



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

Distr.: General  
14 February 2022  
English  
Original: French  
English, French and Spanish only

---

**Committee against Torture**

**Third periodic report submitted by Burundi  
under article 19 of the Convention, due in 2018\***

[Date received: 14 September 2020]

---

\* The present document is being issued without formal editing.



## Introduction

1. Burundi ratified the Convention against Torture on 31 December 1992. Pursuant to article 19 of the Convention, Burundi submitted its initial report in 2006 and the periodic report in 2013. This is the third report.
2. It is the result of painstaking research work by members of the Standing Committee in charge of drafting initial and periodic reports, who were appointed by the Minister responsible for human rights in accordance with Ordinance No. 225/177 of 3 February 2016. It is also evidence of the Government's wish to honour the commitments it has made, in accordance with the recommendations resulting from the submission of the initial periodic report.
3. In preparing the report, Burundi continues to make the most of the experience gained in drafting reports. The Standing Committee in charge of drafting initial and periodic reports set about collecting data and drafting and vetting the report by engaging all the stakeholders involved in the prevention and punishment of acts of torture.

## I. General information

### A. Background information on Burundi

4. Burundi is an East African country with an area of 27,834 km<sup>2</sup>, 27,000 km<sup>2</sup> of which is land. Rwanda lies to the north, Tanzania to the south and east and the Democratic Republic of the Congo to the west.
5. Burundi is divided into 18 provinces, 119 communes and 2,908 *collines* (administrative subdivisions of rural communes), including 97 districts of Bujumbura Mairie. The national language is Kirundi. The official language most used in the civil service is French. Other languages, such as English and Swahili, are learned at school and spoken by some of the population.
6. The last general population and housing census, conducted in 2008, found it to have a population of 8,053,574, of which 51 per cent were female and 49 per cent male. The annual growth rate of the population is 2.4 per cent and the average household size is 4.7 persons. The population of Burundi is characterized by extreme youth: according to the age pyramid, young people and children account for more than 60 per cent of the population. The population density was 310 inhabitants per km<sup>2</sup>.
7. Projections based on the census, issued by the Burundi Institute of Statistics and Economic Studies, give an estimated current population of 10,114,505,<sup>1</sup> with a population density of 379 inhabitants per km<sup>2</sup>.
8. The population is unevenly distributed across the country with an imbalance between provinces ranging from 116.5 inhabitants per km<sup>2</sup> in Cankuzo Province to 474.7 in Kayanza Province. According to the Institute, only 10 per cent of the population live urban areas. Bujumbura, the capital, is the largest city by population. The population of Burundi is very young, with children and young people accounting for over 60 per cent of it. The population density is 297 inhabitants per km<sup>2</sup>, with an annual population growth rate of 3 per cent.
9. The peace process, marked by the 2005 elections, continued in 2010 and 2015 with the organization of presidential, communal, legislative, senatorial and *colline* elections. These resulted in a significant increase in women's participation. In 2016, women accounted for 44 per cent of the elected officials in the Senate, 36 per cent in the National Assembly and 32 per cent in the communal councils and 6 per cent of heads of *collines*.
10. However, since April 2015, a climate of sociopolitical insecurity has prevailed in some parts of the country. This situation has adversely affected the enjoyment of the human rights enshrined in the Convention, which is the subject of the report. Some people have had

---

<sup>1</sup> Data collected in 2016.

their fundamental rights violated, including a few cases of torture and inhuman treatment. In addition, a number of Burundians have fled the country. With a view to stabilization, an inter-Burundi dialogue has been initiated both internally and externally, and a mediator appointed by the subregion is working to reconcile the positions of the parties.

## **B. Normative and institutional human rights framework**

### **1. Government mechanism for the promotion and protection of human rights**

11. The government structure includes a Ministry responsible for human rights. It is responsible for the following:<sup>2</sup>

- Designing and coordinating national human rights and gender policy and ensuring its implementation
- Promoting and protecting human rights in collaboration with other ministries and the public and private organizations concerned
- Designing and implementing with other partners a programme for the prevention and eradication of genocide and crimes against humanity
- Designing and implementing a comprehensive programme of education for peace, national reconciliation, democracy and citizenship in collaboration with other relevant ministries
- Coordinating interventions in the different policy areas of organizations and activities to promote and protect human rights, and developing a consistent communication strategy
- Regularly monitoring the human rights situation and developing a consistent communication strategy
- Advocating for the mobilization of resources for the implementation of the national human rights policy
- Promoting universal health insurance or mutual health insurance systems for public and private workers and the population
- Ensuring steady improvement in coverage of social risks, particularly in the formal private sector, through the establishment of an effective social security system
- Monitoring the application of social security legislation
- Developing and coordinating mobilization strategies for disaster relief in the event of natural disasters in collaboration with other relevant ministries
- Promoting equity in the distribution of national resources in favour of vulnerable social groups
- Coordinating interventions in the different policy areas for disadvantaged and vulnerable persons and organizations and activities for the promotion and protection of human rights, and in areas for the promotion of gender equality
- Contributing to the development, implementation and enforcement of laws, covenants and platforms for action that protect human rights in general, and the rights of vulnerable people, women, children and older persons in particular, and gender balance
- Developing and monitoring the investment projects of the Ministry

### **2. Institutional and legal framework**

12. Burundi is a party to a number of regional and international instruments for the promotion and protection of human rights. Under article 19 of the Constitution, promulgated

<sup>2</sup> Decree No. 100/057 of 4 April 2016 on the missions, organization and functioning of the Ministry of Human Rights, Social Affairs and Gender.

on 7 June 2018, the rights and obligations proclaimed and guaranteed by the international instruments on human rights duly ratified by Burundi are an integral part of the Constitution. The use of torture, cruel, inhuman or degrading treatment or punishment is absolutely prohibited.<sup>3</sup>

13. In legislative and legal terms, the Government of Burundi has put in place, since 2013, several laws aimed at strengthening the promotion, protection and defence of human rights in the context of the fight against torture. These include the following:

- Act No. 1/28 of 5 December 2013 introducing regulations on public demonstrations and meetings
- Act No. 1/33 of 28 November 2014 amending Act No. 1/12 of 20 April 2010 establishing the organization of communal administrations (communal entities)
- Procedure for legal aid and compensation for victims of torture<sup>4</sup>
- Act No. 1/18 of 15 May 2014 providing for the establishment, mandate, composition, organization and operation of the Truth and Reconciliation Commission
- Act No. 1/56 of 4 June 2014, the Electoral Code
- Act No. 1/26 of 15 September 2014 providing for the establishment, organization, composition, operation and jurisdiction of the Special Court for Land and Other Property
- Act No. 1/22 of 25 July 2014 introducing regulations on direct legal action by the State and communes for indemnity against public agents and officials
- Act No. 1/28 of 29 October 2014 providing for the prevention and punishment of trafficking in persons and protection for victims of trafficking
- Act No. 1/04 of 27 June 2016 providing for the protection of victims, witnesses and other persons at risk
- Act No. 1/13 of 22 September 2016 providing for the protection of victims and the prevention and punishment of gender-based violence
- Act No. 1/02 of 27 January 2017 establishing the legal framework for the operation of non-profit organizations
- Act No. 1/25 of 23 December 2017 establishing the tasks, composition and operation of the National Observatory for the Prevention and Eradication of Genocide, War Crimes and Other Crimes against Humanity
- Act No. 1/27 of 29 December 2017 amending the Criminal Code, with torture being considered a criminal offence since 2009 and the Criminal Code of 2017, as amended, providing for harsher penalties for torture-related offences
- Act No. 1/09 of 11 May 2018 amending the Code of Criminal Procedure
- Act No. 1/03 of 10 January 2018 providing for the protection and promotion of the rights of persons with disabilities
- Act No. 1/19 of 14 September 2018 amending Act No. 1/15 of 9 May 2015 governing the press in Burundi

14. At the institutional level, some significant progress has been made. Since 2013, efforts have been made to consolidate an institutional framework that promotes respect for human rights. In particular, the following should be noted:

- Establishment of the Truth and Reconciliation Commission pursuant to Act No. 1/18 of 15 May 2014
- National Commission for the Inter-Burundi Dialogue established pursuant to Decree No. 100/34 of 23 September 2015 providing for the establishment, mandate,

---

<sup>3</sup> Constitution of 2018, art. 25.

<sup>4</sup> Code of Criminal Procedure, arts. 289 and 290.

composition, organization and operation of the National Commission for the Inter-Burundi Dialogue

- Establishment of the Inspectorate General at the Ministry of Human Rights, Social Affairs and Gender
- Establishment of the National Observatory for the Prevention and Eradication of Genocide, War Crimes and Other Crimes against Humanity pursuant to Act No. 1/25 of 23 December 2017
- Establishment of the National Council for National Unity and Reconciliation pursuant to Decree No. 100/0258 of 29 December 2017 providing for the appointment of members of the National Council for National Unity and Reconciliation

## C. Status of ratification of international legal instruments by Burundi and submission of reports

### 1. Cycle of reports on African conventions

<i>Instruments</i>	<i>Date of signature</i>	<i>Ratification date</i>	<i>Reports submitted</i>
Constitutive Act of the African Union, Lomé, 11 July 2000	10 July 2000	28 February 2001	-
Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, Addis Ababa, 6–10 September 1969	10 September 1969	31 October 1975	-
Cultural Charter for Africa, Port Louis, 5 July 1977	---	2 March 1990	-
African Charter on Human and Peoples' Rights, Nairobi, 1981	28 June 1989	28 July 1989	2000 2011
African Charter on the Rights and Welfare of the Child	21 May 2004	28 June 2004	2018
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Ouagadougou, 10 June 1998	9 June 1998	2 April 2003	-
OAU Convention on the Prevention and Combating of Terrorism, Algiers, 1 July 1999	14 July 1999	4 November 2003	
Protocol to the Treaty Establishing the African Economic Community Relating to the Pan-African Parliament, Sirte, Libya, 2 March 1969	29 November 2002	4 November 2003	
Protocol relating to the Establishment of the Peace and Security Council of the African Union, Durban, South Africa, July 2002	9 July 2002	4 November 2003	
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Maputo, 10–12 July 2003	3 December 2003	---	

<i>Instruments</i>	<i>Date of signature</i>	<i>Ratification date</i>	<i>Reports submitted</i>
Protocol of the Court of Justice of the African Union, Maputo, 10–12 July 2003	2 December 2003	---	
Protocol on Amendments to the Constitutive Act of the African Union, Maputo, 10–12 July 2003	2 December 2003	12 December 2006	
African Union Convention on Preventing and Combating Corruption, Maputo, 10–12 July 2003	3 December 2003	18 January 2005	
Protocol to the OAU Convention on the Prevention and Combating of Terrorism, Addis Ababa, 8 July 2004	14 July 1999	4 November 2003	
African Charter on Democracy, Elections and Governance, Addis Ababa, 30 January 2007	20 June 2007	---	
Charter for African Cultural Renaissance, Khartoum, 24 January 2006	---	2 March 1990	
Protocol on the Statute of the African Court of Justice and Human Rights, adopted by the Conference at its eleventh regular session, held on 1 July 2008 in Sharm el-Sheikh, Egypt	3 December 2003	---	
African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), adopted at the special session of the Union held in Kampala, from 22 to 23 October 2009	23 October 2009	---	
Treaty for the Establishment of the East African Community	30 November 1999	18 June 2007	
Pact on Security, Stability and Development in the Great Lakes Region	15 December 2006	June 2008	

## 2. Treaty body reporting cycle

<i>Instruments</i>	<i>Date of signature</i>	<i>Date of ratification or accession</i>	<i>Reports submitted</i>
International Covenant on Civil and Political Rights	---	9 May 1990	1993 2014
Optional Protocol to the International Covenant on Civil and Political Rights	–	–	–
Second Optional Protocol to the International Covenant on Civil and Political Rights	–	–	–
International Covenant on Economic, Social and Cultural Rights		9 May 1990	2015

<i>Instruments</i>	<i>Date of signature</i>	<i>Date of ratification or accession</i>	<i>Reports submitted</i>
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	-	-	---
International Convention on the Elimination of All Forms of Racial Discrimination	1 February 1967	27 October 1977	1999
Convention on the Elimination of All Forms of Discrimination against Women	17 June 1980	8 January 1992	2001 2005 2016
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	-	-	-
Convention on the Rights of the Child	8 May 1990	19 October 1990	2000 2008
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	13 November 2001	24 June 2008	-
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	-	6 November 2007	-
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		18 February 1993	2006 2013
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment		2013	---
Convention on the Prevention and Punishment of the Crime of Genocide	-	6 January 1997	-
United Nations Convention against Transnational Organized Crime	14 December 2000	24 May 2012	-
Convention relating to the Status of Refugees	-	19 July 1963	-
Protocol relating to the Status of Refugees	-	15 March 1971	-
International Labour Organization (ILO) Minimum Age Convention, 1973 (No. 138)	-	19 July 2016	-
ILO Worst Forms of Child Labour Convention, 1999 (No. 182)	-	11 June 2002	-
Convention on the Rights of Persons with Disabilities	---	2014	---

<i>Instruments</i>	<i>Date of signature</i>	<i>Date of ratification or accession</i>	<i>Reports submitted</i>
Optional Protocol to the Convention on the Rights of Persons with Disabilities	---	2014	---
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity	---	---	---
International Convention for the Protection of All Persons from Enforced Disappearance	---	---	---
United Nations Educational, Scientific and Cultural Organization Convention on the Protection and Promotion of the Diversity of Cultural Expressions	14 January 2009	14 January 2009	
ILO Indigenous and Tribal Peoples in Independent Countries Convention, 1989 (No. 169)	---	---	---
Convention relating to the Status of Stateless Persons	---	---	---
Convention on the Reduction of Statelessness	---	---	---

### 3. Status of the dissemination of the Convention against Torture and the methodology for the preparation of the report

15. By ratifying the Convention against Torture, Burundi has undertaken to ensure the prohibition of torture, in particular by including it in the training modules or programmes provided to State officials (police, military, judges, doctors, etc.) who have a role to play in the investigation process. The country has also committed to incorporating laws and regulations prohibiting torture into its legislation.

16. The Constitution recognizes the inherent dignity of the human person and prohibits the subjection of any human being to torture, cruel, inhuman or degrading treatment or punishment.<sup>5</sup>

17. The Ministry of Human Rights, Social Affairs and Gender organizes annual seminars to disseminate the Convention and the Protocol thereto.

18. With respect to the Burundian National Police, there is a service in charge of training police officers in human rights and the legal use of force in particular.

19. There is the Centre for the Promotion of Human Rights and the Prevention of Genocide.

<sup>5</sup> Constitution, arts. 21 and 25.



## II. Status of implementation of the Convention

### Article 1

#### Definition of torture

20. The Criminal Code of 2009, as amended in 2017, reproduces in full the definition of torture set out in the Convention: “Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on persons for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or a third person have committed or are suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity shall be considered torture.<sup>6</sup> No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>7</sup>

### Article 2

#### Legislative, administrative and judicial measures

21. Articles 289 and 290 of the Code of Criminal Procedure provide for the establishment of a compensation fund for victims of torture. As the perpetrators are public officials, the State must compensate the victims and may then take action for indemnity against the perpetrators.<sup>8</sup>

22. Article 64 of the Code of Criminal Procedure relates to the protection of victims of intentional offences against life or the physical integrity of the person, including ill-treatment and torture. The law allows any approved association to join the victim’s case or bring a complaint on the victim’s behalf.<sup>9</sup>

23. Moreover, the Directorate General of Human Rights and Education for Peace and National Reconciliation of the Ministry of Human Rights, Social Affairs and Gender has increased its visits to places of detention in all the country’s provinces in order to detect the irregularities leading to human rights violations. From 2017 to 2018, visits were carried out to 145 places of detention, of which 9 were prisons and 136 were communal detention centres (*cachots*).

### Article 3

#### Expulsion, return and extradition

24. The legal provisions on expulsion, return and extradition are set forth in national law. The Government of Burundi does not have a specific law on extradition. Extradition is authorized only within the limits provided for by law and no Burundian national may be extradited.<sup>10</sup>

25. A Burundian or foreign national who commits a criminal offence outside the national territory is punished under Burundian criminal law, subject to extradition agreements, if the perpetrator is in Burundi or the victim is a Burundian national and the offence is punishable under the law of the country where the offence was committed.<sup>11</sup>

<sup>6</sup> Act No. 1/27 of 29 December 2017 amending the Criminal Code, art. 206.

<sup>7</sup> *Ibid.*, art. 210.

<sup>8</sup> Act No. 1/22 of 25 July 2014 introducing regulations on direct legal action by the State and communes for indemnity against public agents and officials, art. 8.

<sup>9</sup> Criminal Code of 2017, art. 219.

<sup>10</sup> Constitution of 2018, art. 50.

<sup>11</sup> Code of Criminal Procedure of 2018, art. 219.

26. Regarding bilateral and multilateral cooperation, Burundi has signed two extradition treaties, one with Tanzania on 27 April 1988 and one with the members of the Economic Community of the Great Lakes Countries.

27. The treaty signed with Tanzania provides that the countries undertake to grant the extradition of any person accused or convicted in a criminal case as the main perpetrator or accomplice of one of 30 offences listed in the agreement, including torture. The extradition request is made by the Ministry of Foreign Affairs of the requesting State.<sup>12</sup>

28. Regarding return and expulsion, Act No. 1/03 of 4 February 2008, as amended by Act No. 1/32 of 13 November 2008 on asylum and refugee protection in Burundi, and Ordinance No. 530/443 of 4 April 2009 on the implementation of the Act deal with the situation of asylum seekers, including stateless persons. A law on stateless persons was adopted by Parliament in 2018.

29. Articles 19, 78 and 79 of the Act prohibit the return or expulsion of asylum seekers to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.

#### **Article 4 Criminalization of torture**

30. Article 21 of the Constitution of 7 June 2018 provides that human dignity must be respected and protected. Any violation of human dignity is punishable under the Criminal Code.

31. Article 207, 208 and 209 of the Code provide for punishment for acts of torture. Anyone who subjects a person to torture or other cruel, inhuman or degrading treatment is liable to 10 years' imprisonment and a fine of 100,000 to 1 million Burundi francs (F Bu).<sup>13</sup> The offence is punishable by 20 years' imprisonment when it is committed:

- (a) Against a minor under 18 years of age;
- (b) Against a person who is vulnerable owing to age, health, disability, physical or mental impairment or pregnancy;
- (c) Against a witness, victim or civil party, either to prevent that person from reporting an incident or from making a statement in court or motivated by such a report, complaint or statement;
- (d) By multiple persons acting as perpetrators or accomplices;
- (e) With the use or threat of use of a weapon.<sup>14</sup>

32. The perpetrator is liable to 20 years' imprisonment when the torture or other cruel, inhuman or degrading punishment has resulted in mutilation or permanent disability or when it is accompanied by sexual assault. The perpetrator is liable to life imprisonment when the torture has resulted in the death of the victim.<sup>15</sup>

33. The cases related to torture currently before the courts are RMP 152724, RMP 155353, RMP 155357, RMP 155358 and RMP 155366.

#### **Article 5 Territorial jurisdiction**

34. Articles 8 and 9 of the Code of Criminal Procedure specify the extent of territorial jurisdiction, subject to international conventions on diplomatic and consular immunity.

---

<sup>12</sup> Convention, art. 4.

<sup>13</sup> Act No. 1/27 of 29 December 2017 amending the Criminal Code, art. 207.

<sup>14</sup> Ibid., art. 208.

<sup>15</sup> Ibid., art. 209.

35. In addition, article 10 of the Criminal Code provides: “A Burundian or foreign national who commits a criminal offence outside the national territory is punished under Burundian criminal law, subject to extradition agreements and if the perpetrator is in Burundi or the victim is a Burundian national and the offence is punishable under the law of the country where the offence was committed.”

## **Article 6**

### **Arrest and detention of persons accused of torture**

36. Burundi has already made significant progress by incorporating the relevant provisions of the Convention into its law.

37. Article 39 of the Constitution of 7 June 2018 provides: “No one may be deprived of his or her liberty except in accordance with the law. No one may be charged, arrested, detained or tried except in cases determined by laws promulgated prior to the alleged offences.”

38. Article 40 provides: “Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he or she has had all the guarantees necessary for his or her defence.”

39. Article 154 of the Code of Criminal Procedure of 2018 provides: “Freedom being the rule and detention the exception, accused persons may be remanded in custody only if there is sufficient evidence of guilt and the acts of which they are accused appear to constitute an offence punishable by law with a penalty of imprisonment for at least 1 year.”

40. Article 34 of Act No. 1/09 of 11 May 2018 amending the Criminal Code makes provision for the time limits for investigation and police custody.

## **Article 7**

### **Trial or extradition of persons suspected of committing torture**

41. There is no special handling of cases that come to court. Perpetrators of torture are prosecuted and tried in accordance with the procedural rules of ordinary law. Anyone accused of torture is tried in accordance with articles 8, 9 and 10 of the current Criminal Code, subject to the extradition treaties that Burundi has signed with other countries.

## **Article 8**

### **Inclusion of torture in extradition treaties**

42. The following recommendation was made regarding article 8 of the Convention.

43. The State party should take legislative and administrative measures to ensure that the Convention may be invoked as a legal basis for extradition in respect of the offences referred to in article 4 of the Convention when it receives an extradition request from another State party with which it has no extradition treaty, in accordance with article 3 of the Convention.

44. There are two extradition treaties: one with Tanzania and the other with the members of the Economic Community of the Great Lakes Countries, namely Burundi, the Democratic Republic of the Congo and Rwanda.

45. Article 10 of the Criminal Code of 2017 supports the Convention with respect to extradition for torture.

46. In practice, the investigations conducted to date have not revealed any case of extradition for the offence of torture in the strict sense of this term.

## **Article 9**

### **Mutual judicial assistance between States parties**

47. Burundi requires an extradition treaty with the requesting party as a condition for extradition. It is recommended that the requesting party take legislative and administrative measures to ensure that the Convention can be invoked as a legal basis for extradition.

## **Article 10**

### **Education and information regarding the prohibition against torture**

48. Through the Ministry of Human Rights, Social Affairs and Gender, the Government regularly organizes training sessions or awareness-raising and information workshops on combating torture for judges, criminal investigation officers and others in order to eradicate this crime against humanity. Awareness-raising workshops on human rights were organized for judges and police forces as part of the human rights monitoring carried out in 2017. In the same vein, workshops to explain the National Human Rights Policy were organized for young members of political parties, other young persons and judges and registrars of *tribunaux de résidence* (local courts) in 2017. The Centre for the Promotion of Human Rights and the Prevention of Genocide provides training to *colline* councils and heads of zones (administrative subdivisions of communes) on the promotion and protection of human rights in general and on the Convention and the prevention and punishment of torture and ill-treatment more specifically. The same training is provided to the organizers of human rights clubs in schools.

49. In addition to the initiatives above, other State and non-State actors contribute to widely disseminating the principles relating to the prohibition against torture.

## **Article 11**

### **Measures to monitor interrogations, detention and imprisonment**

50. The Code of Criminal Procedure of 2018 incorporates all necessary measures to prevent arbitrariness and therefore torture in all its forms and at every stage of proceedings. These measures also respond to the Committee's concerns.

#### **Custody and interrogation**

51. During police custody, the criminal investigation officer must draw up a police custody report, including the identity of the person held in custody, the nature of and grounds for the custody, the conditions in which the person is being held (whether or not he or she has been tortured) and the location where the person is being held in custody. The report requires the detained person's signature and a copy must be given to this person.

52. Furthermore, women who are more than six months' pregnant or are breastfeeding a baby under the age of 6 months cannot be held in custody except for serious offences and subject to authorization by the public prosecutor (art. 32, third para.). In criminal cases, persons may be held for questioning to prevent them from absconding or escaping before the case has been prepared. Likewise, the Code of Criminal Procedure provides that police custody should be organized such that women and men are held separately and are guarded by police officers of the same sex (art. 32, fourth para.).

53. However, a restriction on freedom of communication during police custody has been added to the Code to prevent communication that could lead to the disappearance or destruction of evidence of the offence committed. Nonetheless, the Code of Criminal Procedure provides that the criminal investigation officer responsible for the police custody must ipso facto inform the family of the person in custody or any other interested party of the action taken and the place of custody.

54. The maximum period of police custody may not exceed seven clear days, which may be exceptionally extended to twice that duration by decision of the public prosecutor (art. 34). This exception is justified by the fact that criminal investigation officers in communal police

stations that are far from the centre of the commune have difficulty in finding means of transport to transfer the detained persons and their case files to the prosecution offices within their jurisdictions. They are sometimes obliged to take advantage of a journey made by the communal administrator from the provincial police station under his or her jurisdiction or the office of the public prosecution service. Nonetheless, non-governmental organizations can help criminal investigation officers transfer detained persons to the public prosecution service within the framework of cooperation.

### **Monitoring of places of detention**

55. The only monitoring mechanism for places of detention in Burundi is purely judicial. Public prosecutors are responsible for performing regular inspections of places of detention, including both police stations and prisons. In addition, there are no forensic doctors trained to identify signs of torture. Criminal investigation officers and public prosecutors make use of the Government's general practitioners to be able to assess signs of torture.

56. Human rights organizations state that they make regular visits to places of detention. The International Committee of the Red Cross is a prime example.

57. Before an interrogation is conducted, persons being questioned are informed of their rights, including the right to remain silent in their lawyer's absence (art. 10 (5)).

58. To avoid torture or other cruel, inhuman or degrading treatment, the Code of Criminal Procedure provides that a record of all interrogations must be drawn up and duly signed on oath by the criminal investigation officer doing the booking and by the person being questioned.

59. They must also jointly initial each page to prevent the insertion of pages or words into the case file. Before signing the record of statement or being fingerprinted, the persons questioned must first read and reread the statement or, if they are unable to read, have it read out by a person of their choice. They still have the right to refuse to sign the record if the interrogation was not properly conducted or the record does not match their statements.

60. This also applies to public prosecutors who summon accused persons to provide explanations on the charges against them. Article 111 provides that accused persons must be informed of their rights under the same conditions as when being questioned by a criminal investigation officer for the proceedings to be valid.

61. The same applies to article 137 on seized items, which provides that a seizure report must be signed by the owner, the local administrative authorities and/or the witnesses.

62. The seizure, where applicable, must be carried out with the suspect present, if possible, to acknowledge the objects and, where appropriate, to initial or mark them. If the suspect is absent and cannot be found, this is recorded in the report. In addition, the Code of Criminal Procedure provides that accused persons may not be compelled to testify against themselves or to confess guilt, failing which the interrogation will be declared null and void.

63. The Code provides for guarantees of alleged perpetrators' right of defence, including the right to be assisted by counsel during the investigation and the right to remain silent in the absence of their counsel.

64. The same applies to public hearings, at which all parties may be assisted by a lawyer or by a person specially approved by the court in the individual case to speak on their behalf. Unless the defendant objects, the judge may ask the president of the Bar to appoint a lawyer who is a registered member.

65. Juvenile defendants must be assisted by defence counsel (art. 222).

66. To resolve the issue of the small size and shortage of prisons to detain alleged perpetrators, the Government has recommended, in article 154 of the Code of Criminal Procedure, that "the accused may be remanded in custody only if there is sufficient evidence of guilt and the acts of which he or she is accused appear to constitute an offence punishable by law with a penalty of imprisonment for at least 1 year".

67. Article 159 further provides: "The order authorizing placement in pretrial detention is valid for a period of 30 days, including the day of issuance. At the end of this period, pretrial

detention may be extended by a reasoned decision on a month-by-month basis, for as long as required by the public interest. However, pretrial detention may not exceed 12 months, unless the acts appear to constitute an offence punishable by law with a penalty of at least 5 years' imprisonment. At the end of this 12-month period, the superior of the judge handling the case shall order provisional release at the request of either the person concerned or the prison governor. An investigating judge who fails to bring an accused person before the pretrial detention judge without valid reason faces disciplinary and even criminal sanctions. Extensions shall be ordered in accordance with the conditions and time limits provided for in 156 and 158.”

68. The President grants pardons to some convicted persons, which contributes to reducing overcrowding in prisons.

69. Regarding the steps taken to address the situation of persons who have been detained for many years, Burundi, through the Ministry of Justice and Civil Protection, has established a standing commission responsible for monitoring the prison and judicial records of prisoners pursuant to Ministry Ordinance No. 550/2083 of 11 November 2016.

70. For information, in 2016, through pardons, 1,357 convicted prisoners received a full remission of their sentence and were released from prison, 498 received a partial remission of their sentence and 12 had their sentence commuted from life imprisonment to 20 years.

71. In 2017, 2,576 convicted prisoners received a full remission of their sentences, 576 received a partial remission, 16 had their sentences commuted and 123 were granted a release on parole.

72. In 2018, 1,365 prisoners were granted a partial remission or commutation of their sentences and 2,979 a full remission.

73. The courts and the prosecution service also take other steps whenever they observe prolonged detention.

74. In the provinces where police stations have been newly built with the financial support of the United Nations Office in Burundi, detention conditions and the working conditions of police officers are good (Rutana and Makamba Provinces).

#### **Widespread sexual violence against women and children in places of detention**

75. Prison officials have put in place a system for handling cases of gender-based sexual violence: prisoner representatives receive complaints from victims, hear the perpetrators and report to the prison officials. In turn, the officials make the decision to place the perpetrators in a punishment cell. This action is reinforced by State and non-State actors working on human rights through the organization of regular visits to places of detention by non-governmental organizations and human rights institutions.

### **Article 12**

#### **Investigation of the commission of an act of torture**

76. The 2018 Code of Criminal Procedure deals severely with cases of torture. Article 349 of the Code prescribes that, “in the event of torture by State employees in the exercise of their duties, duly established, and if the victim has duly joined a civil action, full compensation for the damage shall be borne by the State”.

77. In cases of compensation of torture victims, the State may take indemnity action against officials who have carried out the torture and their co-perpetrators and accomplices.<sup>16</sup>

78. In the event of commission of an act of torture, the Code of Criminal Procedure provides for prompt, impartial and thorough investigations. Unfortunately, there are no forensic physicians trained in detecting the sequelae of torture. In the event of a complaint of torture, investigating officers and members of the prosecution service turn to general practitioners in order to determine whether torture has taken place.

---

<sup>16</sup> 2018 Code of Criminal Procedure, art. 350.

79. Once the crime of torture is established, the Criminal Code, under which it is a criminal offence, severely punishes anyone who subjects a person to torture or other cruel, inhuman or degrading treatment by 10 to 15 years' imprisonment and a fine of F Bu 100,000 to F Bu 1 million.<sup>17</sup>

80. However, the sentence may be increased to between 15 and 20 years' imprisonment if the torture was carried out against a minor under 18 years of age, a person who is vulnerable because of his or her age, state of health, disability, physical or psychological impairment or state of pregnancy, a witness, a victim or a civil party, either to prevent someone from reporting the facts, from lodging a complaint or from giving evidence in court, or because of having brought the complaint or given testimony, and also if the torture was carried out with the use or threat of use of a weapon.<sup>18</sup>

81. A sentence of 20 years' imprisonment is also imposed when torture results in permanent mutilation or disability or when it is accompanied by sexual assault.<sup>19</sup>

82. Life imprisonment is imposed when the torture results in the death of the victim. The 2017 Criminal Code strengthens these penalties by specifying that exceptional circumstances, such as a state of war or a threat of war, internal political instability or any other public emergency, may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.<sup>20</sup>

83. Nor can State officials invoke the order of a superior or a public authority as a justification for torture.<sup>21</sup>

84. It is important to note that these sentences are to be served in full. The Criminal Code also provides for other additional penalties to discourage these acts of barbarity.<sup>22</sup>

85. In addition to these acts of torture, cruel, inhuman or degrading treatment, the Code covers other offences or acts of violence, including intentional homicide.<sup>23</sup>

86. The Criminal Code also provides for very severe penalties for intentional homicide, up to life imprisonment, regardless of the motive, conditions and means of committing the crime.

87. Article 220 of the Code specifies that these penalties are not reducible and that the judge, at the same time as imposing a principal sentence, may issue a socio-judicial surveillance order without prejudice to the other additional penalties provided for by this Code.

88. Other offences or acts of violence that may be related to acts of torture and which are provided for in the Code include: intentional bodily harm,<sup>24</sup> assault,<sup>25</sup> kidnapping,<sup>26</sup> rape,<sup>27</sup> offences against family order, particularly abortion,<sup>28</sup> and offences against the child.<sup>29</sup>

89. In particular, with regard to offences against the child, the Criminal Code provides for 10 years' imprisonment for any person who exposes or neglects a child resulting in mutilation or disability, and 20 years' imprisonment if this exposure or neglect results in death.<sup>30</sup>

<sup>17</sup> 2017 Criminal Code, art. 207.

<sup>18</sup> *Ibid.*, art. 208.

<sup>19</sup> *Ibid.*, art. 209.

<sup>20</sup> *Ibid.*, art. 210 (1).

<sup>21</sup> *Ibid.*, art. 210 (2).

<sup>22</sup> *Ibid.*, art. 211.

<sup>23</sup> *Ibid.*, arts. 212–216.

<sup>24</sup> *Ibid.*, arts. 221–225.

<sup>25</sup> *Ibid.*, art. 226.

<sup>26</sup> *Ibid.*, arts. 257–258.

<sup>27</sup> *Ibid.*, arts. 577–585.

<sup>28</sup> *Ibid.*, arts. 528–534.

<sup>29</sup> *Ibid.*, arts. 535–548.

<sup>30</sup> *Ibid.*, art. 536.

90. The kidnapping of a child for the purpose of ransom is also punishable by 10 to 20 years' imprisonment. The perpetrators of kidnapping followed by the death of the child are punished by life imprisonment.<sup>31</sup>

91. The Code also provides for criminal sanctions for other offences against a child, such as fraudulently obtaining an adoption of a child,<sup>32</sup> directly inciting a child to commit an unlawful act or an act likely to jeopardize the child's health, morals or development,<sup>33</sup> using, recruiting or offering a child for prostitution or production of pornographic materials or performances,<sup>34</sup> committing an act or transaction involving the transfer of a child to another person for remuneration or any other benefit,<sup>35</sup> and using a child for sexual activities for remuneration or any other benefit.<sup>36</sup>

92. With regard to offences against family order, the Criminal Code places particular emphasis on abortion, stating that anyone who, by means of food, drink or medicine, intentionally causes a woman to have an abortion, apart from the cases provided for by law, is punished by 1 to 2 years' imprisonment and a fine of F Bu 20,000 to F Bu 50,000. The Criminal Code punishes by 5 to 10 years' imprisonment and a fine of F Bu 50,000 to F Bu 100,000 anyone who has committed violence against a pregnant woman with premeditation and with knowledge of the victim's condition. And if the violence caused the death of the woman, the penalty is increased to 20 years' imprisonment.<sup>37</sup>

93. The same applies to domestic violence (art. 558). The Criminal Code punishes by 3 to 5 years' imprisonment and a fine of F Bu 50,000 anyone who subjects his or her spouse, child or any other person living in the same household to cruel, inhuman or degrading treatment.

94. Burundi informs the Committee that the provisions of the Criminal Code relating to domestic violence are all applied and that the specific law on the prevention and punishment of gender-based violence was enacted in 2016 (Act No. 1/013 of 22 September 2016 on the protection of victims and the prevention and punishment of gender-based violence).

95. Implementation of this Act protects women against all forms of reprisal and social stigma and ensures that cases of domestic violence are investigated and perpetrators are brought to justice. To this end, specialized chambers have been established in courts of law, a police child protection and vice unit has been set up, and committees to combat sexual and gender-based violence have been introduced at the provincial, communal and *colline* levels. In order to ensure that law enforcement officials receive sufficient training to enable them to handle domestic violence cases properly, State and non-State actors have provided training to the judges of specialized chambers and to child protection and vice squads.

96. In addition, the Government is continuing its efforts to combat sexual and gender-based violence, including domestic violence. A legal aid unit with a budget to pay lawyers' fees on behalf of vulnerable persons has been set up in the Ministry of Justice and Civil Protection. Family and community development centres, which are decentralized services operating under the Ministry of National Solidarity, Social Affairs, Human Rights and Gender, play an active role in raising awareness of the specific law on sexual and gender-based violence and in counselling and supporting victims of such violence.

97. In order to increase the assistance available to victims of domestic and sexual and gender-based violence, new integrated support centres were set up in Cibitoke, Makamba and Muyinga Provinces in 2017. There is also the State-run Humura centre and the privately-run Seruka and Nturengaho centres. A legal support service for victims has been established at each of these centres.

<sup>31</sup> Ibid., art. 537.

<sup>32</sup> Ibid., art. 539.

<sup>33</sup> Ibid., art. 541.

<sup>34</sup> Ibid., art. 542.

<sup>35</sup> Ibid., art. 543.

<sup>36</sup> Ibid., art. 544.

<sup>37</sup> Ibid., arts. 528–534.



98. Mounting public awareness campaigns on the harmful effects of violence against women is one of these centres' top strategic priorities.

99. All these measures have resulted in the regularization of de facto unions, as shown in the table below.

**Regularization of households in de facto unions within the framework of application of the Act on the protection of victims and the prevention and punishment of gender-based violence**

<i>Order no.</i>	<i>Province</i>	<i>Number of households living in de facto unions</i>	<i>Number regularized as at 30 October 2018</i>	<i>Balance</i>
1	Bubanza	12 048	11 746	302
2	Bujumbura	13 254	12 952	302
3	Bururi	4 473	4 179	294
4	Cankuzo	9 506	9 185	321
5	Cibitoke	26 140	26 078	62
6	Gitega	13 563	13 538	25
7	Karuzi	9 892	7 978	1 914
8	Kirundo	No data	-	-
9	Kayanza	7 607	7 565	42
10	Makamba	25 314	15 560	9 754
11	Muramvya	3 442	2 878	564
12	Muyinga	20 348	19 497	851
13	Mwaro	1 962	1 913	49
14	Ngozi	49 125	46 305	2 820
15	Rumonge	7 456	No data	7 456
16	Rutana	7 638	5 323	2 315
17	Ruyigi	7 706	5 918	1 788
18	Bujumbura Mairie	19 098	No data	19 098
<b>Total</b>		<b>234 629</b>	<b>190 615</b>	<b>47 957</b>

*Source:* Data collected at the Ministry of the Interior, Patriotic Training and Local Development, October 2018.

100. Finally, as regards rape (art. 577–585), this act of barbarity is punishable by 15 to 25 years' imprisonment and a fine of F Bu 50,000 to F Bu 200,000, particularly when committed on a minor between 15 and 18 years of age, on a person who is vulnerable because of his or her age, illness, disability, physical or mental deficiency, or a state of pregnancy apparent or known to the perpetrator, or when committed by a teacher, a minister of religion, a doctor, surgeon, midwife or other medical personnel with respect to persons entrusted to his or her care.

101. When the perpetrator committed the rape with the use or threatened use of a weapon, or on a child between 12 and 15 years of age, or when the rape was committed by several persons acting as perpetrators or accomplices, or when it caused the victim a serious deterioration of her health and/or left serious physical after-effects, in particular mutilation, permanent disability or the transmission of disease, the penalty is increased to 20 to 30 years' imprisonment.

102. It should be noted, however, that there are challenges related to the prevention and punishment of sexual violence. In particular, there are problems with adducing evidence, with delays in the forensic examination providing information on the state of a victim (thus blocking preliminary investigation of the case), etc.

103. In the context of effective measures to counter sexual and gender-based violence, enormous progress has been made. For instance, from a legislative and regulatory point of

view, Burundi adopted (i) Act No. 1/13 of 22 September 2016 on the protection of victims and the prevention and punishment of gender-based violence and drew up (ii) the National Action Plan on Resolution 1325 (2017–2021) and (iii) the National Gender Action Plan 2017–2021, in order to raise awareness among all stakeholders of the imperative need to prevent the effects of conflicts on women and girls and to protect women and girls from sexual and gender-based violence and numerous other harmful consequences.

104. In addition, Ministerial Order No. 550/1622 of 19 November 2013 on the mission, composition and functioning of the special chambers for juveniles and victims of sexual violence in Burundi was signed by the Ministry of Justice and Civic Protection and Keeper of the Seals. Article 3 stipulates that “the Chamber for Juveniles and Victims of Sexual Violence of the *Tribunal de Grande Instance* (court of major jurisdiction) is composed of a President and two judges, assisted by an official from the Public Prosecutor’s Office and a registrar”. Article 4 states that “the Court of Appeal sitting as the Chamber for Juveniles and Victims of Sexual Violence is composed of a President and two councillors, assisted by an official from the Public Prosecutor’s Office and a registrar”.

105. Gender units have been established in key ministries, including those of Justice and Civil Protection and Keeper of the Seals, Public Security and Disaster Management, and National Defense and Veterans Affairs, as well as in the ministry in charge of human rights.

106. The Police Unit for the Protection of Minors and Vice has been progressively decentralized in the different provinces of the country (in 6 provinces out of the 18, initially).

107. Focal points for gender-based violence (GBV) have been made more aware of the GBV response guide and the GBV victim management protocol.

108. Criminal investigation officers and all police officers have been trained in measures to combat sexual and gender-based violence, while modules on this topic have been incorporated in police schools and the Institut de Police, and a national police protocol on measures to combat GBV and manage victims of GBV was signed by the Ministry of Public Security and Disaster Management in July 2016.

109. In addition, the Government, in collaboration with United Nations bodies, including the United Nations Development Programme, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the Office of the High Commissioner for Human Rights, the World Bank, and the United Nations Children’s Fund, has organized several awareness-raising, training and information sessions on measures to combat sexual and gender-based violence for opinion leaders, community health workers and other health providers, care providers from family and community development centres, members of associations, students, teachers, judges and prisoners.

110. The Government also organizes regular awareness-raising campaigns and special sessions on rapid processing of legal cases related to sexual and gender-based violence. These partner organizations have so far not reported any cases of rape being used as a means of repression of political opponents.

111. As part of the emergency project on sexual and gender-based violence and women’s health in the Great Lakes region, three integrated GBV management centres were established in the hospitals of Cibitoke, Makamba and Muyinga. They have been operational since 20 February 2017.

112. In addition, the services of the three centres for medical, legal and psychosocial support and reintegration for victims of sexual and gender-based violence (Humura, Seruka and Nturingaho) have been improved as part of steps to strengthen prevention, access to treatment services and support for victims.

113. With regard to the Committee’s concern about the lack of statistics that would allow the extent of violence against women to be measured, the Ministry of Justice and Civil Protection has created a computerized database containing information on complaints filed, investigations pursued, prosecutions brought, convictions obtained and penalties imposed on perpetrators. This database is used in every court of major jurisdiction in Burundi.

114. Finally, in the 1,201 cases of rape examined by the Special Chamber for Juveniles and Victims of Sexual Violence in Burundi up to the first half of 2018, cases were closed and perpetrators convicted in accordance with the Burundian Criminal Code.

### **Article 13**

#### **The right of the victim to file a complaint**

115. The 2018 Code of Criminal Procedure directs criminal investigation officers to receive denunciations, complaints and reports related to the offences that they are tasked to investigate.<sup>38</sup>

116. In the context of complaints from victims of criminal offences, criminal investigation officers have a duty to search for the perpetrators and gather evidence against them in order to make it available to the Office of the Public Prosecutor.

117. However, when the criminal investigation officer or official in the Public Prosecutor's Office finds that a victim has filed a complaint, especially for offences against the person or those concerning the morality of the person, such as torture, cruel, inhuman or degrading treatment or sexual violence, they have a duty not to confront the victim with the alleged perpetrator but rather to ensure his or her protection.<sup>39</sup>

118. Burundi has made significant and commendable progress in implementing Act No. 1/04 of 27 June 2016 on the protection of victims, witnesses and other persons at risk. This law aims to protect persons involved in criminal proceedings (investigators, prosecutors, judges, lawyers or any other participant) or in commissions of inquiry such as the Truth and Reconciliation Commission and who are therefore at risk.

119. The protective measures taken are intended to preserve the safety, physical and psychological well-being, dignity and privacy of victims, witnesses and other persons at serious risk. They include measures of a jurisdictional nature, such as allowing anonymous testimony and non-disclosure of the identity of the witness, victim or other person at risk, allowing the victim or witness to hide their face or distort their voice, shielding them from the public and the accused, and holding the hearing in camera.<sup>40</sup>

120. Non-jurisdictional measures include, in particular, those taken not only by investigating authorities or commissions of inquiry but also by criminal investigation officers and officials in the Public Prosecutor's Office, such as:

- Ensuring the confidentiality of statements by victims/witnesses
- Informing victims and witnesses of the protective measures available to them and the facilities for support in case of imminent danger
- Ensuring that any suspected intimidation of a victim or witness is reported and investigated
- Helping witnesses at risk to appear in court under safe conditions, etc.

121. It is important to point out that the Act on the protection of victims and witnesses has made provision for a unit for the protection of victims, witnesses and other persons at risk, which unfortunately has not yet been established owing to a lack of resources.

<sup>38</sup> 2018 Code of Criminal Procedure, art. 10.

<sup>39</sup> *Ibid.*, art. 119.

<sup>40</sup> Act No. 1/04 of 27 June 2016 on the protection of victims, witnesses and other persons at risk, arts 9 and 10.

## **Article 14**

### **The right of the victim to obtain redress**

122. The 2018 Constitution guarantees the right of the victim to obtain redress. The State is obligated to indemnify all victims of arbitrary actions of the State or of its organs.<sup>41</sup>

123. The 2018 Code of Criminal Procedure, in Chapter XII, section 2 on the enforcement of judgments, has a provision on compensation for victims of torture. This is an innovation compared to the former Code of Criminal Procedure of 3 April 2013, which ignored redress for damages caused by the perpetrators of torture.

124. In the event of torture by State employees in the exercise of their duties, duly established, and if the victim has duly joined a civil action, full compensation for the damage shall be borne by the State.<sup>42</sup>

125. However, even if the victim is compensated by the State, the Code provides that the State may initiate an action for indemnity against the officials who have carried out the torture and their co-perpetrators or accomplices.<sup>43</sup>

126. In enforcing redress, the State, its branches or the commune shall initiate an action for indemnity against the author of the fault for which redress was pronounced, in order to compel him to reimburse all or part of the amounts borne by these institutions.<sup>44</sup>

## **Article 15**

### **Inadmissibility of confessions obtained by torture**

127. In accordance with article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states that “each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”, the 2018 Code of Criminal Procedure is clearer in specifying, in article 90 (3), that “when it is found or proved that confessions of guilt or any other information have been obtained through torture, physical coercion or any other unfair means, they shall be deemed null and void, as shall any evidence derived therefrom”.

128. Article 90 gives a judge the prerogative to pronounce, in addition to these principal penalties, a prohibition on exercising the function during which the torture was perpetrated, without prejudice to other additional penalties provided for by the Code.

129. With regard to the systematic rejection by the courts of confessions obtained under torture, the Code of Criminal Procedure provides that all confessions or information obtained through torture, coercion or any other unfair means shall be deemed null and void, as shall any evidence derived therefrom.

130. Article 90 (3) of the Code of Criminal Procedure of 2018 provides that “when it is found or proved that confessions of guilt or any other information have been obtained through torture, coercion or any other unfair means, they shall be deemed null and void, as shall any evidence derived therefrom”.

131. Confessions extracted under torture are therefore inadmissible in court. If cases have been reported to the Committee, it would be best if the Government were informed of them so they could be addressed on a case-by-case basis.

---

<sup>41</sup> Constitution of 2018, art. 23 (2).

<sup>42</sup> 2018 Code of Criminal Procedure, art. 349.

<sup>43</sup> 2018 Code of Criminal Procedure, art. 350.

<sup>44</sup> Act No. 1/22 of 25 July 2014 regulating the direct action of the State and the communes against their agents and officers for commission of a fault for which the State or commune is liable.

## **Article 16**

### **Prohibition of other acts of cruel, inhuman or degrading treatment or punishment**

132. Burundi experienced violent incidents in 2015 that were due to protests against the presidential elections, followed by the attempted coup on 13 May of the same year.

133. Some Burundian media and civil society organizations that were supposed to defend human rights, denounce acts of torture or ill-treatment and speak out against acts of intimidation, reprisals and threats have since been involved in this protest movement, until administrative and judicial measures were taken against them.

134. These include, in particular, the government measure temporarily banning access to the sites of certain private radio stations that have been involved in these movements, mainly for investigative purposes but also to safeguard the rights of the stations, the rights of others and the rights of the community. It should be noted that some stations have continued to operate, while others (among those that had been suspended) have been reopened and are operating normally.

135. On the other hand, some civil society organizations have also been suspended, owing to several reprehensible acts under Burundian criminal law committed by members of these organizations and their leaders. Investigations into these acts were conducted either through commissions of inquiry or, as is customary, by opening a file on the facts brought to the attention of the judicial authorities and by obtaining an international arrest warrant so that the persons concerned could be arrested and prosecuted.

## **III. Status of the implementation of the recommendations of the Committee against Torture**

### **1. Application of the Convention by domestic courts**

136. In accordance with article 15 of the Convention, which states that “each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”, the 2018 Code of Criminal Procedure was clearer in specifying, in article 90 (3), that “when it is found or proved that confessions of guilt or any other information was obtained by torture, duress or any other unfair means, they shall be deemed null and void, as shall any evidence derived therefrom”.

137. The 2017 Criminal Code severely punishes anyone who subjects a person to torture or other cruel, inhuman or degrading treatment with a prison term of 10 years and a fine of F Bu 100,000 to F Bu 1 million.<sup>45</sup> The perpetrator is also liable to 20 years’ imprisonment when the torture and other cruel, inhuman or degrading treatment has resulted in mutilation or permanent disability or when it is accompanied by sexual assault. Torture is punishable by life imprisonment when it has resulted in the death of the victim.<sup>46</sup>

### **2. Legislative measures to prevent torture**

138. Articles 254 and 258 of the 2018 Constitution specify that organic laws determine the mission, organization, training, conditions of service and functioning of the National Defence Forces, the National Police Force and the National Intelligence Service. The State of Burundi has made significant progress in this regard.

139. Of particular note are: (i) Organic Act No. 1/03 of 20 February 2017 on the mission, organization, composition and functioning of the Burundian National Police; (ii) Organic Act No. 1/04 of 20 February 2017 on the mission, organization, composition, training, conditions of service and functioning of the National Defence Forces of Burundi and; (iii) Organic Act No. 1/06 of 2 March 2006 on the personnel regulations of the National Intelligence Service.

<sup>45</sup> Criminal Code of 2017, art. 207.

<sup>46</sup> Criminal Code, art. 209.

140. It should be noted that a code of ethics is in place for National Intelligence Service personnel, which was developed with the assistance of the United Nations Office in Burundi.

141. In September 2013, the Government of Burundi ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

142. In addition, Acts No. 1/16, No. 1/17 and No. 1/18 of 31 December 2010 on the service regulations for police staff, sergeants and officers of the Burundian National Police formally prohibit police personnel from subjecting people to torture and cruel, inhuman or degrading treatment, as well as authorizing them not to execute orders from a superior that would go against the conduct befitting the service, in this case torture.

### **3. Absolute prohibition of torture**

143. Burundi is in compliance with international standards in the fight against torture perpetrated by the military.

144. The Military Criminal Code, a special criminal code applicable to the military, criminalizes wrongful acts committed in the performance of military service. It coexists with the ordinary Criminal Code, which also punishes acts of torture. Consequently, military personnel guilty of acts of torture are subject to the penalties provided for in the ordinary Criminal Code and under the same conditions (statutory limitations may not apply and the sentences must be served in full).

145. Burundi has also improved its preventive mechanism by building the capacity of criminal police officers, public prosecutors and judges through specially organized training sessions. Furthermore, Burundi amended its Criminal Code on 29 December 2017. Torture remains a criminal offence (art. 206) and the penalties incurred have a deterrent effect. They vary, according to the circumstances, from 10 years' imprisonment to life imprisonment (arts. 206–211). These sentences must be served in full and may not be reduced. They may be combined with additional penalties.

### **4. Police custody, pretrial detention and basic legal guarantees**

146. The current Code of Criminal Procedure sets out the procedures for police custody and pretrial detention.

147. Burundi amended the Code of Criminal Procedure on 11 May 2018. Articles 41, 43 and 44 of the Code provide that the maximum period of detention for public intoxication, identity checks and verifications or a dangerous mental state is 24 hours. For other cases requiring a thorough investigation, the duration of custody has remained 7 days, renewable once by the prosecutor.

148. Regarding the length of pretrial detention, the Code of Criminal Procedure provides that a provisional arrest warrant signed by the investigating judge is valid for 15 days. Before the end of this period, the investigating judge must ensure that the accused is heard in chambers to monitor the legality of the detention. The court order confirming pretrial detention is valid for 30 days, renewable each month for not more than 12 months, depending on the nature and seriousness of the offence.

149. Article 159 (2) and (3) of the Code of Criminal Procedure provides that the maximum period is 1 year for an offence that is punishable by a sentence of 5 years' imprisonment or less and 3 years if the offence is punishable by a sentence of more than 5 years' imprisonment.

150. With respect to the rights guaranteed to persons held in police custody or pretrial detention, article 138 of the Code of Criminal Procedure provides that accused persons must be informed of their rights before questioning for the proceedings to be valid. Accused persons are informed of their rights, including the right to choose a lawyer, communicate freely with that lawyer and remain silent when he or she is not present.

151. To ensure systematically that persons held in police custody or pretrial detention are informed of their rights and that the basic legal safeguards mentioned are in place, article 155 (3) of the Code of Criminal Procedure provides for disciplinary measures against any

investigating judge who fails to refer the matter within 15 days at the latest to the court responsible for reviewing the detention.

152. Article 155 (4) provides for the same sanctions against any presiding judge who does not organize a pretrial detention review hearing within 15 days at the latest of the date of referral of the case to the court by the public prosecutor or the accused.

153. Article 156 of the Code provides that, if the detention is found to be illegal, the court must order the lifting of the pretrial detention on its own motion.

154. However, the Code of Criminal Procedure indicates that the criminal investigation officer responsible for police custody must ipso facto inform the family of the person in custody or any other interested party of the measure to which he or she is subject and the place of detention.

155. In addition, the Code of Criminal Procedure recognizes certain guarantees for the accused to be able to exercise his or her right to defence, in particular the right to be assisted by his or her counsel during the investigation and to remain silent in the absence of counsel.

156. The same applies to the public hearing, where each of the parties may be assisted by a lawyer, or a person specially approved by the court for that case, to speak on their behalf. Unless the defendant objects, the judge may ask the president of the Bar to appoint a lawyer registered with the Bar.

157. However, the assistance of a defence counsel for the defence is mandatory for juveniles.<sup>47</sup>

## **5. Allegations of torture and extrajudicial killings**

158. To prevent impunity, perpetrators of acts of torture are punished in accordance with the law. In 2015, the Independent National Human Rights Commission recorded a total of 27 allegations of torture and other cruel, inhuman or degrading treatment.

159. The protection of victims who lodge a complaint has been significantly improved since the adoption of Act No. 1/04 of 27 June 2016 on the protection of victims, witnesses and other persons at risk.

160. Regarding the lodging of complaints by victims of torture, the Code of Criminal Procedure provides for three ways of submitting cases to the investigation bodies: complaints, denunciations and automatic referrals to the courts. In all cases, the prosecuting authorities give priority to hearing the victim's testimony to further the investigation.

161. However, Burundi regrets that, in some cases, victims do not come forward to lodge complaints or denounce the persons responsible to the judicial authorities and prefer to take flight or denounce them to the media, which impedes proceedings. For this reason, many cases are reported by the media, but the victims do not dare denounce the persons responsible or lodge a complaint with the judicial authorities.

## **6. Persons with albinism**

162. Public awareness campaigns have been conducted in an effort to protect persons with albinism, especially children. Community policing has been set up to provide special protection to persons with albinism.

163. The Government has approved the accreditation of organizations defending the rights of persons with albinism, including Albinos sans frontières and Organisation des personnes albinos du Burundi, whose purpose is to assist persons with albinism in defending their rights.

164. For its part, the Ministry of National Solidarity, Social Affairs, Human Rights and Gender continues to grant these organizations annual funding earmarked for meeting the nutritional, education and health needs of persons with albinism.

<sup>47</sup> Code of Criminal Procedure of 2018, art. 222.

165. However, difficulties persist with regard to the disorders that affect the eyes and skin of persons with albinism and require costly medication.

## **7. Independence of the judiciary**

166. The independence of the judiciary is guaranteed by the Constitution of 2018.<sup>48</sup> In addition, the sectoral policy of the Ministry of Justice for the period 2016–2020 is aimed at maintaining that independence. The policy focuses on three strategic priorities:

- An independent judiciary
- Justice for all
- Respect for human rights in criminal justice

167. The policy vision is to foster the development of an independent, fair modern and universally accessible justice system in Burundi.

168. The vision to guarantee the individual right to a fair justice system is based on seven guiding principles: (i) independence of the judiciary; (ii) access to justice; (iii) equality before the law; (iv) respect for due process; (v) collaboration and cooperation; (vi) the strengthening of human capital; (vii) the promotion of information and communications technologies.

## **8. Training**

169. With regard to capacity-building in the prevention and combating of torture, Burundi has continued its efforts to train judges and police officers through training sessions that have been organized for them. Other State and non-State actors have received training in combating torture provided by the ministry responsible for human rights. Unfortunately, these efforts are currently being frustrated by the withdrawal and disengagement of some of the country's traditional technical and financial partners.

## **9. Detention conditions**

170. Burundi amended the Code of Criminal Procedure on 11 May 2018. Articles 41, 43 and 44 of the Code provide that the maximum period of detention for public intoxication, identity checks and verifications or a dangerous mental state is 24 hours. For other cases requiring a thorough investigation, the duration of custody has remained 7 days, renewable once by the prosecutor.

171. Regarding the length of pretrial detention, the Code of Criminal Procedure provides that a provisional arrest warrant signed by the investigating judge is valid for 15 days. Before the end of this period, the investigating judge must ensure that the accused is heard in chambers to monitor the legality of the detention. The court order confirming pretrial detention is valid for 30 days, renewable each month for not more than 12 months, depending on the nature and seriousness of the offence. Article 159 (2) and (3) of the Code of Criminal Procedure provides that the maximum period is 1 year for an offence that is punishable by a sentence of 5 years' imprisonment or less and 3 years if the offence is punishable by a sentence of more than 5 years' imprisonment.

172. Regarding the steps taken to address the situation of persons who have been detained for many years, Burundi, through the Ministry of Justice, Civil Protection and Keeper of the Seals, has established a standing commission responsible for monitoring the prison and judicial records of detainees pursuant to Ministry Ordinance No. 550/2083 of 11 November 2016.

173. Moreover, the Directorate General of Human Rights and Education for Peace and National Reconciliation of the Ministry of Human Rights, Social Affairs and Gender has increased its field visits to community detention centres, or communal detention centres, and prisons in all the country's provinces in order to detect any irregularities and detention conditions leading to human rights violations.

---

<sup>48</sup> 2018 Constitution, art. 214.



174. In 2017, as a result of visits to 107 places of deprivation of liberty, including 9 prisons and 98 community detention centres, 368 people were released, including 52 prisoners after their cases were processed and 316 detained in community detention centres after irregularities were found.

175. Concerning basic needs, detained and imprisoned persons have access to health-care services and recreational activities.

176. The Government authorizes visits requested by national and international human rights defenders who seek to learn more about conditions in prisons and detention centres.

## 10. Situation of refugees and asylum seekers

177. Article 50 of the Constitution of 2018 establishes that “the right of asylum is recognized under the conditions provided for by the law”. This provision has been realized through the promulgation of Act No. 1/32 of 13 November 2008 on asylum and the protection of refugees in Burundi, currently in force. The Act has been implemented through the following three ministerial ordinances on asylum:

- Ministerial Ordinance No. 530/442 of 7 April 2009 on the application of Act No. 1/32
- Ministerial Ordinance No. 530/443 of 7 April 2009 on the application of Act No. 1/32 and on the composition, organization and operation of the Consultative Commission for Foreign Nationals and Refugees and the Appeals Board
- Ministerial Ordinance No. 530/881 of 6 July 2009 on the appointment of members of the Consultative Commission for Foreign Nationals and Refugees and the Appeals Board. Pursuant to the adoption and promulgation of the Act, the National Office for the Protection of Refugees and Stateless Persons was established in May 2009

178. The National Office serves as the secretariat of the Consultative Commission for Foreign Nationals and Refugees and is responsible for the coordination and monitoring of asylum-related issues.

179. Articles 19, 78 and 79 of the Act prohibit the refoulement or expulsion of asylum seekers to the frontiers of territories where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.

180. According to a report of the National Office for the Protection of Refugees and Stateless Persons, in August 2018:

- 882 new asylum applications, including 778 from nationals of the Democratic Republic of the Congo, were registered; of these, 446 individuals claimed to have arrived in Burundi during the month under review.
- 546 former asylum seekers were granted refugee status.
- 136 refugees were resettled in third countries.
- There were 159,152 internally displaced persons throughout Burundi (according to data for June 2018 from the Displacement Tracking Matrix of the International Organization for Migration).

181. There are also Burundian refugees in neighbouring countries. Under the voluntary repatriation programme, 45,886 Burundian refugees were repatriated from Tanzania, 77 from Lusenda refugee camp in the Democratic Republic of the Congo and 191 from Kakuma refugee camp in Kenya.

182. It should be noted that the National Assembly analysed and adopted two bills in September 2018 by which Burundi acceded to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness.

## 11. Universal jurisdiction

183. Under article 10 of the Criminal Code, any crime or offence committed outside the national territory by a Burundian or by a foreigner shall, subject to extradition agreements,

be punishable under Burundian criminal law if the perpetrator is in Burundi or if the victim is of Burundian nationality and the offence is punishable under the law of the country where it was committed.

## **12. Reparations and rehabilitation for victims of torture**

184. Regarding reparation for victims, the Code of Criminal Procedure of 11 May 2018 provides that the State is responsible for providing full reparation for harm resulting from torture committed by State officials in the performance of their duties.<sup>49</sup>

185. When the State compensates a victim of torture, it may take action for indemnity against the agent who has committed the torture and any co-perpetrators or accomplices (art. 350).

186. Furthermore, the Code extends the right to sue for damages in criminal proceedings to any duly registered association whose purpose is to combat sexual violence or any other intentional offences against life or the integrity of the person (which would include torture).

187. Action for indemnity by the State is regulated by Act No. 1/22 of 25 July 2014 introducing regulations on direct legal action by the State and communes for indemnity against public agents and officials.

## **13. Monitoring mechanism for places of deprivation of liberty**

188. In September 2013, the Government of Burundi ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

189. However, it has not yet established the national preventive mechanism as required under the Optional Protocol.

190. Regarding the independent mechanism to investigate complaints of torture and ill-treatment, Burundi considers that the investigation and prosecution authorities already in place, from the police stations in every commune to the prosecutor's office in every province, are sufficient.

191. Whenever necessary, the Public Prosecutor's Office may establish ad hoc commissions to investigate alleged violations. Examples of this include the commission of inquiry into the insurrection that began on 26 April 2015, the commission of inquiry into the allegations of extrajudicial killings during fighting that followed the attack on four military camps on 11 December 2015 and the commission of inquiry into the massacres that occurred on 14 May 2018 in Ruhagarika in the commune of Buganda, Cibitoke Province.

## **14. Independent National Human Rights Commission**

192. The independence of the Independent National Human Rights Commission is enshrined in several provisions of Act No. 1/04 of 5 January 2011 on the establishment of the Independent National Human Rights Commission. The Commission's operations are subject only to the law.

193. To preserve its independence and credibility, no State body may interfere in the performance of its duties. All State services must provide it with the necessary assistance and support.

194. The Commission is made up of figures known for their probity, integrity, strong sense of responsibility and attentiveness, commitment to human rights, energy and spirit of independence and impartiality in decision-making. In 2015, the Independent National Human Rights Commission recorded a total of 27 allegations of torture and other cruel, inhuman or degrading treatment.

195. The investigations conducted by the Commission showed that these acts are generally committed at the time of arrest or during police custody.

---

<sup>49</sup> Article 349 of the 2018 Code of Criminal Procedure.

## 15. Transitional justice

196. The Government of Burundi set up the Truth and Reconciliation Commission pursuant to Act No. 1/18 of 15 May 2014 on the establishment, mandate, composition, organization and operation of the Truth and Reconciliation Commission.

197. The Commission's mandate is to investigate and establish the truth about the serious human rights violations committed between 1 July 1962 and 2008, when the hostilities ended.

198. To support the Commission's mandate, the Government promulgated Act No. 1/04 of 27 June 2016 on the protection of victims, witnesses and other persons at risk.

199. According to the Commission's report to the National Assembly in 2018, for the renewal of its mandate, between 25 April and 6 May 2018, the Commission had conducted visits to take deposition testimony under the supervision of one or more its members in every province of Burundi. Preliminary estimates show that there had been 72,961 deponents, 100,024 people who had been murdered or disappeared, 21,671 alleged perpetrators of violations, 4,163 mass graves identified and 11,378 persons who had stood out for their actions to protect human lives.

## 16. Political violence

200. Concerning political violence, it should be noted that, in cases of offences relating to human rights violations, gender-based violence or violence against women, the alleged perpetrators are brought directly to the criminal investigation or judicial authorities so that criminal proceedings can be initiated. The same applies to all citizens without exception, including members of the Imbonerakure youth league and personnel of the defence and security forces in conflict with the law, irrespective of the offence, as no one is above the law.

## 17. Discrimination based on sexual orientation

201. Regarding the decriminalization of homosexuality, article 590 of the Criminal Code of 2017 defines homosexuality as an offence because such behaviour is contrary to Burundian customs and morals.

202. Nevertheless, in practice the State ensures the protection of all people in an effective manner, which extends to homosexual persons and so many other Burundian citizens alike, against threats, violence and harm to physical integrity, in keeping with domestic law.

## 18. Cooperation with United Nations mechanisms

203. The Government has established the Department for United Nations Treaty Bodies, Special Procedures and Universal Periodic Review and Other Mechanisms pursuant to Decree No. 100/57 of 4 April 2016 on the mandate, organization and operations of the Ministry of Human Rights, Social Affairs and Gender. The Department is responsible for:

- Assessing the ratification of treaties
- Identifying reports to be submitted and planning their preparation
- Drafting initial and periodic reports to the treaty bodies
- Following up on the recommendations of treaty bodies
- Following up on the concluding observations of special procedures
- Preparing and drafting reports for the universal periodic review
- Following up on the recommendations emanating from the universal periodic review
- Drafting replies to the various questionnaires and correspondence from special procedures
- Conducting awareness-raising activities on the treaties and their implementation among public and private institutions and the general public
- Identifying relevant actions and potential synergies with a view to enhancing collaboration with the treaty bodies

204. These responsibilities are carried out under the supervision of the standing committee on the drafting of initial and periodic reports.

## **Conclusion**

205. As this report shows, there have been significant changes in the executive and legislative branches compared to the situation at the time of the previous report in 2013.

206. The legal and institutional human rights framework has also been improved through, for instance, the establishment of various commissions, including the Truth and Reconciliation Commission and the National Commission for the Inter-Burundi Dialogue.

207. Furthermore, the Government promulgated the Criminal Code of 2017, which contains a definition of torture in line with the definition in the Convention. The Code of Criminal Procedure of 2018 has been amended and a specific law on gender-based violence has been promulgated.

208. In addition, the Government, through the Ministry of Human Rights, Social Affairs and Gender, held a series of training and awareness-raising sessions on human rights for local court judges, investigative police officers and young people with the aim of promoting respect for individual and collective rights and freedoms, the prohibition of torture and the eradication of all forms of torture.

209. In the light of the foregoing, the progress already made in implementing the Convention is satisfactory.

210. The Government reiterates its commitment to the cause of human rights, justice, peace and development for all.

---