



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

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## Committee against Torture

Forty-eighth session

7 May–1 June 2012

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

#### Concluding observations of the Committee against Torture

#### Rwanda

1. The Committee considered the initial report of Rwanda (CAT/C/RWA/1) at its 1070th and 1073rd meetings (CAT/C/SR.1070 and 1073), held on 15 May 2012, and adopted the following concluding observations at its 1090th and 1091st meetings (CAT/C/SR.1090 and 1091), held on 31 May 2012.

#### A. Introduction

2. The Committee welcomes the submission of the initial report of Rwanda, which follows the Committee's guidelines for reporting. However, the Committee regrets that the report lacks statistical information on the implementation of the provisions of the Convention. The Committee appreciates the frank and open dialogue with the State party's delegation, as well as the answers provided orally during the consideration of the report and the additional written submissions.

3. The Committee also notes the progress made towards full reconciliation of the people of Rwanda following the genocide that occurred in 1994, as well as efforts undertaken to provide justice to victims of the genocide and to build a State based on the rule of law.

#### B Positive aspects

4. The Committee welcomes the State party's ratification of or accession to the following international instruments:

(a) The Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 15 December 2008;

(b) The Optional Protocol to the Convention on the Elimination of Discrimination against Women, on 15 December 2008;

(c) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 15 December 2008;

(d) The Convention on the Rights of Persons with Disabilities, on 15 December 2008;

(e) The Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 15 December 2008.

5. The Committee notes the efforts undertaken by the State party to reform its legislation, including:

(a) The adoption in 2003 of the Constitution, in which article 15 states that no person shall be subjected to torture, physical abuse or cruel, inhuman or degrading treatment;

(b) The adoption in 2012 of a new Penal Code, which defines the offence of torture;

(c) The adoption in 2004 of Law No. 15/2004 relating to evidence and its production;

(d) The adoption in 2001 of Law No. 27/2001 relating to the rights and protection of the child against violence, which states that a child should not be subjected to torture or to cruel, inhuman and degrading treatment;

(e) The adoption in 2007 of Organic Law No. 37/2007 on the abolition of the death penalty;

(f) The adoption in 2008 of the Law on the prevention and punishment of gender-based violence.

6. The Committee also welcomes the efforts made by the State party regarding ongoing policies and procedures, including the establishment of the Office of the Ombudsman.

## **C. Principal subjects of concern and recommendations**

### **Definition and criminalization of torture**

7. While welcoming the information provided by the delegation that the newly adopted, but not yet promulgated, Penal Code contains a definition of torture in its article 166, the Committee is concerned that the penalties (six months to five years) provided for in article 205 of said code are lenient. Furthermore the penalties do not cover acts of torture involving the infliction of mental pain or suffering (arts. 1 and 4).

**The State party should promulgate and implement the newly adopted Penal Code as soon as possible, ensuring that the definition of torture is in conformity with the Convention. The State party should further ensure that it provides for appropriate penalties for acts of torture, including the infliction of mental pain or suffering.**

### **Direct application of the Convention before domestic courts**

8. While noting that the Convention can be directly invoked before domestic courts, the Committee expresses its concern at the lack of information about cases in which the Convention has been applied or invoked before courts in the State party (arts. 2, 10, 12, 13 and 16).

**The State party should ensure that public officials, judges, magistrates, prosecutors and lawyers receive training on the provisions of the Convention so as to facilitate its direct invocation before and its application by domestic courts. The State Party should further ensure, in the transitional period before the promulgation of the new**

law, that the lack of definition of torture in the Penal Code is compensated by the direct application in domestic courts of the definition appearing in the Convention. The State party should also provide the Committee with illustrative cases of direct application of the Convention in its next periodic report.

#### **Superior orders**

9. While noting that article 48, paragraph 2, of the Constitution provides for the right of any citizen to challenge a superior order and that the internal instruction of the National Police also provides for subordinates not to execute orders that are contrary to the law, the Committee expresses its concern at the lack of procedures to effectively implement such rules (art. 2).

**The State party should guarantee, as a matter of practice, the right of a subordinate to refuse to execute an order from his or her superior that is contrary to the Convention. It should also ensure, in practice, that the execution of such act may not be a justification of torture, in full conformity with article 2, paragraph 3, of the Convention.**

#### **Allegations of torture and ill-treatment**

10. The Committee expresses its concern about allegations of torture that has occurred in some detention facilities in the State party, in particular reports of 18 cases of torture and ill-treatment (such as severe beatings and electric shocks) during interrogations by Rwanda military intelligence in the Kami and Kinyinga camps, and by other security personnel in “unlawful places,” including the mistreatment of political prisoners, notably Bertrand Ntaganda, Célestin Yumvihoze, Dominique Shyirambere and Victoire Ingabire (arts. 2, 11, 12 and 13).

**The State party should take immediate and effective measures, to prevent torture and ill-treatment in all detention facilities and other places of deprivation of liberty in its territory. It should promptly, impartially and thoroughly investigate the 18 alleged cases of torture, and the reported cases of torture and ill-treatment of political prisoners, and prosecute and punish those responsible with appropriate penalties. Further to the investigation, the State party should ensure that those subjected to torture or ill-treatment are provided with redress, including rehabilitation.**

#### **Report on secret detention centres**

11. The Committee, though noting the statement by the delegation denying the existence of detention in secret places, nevertheless expresses its concern about reports of detainees held in “unofficial detention centres” without having been charged of a crime or brought before a court, nor having access to independent lawyers and to a doctor. The Committee is concerned at the reported 45 cases of unlawful detention in military camps and other alleged secret detention facilities in 2010 and 2011, where the time of detention ranged from 10 days to two years without the provision of legal safeguards (arts. 2, 11 and 12).

**The State party should ensure that no-one is detained in secret or unofficial facilities and prevent all forms of unlawful detention in its territory as well as initiate investigations into such allegations. The State party should, as a matter of urgency, close such facilities and promptly ensure that those detained in such places are provided with all legal safeguards, in particular, the right to promptly appear before a judge, no later than 48 hours after arrest or detention (see Basic Principles on the Role of Lawyers, para. 7), the right to a lawyer of his/her choice, and the right to a medical examination. The State party should establish and make public, in law, an official list of all places of detention, and promulgate penalties for those responsible for detaining persons outside of legal detention facilities.**

**Fundamental legal safeguards**

12. While noting that fundamental legal safeguards for detainees are provided for in the legislation of the State party, the Committee is concerned at reports that with regard to detainees held in police stations, prisons or other detention facilities, fundamental legal safeguards are not systematically applied in accordance with international standards. The Committee is particularly concerned that detainees can allegedly be held for a long period in pretrial detention without appearing before a judge, and that they do not have access to a lawyer or a doctor of their choice or to an independent medical examination, in accordance with international standards. In addition, they do not have the right to notify a family member or a relative. The Committee is further concerned at the lack of a centralized registration system of those deprived of their liberty (art. 2).

**The State party should take prompt and effective measures to ensure, in law and in practice, that all detainees are afforded all legal safeguards from the very outset of their detention. These include the rights of each detainee to be informed of the reasons for his/her arrest, including any charges against him/her; to be informed of his/her rights in connection with his/her detention; to have prompt access to a lawyer or, if necessary, to legal aid, and to be able to consult privately therewith; to have access to an independent medical examination, preferably by a doctor of his/her choice; to notify a relative of his/her detention; to have a lawyer present during any interrogation by the police; to be assisted by an interpreter, if necessary; to be brought promptly before a judge and to have the lawfulness of his/her detention reviewed by a court.**

**The State party should ensure that public officials, in particular judicial officers, medical officers, prison doctors, prison officials and magistrates who have reasons to suspect an act of torture or ill-treatment, record and report any such suspected or claimed act to the relevant authorities. The State party should also consider establishing a centralized registration system of those deprived of their liberty**

**System of monitoring places of detention**

13. The Committee notes the existence of laws, regulations and instructions as well as information that the National Commission for Human Rights, the Office of the Ombudsman and some non-governmental organizations are monitoring police stations and prisons. However, the Committee is concerned at the lack of a mechanism to ensure the monitoring of all places of detention. It also regrets the limited information provided about the existence of a complaints mechanism in such detention facilities, including possibilities to lodge complaints without fear of reprisal (arts. 2, 11, 12, 13 and 16).

**The State party should facilitate the conduct of more visits to places of deprivation of liberty by institutions and non-governmental organizations for monitoring purposes, and ensure that detainees can lodge complaints without fear of reprisal. Complaints should be promptly, impartially and independently investigated.**

**Enforced disappearances**

14. The Committee expresses its concern about reported cases of enforced disappearance and the State party's failure to provide information about the whereabouts of the disappeared or to thoroughly investigate the disappearances, particularly in the cases of André Kagwa Rwisereka and Augustin Cyiza. The Committee is also concerned that 21 of the 24 cases submitted to the State party by the Working Group on Enforced or Involuntary Disappearances remain outstanding (arts. 2, 11, 12, 13, 14 and 15).

**The State party should take all appropriate steps to effectively protect all persons from enforced disappearance. It should ensure that all cases of enforced disappearance are thoroughly investigated and that those responsible for enforced**

disappearances are prosecuted, and if found guilty, punished by appropriate penalties. The State party should also ensure that any individual who has suffered harm as a direct consequence of enforced disappearance has access to all available information which might be useful to determining the whereabouts of the disappeared person, as well as to fair and adequate compensation. The State party should reinforce its efforts to clarify all outstanding cases referred to it by the Working Group on Enforced and Involuntary Disappearances. Furthermore, the State party is urged to ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

#### **Gacaca courts - traditional justice**

15. The Committee appreciates the explanations provided by the State party on the system of Gacaca courts, which were established to speed up prosecutions in connexion with the 1994 genocide, and their imminent closure on the accomplishment of their mandate. The Committee is nevertheless concerned about criticisms raised in relation to the lack of guarantees of fundamental safeguards before the Gacaca courts (arts. 2, 10-13, 15 and 16).

**The State party should ensure that the Gacaca courts system is compatible with the international human rights obligations of the State party, in particular obligations under the Convention relating to basic legal safeguards for a fair trial, and ensure that the remaining cases before the Gacaca are conducted in conformity with these standards. It should also ensure that decisions taken can be appealed before the ordinary courts.**

#### **Violence against women and children, domestic violence, including sexual violence**

16. The Committee notes the measures taken by the State party to combat domestic violence, in particular violence against women and girls. The Committee also notes that the number of cases of rape decreased between 2006 and 2009. However, the Committee remains concerned about the persistence of this phenomenon, as indicated in the State party's report, and notes that there were 1,570 cases of rape of children recorded by the State party in 2009. The Committee also regrets the absence of comprehensive and recent statistical data on domestic violence, as well as on investigations, prosecutions, convictions and penalties applied against perpetrators. The Committee further expresses concern about the absence of comprehensive legislation against corporal punishment of children (arts. 2, 12-14).

**The State party should reinforce measures to eliminate domestic violence, in particular violence against women and girls, including by adopting a comprehensive strategy. It should facilitate the lodging of complaints by women against perpetrators, and ensure prompt, impartial and effective investigations of all allegations of sexual violence as well as prosecute suspects and punish perpetrators. The State party should continue to provide women victims with assistance, including shelters, medical aid and rehabilitation measures. Furthermore, the State party should explicitly prohibit corporal punishment of children in all settings.**

**The State party should provide the Committee with information on the investigations of cases of domestic violence, in particular violence against women and girls, including rape and other crimes, including sexual violence, and on the outcome of trials, including information on the penalties to perpetrators, and redress and compensation offered to the victims.**

**Non-governmental organizations, human rights defenders and journalists**

17. While noting the information provided by the State party's delegation on its relationship with the civil society, the Committee is concerned about reports of intimidation and threats which impede the effective participation of non-governmental organizations in human rights activities. The Committee is especially concerned about information regarding the arrest and detention of human rights defenders and journalists, and regrets the lack of information on investigations into such allegations. The Committee notes the information provided that international non-governmental organizations are currently authorized to register for 5 years, instead of one, and that local organizations are exempted from registration. Nevertheless, the Committee is concerned about reports of obstacles regarding the registration and work of non-governmental organizations (arts. 2, 12, 13 and 16).

**The State party should remove the obstacles affecting the work of non-governmental organizations and provide effective protection against intimidation, threats, arrest and detention of human rights defenders and journalists, including by prosecuting and punishing those responsible for such acts. For this purpose, the State party should effectively implement its decision to grant a five-year registration permit to international non-governmental organizations, and to exempt local non-governmental organizations from registration.**

**Non-refoulement**

18. The Committee expresses its concern at the fact that a foreigner "who compromises or threatens to compromise public security," is expelled, extradited or returned to his or her country and may be in danger of being subjected to torture, in violation of the principle of non-refoulement, due to the lack of an effective mechanism to adequately assess his or her situation with regard to the risk of torture in the country of destination (art. 3).

**The State party should ensure that persons are not expelled, extradited or returned to States where there are substantial grounds for believing that they would be in danger of being subjected to torture. The State party should take steps to guarantee that the principle of non-refoulement is properly applied by the High Court when it decides on such cases. The State party should further ensure that the draft law on extradition, currently under discussion in Parliament, incorporates international obligations under article 3 of the Convention.**

**Prison conditions**

19. While noting efforts made by the Government, the Committee is concerned about the inadequate prison conditions in the State party, in particular with regard to hygiene, access to health care and food. It is concerned about the high rate of overcrowding and that people may be held in detention after having completed their sentences. The Committee also expresses concern at reports that a high number of mothers are detained with their babies in extremely difficult conditions (arts. 2, 11 and 16).

**The State party should strengthen its efforts to improve prison conditions and ensure that they are in conformity with the Standard Minimum Rules for Treatment of Prisoners, by:**

**(a) Reducing the high rate of overcrowding, in particular through the wider use of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

**(b) Releasing detainees who have completed most of their prison sentences and for whom reintegration into society is considered appropriate by the competent authorities;**

(c) **Avoiding long periods of pretrial detention and ensuring that pretrial detainees receive a fair and speedy trial;**

(d) **Ensuring that minors are separated from adults, and that pretrial detainees are separated from convicted detainees;**

(e) **Ensuring that mothers detained with their babies are placed in more appropriate settings.**

#### **Juvenile justice**

20. The Committee is concerned that minors under 12 years of age who are in conflict with the law can be detained for a maximum period of eight months, and that such minors are not always detained separately from adults. The Committee is also concerned about reports that some minors are arrested and detained for vagrancy without any legal safeguards (arts. 2, 10 and 16).

**The State party should take steps, as a matter of urgency, to avoid detaining minors in conflict with the law and, as an alternative to imprisonment, provide them with special care. The State party should also ensure that all minors are only deprived of their liberty as a last resort and for a short period of time. The State party should further ensure that minors deprived of their liberty enjoy full legal safeguards, and if convicted, that they are detained separately from adults.**

#### **Training**

21. While noting information provided by the State party on human rights training conducted for law enforcement personnel, medical doctors and nurses, National Prison Service staff, Judicial Police officers, including on the principles set forth in the Convention, the Committee is concerned at the lack of information on the impact of such training in combating torture and ill-treatment and on its evaluation. It is also concerned at the lack of information on the training provided to medical doctors with regard to identifying acts of torture includes familiarization with the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)* (art. 10).

**The State party should reinforce training programmes addressed to law enforcement officials, civil, military and medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of individuals subjected to arrest, detention or imprisonment. It should assess the effectiveness of the training provided and ensure that the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)* is included in the training programmes.**

#### **Redress, compensation, rehabilitation**

22. The Committee expresses concern about information provided in the State party's report that further to legislation, "the right of victims to obtain compensation is subject to authentic act or recognition from the perpetrator of the offence giving rise to compensation". The Committee is of the opinion that this requirement may prevent victims of torture or ill-treatment from obtaining redress, including compensation, in compliance with the Convention. The Committee also expresses concern at the lack of cases in which the State party has been liable for compensation in relation to damages caused by its agents in connection with torture and ill-treatment, despite the provisions in the Civil Code (Book III, arts. 258-262) relating to civil liability with respect to offences and quasi-offences (art. 14).

**The State party should review its legislation and remove the condition based on "recognition of offence by the perpetrator" so as to ensure that victims of torture may**

**seek and obtain prompt, fair and adequate compensation, including in cases where the civil liability of the State party is involved. The State party should provide the Committee with statistical data on cases in which the State party has provided compensation to victims of torture or ill-treatment, as well as the amount of the compensation.**

#### **Coerced confessions**

23. While noting information in the State party's report that evidence obtained through torture or any cruel or degrading method is prohibited, the Committee is concerned about reports that individuals charged with threatening national security and detained at Kami or Mukamira military camps as well as in "safehouses" in Kigali had made confessions due to beatings and torture. The Committee is particularly concerned that judges did not require investigations into such cases but placed the burden of proof on the persons charged (art. 15).

**The State party should ensure that confessions, statements and evidence obtained as a result of torture or ill-treatment are not invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made. The State party should investigate confessions obtained through torture, and prosecute and punish those responsible. It should review criminal convictions based solely on confessions in order to identify instances of wrongful convictions based on evidence obtained through torture or ill-treatment, and take appropriate remedial measures and inform the Committee on its findings.**

#### **National Commission for Human Rights**

24. While welcoming the delegation's explanations on the activities of the National Commission for Human Rights, the Committee is concerned about the reported lack of effective independence of the Commission and the insufficiency of financial and human resources necessary to enable it to adequately fulfil its mandate (art. 2).

**The State party should take appropriate measures to guarantee, in practice, the independence of the National Commission for Human Rights and provide it with adequate financial and human resources to enable it to effectively fulfil its mandate, in full conformity with the Principles relating to the Status of National Institutions (the Paris Principles).**

25. The Committee recommends that the State party consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.

26. The Committee recommends that the State party consider making the declarations envisaged under articles 21 and 22 of the Convention in order to recognize the competence of the Committee to receive and consider communications.

27. The State party is requested to widely disseminate the report submitted to the Committee as well as the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

28. The State party is invited to submit the common core document in accordance with the requirements of the common core document contained in the harmonized Guidelines on reporting under the international human rights treaties (HRI/GEN.2/Rev.6) approved by the inter-committee meeting of the human rights treaty bodies and to observe the page limit of 80 pages for said common core document.

29. The Committee requests the State party to provide by 1 June 2013 follow-up information in response to the Committee's recommendations with regard to (i) conducting prompt, impartial and effective investigations; (ii) prosecuting suspects and sanctioning



perpetrators of torture and ill-treatment; (iii) providing redress to victims; and (iv) guaranteeing fundamental legal safeguards to detainees held in police stations, as contained in paragraphs 10, 12 and 14 of the present concluding observations. In addition, the Committee requests follow-up information on secret detention centres and reducing overcrowding in prisons, as contained in paragraphs 11 and 19 (a) and (b) of the present concluding observations.

30. The Committee invites the State party to present the next report, which will be its second periodic report, by 1 June 2016. To that effect, the Committee invites the State party to accept, by 1 June 2013, to report under the optional reporting procedure, which consists in the transmittal by the Committee to the State party of a list of issues prior to the submission of its report. The State party's response to this list of issues will constitute, under article 19 of the Convention, its next periodic report.

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