

TREATY BODY MONITOR

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Key facts¹

Ratified ICCPR	Reservations	Recognises Committee's competency under Art.41 ²	Submission of State party report	Other core treaties ratified
1975	None	Yes	Due: 10 April 1992 Submitted: 23 July 2007	ICESCR, CAT, CRC, CEDAW, CMW, CRPD

Opening remarks by the delegation

The delegation of Rwanda was led by Mr. Joseph Nsengimana, Ambassador to the United Nations for Rwanda. He was supported by a small delegation consisting of representatives from the Ministry of Justice, the Ministry of Foreign Affairs, the National Human Rights Commission, and the Legal Affairs and Human Rights Office of the National Police. While Ambassador Nsengimana and Mr. Eugène Rusanganwa, a Human Rights Officer in the Ministry of Justice, primarily addressed Committee members, the delegation also was assisted by the following members: Ms. Hope Tumukunde, Commissioner of the National Human Rights Commission; Mr. Azarias Uwimana, Director of Legal Affairs and Human Rights with the National Police; and Mr. Etienne Nkerabigwi, a Legal Advisor in the Ministry of Foreign Affairs and Coordinator of a Treaty Reporting Task Force.

¹The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx and <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&id=322&chapter=4&lang=en>

² Article 41 of ICCPR recognises the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.

Ambassador Nsengimana began his opening remarks to the Committee by acknowledging that since the 1994 genocide, Rwanda has been focused on and will continue to take steps toward bringing about unity and reconciliation among ethnic groups, restoring Rwandans' civil and political rights, and establishing a State built upon a rule of law. The Ambassador updated Committee members on the progressive measures Rwanda has taken to reconstruct its institutional and legal framework by way of its new constitution adopted on 4 June 2003. The Ambassador proudly noted that the new constitution created independent democratic branches of government and national institutions focused on the promotion of human rights, such as the commission for unity and reconciliation, an electoral commission, a gender observatory, a national council for youth, and a commission to fight genocide.

In an inefficient use of time, the Ambassador provided the Committee with formal, oral responses to the list of issues. While the delegation's oral replies were necessary due to its failure to provide the Committee with written replies in English in advance of the meeting, the responses did not provide much more than a theoretical analysis regarding the implementation of the Covenant.

Overview of key issues

The Rwandan delegation and the Committee engaged in positive and productive discussions, with all Committee members welcoming the long-awaited report and presence of the delegation before the Committee and noting their deep sympathies with Rwanda's tragic and violent past. However, as noted by Ms. Wedgwood (United States), the Committee also made clear that "past trauma cannot be an excuse" for a failure to fully implement the Covenant. The Committee noted its general dissatisfaction with the detail of the delegation's report and the lack of empirical data in the delegation's responses to the list of issues about how the Covenant was being implemented on the ground.³ Finally, Ms. Majodina (South Africa) noted that the Human Rights Commission, represented on the delegation by Ms. Hope Tumukunde, should have provided a shadow report to the government's report, independently assessing the government's implementation of the Covenant.

While the Committee was anxious to educate the delegation on ways in which it could more effectively implement the Covenant, it was apparent that the Rwandan delegation felt that the Committee's assessments failed to give appropriate consideration and deference to Rwanda's culture, regional issues, history, and progress. The Ambassador's constantly reminded the Committee that there was a need for sensitivity to the atrocities of Rwanda's past as the country returned to a rule of law. Further, while acknowledging that defects still exist in Rwandan society, the Ambassador honoured the progress his country has made by noting that "not all democracies have one flag or colour," and that Rwanda is carefully and systematically rebuilding its country based on a rule of law and human rights tailored to its distinct culture and history.

Constitutional and legislative framework

Concluding Observation:

8. The State party should take steps to make the Covenant known to all the population and mainly to judges and law enforcement officials. The State party should include in its next periodic report detailed examples of the application of the Covenant by domestic courts.

While pleased that the Covenant is granted priority over domestic law, the Committee expressed their deep concern that, in practice, the Covenant was merely a theoretical instrument with rare application in the legal system. Ms. Wedgwood explained that Article 190 of the Rwandan Constitution providing for the integration of the Covenant into national legislation is "just a formality" if the accused still do not have access to council, if prisoners in solitary confinement are denied the right to receive visitors, or if journalists are charged with "divisionism" for openly criticizing the government.

³ Concerns raised by Ms. Wedgwood (United States) and Ms. Majodina (South Africa).

Several Committee members requested elaboration from the delegation on the role of the Covenant in the legal structure of the country. In response to the delegation's reply that the Covenant was not often invoked by petitioners and therefore not applied by the judiciary, Mr. Salvioli (Argentina), Mr. Bhagwati (India) and Ms. Motoc (Romania) inquired as to whether programs were in place to educate the judiciary on human rights and international law, including the Covenant. Mr. Fathalla (Egypt) requested further clarification as to why the Covenant trumped all domestic legislation but not the Constitution.

Based on Rwanda's specific history of ethnic violence, the Committee and the delegation discussed at length the issues of reconciliation and unity. Mr. Amor (Tunisia) raised concern over whether civil society was granted access to participation in the National Unity and Reconciliation Commission and whether the existence of the Gacaca courts only proved to "handicap" reconciliation. Further, certain Committee Members advised the delegation that Rwanda cannot refuse to recognise minorities (Ms. Majodina) or limit the right of free speech (Ms. Wedgwood) in the name of unity.

Security of persons and prohibition of cruel, inhumane or degrading treatment

Concluding Observations:

- 12. The State party should ensure that all allegations of such violations (enforced disappearances and summary or arbitrary executions) are investigated by an independent authority and those responsible for such acts are prosecuted and duly punished. The victims or their families should have an effective remedy, including compensation, in accordance with article 2 of the Covenant.*
- 14. The State party should put an end to the sentence of solitary confinement and ensure that persons sentenced to life imprisonment benefit from the safeguards of the United Nations Minimum Rules for*

On the security of persons, Mr. Sanchez-Cerro (Peru) noted his concern over reports of the human trafficking of children and the recruitment of child soldiers, while Ms. Wedgwood insisted on action from the government with regard to the specific disappearances of several high level officials, including Lieutenant Colonel Augustin Cylza, Leonard Hitimana, Jean-Marie Vianney and Damian Musayidiz. While lacking in sufficient information at the time, the delegation assured the Committee that it would investigate the reports of child human trafficking and specific incidences of disappearances and provide the Committee with updated responses.

While the Committee applauded Rwanda's abolition of the death penalty and its ratification of the Second Optional Protocol to the Covenant in December 2008, it voiced serious concerns regarding alternative sentencing. The Committee's comments signalled its sharp disapproval of solitary confinement as an acceptable replacement for a death sentence. Ms. Majodina noted that "solitary confinement is cruel and inhumane and prohibited by Article 7 of the Covenant." Further, in response to information received from NGOs, Mr. Rodley (United Kingdom) and Ms. Wedgwood took issue with reports of severe restrictions on the right of prisoners in solitary confinement to receive visitors. The Committee's opinion regarding solitary confinement appeared unchanged by the delegation's explanation that solitary confinement in Rwanda simply means prisoners were "housed in private cells rather than in shared, dormitory-like rooms with other inmates."

Right not to be subject to arbitrary detention and right to fair trial

Concluding Observations:

16. *The State party should take steps to ensure that no one is detained arbitrarily, in particular for reasons essentially of poverty, and that the offence of vagrancy is eliminated from the penal code.*
17. *The State party should see to it that all tribunals and courts in the country operate in accordance with the principles set out in article 14 of the Covenant and paragraph 24 of the Committee's General Comment No.32.*
18. *The State party should take steps to ensure free legal assistance for those who do not have the means to pay for the assistance of a defence lawyer, in accordance with article 14, paragraph 3(d) of the Covenant.*

The Committee's distress over various incidences of arbitrary detention was evident in its remarks regarding vulnerable groups within Rwandan society. Ms. Motoc and Ms. Wedgwood expressed grave concern over the detainment of children at the Gikonda facility and other private detention centres, while Mr. Amor continually pressed the delegation for an explanation as to legal justification for the detainment of beggars, vagrants and street children.

The Committee heavily focused its inquiries on violations of due process guarantees present in Rwanda's Gacaca court system. While expressly noting its empathy with Rwanda's violent and devastating past, the Committee seemed frustrated by Rwanda's continued and widespread use of the Gacaca court system.⁴ Ms. Chanet (France) was "astonished" by the Gacaca's courts incompatibility with Article 14 of the Covenant and cautioned the delegation that the "desire for proximity endangers the impartiality of the judges" and is not appropriate to address serious criminal violations. Mr. Sanchez-Cerro, Ms. Wedgwood and Mr. Bhagwati advised that the current practice of not requiring each and every defendant in the Gacaca courts to be provided with legal representation is a direct violation of Article 14 of the Covenant.

The Committee's harsh criticism of the Gacaca court system was met with sharp disagreement by the delegation. The delegation defended the continued role of the Gacaca system in Rwandan society by stating that the system has dealt with more than one million cases, it has reduced overcrowding in prisons, and its "errors are minor and fleeting and have been addressed." Further, after repeated attacks on the system, the delegation's sensitivity to the issue was evident in its response to the Committee that after asking for and not receiving input from the international community as to how to bring a large number of offenders to justice after the 1994 genocide, Rwanda "found a solution when the whole world couldn't."

Freedom of thought and expression

Concluding Observations:

20. *The State party should guarantee freedom of expression for the press and the media, as well as for all citizens. It should make sure that any restriction on the exercise of their activities is compatible with the provisions of article 19, paragraph 3, of the Covenant and cease to punish so-called acts of "divisionism." The State party should also undertake investigations into the above-mentioned acts of intimidation or aggression and punish their perpetrators.*
21. *The State party should take the necessary steps to enable national non-governmental human rights organisations to operate without hindrance. It should treat all political parties on an equal footing and offer them equal opportunities to pursue their legitimate activities, in accordance with the provisions of articles 25 and 26 of the Covenant.*

⁴ Concerns raised by Ms. Wedgwood, Mr. Amor, Mr. Thelin (Sweden), and Mr. Sanchez-Cerro.

While acknowledging the media's horrific role in the 1994 genocide, the Committee cautioned the delegation that the media's prior actions cannot be used as an excuse to restrict free expression. Ms. Wedgwood noted that the issue of the freedom of the press was a priority for her as the media is the true "check and balance" on the government. Ms. Wedgwood argued that the usage of the term "divisionism" as a justification to restrict free press was too vague and over inclusive and sounded "Stalinistic." In addition to the Committee's concerns over legal restrictions on free speech, Ms. Wedgwood and Mr. Thelin (Sweden) also noted their alarm over reports of physical attacks on journalists and of the loss of press licenses based on an agency's employment of certain journalists.

Adding to the comments regarding freedom of the press, Mr. Lazhari (Algeria) noted his specific concern that the establishment of an opposition party in Rwanda appeared virtually impossible. NGO testimony before the Committee echoed Mr. Lazhari's concerns by noting that there is no real democracy in Rwanda because the creation of political parties remains difficult and any opposition to the government can be sanctioned.⁵ Further, the NGO testimony warned that the free speech of NGOs has become threatened because of their inability to meet the monetary requirements for operation based on a new 2009 law.

The delegation communicated that the government's need to be sensitive to the atrocities of its past justified its restrictions on free speech. The delegation argued that the government is working toward a "national identity," and while Rwanda's citizens are permitted to denounce government corruption, restrictions on that speech will arise when that criticism is used to fuel ethnic hatred.

Treatment of persons deprived of liberty

Concluding Observation:

15. The State party should, as a matter of urgency, adopt effective measures against overcrowding in detention centres and ensure conditions of detention that respect the dignity of prisoners, in accordance with article 10 of the Covenant. It should put in place a system to segregate accused persons from convicted person and minors from other prisoners. The State party should, in particular, take steps to ensure that all the United Nations Standard Minimum Rules for the Treatment of Prisoners are respected.

Even after the delegation attempted to assure the Committee that prison conditions have markedly improved since 1999, Ms. Wedgwood remarked that conditions in Rwandan prisons remain harsh, and that greater attention needs to be paid to food rations and health care. Ms. Wedgwood also advised the delegation that mixing pre-trial detainees with convicts and adults with children are prohibited by the Covenant and requires immediate review and attention. Mr. Salvioli noted his alarm regarding reports from NGOs of five hundred pregnant women in prison and inquired as to what the statistics were for bringing those responsible for these rapes to justice. In response to Mr. Salvioli, the Ambassador surprisingly stated "there are not any cases of rapes committed in prisons."

On a more positive note, the Committee appeared pleased by the delegation's reports regarding the usage of community service as an alternative to incarceration and encouraged its continued implementation. The Committee noted that community service allowed Rwanda to address its issue of overcrowding in prisons, while also providing for a healthy transition of inmates back into society.

Other issues

Dialogue between the delegation and the Committee also focused on the issues of minorities and women. The Committee reminded the delegation that the 1994 genocide does not afford the government the right to

⁵ Testimony before the Committee by Joseph Sanane Chiko, President of the Human Rights League of the Great Lakes Region.

discriminate against minorities in the name of unity and reconciliation. Referencing a shadow report from the Minority Rights Group International, Ms. Majodina noted her concern with the government's treatment of the Batwa by citing the Ministry of Justice's refusal to grant an NGO representing the Batwa people status until it changed its name. Further, Ms. Wedgwood inquired as to whether the government intended on making reparations to these indigenous peoples who had been forced off their land. Ms. Wedgwood also expressed concern over reports of Jehovah's Witnesses being jailed and beaten for their refusal to participate in night-time watches, in direct violation of their right to conscientious objection in article 18 of the Covenant.

While dismissing the Committee's argument for land reparations for the Batwa as not legally sound, the Ambassador acknowledged that these peoples have been discriminated against in the past and now must be afforded positive incentives and measures. In response to the inquiry about Jehovah's Witnesses, the Ambassador noted that alternative service options have been offered to accommodate their religious restrictions.

The Committee also spent considerable time discussing the treatment of women. Mr. Amor and Ms. Majodina were pleased by the advancements of women, such as the positive improvements in secondary education for girls and the requirement that 30 percent of posts in all decision-making organs were set aside for women, but encouraged the delegation to put forth greater efforts to keep girls in school and to continue to work toward the elimination of discriminatory laws.

Conclusions and next steps

In brief concluding remarks, the delegation reminded the Committee that Rwanda's recent history is marked by "a massive violation of civil and political rights through a genocide." It reiterated the government's view that restrictions on free speech are justified in the case of limiting propaganda that leads to division, and that it would not allow divisionism to become an obstacle to its achievement of a unified nation state under a rule of law. The Ambassador acknowledged that its report was limited but felt positive about its exchanges with the Committee. Further, the delegation invited the Committee to visit Rwanda as it felt that the misconceptions contained in some of the Committee's questions and criticisms would be clarified by viewing conditions on the ground.

Breaking with the practice of the previous Chairperson (Mr Rivas Posada, Columbia), the new Chairperson (Mr Iwagasa, Japan) did not provide concluding remarks. This meant the delegation departed without an indication of what to expect in the Committee's concluding observations, or where it thought Rwanda had made progress.

In its concluding observations, the Committee advised the State Party that it should provide information within one year on its follow-up actions based on the Committee's recommendations with regard to solitary confinement, enforced disappearances, and the prosecution and punishment of those responsible for the killings of women and children during and after the Rwandan Patriotic Army uprising against the 1994 genocide. Further, the State party should submit its fourth periodic report on 10 April 2013 after substantive consultation and input from civil society and non-governmental organizations.

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TREATY BODY MONITOR STAFF

Eléonore Dziurzynski, Communications Officer, Geneva

Gareth Sweeney, Deputy Manager, Geneva

Katrine Thomassen, Manager International Programme, Geneva

Michael Ineichen, Human Rights Officer, Geneva

Michelle Evans, Representative to the UN, New York

Vanessa Jackson, Human Rights Officer, New York

AUTHOR OF THE RWANDA REPORT

Mary Mercadante, Intern

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