



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

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## Committee against Torture

### Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 493/2012\*, \*\*

<i>Communication submitted by:</i>	Damien Ndarisigaranye, represented by TRIAL (Track Impunity Always)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	8 December 2011 (initial submission)
<i>Date of present decision:</i>	10 November 2017
<i>Subject matter:</i>	Torture committed by police officers; use in a judicial proceeding of confessions obtained under torture; failure to investigate; lack of redress
<i>Procedural issues:</i>	Examination of the same matter under another procedure of international investigation or settlement; exhaustion of domestic remedies
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; measures to prevent acts of torture; systematic monitoring of custody and treatment of detainees; State party's obligation to ensure that its competent authorities proceed to a prompt and impartial investigation; right to file a complaint; right to redress
<i>Articles of the Convention:</i>	Articles 2 (1) and 11 to 14, read in conjunction with articles 1 and 16 of the Convention

1.1 The complainant is Damien Ndarisigaranye, a Burundian national born on 15 August 1953 in Burarana. He claims to be the victim of violations by Burundi of his rights under articles 2 (1) and 11 to 14, read in conjunction with article 1, and, alternatively, with article 16 of the Convention. He is represented by TRIAL (Track Impunity Always).

1.2 Burundi made the declaration recognizing the competence of the Committee to receive and consider individual complaints under article 22 of the Convention on 10 June 2003.

\* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

\*\* The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.



1.3 On 27 February 2012, in accordance with rule 114 (1) of its rules of procedure, the Committee requested the State party to adopt effective measures, throughout the duration of the Committee's consideration of the complaint, to prevent any threats or acts of violence to which the complainant might be exposed, in particular as a result of having lodged the present complaint, and to keep the Committee informed of the measures taken to that end.

#### **The facts as submitted by the complainant**

2.1 In the wake of the civil war (1993–2006), Burundi experienced a power struggle that led to a climate of instability. In 2006, the last active rebel group — the Forces nationales de libération (National Liberation Forces) — signed a ceasefire with the Government, thereby marking the official end of the Burundian civil war. However, the political instability and the resulting threat to the peace process remained a source of concern. In August 2006, six political figures, including the former president and the vice-president, were imprisoned for an alleged attempted coup d'état.

2.2 Against that background, on 2 August 2006, at around 8 a.m., the complainant, who was a colonel in the Burundian army, was arrested in the centre of Bujumbura by seven plain-clothes officers of the National Intelligence Service. They pointed a gun at his chest and, without any explanation, asked him to follow them. One of the officers was Jean Bosco Nsabimana. When they arrived at the Intelligence Service headquarters, the complainant was taken to an office where there were six Intelligence Service officers, including Mr. Nsabimana. The Administrator-General of the Intelligence Service, Major-General Adolphe Nshimirimana, was in telephone contact with the officers. The officers informed the complainant that he was accused of involvement in an attempted coup d'état and they asked him to sign a statement admitting his involvement. As he refused to sign, the complainant was severely beaten all over his body for more than two hours, in particular on his back, with sticks, batons and wires that had previously been placed in water mixed with sand so that the sand would work its way into his wounds and increase his suffering. One of the officers filmed the scene. According to the complainant, General Nshimirimana ordered the agents by telephone to continue the beating when he refused to confess. As the complainant still refused to sign a confession, he was hung up by his arms above the floor and again severely beaten all over his body. In order to stifle his cries of pain, a stone was placed in his mouth, damaging his teeth.

2.3 The beating stopped when the complainant, who was in a critical condition, agreed to sign a prepared statement admitting his involvement in the attempted coup d'état. He was then held for seven days in an Intelligence Service cell measuring 9 m<sup>2</sup> with 12 other persons, in appalling, unhygienic conditions, without receiving any food for several days. There were no washing facilities in the cell and the complainant had to sleep on the floor. He received no treatment during this period, despite his repeated requests to be examined by a doctor. He was not allowed to communicate with a lawyer or his family, who learned of his arrest via the media.

2.4 While he was being held in the Intelligence Service cell, the complainant was visited by members of the Ligue Iteka and the Ligue Izere, two Burundian human rights associations, who noted that he had been subjected to torture. Alerted by numerous reports, the Minister for National Solidarity, Human Rights and Gender, Françoise Ngendahayo, personally visited the Intelligence Service headquarters on 3 August 2006. She made the following statement to the media: "I went to see the arrested persons ... They told me they had been beaten and I could see that they had. I asked the Director of the Intelligence Service (Documentation nationale) to put a stop to it."<sup>1</sup>

2.5 No action was taken, however. Following the visits of the Ligue Iteka and the Ligue Izere, a public statement signed by 10 human rights organizations and condemning the arrest of political figures by the Intelligence Service was sent to the Burundian authorities on 4 August 2006. The statement said that the visits made by the Ligue Iteka, detainees' families and the Minister for National Solidarity, Human Rights and Gender had confirmed

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<sup>1</sup> Agence France-Presse (AFP), "Préparation d'un coup d'état: les personnes arrêtées 'battues'" (Arrested and "beaten" for planning a coup d'état), 4 August 2006 (article in *Burundi Bwacu*).

that three individuals, including the complainant, had been subjected to torture and that the defendants were not permitted to see lawyers or doctors.

2.6 On 9 August 2006, when he had been held in the Intelligence Service cells for a week, the complainant was brought before the public prosecutor at Bujumbura city hall and formally charged with involvement in an attempted coup d'état. He was then transferred to Mpimba central prison. On 10 August 2006, at the insistence of the complainant's family and humanitarian associations, he was transferred to the Kamenge military hospital for treatment. On the basis of the medical findings, the lawyer appointed to the complainant following his transfer to Mpimba prison reported the acts of torture to the investigating judge and requested the latter to order an expert opinion so that a medical certificate could be issued. On 17 August 2006, a medical certificate was issued at the request of the investigating judge; it confirmed the presence of multiple linear and ecchymotic marks and stated that the complainant "has been subjected to beatings and intentional injury. The painful palpation of all the injuries suggests that they are recent. The profusion of lesions of the same kind over almost the entire body is reminiscent of torture".<sup>2</sup> The investigating judge, despite having agreed to the medical examination, took no action on the findings in the medical report, and no investigation into the case was opened. On 22 September 2006, on the basis of the medical certificate, the complainant's lawyer lodged a formal complaint with the Bujumbura public prosecutor.<sup>3</sup>

2.7 The complainant was held for more than five months at Mpimba prison in appalling conditions that were exacerbated by overcrowding, with serious consequences for the prisoners' health and safety. He was released on 16 January 2007, having been acquitted the previous day for lack of evidence in the proceedings against him and several others for an attempted coup d'état.

2.8 In addition to the steps taken before the judicial authorities, the acts inflicted on the complainant were brought to the attention of government and administrative authorities by a number of national and international human rights organizations, notably by means of a call for urgent action by Amnesty International on 3 and 4 August 2006 and by the World Organization against Torture on 1 September 2006. On 4 August 2006, a coalition of 10 human rights organizations based in Burundi<sup>4</sup> adopted a statement publicly condemning the arrest and detention of several people, including the complainant, who was specifically named in the statement. The Working Group on Arbitrary Detention and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (the Special Rapporteur on torture) also took joint action in an urgent appeal on behalf of the complainant on 10 August 2006. The complainant also refers to the concluding observations adopted by the Committee against Torture following its consideration of the State party's periodic report in 2006, in which it called on the authorities to conduct an immediate and impartial inquiry pursuant to reports that several of the persons detained for allegedly attempting a coup were subjected to torture (see CAT/C/BDI/CO/1, para. 12).

2.9 Thus, the Burundian authorities were informed repeatedly of the torture suffered by the complainant and could not therefore have been unaware of it. However, at the time of the submission of the communication to the Committee, more than five years had passed since the incidents had taken place and no action had been taken on the complaint. Deficiencies in the judicial system and risks to his physical and psychological integrity prevented the complainant from taking other steps to assert his rights. In particular, he was unable to apply to the Attorney General to complain about the inaction of the deputy public prosecutor and to request an investigation, since, in the meantime, the deputy prosecutor had become the Attorney General and the complainant would therefore have been obliged

<sup>2</sup> A copy of the medical certificate is annexed to the file.

<sup>3</sup> A copy of the complaint is annexed to the file.

<sup>4</sup> Ligue Iteka, Observatoire de l'action gouvernementale, Action by Christians for the Abolition of Torture, Association pour la protection des droits humains et des personnes détenues, Forum pour le renforcement de la société civile, Ligue des droits de la personne dans la région des Grands Lacs (Antenne Burundi), Organisation de lutte contre la corruption et les malversations économiques, Office of the United Nations High Commissioner for Human Rights in Burundi, Human Rights Watch and Avocats sans frontières.

to submit his complaint to the same person that had refused to take action in his case. Such an approach had no prospect of success.

2.10 Accordingly, the complainant submits that (a) the available domestic remedies have given him no satisfaction, as the authorities have not responded to his complaints, whereas they should have opened a criminal investigation on the basis of his allegations; (b) the domestic remedies have been unreasonably prolonged, since more than five years have passed since the incidents took place and no investigation has been opened; and (c) it was dangerous for him to take any other steps, since the persons responsible for the acts of torture in question were senior officials in the National Intelligence Service and persons affiliated with the current Government.

### **The complaint**

3.1 The complainant claims to be the victim of a violation by Burundi of his rights under articles 2 (1) and 11 to 14, read in conjunction with article 1, and, alternatively, with article 16 of the Convention.

3.2 According to the complainant, the abuse to which he was subjected caused him acute pain and suffering and constitutes acts of torture as defined in article 1 of the Convention. The Intelligence Service officers, who are agents of the State, armed with sticks, batons and wires beat him for more than two hours in order to extract a confession from him. This suffering was inflicted intentionally, as evidenced by the fact that the objects used to beat the complainant had previously been placed in sand so that it would get into the wounds sustained during the beating and by the fact that the torture was filmed by one of the persons present.

3.3 The complainant adds that the State party has not taken the necessary measures, legislative or otherwise, to prevent the practice of torture in Burundi, as required under article 2 (1) of the Convention. During the seven days that he was held in the Intelligence Service cell, the complainant had no access to a lawyer, was unable to receive visits from his family and received no treatment. According to the complainant, the State party also failed in its duty to investigate the acts of torture inflicted on him in order to bring those responsible to justice. Furthermore, despite the 2009 reform of the Criminal Code, there are still legal obstacles in the way of effectively preventing the practice of torture. In particular, there is no provision of law explicitly rejecting the validity of confessions obtained under torture, and article 27 of the Code of Criminal Procedure requires only that "if it is proved that confessions of guilt have been obtained under duress, they shall be null and void". In addition, the complainant points out that in Burundian law, apart from the special circumstances of war crimes, crimes against humanity and crimes of genocide, acts of torture committed outside these specific contexts are subject to a statute of limitations of 20 or 30 years depending on the circumstances.<sup>5</sup> Accordingly, the complainant submits that the State party has failed to take the legislative or other measures required under article 2 (1) of the Convention.

3.4 The complainant submits that the Burundian authorities did not properly monitor his treatment during his detention on the premises of the National Intelligence Service: he had no access to a lawyer; he was unable to appeal his detention; he was not examined by a doctor; and he was unable to communicate with his family to inform them of his arrest. In this regard, the complainant claims that there is no system of effective, systematic monitoring of places of detention and that the practices of the Burundian authorities, in particular the National Intelligence Service, in respect of persons deprived of their liberty do not conform to the requirements of article 11 of the Convention.

3.5 Although the Burundian authorities were informed about the torture of the complainant, they failed to carry out a prompt and effective investigation, in violation of their obligation under article 12 of the Convention. The complainant also points out that

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<sup>5</sup> Criminal Code of Burundi, art. 150.

Burundian criminal law does not oblige prosecutors to prosecute perpetrators of torture or even to order an investigation.<sup>6</sup>

3.6 The complainant also invokes article 13 of the Convention, arguing that no inquiry was opened into his allegations, despite the filing of a formal complaint on 22 September 2006 for acts of torture. No action was taken in response to his complaint, even though it was supported by sound evidence resulting from an expert examination. The case was thus not examined promptly and impartially, contrary to what is prescribed by article 13. Furthermore, the lawyer of another person arrested by officers of the National Intelligence Service in the same circumstances as the complainant was himself thrown into prison after having reported the torture suffered by his client.<sup>7</sup> According to the complainant, this amounts to an act of intimidation against the victims in the case and against their counsel for raising legitimate fears concerning their safety. In conclusion, the complainant submits that the State party did not ensure his right to bring a complaint and to have his allegations examined promptly and impartially, in violation of article 13 of the Convention.

3.7 The complainant further considers that the State party has violated its obligation under article 14, since, on the one hand, the crimes committed against him have gone unpunished and, on the other, he has received no compensation and has not benefited from rehabilitation measures for the torture he suffered. Given the passivity of the judicial authorities, other remedies to obtain redress, through a civil suit for damages, for example, have no realistic prospect of success. The Burundian authorities have taken few measures to compensate victims of torture, a point raised by the Committee in its concluding observations following its consideration of the State party's report in 2006 (see CAT/C/BDI/CO/1, para. 23). With regard to his right to rehabilitation assistance to help him recover as fully as possible in physical, psychological, social and financial terms — which he has not received — the complainant submits that, in its concluding observations, the Committee also highlighted with concern the absence of any measures to provide victims with the means to exercise this right. In addition, the complainant recalls that the State party's obligation to ensure that redress is obtained includes, but is not limited to, the provision of compensation for the harm suffered, and must also include the adoption of measures to ensure non-repetition of the acts. This involves, first and foremost, opening an investigation and prosecuting those responsible.<sup>8</sup> In the case of the complainant, the crime committed against him remains unpunished, which is a violation of his right to redress under article 14 of the Convention.

3.8 The complainant reiterates that the violent acts inflicted on him constitute torture, in accordance with the definition set out in article 1 of the Convention. However, and as a subsidiary argument, even if the Committee did not agree to qualify it as torture, he maintains that the abuse endured by him in any case constitutes cruel, inhuman or degrading treatment, and on that basis, the State party also has an obligation, under article 16 of the Convention, to prevent public officials from committing, instigating or tolerating such acts and to punish them if they do. In addition, he recalls the conditions of custody that he had to endure for his five months of detention, first in the Intelligence Service cells, then in Mpimba prison. These two places of detention are characterized by overcrowding and insanitary conditions.<sup>9</sup> He refers again to the Committee's concluding observations, in which it noted that conditions of detention in Burundi amount to inhuman and degrading treatment (see CAT/C/BDI/CO/1, para. 17). Lastly, he recalls that he received no medical

<sup>6</sup> The complainant refers to the Committee's recommendation in this regard, that the State party should make clear the obligation of the competent authorities to institute, systematically and on their own initiative, impartial inquiries wherever there are reasonable grounds to believe that an act of torture has been committed (see CAT/C/BDI/CO/1, para. 22).

<sup>7</sup> The complainant refers to Déogratias Niyonzima, in whose case the Committee already adopted a decision on 21 November 2014 (*Niyonzima v. Burundi*, CAT/C/53/D/514/2012).

<sup>8</sup> The complainant refers among other things to *Urra Guridi v. Spain* (CAT/C/34/D/212/2002), para. 6.8. He adds that these views are in line with the jurisprudence of the Human Rights Committee (*Bautista v. Colombia*, CCPR/C/55/D/563/1993, para. 8.2; and *Coronel et al. v. Colombia*, CCPR/C/76/D/778/1997, para. 6.2).

<sup>9</sup> In May 2011, according to a source cited by the complainant, Mpimba prison held more than 4,000 detainees, whereas its maximum capacity is 800.

treatment while in detention in the Intelligence Service cells, despite his critical condition, and therefore concludes that the conditions of detention he experienced constitute a violation of article 16 of the Convention.

#### **State party's observations on admissibility and the merits**

4.1 The State party was requested to submit its observations on the admissibility and merits of the communication on 27 February 2012. Reminders were sent on 19 November 2012, 15 May 2013, 12 August 2013 and 10 February 2015. On 9 June 2015, the State party submitted observations on the "investigations carried out" and on the admissibility of the communication. First of all, it notes that, as soon as they were apprised of the acts of torture by the complaint lodged by the complainant's lawyer, the judicial authorities launched an investigation. An investigation was opened against the accused Jean Bosco Nsabimana, alias "Maregarege", and registered as case No. D15 5604/ B.V with the public prosecutor's office at Bujumbura city hall. When it was noted that there might be significant evidence of guilt, the same case was registered with the public prosecution service as case No. RMP 123.256/ B.V. on 6 July 2007. Witnesses for the prosecution and the defence were summoned, some of whom have already made statements. However, the defendant categorically rejects the accusations against him, arguing that he was not present at the time of the attempted coup d'état. According to the State party, to date, prosecutors have been engaged in an investigation aimed at securing significant evidence of the perpetrator's guilt, while at the same time ensuring the necessary guarantees for the exercise of his right of defence, and gathering evidence — for and against the accused — in accordance with the principle of presumption of innocence.

4.2 With respect to admissibility, the State party submits that the Committee should reject the communication under articles 22 (2) and 5 (b) of the Convention on the grounds of abuse of rights, since the complainant voluntarily abandoned the available domestic legal remedies. According to the State party, simply making an application to a protection body is not sufficient because the latter cannot obtain sufficient information on the events in question or the nature of the alleged violations unless the victim and his counsel show a genuine willingness to cooperate and collaborate with the investigation. In the present case, since filing the complaint with the prosecutor's office, the complainant's lawyer has not returned to follow up on the case. The State party therefore considers that the complainant's lawyer filed the complaint without any real intention on the part of the complainant of pursuing the proceedings, which amounts to "intellectual fraud" and indicates bad faith. The State party adds that, since the complainant's acquittal, he has remained free and he has never been to the prosecutor's office to follow up on his case. Furthermore, the complainant has lodged no judicial or administrative appeal regarding the lack of promptness on the part of the prosecutor.

4.3 The State party adds that the time limits used for closing the file relating to the acts of torture are not overly long, since the dates on which the complaint was filed and the case referred to the Committee were close together. The period in question does not therefore constitute an unreasonable delay and does not justify any exception to the rule that all available domestic remedies must be exhausted, as required under article 22 (5) of the Convention. In addition, the State party asks the Committee to find that the domestic judicial system provides sufficient safeguards, since recourse to protection procedures is effective.

4.4 The State party concludes that the criminal classification of the acts in question is a matter for the courts and requests the Committee to allow the domestic proceedings to follow their normal course, since the allegations made are merely politically motivated speculation. The State party therefore reiterates its willingness to pursue the case.

#### **Complainant's comments on the State party's observations on admissibility and merits**

5.1 On 22 July 2015, the complainant submitted his comments on the State party's observations. He rejects the argument that the communication constitutes an abuse of rights. He refers to the case of *Ben Salem v. Tunisia*, in which the Committee pointed out that in order for there to be abuse of the right to raise a matter before the Committee under article

22 of the Convention, one of the following conditions must be met: the submission of a matter to the Committee must amount to malice or a display of bad faith or intent at least to mislead, or be frivolous; or the acts or omissions referred to must have nothing to do with the Convention.<sup>10</sup> In the present case, the complainant considers that the State party has not established the existence of one of these conditions.

5.2 The complainant also rejects the argument that he has failed to exhaust domestic remedies and reiterates that more than five years have elapsed since the events and that, contrary to what the State party asserts without adducing any evidence, his criminal complaint did not lead to an investigation.<sup>11</sup> The complainant points out that the Committee requires the exhaustion of only effective, useful and available remedies. In this regard, he notes that, even though an investigation was opened against Mr. Nsabimana, several other persons were involved in the violence which he endured. As the State party itself states, to date, prosecutors have been engaged in an investigation aimed at securing significant evidence of the perpetrator's guilt. The judicial authorities were therefore still allegedly investigating the case nine years after his complaint was filed on 22 September 2006.

5.3 The complainant then refers to the case of *Niyonzima v. Burundi* to point out that the Committee found that the lack of information or detail which might have helped the Committee to ascertain what progress had been made and to judge how effective the investigation might have been, despite the fact that the case had been brought more than eight years previously, constituted inaction on the part of the competent authorities, which had made it unlikely that any remedy that might provide effective reparation could be initiated, and that, in any event, the domestic proceedings had been unreasonably lengthy.<sup>12</sup> The complainant thus questions the veracity of the State party's claims concerning the investigation carried out and considers that, even if an investigation was opened, it was not carried out in a prompt, effective and impartial manner.

5.4 The complainant further specifies that he never dropped his complaint but that, as the acts remained unpunished after a lengthy period of time, he was forced to take the case to international courts. He adds that the proceedings are not mutually exclusive and that, despite the fact that he has submitted his complaint to the Committee, it would be desirable for the Burundian authorities to initiate proceedings and to prosecute those responsible.

5.5 Lastly, the complainant notes that the domestic remedies have been unreasonably prolonged. Relying on the jurisprudence of the Committee,<sup>13</sup> he considers that a delay of five years and four months before an investigation is opened into allegations of torture is unreasonably long. With regard to the State party's assertion that he has lodged no appeal regarding the lack of promptness on the part of the prosecutor, the complainant recalls that he was not able to make an application to the Attorney General in order to complain about the inaction of the deputy public prosecutor because, in the meantime, the deputy public prosecutor had become the Attorney General. An approach that involved making an application to the person that had refused to take action in his case was one that had no prospect of success. Furthermore, it would be dangerous for him to lodge a complaint, since those responsible for the acts of torture to which he was subjected are senior officials in the National Intelligence Service and persons affiliated with the current Government who have considerable power and means of exerting pressure.

<sup>10</sup> *Ben Salem v. Tunisia*, (CAT/C/39/D/269/2005), para. 8.4.

<sup>11</sup> In the absence of any documentation to support his claim, the complainant emphasizes the difficulty of verifying the assertions of the State party, which claims that the judicial authorities launched an investigation as soon as they were apprised of the acts of torture.

<sup>12</sup> *Niyonzima v. Burundi*, para. 7.2.

<sup>13</sup> The complainant refers to *Halimi-Nedzibi v. Austria* (CAT/C/11/D/8/1991), para. 13.5, in which the Committee determined that a delay of 15 months before initiating an investigation into allegations of torture, which then failed to yield a result in two years, is unreasonably long and releases the complainant from the requirement to exhaust domestic remedies. He also invokes *Dimitrijevic (Dragan) v. Serbia and Montenegro* (CAT/C/33/D/207/2002), paras. 2.3 and 5.2; *Dimitrijevic (Danilo) v. Serbia and Montenegro* (CAT/C/35/D/172/2000), paras. 2.5 and 6.2; and *Dimitrov v. Serbia and Montenegro* (CAT/C/34/D/171/2000), paras. 2.3 and 6.1.

## Issues and proceedings before the Committee

### *Consideration of admissibility*

6.1 The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been, and is not currently being, examined under another procedure of international investigation or settlement.<sup>14</sup>

6.2 The Committee further observes that the State party has challenged the admissibility of the communication on the grounds that the complainant has abused the right to submit such a communication. With regard to the abuse of right raised by the State party, the Committee recalls that, in order for there to be abuse of the right to raise a matter before the Committee under article 22 of the Convention, one of the following conditions must be met: the submission of a matter to the Committee must amount to malice or a display of bad faith or intent at least to mislead, or be frivolous; or the acts or omissions referred to must have nothing to do with the Convention.<sup>15</sup> In the present case, it cannot be ascertained that the complaint has been submitted in bad faith or is frivolous, since the complainant complains of acts of torture and/or ill-treatment and accuses the State party of violating provisions of the Convention.<sup>16</sup> Accordingly, the Committee concludes that the complainant has not abused the right to submit such a communication within the meaning of article 22 (2) of the Convention.

6.3 The Committee further notes that the State party has challenged the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies, since, following the complaint lodged by the complainant's lawyer, a criminal case was opened and registered on 6 July 2006 with the public prosecutor as case No. RMP 123.256/B.V. The Committee notes that the State party has indicated that proceedings are ongoing, but it has provided no further information or evidence that might allow the Committee to ascertain what progress has been made or to judge how effective the proceedings might be, bearing in mind that the case has remained on the docket of the public prosecution service for more than 11 years. The Committee finds that, in the circumstances, the inaction of the competent authorities has made it unlikely that any remedy that might provide effective relief can be initiated and that, in any event, the domestic proceedings have been unreasonably prolonged. Accordingly, the Committee considers that it is not precluded from considering the complaint under article 22 (5) (b) of the Convention.

6.4 In the absence of any obstacle to the admissibility of the communication, the Committee proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (1), 11 to 14 and 16 of the Convention.

### *State party's failure to cooperate*

7. On 26 November 2015, 25 April 2016, 29 June 2016 and 30 November 2016, the State party was invited to submit its comments on the merits of the communication. The Committee notes that no information has been received in this connection. It regrets the State party's refusal to communicate any information on the merits of the complainant's claims. The Committee recalls that the State party is obliged, pursuant to the Convention, to submit to the Committee written explanations or statements clarifying the matter and indicating the measures, if any, that may have been taken to remedy the situation. In the absence of a response from the State party, due weight must be given to the complainant's allegations, which have been properly substantiated.

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<sup>14</sup> The Committee notes that the complainant's case was brought to the attention of the Working Group on Arbitrary Detention and of the Special Rapporteur on torture in 2006. These extra-conventional procedures or mechanisms do not constitute procedures of international investigation or settlement within the meaning of article 22 (5) (a) of the Convention and the examination of the complainant's case by these procedures therefore does not render the communication inadmissible under this provision. See, in this regard, *Bendib v. Algeria* (CAT/C/51/D/376/2009), para. 5.1; and *Niyonzima v. Burundi*, para. 7.1.

<sup>15</sup> See *Ben Salem v. Tunisia*, para. 8.4.

<sup>16</sup> See, *mutatis mutandis*, *T.M. v. Republic of Korea* (CAT/C/53/D/519/2012), para. 8.3.

*Consideration of the merits*

8.1 The Committee has considered the complaint in the light of all the information made available to it by the parties, in accordance with article 22 (4) of the Convention. As the State party has not provided any observations on the merits, due weight must be given to the complainant's allegations.

8.2 The Committee notes the complainant's claim that, on 2 August 2006, he was arrested without a warrant by seven plain-clothes officers of the National Intelligence Service and taken to the Service's premises. The Committee has further noted the complainant's allegations that, after he denied any involvement in an alleged coup d'état, Intelligence Service officials beat him severely all over his body; that they put a stone in his mouth to stifle his cries; that, during her visit to the Intelligence Service headquarters on 3 August 2006, the State party's Minister for National Solidarity, Human Rights and Gender stated that she had personally seen that detainees showed signs of torture; that, according to the medical certificate issued on 17 August 2006, the profusion of lesions of the same kind over almost the entire body was reminiscent of torture; that, despite his requests, the complainant received no medical treatment during the seven days that he was held on the premises of the National Intelligence Service; that the blows that were inflicted on him intentionally in order to extract a confession from him caused him acute pain and suffering. The Committee notes that the State party does not dispute the facts as presented by the complainant. In the circumstances, the Committee concludes that the complainant's allegations must be taken fully into account and that the facts as presented constitute torture within the meaning of article 1 of the Convention.

8.3 The complainant also invokes article 2 (1) of the Convention, which requires the State party to take "effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". The Committee notes that in the present case the complainant was beaten and then detained without legal grounds for seven days in the Intelligence Service cells without access to a lawyer, his family or a doctor. It recalls its conclusions and recommendations, in which it called on the State party to take effective legislative, administrative and judicial measures to prevent all acts of torture and all ill-treatment and to take steps, as a matter of urgency, to bring all places of detention under judicial control and to prevent its officials from making arbitrary arrests and engaging in torture (see CAT/C/BDI/CO/1, para. 10). In the light of the foregoing, the Committee finds a violation of article 2 (1), read in conjunction with article 1 of the Convention.<sup>17</sup>

8.4 The Committee also notes the complainant's argument that article 11 has been violated, inasmuch as the State party failed to properly monitor the treatment he received during his detention on the premises of the National Intelligence Service. In particular, he claims that his detention was unlawful; that he did not have access to legal counsel; that he was unable to appeal his detention; that he was unable to communicate with his family to inform them of his arrest; and that he was not examined by a doctor, despite his critical condition. The Committee recalls its concluding observations regarding the second periodic report of Burundi, in which it expressed concern at: the excessive length of time during which people can be held in police custody; numerous instances in which the allowable duration of police custody has been exceeded; failures to keep registers on persons in custody or failures to ensure that such records are complete; failures to comply with fundamental legal safeguards for persons deprived of their liberty; the absence of provisions that guarantee access to a doctor and access to legal assistance for persons of limited means; and the excessive use of pretrial detention in the absence of regular reviews of its legality and of any limit on its total duration (see CAT/C/BDI/CO/2, para. 10). In the present case, the complainant appears to have been deprived of any form of judicial oversight. The manifest absence of any mechanism for monitoring the cells at the National Intelligence Service, where the complainant was detained, undoubtedly increased the risk of his being subjected to acts of torture and ill-treatment. In the absence of any compelling

<sup>17</sup> See, inter alia, *Niyonzima v. Burundi*, para. 8.3.

evidence from the State party that it did supervise the complainant's detention, the Committee finds that the State party has violated article 11 of the Convention.<sup>18</sup>

8.5 As for articles 12 and 13 of the Convention, the Committee has taken note of the complainant's claims that he was detained without legal grounds from 2 to 9 August 2006, when he was brought before the public prosecutor and formally charged with involvement in an attempted coup d'état. Notwithstanding the fact that he filed a complaint on 22 September 2006 with the Attorney General's Office, that the complaint was supported by a medical report requested by the investigating judge and indicating that he had probably been subjected to torture, and that the facts were widely known and reported by various people, including a minister of the Government of the State party, no investigation has been carried out, more than 11 years after the events. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified. It also rejects the State party's argument that the lack of progress in the investigation can be put down to a lack of cooperation on the part of the complainant or his lawyer. The Committee draws attention to the State party's obligation under article 12 of the Convention to ensure that its competent authorities proceed ex officio to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed.<sup>19</sup> In the present case, the Committee finds a violation of article 12 of the Convention.

8.6 By failing to meet this obligation, the State party has also failed to fulfil its responsibility under article 13 of the Convention to guarantee the right of the complainant to lodge a complaint, which presupposes that the authorities provide a satisfactory response by launching a prompt and impartial investigation.<sup>20</sup> The Committee therefore also finds a violation of article 13 of the Convention.

8.7 Regarding the complainant's claims under article 14 of the Convention, the Committee recalls that this article not only recognizes the right to fair and adequate compensation but also requires States parties to ensure that the victim of an act of torture obtains redress. The Committee recalls that redress should cover all the harm suffered by the victim and should encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of the individual case.<sup>21</sup> In the present case, in the absence of a prompt and impartial investigation, despite clear material evidence that the complainant was the victim of acts of torture which have gone unpunished, the Committee concludes that the State party has also failed to fulfil its obligations under article 14 of the Convention.

8.8 Regarding the complaint under article 16, the Committee has taken note of the complainant's allegations that he was detained from 2 to 9 August 2006 on the premises of the National Intelligence Service in a cramped room shared with 12 other detainees in appalling sanitary conditions and denied access to a doctor, despite asking for one and despite his worrying state of health. He further claims that on 9 August 2006 he was transferred to Mpimba prison, which is characterized by overcrowding and insanitary conditions that amount to inhuman and degrading treatment. In the absence of any relevant information from the State party in this regard, the Committee concludes that the facts in the present case disclose a violation by the State party of its obligations under article 16 of the Convention.<sup>22</sup>

9. The Committee, acting under article 22 (7) of the Convention, concludes that the facts before it disclose a violation of article 1, read alone and in conjunction with article 2 (1), and articles 11 to 14 and 16 of the Convention.

10. Pursuant to rule 118 (5) of its rules of procedure, the Committee urges the State party to launch an impartial investigation into the events in question, with a view to bringing those allegedly responsible for the victim's treatment to justice, and to inform it,

<sup>18</sup> See *E.N. v. Burundi* (CAT/C/56/D/578/2013), para. 7.6.

<sup>19</sup> See, inter alia, *Niyonzima v. Burundi*, para. 8.4. See also *Kabura v. Burundi* (CAT/C/59/D/549/2013), para. 7.4.

<sup>20</sup> *Niyonzima v. Burundi*, para. 8.5.

<sup>21</sup> *Ibid.*, para. 8.6. See also *Ntikaraha v. Burundi* (CAT/C/52/D/503/2012), para. 6.5.

<sup>22</sup> See, inter alia, *Niyonzima v. Burundi*, para. 8.8; and *Ntikaraha v. Burundi*, para. 6.6.

within 90 days of the date of transmittal of this decision, of the steps it has taken in conformity with the above views, including adequate and fair compensation encompassing the means for as full a rehabilitation as possible of the victim.

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