



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

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COMMITTEE AGAINST TORTURE

Thirty-seventh session

SUMMARY RECORD OF THE 733rd MEETING

Held at the Palais Wilson, Geneva,
on Friday, 10 November 2006, at 3 p.m.

Chairperson: Mr. CAMARA (Vice-Chairperson)
later: Mr. MAVROMMATIS (Chairperson)

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In the absence of Mr. Mavrommatis (Chairperson), Mr. Camara (Vice-Chairperson),
took the Chair.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Initial report of Burundi (continued) (CAT/C/BDI/1; HRI/CORE/1/Add.16/Rev.1)

1. At the invitation of the Chairperson, the members of the delegation of Burundi resumed their places at the Committee table.
2. The CHAIRPERSON invited the delegation of Burundi to reply to the questions put by Committee members at the 730th meeting.
3. Ms. NGENDA HAYO (Burundi), replying to the questions of a legal nature, said that although no legal enactment in Burundi contained a definition of torture, perpetrators of torture or cruel, inhuman or degrading treatment were prosecuted and punished for offences under ordinary law, such as assault occasioning actual bodily harm, as provided for in the Criminal Code. Accordingly, all acts covered by the Convention were already sanctioned, but the revised Criminal Code, due to be promulgated in early 2007, would contain a whole chapter - articles 200-233 - defining torture and cruel, inhuman or degrading treatment or punishment.
4. The State was obliged to investigate all allegations of torture, protect victims' rights and ensure that guilty parties were severely punished. Most victims of torture, however, were insufficiently informed of the judicial procedures to follow. A new government department, set up to assist victims of human rights violations, had begun improving the dissemination of information on judicial procedures, in close cooperation with national and international stakeholders. A simplified version of the Code of Criminal Procedure in all the languages spoken in Burundi had been produced by the Association of Women Jurists and had been widely distributed. It was her Government's intention that the revised Code of Criminal Procedure, expected to enter into force in early 2007, would include provisions on compensation for victims of torture and would enable third parties to seek compensation on their behalf.
5. Since 1999, persons remanded in custody had been entitled to immediate access to a lawyer; they also had the right to lodge an appeal. There was considerable demand for legal aid but, as resources were scarce, ex officio lawyers could not be appointed by the State. Instead defendants were often afforded vital legal aid by NGOs. At the Government's request, the World Bank had offered the Association of Women Jurists financial support for the provision of legal aid.
6. Pursuant to article 60 of the Code of Criminal Procedure, persons could be remanded in custody for up to seven days, with one possible extension of another seven days. It should be borne in mind that until 1999 the courts had had carte blanche to decide how long a person could

be remanded in custody. The Government would see to it that the revised Code reduced the maximum period to 48 hours, in line with international standards, as recommended by Mr. Camara.

7. Members of the military police and armed forces could arrest persons caught in flagrante delicto, but they were required to hand them over to the competent authorities as soon as possible for investigation. Any ensuing investigation and detention required the authorization of the public prosecutor.

8. She agreed that it was difficult in Burundi to ensure that investigating police officers were not involved, directly or indirectly, in acts of torture. Since judges themselves played a key role in the prosecution of suspects, the Government recognized the importance of combating impunity by imposing severe sanctions on any member of the judiciary found guilty of corruption or complicity in acts of torture. At the same time, the Government was looking into ways of ensuring that the judiciary enjoyed greater independence.

9. The national intelligence service was responsible for gathering and processing all the social, political, economic and security-related data required by the Government for its functions, including that of protecting State security. Its agents were legally empowered to take every necessary measure to safeguard State security, such as investigating crimes and making arrests, provided warrants were issued by the public prosecutor. Those agents were brought before the courts if suspected of direct or indirect involvement in acts of torture or cruel, inhuman or degrading treatment. The Government was aware of, and intended to address, the problem posed by individuals who worked for both the criminal investigation department and the State security service.

10. Prison visits were made regularly by inspectors working for the public prosecutor's office, which was obliged to ensure that no irregularities occurred at any place of detention. The inspectors were rotated with a view to avoiding complacency and complicity on their part. Financial difficulties, however, meant that such visits were not carried out often enough. Furthermore, owing to hierarchical rivalries between police officers and members of the judiciary, visits to police lock-ups often triggered conflicts. Representatives of NGOs and UNHCR also visited places of detention and had repeatedly urged the Government to improve conditions.

11. Burundi's prison system was seriously underfunded and the number of prisoners in the 11 jails was a cause for concern. The number had decreased dramatically, however, following the release of 600 political prisoners. More political prisoners would be released shortly, now that the National Liberation Forces (FNL) had signed the ceasefire. All prisoners held for a year without trial were conditionally released. Regrettably, the sexes were separated only in one prison, but the Government had already taken action to upgrade prison buildings, separate the sexes, and provide separate sections for children and minors. ICRC had made important recommendations for improving prison conditions and the Government hoped to strengthen cooperation with all international stakeholders. Many projects had been abandoned during the civil conflict and the Government would welcome financial aid from the international community.

12. She announced Government plans to amend the Criminal Code and raise the age of majority from 13 to 15 years.
13. Turning to questions of a more general nature, she said that the authorities were investigating certain massacres and mass murders that had taken place during the civil war. It had set up a commission to investigate the Gatumba massacre, whose report, as yet unofficial, held the FNL responsible. Since the recent signing of a ceasefire with the Government, however, FNL had enjoyed provisional immunity from prosecution, pending the creation of the Truth and Reconciliation Commission and the Special Tribunal under the auspices of the United Nations, at which the case would undoubtedly be re-examined. NGO reports that the person investigating the Muyinga massacre had been dismissed were untrue; he had simply been transferred to another case, following allegations that he was related to one of the victims. Negotiations were under way in New York on the establishment of the Truth and Reconciliation Commission and the Special Tribunal for Burundi. The main disagreement was over whether the two bodies should begin operating simultaneously or whether the Truth and Reconciliation Commission should begin first. As soon as her Government had further information, it would be conveyed to the Committee.
14. With regard to the Human Rights Watch report on the detention of hospital patients who had been unable to pay their medical bills, she said that the Government had originally faced a dilemma. Should the authorities refuse them health care altogether or allow them to enter hospital until their families or welfare organizations could come to their assistance? They had chosen the lesser of two evils and had spent large sums of money on treating the patients concerned. In view of the high rates of maternal mortality and mortality among very young children in Burundi, the Government had recently introduced free childbirth facilities in State hospitals and free health care for the under-fives. Finances permitting, it hoped to extend free health care to all vulnerable, low-income groups.
15. The 800 Rwandan refugees sent back to their country in 2005, as mentioned by Mr. Mariño Menéndez, had been voluntarily repatriated, in a dignified manner, despite the proposal of the FNL to place them in a refugee camp. At a recent UNHCR meeting, Burundi had been held up as an example of how to address the refugee problem, as demonstrated by the large numbers of Rwandan refugees living peacefully in Bujumbura and elsewhere in Burundi. As far as stateless persons were concerned, the new asylum law due to be promulgated in 2007 clearly stipulated that they should be protected.
16. The revised Criminal Code would take into consideration all the recommendations on women's rights made by civil society, including the Association of Women Jurists. The Government had only been in office for one year and lacked funds yet, far from being complacent, it was fully committed to protect women's rights, as witnessed by the annual national campaign to combat violence against women and the President's recent declaration that the Constitution applied equally to men and women. She herself had represented Burundi at a meeting on violence against women in the United Nations Economic and Social Council. In cooperation with UNDP, her Government had been conducting in-depth studies to eliminate the main types of violence against women, such as corporal punishment and rape. Accordingly, the revised Criminal Code would also eliminate all forms of gender-based discrimination and

strengthen the legal provisions on rape. New legislation on succession and marriage was about to be adopted after many years of debate, and information about it would be disseminated in all national languages.

17. The national code on the rights of the child had been submitted with the initial report, and draft legislation to protect children in difficulty was currently before parliament.

18. With regard to human rights education, she said that a seminar on human rights violations had been held at the university of Bujumbura, and it was planned that the subject would be included in the law course. Under existing legislation, police officers were required to receive training in human rights.

19. Her Government had noted the Committee's recommendations on the prevention of sexual violence. It had already begun implementing a plan of action on gender, as part of a good governance programme formulated in conjunction with UNDP, but its implementation had been delayed until 2007 owing to the United Nations reform process. She appealed to the international community for immediate financial and other assistance in implementing the plan of action.

20. Mr. Mavrommatis took the Chair.

21. Mr. MARÍÑO MENÉNDEZ, Country Rapporteur, said that he would find it helpful to be given the texts of legislative reforms, particularly those relating to criminal justice, asylum and the family, so as to determine the extent to which Burundi's domestic law conformed to the provisions of the Convention. He welcomed the fact that the reform of the Criminal Code would specifically address the issue of violence against women and that new civil laws would resolve many issues of gender discrimination. Since the asylum bill currently under consideration made the return of foreigners to their countries of origin conditional upon their consent, he wished to know what procedures applied to foreigners who did not wish to leave Burundi.

22. He asked whether Burundi had signed extradition treaties with neighbouring countries. He recalled that, if it had not, and to the extent that the Convention was justiciable under domestic law, the Convention could be considered an extradition treaty. He enquired whether any judicial body in Burundi had issued a decision pursuant to the provisions of the Convention. He requested additional information on plans for the establishment of a special tribunal to prosecute war crimes and crimes against humanity. Specifically, he wished to know what measures had been formulated for combating the impunity of those who committed such crimes.

23. He welcomed the information provided by the delegation concerning the development of the health-care system, and particularly the plans for the provision of free medical care to children under 5 and to women giving birth in public hospitals. The Committee would include in its recommendations ways in which the assistance of the international community might be enlisted to those ends.

24. He asked what areas of responsibility were planned for the new national human rights institution. Would it, for example, conduct prison inspections? He requested additional

information on reports that the Public Prosecution Service had blocked a Supreme Court decision to release on bail persons suspected of attempting to overthrow the Government. The delegation should explain what powers were granted to the public prosecutor in relation to those vested in the Supreme Court.

25. Ms. NGENDAHAYO (Burundi) said that information concerning legislative reforms would be sent to the Committee in due course. Her Government was determined to bring its legislation into conformity with international standards; it was therefore fortunate that it would have the opportunity to examine the Committee's concluding observations before enacting its reforms. Of the 21,000 or so Rwandans who had been in Burundi in April 2006, only 3,000 remained; 161 of them had requested asylum and the remainder would be leaving by the end of November 2006. Burundi was also host to some 10,000 Congolese refugees. The health-care situation in Burundi was quite dire: there was only one doctor for every 500,000 persons, hospitals were overcrowded and many sick persons died at home as a result of extreme poverty. For that reason, although the Government had not yet received external financing for its health-care system, it was nevertheless going ahead with plans for improving it. Funds had been made available to provide for the release of detainees who had not been able to pay their medical bills, and to build new hospitals, pharmacies and medical centres.

26. A delegation had been appointed to hold talks with United Nations experts concerning the establishment of a mechanism for prosecuting war crimes and crimes against humanity committed during the civil war. She would provide the Committee with updated information on progress in those talks. A national human rights institution, in keeping with the Paris Principles, had been set up in October 2006. It was difficult to provide the Committee with any information on the case involving persons suspected of attempting to overthrow the Government because the investigation had not yet been completed.

27. Mr. CAMARA, Alternate Country Rapporteur, asked whether the public prosecutor monitored, and if necessary, sanctioned, the conduct of members of the national intelligence service, who were also competent to carry out functions normally performed by members of the criminal investigation department.

28. Ms. NGENDAHAYO (Burundi) said that the public prosecutor could impose sanctions on members of the national intelligence service, just as he would on any other person who had committed a crime. The fact that he had been given broad powers was a structural problem that would require amending the relevant legislation. She would welcome the Committee's recommendations for dealing with that problem, as it would enhance the Government's efforts to prevent torture.

29. The CHAIRPERSON observed that it was gratifying to receive a reply that contained an invitation for assistance from the Committee.

30. Ms. SVEAASS asked whether the projected financing of the health-care system would be used in part to train medical staff. She wished to know what progress had been made in making domestic violence illegal under the law. She asked how the Government planned to implement human rights training for government legal staff, in particular regarding gender issues.

31. Ms. NGENDA HAYO (Burundi) said that the training of health-care staff would be included in the financing package, but it would be carried out alongside infrastructure development projects. The Government had undertaken a variety of activities relating to the improvement of the status of women, including the establishment of a department for gender promotion and the development of a guide for incorporating gender in training programmes.

32. The CHAIRPERSON thanked the delegation for its participation.

33. The delegation of Burundi withdrew.

The meeting was suspended at 4.20 p.m. and resumed at 5.05 p.m.

Fourth periodic report of the Russian Federation (continued) (CAT/C/55/Add.11; CAT/C/RUS/Q/4 and Rev.1; HRI/CORE/1/Add.52/Rev.1)

34. At the invitation of the Chairperson, the members of the delegation of the Russian Federation resumed their places at the Committee table.

35. Ms. BELMIR, Alternate Country Rapporteur, said it was not clear from the information provided which legislation was applied in certain territories under the control of the Russian Federation, including the Chechen Republic. In that connection, she drew attention to the grounds for introducing a state of emergency under the Federal Constitutional States of Emergency Act No. 3-FKZ mentioned in paragraph 11 of the report (CAT/C/55/Add.11). She also referred to comments by the Government of the Russian Federation on the concluding observations of the Human Rights Committee (CCPR/CO/79/RUS/Add.1) to the effect that the inhabitants of the Chechen Republic had the opportunity to apply directly to local military procurators. It seemed that ordinary law was not applicable in that territory, but military justice and state-of-emergency legislation were. She recalled that the application of the latter was subject to regional and international human rights treaties to which the Russian Federation was party, treaties which called for protection of the right to life and the prohibition of prosecution or punishment not provided for under ordinary law.

36. She would welcome clarification concerning the types of acts and “omissions” punishable under the Federal Code of Administrative Offences, and the case brought before the European Court of Human Rights concerning the conviction of a Russian businessman for exerting improper pressure during contractual negotiations.

37. She also expressed concern about the use of internal passports, which restricted the rights of citizens, including the rights to housing, work and freedom of movement. Breaches relating to internal passports were not clearly defined in the Criminal Code or Code of Criminal Procedure.

38. Of the 250 or so complaints concerning the Russian Federation submitted to the European Court of Human Rights, more than 60 had been declared admissible. Very few complaints had been submitted by inhabitants of the Chechen Republic, apparently because they

were not well informed of their right of redress. The complaints submitted, however, referred to detention and prison conditions in which some people, particularly women and children, were subjected to physical and psychological pressure that constituted torture and ill-treatment.

39. Reports had been received from NGOs that Russian nationals released from Guantánamo Bay had been arrested upon their return to the Russian Federation, subjected to ill-treatment during detention, tried without guarantees of due process and sentenced to heavy penalties. She would welcome comments on those points.

40. Mr. GROSSMAN said that in December 2004 the State Duma had rejected the bill amending article 117 of the Criminal Code that would have broadened the definition of torture and brought it into line with article 1 of the Convention. The fact the bill had been submitted implied that there was a need for change. He enquired what other steps were being taken to ensure compliance with article 1, in particular to criminalize acts of torture committed with the consent or acquiescence of a public official or other person acting in an official capacity. Did the State party consider that such obligations existed under article 117 by interpretation, although they were not explicitly stated?

41. Article 96 of the Code of Criminal Procedure required the competent authorities to notify close relatives of persons held in detention within 12 hours of the time of their arrest, but provided for an exception in the interests of ensuring secrecy of investigations. He enquired what was the maximum period that detainees could be held without notifying their relatives, and how the State party could reconcile it with the recommendation by the Special Rapporteur on the question of torture that in all cases the time limit should be 18 hours. He sought clarification regarding the legal grounds for denying suspects held in special detention facilities access to independent defence counsels. He also asked what protection was afforded to persons detained without charge on suspicion of committing the offences listed in paragraph 37 of the report.

42. He welcomed the comments made by the Minister of Defence to the State Duma concerning the possible introduction of reforms to combat the problem of hazing. It was reported that one quarter of the allegations of torture and ill-treatment in the armed forces involved hazing. It would be useful to have information on the number of prosecutions for torture and ill-treatment involving hazing. Noting the State party's comment that it was not possible to provide statistics on cases of torture, he recalled that the submission of relevant statistics and disaggregated data was a requirement under the Convention.

43. In the light of amendments introduced to federal legislation in December 2005, the registration of NGOs could be refused if their objectives constituted a threat to political independence, territorial integrity or national unity or were in conflict with national cultural interests. Were there any jurisprudential criteria for establishing what constituted a threat, or was it a question of interpretation? Under the same legislation, NGOs could be banned from engaging in extremist activities. What was the State party's definition of "extremist activities"? Did they necessarily entail real or imminent acts of violence, or more subjective factors?

44. Information had been received from NGOs on the existence of secret detention facilities in the Chechen Republic, Ingushetia, North Ossetia and Kabardino-Balkaria. He asked whether any investigations had been carried out to confirm such reports.

45. He would welcome further information on regulations governing the procedure for granting political asylum, and in particular whether asylum-seekers could appeal against decisions rejecting their applications. In that connection, he recalled the Committee's jurisprudence that the right enshrined in article 3 of the Convention required the opportunity for the effective and impartial review of such decisions.

46. He enquired whether any investigation had been conducted into the allegations of ill-treatment of Roma people in connection with "Operation Tabor" in St. Petersburg in 2004, and the reported sexual abuse of women at a military base.

47. Mr. MARIÑO MENÉNDEZ said, with reference to the situation in Chechnya, that he had noted that suspects of "terrorism" could be held for up to 30 days without being indicted. Could suspects be held incommunicado during that period, or as part of their sentence if convicted? If so, for how long? He would welcome information on cooperation between the military procurator and local procurator in resolving cases. Who was responsible for initiating proceedings? During a state of emergency, were Chechen citizens outside the zone to which the state of emergency applied subject to restricted freedom of movement?

48. Referring to the demolition of Romani housing in Kaliningrad and the limited access of Roma to housing, he asked whether the situation had been investigated and whether a solution had been found.

49. He would welcome further information on the ruling by the Constitutional Court in June 2005, which had opened the possibility of obtaining redress for an unjust sentence for acts relating to torture or other cruel or inhuman treatment.

50. He asked how the process of expulsion of a foreign national was affected if that person made an application for asylum. Was the process suspended, for example? Could asylum-seekers be detained while their application was being processed, and if so, for how long? Was immediate expulsion with no judicial supervision authorized by any administrative procedure, or was expulsion always subject to judicial supervision?

51. Ms. SVEAASS expressed concern at the serious problems reported by NGOs concerning minority ethnic groups subjected to violence and discrimination, and wondered whether it was planned to invite the United Nations Independent Expert on minority issues to visit the country. She expressed concern also at the reported threats to security of human rights defenders, and at the killing of journalists, most recently Anna Politkovskaya. She wondered how the Government intended to deal with the problem, and whether cooperation with the Special Representative of the Secretary-General on human rights defenders might be sought on that matter.

52. Referring to the reported problems of the trafficking of women and children for sexual exploitation, she asked whether the Government had plans to ratify, if it had not already done so, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

53. She asked for information on progress with draft Federal Law No. 11807-3 on public control over the rights of detainees in places of forced detention and on the assistance of non-governmental associations in the operation of penitentiary authorities and detention facilities. Had it been approved?

54. She would welcome information on any steps taken to improve psychiatric hospitals, and on the possibilities of outpatient care. She had been alarmed to hear of the problems of overcrowding in psychiatric hospitals for children.

55. If she had understood correctly, it was only at the stage of their second interview that asylum-seekers were issued with a certificate. What measures were being taken to comply with international standards in that regard?

56. She would welcome information on what medical care and rehabilitation were offered to victims of torture.

57. The CHAIRPERSON welcomed the improvements reported. Considerable progress still needed to be made, however. He urged the Government to allow the Special Rapporteur on torture to visit the Russian Federation and allow him complete freedom to carry out his mandate. Similarly, NGOs should be allowed to carry out their activities freely, which was the sign of a healthy democracy.

The meeting rose at 5.55 p.m.