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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 FIRST PART (PUBLIC)*
OF THE 730th MEETING

Held at the Palais Wilson, Geneva
on Thursday 9 November 2006, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.730/Add.1.

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (item 6 of the agenda) (*continued*)

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

1. *At the invitation of the Chairperson, the members of the Burundian delegation took places at the Committee table.*

2. Ms. NGENDAHAYO (Burundi) explained that owing to the recent civil war, the Government of Burundi had not been able to fulfil by the required deadline its obligation to submit periodic reports to the Committee, as required by article 19 of the Convention. Burundi accepted the definition of torture stated in article 1 of the Convention, although its legislation did not define the practice explicitly. Torture was considered as an aggravating circumstance of other offences, and the perpetrators of acts of torture were prosecuted and sentenced for various infringements of ordinary law as provided for in articles 145 to 150 of the Criminal Code, such as assault and intentional wounding. Various instruments also contributed to combating and punishing acts of torture, such as article 19 of the Constitution of 18 March 2005 which provided inter alia that international instruments, including the Convention against Torture, were an integral part of domestic law; the Act of 8 May 2003 punishing the crime of genocide, crimes against humanity and war crimes; and the Act of 22 September 2003 on the prison system.

3. With regard to article 3 of the Convention, Burundi had concluded extradition treaties with the Democratic Republic of the Congo, Rwanda and the United Republic of Tanzania. The convention on extradition and mutual judicial assistance in criminal matters between the United Republic of Tanzania and the Republic of Burundi imposed the obligation on the two parties to extradite any person accused or sentenced as the principal or accessory perpetrator of an act of torture.

4. With reference to article 5 of the Convention, in addition to the information given in the report, Ms. Ngendahayo pointed out that article 3 of the Criminal Code stipulated that anyone committing an offence shall be punished in accordance with the law, subject to the provisions of international conventions on diplomatic and consular immunity. That meant that any person guilty of an offence in Burundi was punished in accordance with the laws of the country. Similarly, article 4 of the Criminal Code stipulated that any offence committed outside the country and bearing a penalty of more than two months' imprisonment could be tried in Burundi, subject to the provisions on extradition, if a complaint was lodged by the presumed victim or an accusation was made by the authorities of the country where the offence was committed. In the case of offences other than those jeopardizing the security of the State or forgery, no prosecution was undertaken if a final judgment had been pronounced against the accused in the other country.

5. Turning to article 6 of the Convention, Ms. Ngendahayo stated that article 60 of the Code of Criminal Procedure stipulated that police custody could not exceed seven days, except in the case of an essential extension authorized by the Public Prosecution Service for a period that could not exceed twice the initial duration. In addition, the Public Prosecution Service could resolve to terminate police custody at any time if it considered that it was not justified or was no longer justified. Article 62 of the Code of Criminal Procedure stipulated that although taking a

person into police custody entailed a restriction on his or her freedom to communicate, the detainee did have the right to inform a person of his or her choice about his or her situation. Whether or not the exercise of that right was appropriate was assessed, depending on the circumstances of the case, by the judicial police officer responsible for the police custody or by the judge under whose authority he was acting. At the end of the legally permitted duration of police custody, the person must be brought before the public prosecutor or released.

6. Turning to article 7 of the Convention, she drew attention to the fact that the Burundian courts had competence to deal with any offence committed anywhere within Burundian territory, regardless of the nationality of the perpetrator. At all stages of legal proceedings, persons suspected of having committed torture were guaranteed a fair and equitable trial. The rules of evidence were the same as those applied to people committing offices or crimes under ordinary law.

7. As for article 8 of the Convention, Burundi permitted the extradition of a perpetrator of torture only where there was a corresponding treaty. Thus, under the extradition treaty between Burundi and the United Republic of Tanzania, four of the offences that could give rise to extradition had to do with torture: rape, kidnapping, arbitrary imprisonment and assault occasioning actual bodily harm. Similarly, the extradition treaty between Burundi and the members of the former Economic Community of the Great Lakes Countries provided that any offence resulting in a penalty of more than six months–which was the case for most acts of torture–would give rise to extradition.

8. With regard to article 10 of the Convention, information campaigns concerning the prohibition against torture had been organized by the authorities, and specifically the Ministry of National Solidarity, Human Rights and Gender and the Government Commission on Human Rights set up in 2000. Furthermore, a national commission on human rights was shortly to be established.

9. With reference to article 11 of the Convention, she drew the attention of the Committee to the existence of control measures intended to prevent the inflicting of torture on persons being interrogated, in detention or in prison. In addition, article 61 of the Criminal Code stipulated that whenever someone was placed in police custody, a detailed report must be drawn up by the responsible judicial police officer, with this report recording in particular the place and time of the arrest, the reasons for the taking into police custody and the place where the detainee was being held. Persons held in police custody must also be informed of all their rights.

10. Moving on to article 12 of the Convention, Ms. Ngendahayo emphasized that a person found guilty of physical torture inflicted on an arrestee or detainee could be sentenced to 10 to 20 years' imprisonment. A perpetrator of acts of torture resulting in the death of the victim was subject to life imprisonment or the death penalty. Furthermore, if the Principal Public Prosecutor found evidence of torture or was petitioned by the presumed victim or a third party, he could place the matter before the appropriate court, at his own discretion.

11. With regard to article 13, Ms. Ngendahayo stated that the presumed victim of an act of torture, just like any other victim of a criminal offence, had two recourses by which to take action against the presumed torturer: either private prosecution or a judicial investigation within which criminal proceedings were brought by the Public Prosecution Service.

12. With regard to article 14, she stated that when a perpetrator of torture was convicted, the victim was entitled to redress commensurate with the injury suffered. Similarly, in the event of a malicious prosecution, the complainant could be ordered to pay damages and interest.

13. Turning to article 15 of the Convention, Ms. Ngendahayo reported to the Committee that confessions obtained under duress were null and void. Furthermore, in a finding dated 26 September 2002, the Supreme Court had clearly established the principle that a confession obtained before a trial was not, in and of itself, proof but merely one piece of evidence which might satisfy the court if backed up by other evidence.

14. Speaking more generally, Ms. Ngendahayo informed the members of the Committee that the new Criminal Code, which was intended to enter into force shortly, would criminalize torture. She recalled that Burundi had undertaken to ratify the Optional Protocol to the Convention against Torture as soon as possible. In addition, a department responsible for providing assistance to victims of human rights violations, including the victims of acts of torture, had been established within the Ministry of National Solidarity, Human Rights and Gender. The Government of Burundi also intended to establish shortly a compensation fund for victims of torture, with help from the international community. In addition to the ongoing reform of the Criminal Code and the Code of Criminal Procedure, it would also be necessary to review the law on the prison system, the Regulations governing the Judicial Police of the State Counsel's Office and the mechanism for protecting complainants and witnesses. Programmes of rehabilitation would also have to be set up for the victims of torture.

15. In the area of training, over the past three years Burundi and its international partners had organized a range of activities directed towards the prison administration personnel, concentrating in particular on the Code of Conduct for law enforcement personnel and on the prohibition against torture. Finally, it should be noted that Burundi had recently received from the European Union a significant sum of money that would be used to improve conditions in places of detention.

16. Mr. MARIÑO MENÉNDEZ (Country Rapporteur) thanked the delegation for its updates on recent developments in the situation in Burundi, assuring the delegation that the Committee fully understood the reasons for the State party's inability to present its initial report any earlier. He welcomed the frankness with which the State party had described in its report the difficulties and shortcomings which to date had impeded the implementation of the Convention. He noted that reform of the Criminal Code and the Code of Criminal Procedure was under way and expressed the hope that the recent ceasefire agreement with the last armed movement in Burundi would make it possible to create the conditions that were needed to strengthen the rule of law and to promote and protect human rights.

17. One worrying shortcoming in the area of legislation was that there was no definition of torture in the Criminal Code, something which constituted an obstacle to the full integration of the provisions of the Convention into domestic legislation. The phrase "assault and intentional wounding" was not sufficient to cover all the acts which constituted torture. In particular, it excluded all forms of moral or psychological torture and ignored certain fundamental concepts, such as those having to do with the non-applicability of any statutory limitations or the aspect of

orders given by a superior. The fact that torture was not at present classified as a criminal offence also made it difficult to undertake criminal proceedings.

18. Reform of the legislation appeared to be all the more urgently needed as numerous cases of torture were still being reported. According to a report submitted to the Committee by several non-governmental organizations, 601 cases were said to have been recorded between the beginning of 2005 and July 2006.

19. Although article 19 of the Constitution of 2005 provided that the international instruments ratified by Burundi enjoyed constitutional rank, it appeared that the Burundian courts had never applied the provisions of the Convention directly. It was thus necessary to determine whether Burundi's legal system was monistic, as was said in the information supplied to the Committee, or rather dualistic, as the practice of the courts would tend to indicate.

20. The intelligence services of the State were said to be responsible for numerous cases of extrajudicial executions, disappearances and torture. Their double function (security of the State and judicial police) made them particularly liable to be used as instruments of political repression, in particular in a context of instability and crisis. It would thus be enlightening to find out whether it was intended to take measures within the context of the reforms planned in the legislative sphere, on the one hand, to clarify the mandate of those services and in the institutional sphere, on the other, to bring their activities under better supervision and control.

21. The delegation could also provide further information dealing with visits to places of detention, indicating in particular whether there were any visitng justices. The inspections carried out by members of the United Nations Operation in Burundi (ONUB) had been suspended at the beginning of 2006, but as it was intended that that operation should be replaced on 1 January 2007 by the United Nations Integrated Office in Burundi (BINUB), did the Government intend to re-establish its cooperation with the United Nations in the area of monitoring of places of detention?

22. One practice of concern was the detention of patients who were unable to pay the debts they had incurred because of medial and hospital expenses, whereas a prohibition on imprisonment for debt was one of the principles enshrined in international human rights instruments. Furthermore, the overcrowding in prisons was an extremely worrying problem. In most prisons, the conditions of detention had become virtually inhuman. The only solution to that situation would be to build new prisons, and he asked whether the Government planned to take any such steps as part of the reform of the legislation on prisons.

23. Mr. Mariño Menéndez also wished to know whether the Government intended to take any legislative measures in the areas of asylum and refuge. Quoting the example of the 800 Rwandan refugees returned to their country in June 2005 without any possibility of recourse whatsoever, he pointed out that such a practice was an infringement of the principle of non refoulement and asked the delegation for its comments on that point. He also asked whether the Government planned to adopt legislative measures aimed at protecting stateless persons.

24. Stressing that discrimination and violence against women must be dealt with by targeted action, Mr. Mariño Menéndez asked whether the Government intended to amend the legislation so as to eliminate the principal forms of discrimination, some of which (such as the criminalization of adultery if committed by a woman)

even manifested themselves as inhuman treatment. For example, a broad definition of all the forms of gender-based violence, including domestic violence, might be included in the Criminal Code.

25. Mr. Mariño Menéndez said that he was astonished at the definition of genocide given in paragraph 56 of the report, which did not mention the intention to destroy completely or in part a national, ethnic, racial or religious group. He wondered whether that incomplete definition matched the actual wording of the Act of 2003 being referred to, or whether it was simply a truncated citation. He also expressed concern at the possible adoption of an amnesty law in the context of transitional justice, which might give relief to the perpetrators of certain crimes for which there was normally no statute of limitations.

26. Turning to the question of the fight against impunity for those responsible for acts of torture, Mr. Mariño Menéndez recalled that the Convention against Torture could act as the legal basis for extradition between two States which did not have an extradition treaty and asked whether there was any obstacle to the application of that provision of the Convention by the Burundian authorities. As for the protection of the defenders of human rights, he noted with concern information recording acts of harassment and aggression against certain NGO members or activists in the north of the country.

27. Mr. Mariño Menéndez wished to know whether military personnel were authorized to arrest persons caught in flagrante delicto or whether that function was uniquely the responsibility of the police. He also wished to know whether persons placed into police custody were under the surveillance of the public prosecutor or another member of the judiciary right from the start of the custody. He also wondered whether placing detainees in solitary confinement was a common practice. The delegation might also indicate whether persons in police custody could request an examination by a doctor at any time and what medical and investigative steps were taken if a person in police custody claimed to have been tortured. Similarly, the delegation might indicate whether persons placed in police custody or in preventive detention had access to a lawyer at all times and whether there was a public legal aid system, giving detainees access to the services of a lawyer assigned ex officio. It would also be interesting to know whether interrogations were permitted without a judge being present. Noting that criminal proceedings were initiated by the public prosecutor, who was considered to be a judge, he stressed the need to separate the judicial functions more clearly, so that the preliminary investigation and the criminal proceedings did not fall within the competence of the same body.

28. The reform of the Criminal Code and the Code of Criminal Procedure would probably allay some of the concerns he had expressed. It might be feared, however, that the reform could be retarded or even brought to a halt by the implementation of the mechanisms called for in Security Council resolution 1606 (2005). He asked whether the Government had drawn up a timetable for the creation of the Truth Commission and the special court. If not, did it intend to do so? What in the view of the delegation was the impact of the transitional justice project on the implementation of the Government's legislative programme?

29. Mr. CAMARA (Alternate Country Rapporteur) said that the fundamental question in his view was that of the standing within the domestic legal system of the international instruments to which Burundi was a Party. Not having been able to

find a clear answer to that question in the documents submitted to the Committee, he wondered, as had Mr. Mariño Menéndez, whether Burundi's legal system should be considered as monistic or dualistic. The question, which might appear purely theoretical, was in fact of decisive importance. If the Convention against Torture genuinely enjoyed constitutional rank, then the absence of a definition of torture in the Criminal Code should not necessarily prevent the perpetrators of torture from being prosecuted and punished. Indeed, the courts could rely on the definition in the Convention, if the latter had been incorporated into domestic law. It also appeared contradictory that torture could be considered as an aggravating circumstance if it had not been defined as an offence. The problem might thus well be an issue of criminal law policy, or even one of political will. In order to help the Committee better understand the difficulties encountered, the delegation should state whether the international instruments to which Burundi was a Party automatically became part of domestic law as soon as they were ratified or whether it was necessary to adopt a specific law in order to integrate the instruments into the legislation and thereby allow them to be applied.

30. The lack of provision for criminal prosecution of torture raised the question of the status of the judiciary in the State party, and in particular of the independence of the judges in the offices of the State Counsel. Further information on the rules governing their recruitment, their promotion and the penalties that could be applied to them would therefore be useful. Mr. Camara feared in particular that the possibility of imposing criminal penalties on judges, as provided for by the law, would be a serious obstacle to the unhindered performance of their functions.

31. With regard to article 10 of the Convention, concerning education and information regarding the prohibition against torture directed towards law enforcement personnel, medical personnel and public officials, Mr. Camara noted that the State party had created several bodies with responsibility for matters of human rights, whose only initiative known to date was a seminar on international justice and the domestic justice system that had been organized in 2002. He wished to know what other training activities had been undertaken by those bodies with a view to developing a culture of respect for human rights in the country.

32. Under the State party's Code of Criminal Procedure, police custody could be of seven to fourteen days' duration. Although there was not an international rule on that issue, the recommended maximum duration was forty-eight hours. In order to limit the risks of torture of persons held in police custody, there was a need not only to shorten its duration but also to implement a minimum of external monitoring of it, by guaranteeing the suspect access to a lawyer, a doctor or any other person of the suspect's choice, right from the start of custody. Furthermore, the names of the persons arrested and the date of and reasons for their arrest should be noted in records accessible both to members of the judiciary and to civil society. Did such records exist? Under the Code of Criminal Procedure, monitoring of the treatment of persons taken into police custody was the responsibility of departments of the Public Prosecution Service. Given that the judicial police came under that body, it might be feared that any abuses observed would be passed over in silence. It would be therefore be desirable to set up an independent monitoring mechanism. Paragraph 145 of the report stated that inflicting "physical torture" could result in 10 to 20 years' imprisonment. Did that mean that forms of psychological torture, which also fell within the definition of torture as given in the Convention, were not taken into consideration?

33. Paragraph 146 of the report indicated that the Public Prosecution Service could decide whether or not a prosecution should be undertaken when it was informed of evidence that acts of torture might have been committed. That constituted a violation of article 12 of the Convention. In addition, by virtue of the same article, it was the responsibility of the State, not the victim, to ensure that an investigation was undertaken, and, if necessary, that legal proceedings were started; the report did not indicate clearly that that was what actually happened.

34. Article 15 of the Convention made it mandatory for States parties to ensure that a statement obtained by torture could not be invoked as evidence. The delegation had referred to the finding of principle handed down by the Supreme Court that a confession, on its own, could not result in conviction. However, that appeared to suggest that a statement obtained through torture could be valid provided that it was supported by other evidence, thereby negating the intention of article 15.

35. Mr. GROSSMAN, observing that the definition of torture as given in article 1 of the Convention was not reflected in domestic law, asked what was the average period of time needed for incorporation of the provisions of the international instruments ratified by the State party into its domestic legislation. He informed the delegation that a standardized code for post-conflict criminal justice had been drawn up under the guidance of the Office of the United Nations High Commissioner for Human Rights, of which the State party could make use as part of the current reform of its criminal law. It would be useful if the Committee could have a copy of the draft law on the criminal prosecution of torture as defined by the Convention.

36. With reference to article 2 of the Convention relating to the measures to be taken by the State party to prevent torture, Mr. Grossman listed several murders, including that of a student who had been killed in the commune of Butere by a group of armed men, among whom a witness had recognized members of the National Intelligence Service (Service National de Renseignements - SNR); he asked whether investigations had been started and whether members of the SNR had been found guilty and, if so, what their sentences had been. He also wished to know whether, in that context, any thought had been given to establishing a witness protection mechanism.

37. Security Council resolution 1606 (2005), adopted on 20 June 2005, called for the creation of a mixed Truth Commission and a Special Chamber within the court system. Information on the measures that had been taken to implement the resolution would be welcome. In addition, Mr. Grossman wished to know whether the Government Commission on Human Rights had received complaints relating to torture and whether it had pursued them. He also asked whether anyone had been questioned and prosecuted in connection with the events that had occurred in the Gatumba refugee camp in 2004. The Government had appointed a commission with the mandate to investigate the massacre of a number of people committed in July 2006 by members of the armed forces and personnel of the National Intelligence Service in the province de Muyinga. What was the status of that commission of inquiry? How was its work progressing? Information provided by non-governmental organizations indicated that the person responsible for the investigation had been dismissed Was that correct?

38. Mr. Grossman asked what were the applicable rules with regard to evidence in cases of rape. He also wished to know whether there were any measures to protect

victims who laid complaints from possible reprisals and whether post traumatic counseling services had been set up to help women who had been subjected to sexual violence, particularly in the rural areas. Also, numerous cases of sexual violence against children in the prisons were reported. Were those cases being investigated? Had a special prosecutor been appointed? Non-governmental organizations had also reported several cases of rape of children in which the presumed perpetrators were law enforcement personnel, who had not yet been apprehended. It would be useful to hear the comments of the delegation on those cases.

39. Ms. BELMIR wished to know whether the State party intended to ratify the 1949 Geneva Conventions that formed the foundation of international humanitarian law, and also the related second additional Protocol. She also asked about the progress of the preparatory work towards the creation of a truth and reconciliation commission and whether the Government intended to establish a specialized court to examine the crimes committed in the course of the civil war. She strongly urged the State party to incorporate into its criminal law a definition of torture in line with that in article 1 of the Convention so that acts of torture could be punished as crimes in themselves and not just as aggravating circumstances. With regard to the treatment of minors under the justice system, it was quite clear that the State party observed neither the Beijing Rules nor the Riyadh Guidelines.

40. Ms. GAER, welcoming the frankness with which the report described the methods of torture used by State officials (para. 12) and referring to the information that such practices were widespread, particularly in secret or remote locations (para. 13), echoed the view that if the State party wished to eradicate the scourge of torture, it must ensure that the persons detained in such locations were able to receive visits from family members, a doctor, a lawyer and human rights organizations. In that connection, she wished to know whether the International Committee of the Red Cross had free access to the country's places of detention and, if not, whether any measures were envisaged to improve the situation.

41. Referring to the statistics on the prison population given in paragraph 16 of the report, Ms. Gaer asked the delegation to state whether, in the prisons listed, men were separated from women, adults from minors and suspects from people already found guilty. She also asked whether measures were being taken to prevent sexual violence in those places of detention and, how many complaints, if any, for sexual mistreatment had been recorded.

42. She asked the delegation to comment on information from Amnesty International stating that government officials minimized, denied, or even condoned rape when complaints of it were made to them. In addition, it was said that the perpetrators of offences belonging to the armed forces enjoyed virtually total impunity, however serious the offence. According to the report of the Department of State of the United States of America published in March 2006, rape was used as a weapon of war in Burundi. If that were so, the offence would constitute not only a violation of the Convention, but also a crime against humanity. The State party could effectively combat such practices by taking measures to make it clear to recruits during their military training that rape was absolutely forbidden, punish members of the armed forces who committed rape, protect the potential victims and prosecute the guilty, including the superior officers who condoned such acts. Ms. Gaer also wished to know whether the State party had adopted an action plan to

prevent torture in general and sexual violence in particular and whether it had established mechanisms of aid and psychological support for the victims of rape. Given that the members of the police and the judges not only did nothing to discover the perpetrators in cases of rape, but even ridiculed and humiliated the women who sought their help, Ms. Gaer asked whether the State party intended to organize awareness-raising activities directed towards the personnel of the criminal justice system so as to change mindsets and attitudes towards victims of rape.

43. Additionally, Ms. Gaer wished to know, in the context of article 14 of the Convention, whether the State party exercised its universal jurisdiction. For example, if a torturer had fled to Burundi could he be judged by the national courts and could the victim appeal to the civil courts to obtain compensation, even in the event that the offences had been committed in another country? Finally, Ms. Gaer asked whether the Burundian Government had reacted to the joint appeal made in August 2006 by eight non-governmental organizations, calling on it to issue a firm condemnation of torture, to take measures to ensure that credible investigations were undertaken and to authorize visits to detainees by family members, a lawyer and human rights organizations.

44. The CHAIRPERSON, noting that several members of the Committee had stressed the need to include a definition of torture in Burundian domestic law, suggested that the State party should incorporate the definition given in article 1 of the Convention. He also thought that Burundi should adopt rules of positive law and enabling legislation in order to enshrine in the law, inter alia, an absolute prohibition against torture, a ban on using orders from a superior as a justification of torture, a prohibition on returning a person to a country where there was a risk that the person would be tortured and the inadmissibility of evidence obtained under duress.

The first part (public) of the meeting rose at 12.40 p.m.