relating to creation and organization of the NPS.

law according to applicable provisions. Article 12 of the Penal Code states the principle of double qualification for the facts considered to be a crime or offence in the following manner: “Whoever is an accomplice to a crime or offence committed out of the country, may be prosecuted and judged by the Rwandan courts, if the action is punishable both by foreign law and Rwandan law, on the condition that the action considered a crime or offence has been noticed by a final decision of a foreign court.”

70. The provisions of articles 310, 316 and 388 of the Penal Code criminalize and punish violence and physical injuries, and treats acts of torture as aggravating circumstances for which penalties may go up to life imprisonment with special provisions (isolation). Specific laws have been adopted to punish acts of torture related to genocide, crimes against humanity and war crimes.⁴⁵ Those articles clearly deal with acts of torture and ill treatment and provide penalties up to life imprisonment with special provisions (with isolation).

71. Paragraph 3 of article 7 of the Convention concerns the right of any person prosecuted to have benefited from fair treatment during the proceeding. Constitutional provisions set up principles according to which any detained or accused person has the right to treatment preserving his or her dignity and mental and physical integrity. Any person arrested or detained has the right to be informed of the reasons for their arrest and the right to be presumed innocent until proved guilty. Every person has the right to legal counsel of their choice, to be judged within a reasonable period and to be protected by the principle of legality of offence and penalties (arts. 10 to 25 of the Constitution).⁴⁶ Article 119 provides that in a penal matter evidence may be established by all means of fact or law provided that they are submitted to contradictory debates and that they are not related to prohibited evidence.

72. The Constitution and the CCP do not distinguish a foreigner from a national citizen for the purposes of guarantees to a fair trial. Furthermore, the foreigner has the right to receive an explanation of the laws governing detainees in a language he or she understands well (art. 33 of the law establishing the NPS). In cases of crimes and offences at the international or cross-border level, Rwandan courts may communicate and co-operate with foreign courts in the course of investigation, in order to facilitate the supply of required information to elucidate the veracity of facts.⁴⁷

Article 8

Criminalization of acts of torture in the extradition treaties

73. In the extradition convention between Rwanda and the United Republic of Tanzania,⁴⁸ torture as such is not mentioned. It should be noted that on the list of 31 crimes and offences that may lead to extradition, only four are related to acts of torture or ill treatment. Most are about rape, kidnapping and arbitrary detention, sequestration and violation of physical integrity.

74. Article 2 of the extradition convention between Rwanda and the countries of the Great Lakes Regions stipulates that “for all offences and attempts, violators may serve,

⁴⁵ Referring to law No. 33 bis/2003 of 6 September 2003 repressing genocide crime, crime against humanity and war crime.

⁴⁶ The part related to fundamental rights of the person in the constitution of 4 June 2003 does not exclude a foreigner.

⁴⁷ Article 103 of Law No. 15/2004 of 12 June 2004 relating to evidence and its production.

⁴⁸ Treaty between the Republic of Rwanda and the United Republic of Tanzania for the extradition of fugitive criminals, signed 25 January 1965.

according to the laws of each one of the contracting parties, a penalty of imprisonment whose maximum duration is not below six months, whatever the penalty effectively decided by the Tribunal". The offences in the Rwandan Penal Code related to acts of torture are crimes whose minimum penalty is six months and maximum penalty is life imprisonment with special provisions (isolation). In these cases, acts of torture, according to Convention provisions and the Penal Code, generate extradition within the framework of judicial cooperation among the Great Lakes countries.⁴⁹

75. Torture is not mentioned as such in the list of crimes and offences that may result in extradition in the extradition convention between Rwanda and Kenya. The named offences related to acts of torture include genocide and related crimes, crimes against humanity, war crimes as defined by respective international instruments, rape, murder, violations to physical integrity that carry a sentence of five years or more of imprisonment, arbitrary detention and other related offences.⁵⁰

76. On the point of whether Rwanda makes extradition conditional on the existence of a treaty, Article 25 of the Rwandan Constitution provides that the extradition of foreigners is only authorized as provided by the law or international conventions to which Rwanda belongs. However, no law or treaty obliges Rwanda to make extradition conditional on the existence of a treaty. Rwanda considers that the provisions of the Convention against Torture and other international conventions forbidding the acts of torture constitute a legal basis for extradition, as a result of their ratification.

77. A law about extradition is at the point of being adopted by the lower chamber of Parliament. This law project provides that, in the absence of an extradition convention between Rwanda and another country, extradition may be done through international cooperation, concluding a particular agreement on extradition (art. 9 of the law project). Furthermore, Rwanda has a priority programme of proceeding to other treaties of extradition, in order to facilitate the arrest of fugitives suspected of committing acts of torture and other ill treatment during genocide.

78. Those who commit punishable attempt and criminal participation are subject to extradition the same way as those who commit offences in all extradition treaties to which Rwanda belongs.⁵¹

Article 9

Mutual judicial assistance between State parties in criminal procedure regarding torture

79. The extradition treaties mentioned above provide for mutual judicial assistance in criminal matters. One State party may request that the other State communicate and cooperate in the course of a duly transmitted criminal investigation⁵² by providing required information, mainly concerning international or cross-border crime. The mutual judicial assistance treaties mentioned above lay out the procedure by which communication and

⁴⁹ Judicial Convention between the Republic of Zaire (DRC) and the Republic of Rwanda and the Republic of Burundi, signed in Kigali on 21 June 1975.

⁵⁰ Extradition Treaty between the Government of the Republic of Kenya and the Government of Rwanda, signed in Kigali, 30th day of September 2009.

⁵¹ Referring to Schedule B of Extradition treaty between Kenya and Rwanda; article of the Extradition treaty between the countries of the Great Lakes; article 1 paragraph 1 and point 30 of the Extradition treaty between Rwanda and Tanzania.

⁵² Any proceeding related to judicial mutual help is transmitted through diplomatic way according to the prescriptions of the treaties mentioned above.

cooperation in the course of an investigation is implemented. Communication and cooperation in the course of an investigation shall describe the infraction, the object of the instruction, names and addresses of the fugitive and the required investigation measures.⁵³

80. Rwanda has experienced cases involving torture committed during the genocide perpetrated against the Tutsi, in which a request for judicial assistance was made to other States. No request such requests have been sent to Rwanda. Several Rwanda requests are pending before other States.

Article 10

Mobilization for the respect of the Treaty provisions

81. MINIJUST, the Supreme Court, the NPPA, the National Police, the NCHR and the Office of the Ombudsman have annual plans for the training of their staff. These trainings are designed by Judicial Police staff,⁵⁴ LDF, medical doctors,⁵⁵ local authorities⁵⁶ and NPS staff.⁵⁷

82. Medical doctors and nurses have been trained on physical and psychological abuse identification in order to fight violence against children and women. This knowledge serves in the identification of acts of torture and cruel, inhuman and degrading treatment or punishment. The training designed by a staff of judicial professionals emphasizes respect for human rights in general, respect for limitations on detention periods, the principle of presumption of innocence until proved guilty, judicial independence, subordination of the Judicial Police to the PP staff, free access to a lawyer, international legal instruments related to human rights ratified by Rwanda, and the rights of the detainees in general and particularly those of vulnerable groups in detention, such as women, minors and the sick.⁵⁸

83. The nature and the frequency of trainings are noticed by the creation of an Institute of Legal Practice and Development⁵⁹ to mainly ensure the continuous training of judges, PPOs, JPOs, judicial support personnel and lawyers. This staff is trained on respect for human rights, criminal procedure, the administration of evidence, support for victims and protection of witnesses of violence, investigative techniques of specific crimes (such as terrorism and domestic violence) and international law, including the implementation of treaties which Rwanda has ratified. Participants are appointed based on the theme being developed. There are successive sessions, and at least two sessions are held quarterly.⁶⁰

84. Specific programmes of sensitization on respect for the rights of women and children are very advanced in Rwanda and the Government of Rwanda is proud of it. More particularly, the Government rejoices in the fact that it not only participates in education

⁵³ Article 18 of the Judicial Mutual Help treaty among the Great Lakes States.

⁵⁴ Training session organized by Advocates without Borders in March 2010 on the Treaty against torture intended to Judicial Police Officers (JPO).

⁵⁵ Training of 9 March 2008, on the role of medical doctors in the fight against violence committed to women and minors, *New Times*, 11 March 2008.

⁵⁶ Training session of June and November 2007, 1,480 people were trained on the fundamental principles of human rights comprising prohibition of acts of torture and ill-treatments.

⁵⁷ Training session of June 2010, organized by Penal Reform International NGO on the rights of the detained people.

⁵⁸ Referring to the Training Programs (2009–2010) of NGOs like: ASF, PRI, and HAGURUKA with their partner's institutions.

⁵⁹ This Institute was created in 2006 by the law No. 22/2006 of 28 April 2006, O.G. No. special of 6 July 2006.

⁶⁰ www.ilpd.ac.rw.

and sensitization but has also established receiving and listening structures and legal assistance centres for women and children victims of violence. This is done through the Office of Monitoring on Gender, Child Rights Observatory, and Centers for holistic care for victims of gender-based violence and violence against children, called “One Stop Centers”, which have been established in public hospitals. ISANGE One Stop Center has been established at the National Police Hospital in Kigali and a “Gender Desk” has been established at police stations to handle cases of victims of gender-based violence and violence against children. In each cell or *Umudugudu*⁶¹ there is an officer in charge of gender-based violence issues and violence against minors as well as a “Gender-Based Violence committee” to protect children and women against violence, supervised by MIGEPROF. Within the army (Rwanda Defence Forces), there is a “Gender Desk” responsible for protecting women and children against violence. At each prosecution, there is an officer responsible for gender-based violence and violence against children. Houses of Access to Justice have been established in each district. They have the duty to receive and guide victims of gender-based violence and violence against children.

85. Specialized State and non-governmental organization structures are in charge of citizen protection against gender-based violence and sexual violence against minors. In these specialized structures, women and children learn their rights and become familiar with the procedures legally provided to guarantee the claim of these rights, including an appeal in case of violation of their rights. The international and national organizations most active in the prohibition of acts of torture are: FACT/RWANDA, Avocats Sans Frontiers/Belgium, PRI, LIPRODHOR, HAGURUKAKA, CLADHO, LDGL, PROFEMMES-TWESE HAMWE ... These organizations are in charge of sensitization for the respect of human rights and denouncement of violations. They submit reports to the institutions in charge for the follow up, repair and prevention of future cases.

86. The measures taken are very effective. There has been a decrease rate of criminality related to gender-based and sexual violence against minors. In 2006, police recorded 2,033 cases of rape of minors and 403 cases of rape. By contrast, in 2009 they recorded 1,570 cases of rape of minors and 297 cases of rape.⁶²

Article 11

Systematic review of interrogation rules, detention and imprisonment to avoid acts of torture

87. To control arrests and detentions, article 18 of the Constitution provides that each person’s liberty is guaranteed by the State. No one shall be subject to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute a crime under the law in force at the time it was committed. The Penal Code criminalizes the offence of illegal detention (arts. 297, 299 and 300).

88. The CCP clearly provides that any person under arrest should be informed of the charges of against him or her and also has the right in particular to inform their lawyer or any other person of their choice, family members inclusive (art. 37 of the CCP). Each prison has access to a medical doctor. Hence, every person jailed receives a medical test when they enter the prison, and they have the right to medical care (art. 27 of the law establishing the NPS). If the jailed person is a foreigner, they have the right to meet and

⁶¹ Cell is the smallest administrative instance close to the population commonly called “Street”.

⁶² *Source:* MININTER, Report on situation of infraction regarding violence’s physical integrity addressed to the Prime Minister on 14 May 2010 by the Minister of Internal Affairs and Security. It is noticed from the above figures that minors and gender based criminality decreased in 2009.

exchange information with their country's diplomatic representatives. If the jailed foreigner is of a country that has no representation in Rwanda, is a refugee or is a stateless person, he or she may, after approval of the Minister, solicit assistance of another country's representatives or of an international organization of his or her choice, provided the entity agrees.

89. Rwanda implemented the philosophy of the fundamental principles on the treatment of people deprived of freedom by creating the NPS. The Government of Rwanda put in place an autonomous public institution in charge of prison management and the improvement of prison conditions. The law establishing the NPS guarantees the rights of all jailed persons, especially the right to be treated with dignity and protected against all forms of torture, cruel and inhuman or degrading treatment. Furthermore, no form of discrimination is authorized. Article 7 of the instructions of the Minister of Internal Security No. 09/08 of 16 June 2008 related to conditions of detention during arrest, food supply and the visits of the detainees, provides that the accused deserves medical treatment when required by his or her health state. Article 8 of these instructions provides that no one shall be arrested contrarily to what is provided by the law. Inhuman or degrading acts and torture or other ill treatment likely to extort a confession from the accused are forbidden. A code of ethics of the judicial profession, the Statute of Public Prosecution Personnel and the Statute of Police National Officers have been implemented and provide disciplinary or penal sanctions in cases of violation of the code of conduct.⁶³

90. Inspection of police practices, especially regarding custody, is regularly done by the Judicial Police Inspection, PPOs, NCHR, the Office of the Ombudsman and non-governmental organizations. Inspections are regularly conducted, or upon receipt of information that violations of human rights, acts of torture inclusive, are taking place. National and international organizations like the ICRC and PRI have always regularly visited detention centres and prisons. These regular visits to prisons especially aim to observe the following points: living conditions of the detainees, the detainees' dossier status, the status of women accompanied by infants, the situation of minors in detention and the situation of detainees with terminal conditions or HIV/AIDS.

91. Detention in secret places is prohibited. Article 88 of the CCP provides that secret detention is considered illegal detention, and includes any detention out of police custody, military custody or in an appropriate prison. Police or military custody as well as prisons are governed by the law.

92. The control mechanisms of law enforcement officials have been implemented to avoid abuses that may lead to torture or ill treatment. Article 89 of the CCP provides that when a person is detained unlawfully any judge who is appointed to a court which is located near the place where the person is detained and whose competence covers the offences the detained person is alleged to have committed can, upon request by any interested party, order the officer who detained that person to appear and produce the detainee in order to indicate the reason and manner under which he or she is detained. If the judge decides there has been unlawful detention, he may immediately stipulate punishment for any officer who unlawfully detained the person. The punishment is provided for under the Penal Code. When a person is arrested and detained, the JPO has 72 hours to instruct and forward the dossier to the PP. The latter has seven days of instruction and should forward the dossier to the tribunal. The order of the judge on preventative detention is given within 24 hours. The order authorizing preventative detention is valid for 30 days,

⁶³ Law No. 22/2004 relating to the Public Prosecution statutes and its staff, the Law No. 09/2004 relating to Judicial Code of conduct, Ministerial Order No. 004/05 of 22 December 2005 instituting, regulations, sanctions and disciplinary procedure in the National Police.

renewable each month. It may not be extended for contraventions nor be extended beyond six months for misdemeanors or beyond one year for felonies. An Institute of Legal Practice and Development has been put in place to ensure a continuous training for JPOs, PPOs, judges and lawyers.

93. Individuals especially at risk are specifically protected in detention. Men are separated from women and minors from adults. Practically, men and women are detained in different blocs, with their health states and sentences taken into consideration. Knowledge-improving programmes and leisure are provided. A jailed pregnant or breastfeeding woman receives appropriate treatment. Infants get food appropriate for their age and are turned over to their families at the age of three years. If the infant has no family to receive it, the Government finds it a host place. Sick people, such as diabetics and people living with HIV/AIDS, receive appropriate healthcare and food, and receive ARVs through the Global Fund project. Other rights of jailed persons are also recognized, including the right to worship and right to 50 per cent of income from any work performed (art. 25 of the law relating to creation of the NPS).

94. In the framework of improving prisons conditions, the Government of Rwanda established the NPS to ensure respect for the rights of incarcerated people and to guarantee their security and welfare. This service also works to ensure respect for the right to life, physical and mental integrity and welfare of the detainee. It implements effective strategies enabling the detainee to be rehabilitated and reintegrated in the society, to promote activities generating income and their good management in prisons and to build the capacities of the incarcerated people. The creation of this institution reinforced improvement in prison conditions and their adaptation to international principles related to minimal conditions for the treatment of people deprived of their liberty. Each prison should keep an updated register, indicating for each detainee their identity, reasons for their detention, the competent authority that decided the detention, and the day and the hour of admission and release. New detention centres are under construction, and the employment of qualified staff as well as their capacity building has been done.⁶⁴ Those new centres will provide ample space so as to solve the problem related overcrowding; they will also enable the closure of the oldest and most dangerous detention centres.

95. The NPS has an inspection service in charge of the follow up on detention conditions and the management of prison assets. It regularly conducts visits into all county prisons. At each opportunity, the inspection service writes a report and gives recommendations to improve the living conditions of incarcerated people and promote good prison administration. At the end of each visit recommendations are forwarded to the institutions in charge, so they may implement the improvements.

96. To avoid overcrowding or detention beyond the period of conviction, releases have been initiated. In January 2003, the release of certain categories of persons detained for genocide was made, especially those who had confessed and pleaded guilty, minors between 14 and 18 years of age during the genocide, people over 70 years of age and prisoners suffering from chronic and incurable diseases. This measure was extended to other detainees whose detention period was at risk of being more than the duration provided by the penalty. Since January 2003, 60,278 detained have been released. These measures are applied each year to bring solutions to detention conditions. Projects related to

⁶⁴ The recruitment of a qualified staff made up of judges, medical doctors and nurses, engineers, computer skilled, accountants, was done in 2008. Presently the personnel of the NPS of Rwanda contribute in peace keeping operations and capacity building in Haïti.

provisional release were submitted to the Cabinet for approval, envisioning the release of 2,290 detained people, among whom 59 are soldiers.⁶⁵

97. The recourse to Work for General Interest⁶⁶ as an alternative to imprisonment penalty is also a remedy for prison overcrowding. Through this programme, the sentenced persons are involved in the execution of their penalties and join members of the community. By December 2009, 94,446 people had been sentenced to the Work for General Interest programme by *Gacaca* Courts.⁶⁷ At the end of 2009, 58,956 people have gone through camps to serve such sentences.⁶⁸ This programme constitutes unpaid work and its participants have the rights like other free citizens.

Article 12

Investigations regarding act of torture

98. The authorities competent to initiate and carry out investigations related to penal matters are JPOs and PPOs. Once a matter has been referred to a competent court, a judge takes over the investigation. In a penal matter, the judge is active in searching for evidence, interrogating the parties, visiting the scene of the crime and estimating damages. In a disciplinary matter, the authorities competent to initiate and carry out investigations are the Managing authorities of institutions. Any PPO who lapses from duty on honor or dignity commits a disciplinary fault that, according to its gravity, may be sanctioned in various ways, ranging from temporary suspension to dismissal (art. 44 of the law governing PPOs). Articles 87 to 94 of the law on general statutes for the Rwanda Public Service provides that lapses from duty of civil servants shall be sanctioned, according to their gravity, by one of the penalties provided by the Statute.

99. Legal texts relating to the rules and regulations of the National Police set up prohibitions and determine sanctions comprising disciplinary imprisonment of 30 days for police lapses from duty.⁶⁹ Prison guards guilty of a disciplinary fault are sanctioned according to rules included in the particular statute on the prison guards (art. 18 of the law establishing NPS). The police and army staff as well as judicial employees, prosecution employees and prisons guards are governed by their particular statutes and a disciplinary regime is provided for any lapse from duty and discipline in the execution of their duties. In cases of torture, the most severe disciplinary punishment that may apply includes revocation for acts of torture constituting serious crimes (gross negligence). These penalties may include criminal penalties.

100. Article 79 of the CPP provides that if medical examinations or forensic analysis become necessary in cases of torture, any person legally requested to by a JPO, PPO or judge is required to serve as an expert or medical doctor. This provision obliges the doctor to immediately proceed to a medical examination if required by the investigators or the judge. Article 76 and the following articles of the law relating to evidence and its production provide that any interested party may ask the judge to charge one or more experts to proceed to investigations or give a technical notice in regard with their

⁶⁵ MINIJUST, Department of Human Rights, Archives, July 2010.

⁶⁶ Explanatory note of Presidential Decree No. 10/01 of 7 March 2005 relating to the creation of National Service of work for General Interest.

⁶⁷ Quarterly report of TIG Executive Secretariat, December 2009.

⁶⁸ *Source*: PRI/LIPRODHOR, Monitoring of execution of sentences in Rwanda, Quarterly report, April 2010.

⁶⁹ Article 7 of the Ministerial Decree No. 004/12/2005 instituting regulations, sanctions and disciplinary procedure in the National Police.

profession. By this, it is understood that when a person is victim of acts of torture, they deserve an expert to record their injuries.

101. Disciplinary sanctions are independent from penalties provided by penal legislation. The same act or omission may be the subject of both a disciplinary and penal proceeding. When actors have been dismissed they are may be subject to penal sanctions in cases of torture.

Article 13

Right of the victim to complain before competent authorities

102. If the actor has been prosecuted, article 131 of the CCP gives the first possibility to the victim of torture to seek damages at the same time as the criminal proceeding. The victim can lodge a claim for compensation in a competent court claiming damages by way of notice by stating the claim in the court registry or in court at the time of hearing.

103. When proceedings do not take place, article 133 gives to the victim a second possibility. The victim may go to the court by claiming damages in a private prosecution. This action starts to move the criminal action, informing directly the repressive judge in order to repair the damages and to apply the penalties. This possibility arises mainly when a criminal file was put in safe keeping or when a period of six months has elapsed without any action being taken by the JPO.

104. Victim and witness protection mechanisms have been put in place. A department in charge of victim and witness protection has been set up at the NPPA to protect them against intimidation or any ill-treatment.

105. A victim has the possibility of recourse before impartial and competent courts and tribunals by claiming damages by way of private prosecution. Specific programmes of victim and witness protection have been instituted for these proceedings. Each Public Prosecution of Higher Instance Court has a staff to protect victims and witnesses. This system is intended to prevent harassment and retraumatization of victims. In addition, the Public Prosecution of Higher Instance Court provides medical care, transportation and support throughout the trial.

106. There is no staff trained specifically to treat cases of torture. However, in the police and prosecution, there is a staff trained to treat cases of violence against women and children. Specific programmes of follow up or care-taking of victims of violence against women and children have been put in place in all country districts, in the National Police, in prosecution instances and in women's associations and other non-governmental organizations.

107. These measures are very effective concerning criminality reduction and victim humanization.

108. A third possibility for victims is that of recourse before independent human rights institutions, especially the NCHR and the Office of the Ombudsman. As an illustration, the CNDP dealt with 1,361 cases in 2008, while the Office of the Ombudsman dealt with 3,056 cases, of which 2,257 have been settled, though these cases are not related to torture. Victims of torture have the same right of appeal to these institutions. These institutions have a duty to guide and assist victims in the process of recovery of their rights.

Article 14

Right of the victim to obtain fair compensation

109. The right of victims to obtain compensation is subject to authentic act or recognition from the perpetrator of the offence giving rise to compensation. This act may be a decision to cast force of judgment establishing the guilt of the actor and/or giving compensation to the victim. The procedure of implementing the court's decisions regarding damages is governed by the provisions of the Code of Civil Procedure relating to safety and performance. Once the victim has a final court decision, he becomes creditor to the perpetrator, and is entitled to the movable and immovable property of his debtor by voluntary or forced judgment decisions (arts. 191 to 312 of the Code of Civil Procedure). If a voluntary execution has not been observed, there will be forced execution in the legal forms (regular seizures and sales of assets of the debtor) with the assistance of the police.

110. The Government of Rwanda may be liable for acts committed by its agents in connection with their duties. Thus, it can participate in the compensation of a victim of torture committed by its agents on the basis of the provisions of the Civil Code relating to Civil Liability with respect to offences and quasi-offences (arts. 258 to LIII 262 of the Civil Code).

111. Cases of torture are not punished as such under domestic law, and there is no specific case where the Rwandan state was liable for compensation for damage caused by its agents in connection with torture and other ill treatment, except in cases of genocide. The genocide proceedings have repeatedly led to shared responsibility between the planners of genocide, the perpetrators and the state. The jurisprudence in this area reveals several cases in which the Government of Rwanda was ordered to pay damages with interest for acts constituting crimes of genocide and crimes against humanity committed by its agents.⁷⁰ No compensation has been recorded for victims of torture.

112. Insaenge One Stop Center is a specialized centre located at the Hospital of the National Police responsible for receiving victims of sexual violence and ensuring their medical, legal and psychological care. Rehabilitation and restoration programmes are highly developed for victims of torture during the genocide, victims of gender-based violence and victims of violence against minors. In each health centre or general hospital, there is a doctor or nurse with specific responsibility for gender-based violence cases and a staff of counseling or rehabilitation, to promote social reintegration of victims and combat the effects of post-traumatic stress disorder. Physicians determine the extent of damage caused to the victim, administer the necessary care and send investigators. The information collected is kept in evidence throughout the process of investigation or indictment. In these cases, expertise and medical care are free. With regard to post-traumatic states, the Government of Rwanda has set up programmes to provide care for people traumatized by the genocide. Infrastructure and health personnel to assist the traumatized are also used for other cases including cases of torture and ill-treatment.

113. Local Associations such as Haguruka are very active and specialized in the field of protection of the rights of women and children through legal assistance to victims, the

⁷⁰ For information: RP. No. 006/KIG/CS, Public Prosecution against Karamira Frodouard, accused of genocide crime has been sentenced to death penalty and joint damages with the Government of Rwanda of 1.183.196.600 Rwandan Francs including fees and costs of 40.600 Rwandan Francs. *Source*: Book of Jurisprudence, ASF-Supreme Court, Vol. I, pp. 73–109. Several judgments and court decisions have resulted to joint payment of Damages and Interest for crimes committed by public official with regards to their mission. The compensation has never occurred.

granting of micro-credit to women and vulnerable children, support for children in foster families and support for women victims of domestic violence.

114. Education programmes and training on citizenship have been introduced in prisons to prepare for reintegration and prevent recidivism. Prisons have a primary duty to re-socialize inmates, preparing them to become good citizens willing to broaden their scope and to coexist peacefully with the population. Achieving these goals may be through training, work, cultural activities, physical exercise and recreation. The Directorate of Prison works for this purpose, with other institutions involved in such activities (Article 48 of the Act establishing the NPS). As part of reconciliation, perpetrators of acts of torture committed during the genocide ask victims for forgiveness, to restore dignity to the victims and strengthen peaceful coexistence.

Article 15

Value of statements obtained under torture

115. In principle, evidence in criminal cases is established by all means in fact or in law, provided they are subject to debates (art. 119 of the 2004 law on the administration of proof). However, obtaining evidence through physical restraint, whipping, torture, brainwashing or any cruel or degrading method is prohibited. Such evidence is prohibited not only in the ordinary courts, but also in specialized courts, including military tribunals and committees of conciliators. Evidence that has no probative force to be declared admissible or valid in resolving a dispute is without effect (art. 8 of the Evidence Act). Even if a confession is voluntary, it can be revoked if it is proven that the suspect was physically extorted or that there was a mistake of fact. It cannot be revoked on the grounds of an error of law (art. 110 of the Evidence Act).

116. It has been held that a confession “can not be accepted by a Tribunal, if the procedure used was faulty, and when defendants have retracted, alleging for the first time that the confession was extorted under intimidation”.⁷¹

117. Rules surrounding indirect evidence are less developed in practice, and are usually sufficient and reliable enough to establish causation in the absence of direct evidence standard. This type of evidence is very common. It includes, for example, human presumptions, recording of telephone tapping, photographs or video recording (art. 121 and subsequent of the Evidence Act). Such evidence is subject to authentication by a witness or an expert to be reliable (art. 127 of the law relating to evidence and its production). These proofs are subject to prior approval by the Attorney General and confirmation by a witness or an expert to be valid (art. 127 of the Law of Evidence).

Article 16

Prohibition of other forms of cruel, inhuman or degrading treatment

118. The Constitution proscribes cruel, inhuman or degrading treatment (s.15). It further provides that all people are entitled to their physical or mental integrity (art. 16). The human person is sacred and inviolable. The Constitution thus poses the principle that personal freedom is inviolable and guaranteed by the State. Restrictions on freedom can be made only as provided by law at the time of committing the offence (art. 18).

⁷¹ Specialized Chamber of Intermediate Court of GISENYI, RP: CS/TPI/GISENYI, Judgment of 27 October 2000, Public Prosecution against NIYONIRINGIYE Felix and co-authors, *Source*: Jurisprudence Book, ASF-Supreme Court, Genocide cases, Vol. V, pp. 95–122.

119. To prevent acts of torture and ill treatment, the Criminal Code provides sanctions against attacks on individual freedom (Articles 388 to 390). Any person who by violence, trickery or threats arbitrarily kidnaps, arrests or detains an individual shall be punished with imprisonment from five to ten years. If the victim is a minor, the penalty is brought to the maximum. If deprivation of freedom has lasted over a month, the penalty is increased to 20 years. If detention has been followed by physical torture or death, the offender shall be punished by life imprisonment. The perpetrator will receive the same penalties if he or she detains (...) or transports any persons in order to sell, enslave or put them under his authority for the same purpose. Article 300 of the Code provides for penalties of up to 6 months imprisonment against the Director of Prison or other officer entrusted with the care of prison who receives a prisoner without a written order, warrant or judgment. MINIJUST and the Supreme Court have established radio broadcasts as part of sensitizing the population to respect laws. The Ministry of Interior and National Police have implemented a programme called “community policing” aimed at empowering the population to their own security, to denounce any act that undermines rights or freedoms of any member of the population.

120. The State has also made a firm commitment to improving conditions of detention in custody, temporary detention or imprisonment following conviction. Presidential Order No. 43/01 of 10 November 2007 establishing prisons and methods of construction⁷² provides that every prison should have a dormitory, clean toilet facilities, a place reserved for physical exercise, a clinic, a place reserved for visits, a kitchen, water and electricity, and ventilation (art. 2). In all detention facilities, women are separated from men and minors are separated from adults. Nyagatare Detention Center is reserved for minors to comply with the Minimum Standard Rules for treatment of detained persons and groups at risk.

121. Measures for decongesting detention centres have been implemented, including the strict deadlines of custody and preventative detention; the establishment of alternative penalties such as execution of community service; regular provisional release⁷³ and suspended sentences; expansion of detention centres and construction of new prisons (there are three prison construction projects in progress).⁷⁴ Regular monitoring of hygiene and good prison administration is provided by supervisory institutions, including the NCHR, the Office of the Ombudsman and other NGOs like the ICRC.

III. Conclusion

122. Torture and other ill treatment is currently an issue and has been for a very long time, to citizens of all nations. Hence, the international community is determined to eradicate this evil by the adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Rwanda acceded to this philosophy by the ratification of the Convention.

123. In Rwanda, several initiatives aimed at promoting human rights and the fight against acts of torture have been taken in the political, legal and socio-cultural arenas. Respect for human dignity and the prohibition of any treatment that would undermine this dignity are formally recognized in the Rwandan legal system.

124. The commitment of the Government of Rwanda to take prohibition and punishment measures regarding torture is reflected in provisions of the Criminal Code even if it does

⁷² J.O. No. 4 of 15 February 2008.

⁷³ 1,681 people are on the awaiting list to be released and approved by the Cabinet.

⁷⁴ The three prisons under construction are MAGERAGERE, BUTAMWA and GIKOMBE.

not specifically criminalize specific acts of torture or cruel, inhuman or degrading treatment as set forth in the Convention. This commitment was demonstrated again by the ratification of the Convention and the development of the new Criminal Code that criminalizes its provisions and provides penalties for acts of torture as defined in the agreement.

125. In practice, judicial, administrative and institutional officials in charge of the protection of human rights will ensure the implementation of legislation to punish perpetrators of violence on one hand, and restore the rights of victims on the other hand.

126. The use of torture is rare in Rwanda. The efforts in education on human rights and the fight against torture and mistreatment are regularly provided by public institutions and human rights organizations.

127. The Government of Rwanda is willing to consider all necessary measures to reinforce the fight against torture and abuse by adopting legal and political measures to implement the Convention's terms, taking into account the realities of Rwanda and the Rwandan people.
