



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

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## Committee against Torture

### Communication No. 522/2012

#### Decision adopted by the Committee at its fifty-fifth session (27 July-14 August 2015)

<i>Submitted by:</i>	Patrice Gahungu, represented by Track Impunity Always (TRIAL)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	30 July 2012 (initial submission)
<i>Date of present decision:</i>	10 August 2015
<i>Subject matter:</i>	Torture committed by police officers
<i>Procedural issues:</i>	None
<i>Substantive issues:</i>	Torture and cruel, inhuman or degrading treatment or punishment; obligation to systematically monitor interrogation techniques and practices; obligation of the State party to ensure that the competent authorities conduct a prompt and impartial investigation; right to lodge a complaint; right to redress
<i>Articles of the Convention:</i>	Articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with articles 1 and 16 of the Convention



## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fifth session)**

concerning

#### **Communication No. 522/2012\***

<i>Submitted by:</i>	Patrice Gahungu, represented by Track Impunity Always (TRIAL)
<i>Alleged victim:</i>	The complainant
<i>State party:</i>	Burundi
<i>Date of complaint:</i>	30 July 2012 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting on 10 August 2015,*

*Having concluded* its consideration of complaint No. 522/2012, submitted to the Committee against Torture by Mr. Patrice Gahungu under article 22 of the Convention,

*Having taken into account* all information made available to it by the complainant, his counsel and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention**

1.1 The complainant is Patrice Gahungu, born in 1973 in Bweru commune, Ruyigi Province, and residing in Bujumbura. He claims he was the victim of violations of articles 2 (para. 1), 11, 12, 13 and 14, read in conjunction with article 1 and, alternatively, article 16 of the Convention. The complainant is represented by counsel.

1.2 On 18 September 2012, in accordance with rule 114, paragraph 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 or his family might be exposed, in particular as a result of having lodged the present complaint.

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

2.1 The complainant is a lawyer by training and practised for many years in the investigations, operations and transmissions offices of the Burundian National Police, until 2007 when he was dismissed following internal disputes. Since the events

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\* The following Committee members took part in the consideration of the communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Claudio Grossman, Jens Modvig, Sapana Pradhan-Malla, George Tugushi and Kening Zhang.

recounted in this communication, he has not practised for the police. He is married, has two children and is responsible for three of his brother's children.

2.2 At the time of the events, in July 2010, when Burundi was in serious electoral crisis, the complainant was a member of the executive committee of the opposition party, the Union pour la paix et le développement, and the executive secretary of the Union's youth branch at the national level. The complainant enjoyed a degree of renown owing to his position as a senior member of the Union and the fact that he had spoken regularly in public on behalf of his party during the presidential election.

2.3 On 1 July 2010, around 5.30 p.m., the complainant was driving to downtown Bujumbura. At the premises of the National Liberation Forces party, located in North Mutanga, he picked up four hitchhikers who wished to go downtown. When the complainant stopped for gas, two vehicles pulled up to either end of his car, preventing him from leaving. As a former member of the Burundian National Police, he quickly identified the vehicles as belonging to the National Intelligence Service. Six officers stepped out of the vehicles. They fired several shots in the air to intimidate the complainant and his passengers. The passengers managed to flee, but three of them were caught and forced to get into the National Intelligence Service vehicle. The complainant had a pistol put to his head and was also forced into the vehicle. At no time did the officers notify him of the reasons for his arrest nor show him an arrest warrant.

2.4 During the ride to the offices of the National Intelligence Service, the complainant was hit many times by the two officers next to him, including with the butt of a gun. His glasses were broken in the beating and his personal effects were also taken away. When he arrived at the offices of the National Intelligence Service around 6 p.m., the complainant was forced to remove his shoes and sit on the ground in the courtyard next to the three hitchhikers. The complainant then suddenly saw one of the hitchhikers fall over after being hit by a stone thrown by one of the National Intelligence Service officers. A few seconds later, the complainant was himself hit by a stone thrown by the same officer, so hard that he lost consciousness. While he was unconscious, he was taken to the office of the head of the National Intelligence Service, who spat in his face, after which he regained consciousness.

2.5 The interrogation, which began at 6 p.m. and lasted till approximately midnight, was primarily led by the head of the National Intelligence Service. The complainant was interrogated about grenade attacks allegedly carried out by members of the Union pour la paix et le développement and the National Liberation Forces, the links between these two groups, the weapons at the disposal of the National Liberation Forces and other topics. During the interrogation, the complainant was tortured by officers of both the National Intelligence Service and the Burundian National Police, at the behest of the head of the National Intelligence Service and in his presence, as well as that of the executive assistant of the National Intelligence Service, the deputy director general of the Burundian National Police and the Burundian National Police chief for the West Region.

2.6 The head of the National Intelligence Service began by ordering the complainant to lie on his stomach while an intelligence officer undressed him. Once the complainant was naked, the intelligence officer spread sand across his back so that it would penetrate the wounds to be inflicted on him and heighten the pain. Two intelligence officers then immobilized the complainant and beat his feet repeatedly with clubs and ramrods. The intensity of the beating was such as to cause serious bruising and swelling, preventing the complainant from being able to walk. To compound the humiliation, the intelligence officers attempted to force a rock into the complainant's mouth to stifle his screams. The executive assistant then ordered him to stand up. Unable to do so, he was forcibly lifted. The executive assistant then put his

pistol to the complainant's head, kicked an open wound on his right buttock and warned him that he had power of life and death over him. The executive assistant then repeated the same questions that the head of the National Intelligence Service had already asked. When he did not receive a reply, he ordered the agents to beat the complainant across the back with belts. Water bottles were also used to hit him in the face. He was hit again on the feet with ramrods, causing significant bleeding. When he tried to stem the bleeding, the agents forced him to swallow his own blood.

2.7 Unable to walk, the complainant was dragged to another office. During the transfer, a Burundian National Police officer attempted to strangle the complainant, who was saved at the last second by an investigating police officer. The intelligence officers severely tortured the complainant again, including beatings on the shoulders with a belt and on the feet with a ramrod. He was also hit in the nose with a club and in the throat with a ramrod. Then an intelligence officer cut off a piece of the complainant's earlobe with bicycle pliers and forced him to eat it. When the complainant refused, he was hit with the pliers on the right eye and genitalia.

2.8 When the deputy director general of the Burundian National Police and the Burundian National Police chief for West Region came into the office, they ordered that the complainant be handcuffed and put in the adjoining lavatory. The complainant remained there from 1 to 6 July 2010, handcuffed at all times. The lavatory measured 1.5m by 3m. The complainant had trouble finding a comfortable position because of the unbearable pain caused by the beatings, especially the open wound on his right buttock. During the five days that he was held in the lavatory at the National Intelligence Service premises, the complainant was deprived of water, food and medical care. He was forced to drink the toilet water in order to survive. The acts of torture continued during the detention: every night, intelligence officers beat him with clubs, belts and ramrods all over his body. In addition, the fear of their arrival prevented him from sleeping for the entire period. The complainant did not receive any family visits. His wife, who had been informed of his arrest by witnesses, went to the National Intelligence Service premises as early as 1 July but was not permitted to see her husband.

2.9 Notified of the complainant's arrest, observers from the United Nations Office in Burundi went to the National Intelligence Service premises on 2 July 2010 and were informed that the complainant had been taken by other officers on a search. In fact, that day, the complainant had been taken to Lake Tanganyika. At one point during the journey, an intelligence officer told the complainant to say his last prayer before his execution, but he was returned to the National Intelligence Service premises three hours later, after the observers had left.

2.10 On 6 July 2010, the complainant was interrogated again by an investigating police officer about a plan to undermine the Government in which he had allegedly taken part. He was asked to sign a report of uncertain content, which the complainant resigned himself to signing out of exhaustion. The same day, he was taken to the public prosecution service along with the three hitchhikers and was brought before the investigating judge. He was held all day in the public prosecution service's cell, located in the basement of the building, and was not heard until the end of the afternoon. He was then informed that he was accused of plotting against the State.

2.11 At this initial hearing, the complainant reported to the judge the abuse he had suffered while detained at the National Intelligence Service premises and was able to show the visible traces thereof. On 6 July 2010 at around 8 p.m., the complainant was transferred to Mpimba, the central prison of Bujumbura. Having still not received any medical care, he was in a worrying condition. The complainant was held for 15 months at Mpimba prison. This extended period of detention in appalling conditions had adverse effects on his physical and mental health, despite the fact that he was

supported by his family. He shared his windowless, 3m by 4m cell with another inmate. Any food he received was provided by his family and the medication required for his condition was prescribed by representatives of the International Committee of the Red Cross (ICRC), who visited him periodically. Following their first visit, the ICRC representatives requested that an X-ray of his foot be taken, to no avail.

2.12 The observers from the United Nations Office in Burundi and the Independent Expert on the situation of human rights in Burundi also visited the complainant at Mpimba prison a number of times. They were able to directly observe the traces of abuse on his entire body which left no room for doubt as to the fact that he had been tortured. In the report drafted after their visit to the complainant on 8 July 2010, the observers describe having noted that part of his ear had been sliced off, that his nose and feet were swollen, like the feet of a child suffering from kwashiorkor, and that his buttocks were very puffy. They had also noted that he could barely walk. The observers also took photographs of the complainant's swollen body during that visit, which took place two days after his transfer to Mpimba.<sup>1</sup> In a report following his first visit to Burundi, the Independent Expert, who visited the complainant during his detention at Mpimba prison, describes the injuries observed on the complainant, including the presence of scars on the victim's ear (see A/HRC/17/50, para. 41).

2.13 On 13 July 2010, there was a second hearing before the investigating judge during which the complainant once again reported the abuse and ill-treatment that he had suffered while in detention at the National Intelligence Service premises. On 26 July 2010, he was brought before the Council Chamber for an extension of the period of detention, accompanied by his lawyer for the first time. When the lawyer asked the investigating judge about the charges against his client, he was told, informally, that there was insufficient evidence to indict Mr. Gahungu but that he would nonetheless remain in detention. The complainant's lawyer appealed the decision to continue the detention. However, the Appeals Court, not having found the file at the public prosecutor's office, has never considered the appeal.

2.14 Although the complainant was initially accused of plotting against the State, at a new hearing on 5 July 2011, the charges against him were changed to accessory to the possession of illegal weapons.

2.15 On 18 October 2011, Mr. Gahungu was finally sentenced to 1 year's imprisonment for being an accessory to the possession of illegal weapons.<sup>2</sup> Having already spent nearly 15 months in prison at the time of his conviction, he was released on 24 October 2011.

2.16 The complainant contends that he still suffers from the severe physical and mental scars of the torture to which he was subjected. His overall health has declined, especially since, owing to a lack of funds, he never received the necessary care, either while in detention or after his release. His right eye is sensitive because of the blow he received with the pliers. He often feels tingling in it and it weeps involuntarily. He feels persistent pain in his genital area. He cannot walk for long distances and is forced to take pain medication very regularly. Mr. Gahungu was also severely harmed mentally. At night, he often falls prey to nightmares in which he is chased by intelligence officers. He suffers from a general feeling of insecurity, which is fuelled by real threats against his life: since his release in October 2011, he has been the object of intense surveillance by individuals identified as being members of the National Intelligence Service. He regularly receives threatening phone calls, including death threats. Intelligence officers have also come to his home on several occasions.

<sup>1</sup> The complainant has included the report of the observers from the United Nations Office in Burundi and the photographs in an annex to his file.

<sup>2</sup> A copy of the judgement is included in the file.

He was informed by sources within the National Intelligence Service that there was a plan to kill him. The threats have intensified since June 2012 and the danger to his life and his physical and mental integrity are considered to be so real and imminent that he is forced to live in hiding.

2.17 His medical issues are compounded by social and financial problems, as he is unemployed and merely volunteers with the Union pour la paix et le développement. Owing to his detention, the treatment to which he was subjected and the physical and mental side effects of the ill-treatment, the complainant is unable to resume his previous post. Consequently, he is surviving only with the help of his relatives and is struggling to meet the needs of his dependent children.

2.18 Regarding the matter of the exhaustion of domestic remedies, the complainant contends that he reported the treatment to which he had been subjected to the Burundian authorities on many occasions. On 6 July 2010, at the first hearing before the investigating judge, he immediately reported the torture he had endured while in detention at the National Intelligence Service premises (see para. 2.11 above). Given his worrying condition and the visible signs of assault, there is no doubt that the investigating judge was able to observe for himself that the complainant had been tortured. The complainant emphasizes that international non-governmental organizations also described his situation in their reports.

2.19 At the subsequent hearings before the Council Chamber, the complainant once again reported the torture he had suffered. Furthermore, at the hearing of 5 July 2011 before the Bujumbura Tribunal de Grande Instance (court of major jurisdiction), his lawyer again reported the torture to which the complainant had been subjected while in detention at the National Intelligence Service premises. Despite the complainant's multiple reports to the judicial authorities, no investigation was initiated into the events.

2.20 A few months after his release in October 2011, and despite the incessant threats he had received since then, the complainant filed a formal complaint of torture with the public prosecutor at Bujumbura city hall on 9 February 2012, to which he annexed photographs taken by the observers from the United Nations Office in Burundi a few days after his torture. In his complaint, he also described the conditions of his arrest and the ill-treatment he received while in detention at the National Intelligence Service premises and named some of the officers involved. However, no action has been taken on this criminal complaint. Mr. Gahungu has never been heard and the alleged offenders, although easily identifiable, have never been summoned. On 5 June 2012, the complainant followed up on his complaint with the public prosecutor at Bujumbura city hall, but no action was taken then, either. He contends that, in the light of the threats to him and the risks that he and his family are running, he cannot reasonably be expected to initiate further proceedings with the authorities, which have in any case proved to be unresponsive.

### **The complaint**

3.1 The complainant claims to be the victim of violations by the State party of articles 2 (para. 1), 11, 12, 13 and 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 during his transfer to and detention at the premises of the National Intelligence Service caused him intense pain and suffering and constitutes torture<sup>3</sup> within the meaning of article 1 of the Convention.

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<sup>3</sup> The complainant refers to communication No. 207/2002, *Dimitrijevic v. Serbia and Montenegro*,

3.3 With further reference to article 1 of the Convention, the complainant points out that he was deprived of the right to see a doctor and to be visited by his family during his detention. Between 1 and 6 July 2010, he was thus held incommunicado and had no contact whatsoever with the outside world. He was kept in an unsanitary lavatory without any care, food or water,<sup>4</sup> was given death threats and was subjected to mock executions. The complainant recalls that the Committee has already qualified as methods of torture the fact of leading a person to the bank of a river and threatening to drown him or her for refusal to confess to an offence, and of pointing a gun to his or her head (see CAT/C/75, para. 143). In addition, the complainant was exposed to a host of humiliating and degrading treatments and practices. There is no doubt that these acts were perpetrated intentionally by agents of the State party, as evidenced by the presence of senior officials of the National Intelligence Service and the Burundian National Police during the ill-treatment, and the fact that it was they who ordered the acts to be carried out. The purpose of those acts was to obtain information concerning the political opposition of the Union pour la paix et le développement and the National Liberation Forces.

3.4 The complainant also invokes article 2, paragraph 1, of the Convention, under which the State party should have taken effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. However, in the present case, the complainant was deprived of contact with his family and with a lawyer throughout the entire period of his detention at the premises of the National Intelligence Service, which lasted 5 days. His detention took place outside the protection of the law — a context that is particularly conducive to the practice of torture. Moreover, during the first 12 days of his detention, he received no care, even though he had requested it and his condition had deteriorated and clearly required immediate medical attention. It was not until 12 July 2010 that ICRC representatives examined him; nevertheless, the requested X-ray was not performed.

3.5 Although there is no statute of limitations under Burundian law for the prosecution of genocide, crimes against humanity or war crimes, when the offence of torture is committed outside these specific contexts, it is subject to a statutory limitation ranging from 20 to 30 years, depending on the circumstances.<sup>5</sup> The complainant adds that his is not an isolated case and that serious human rights violations by police officers go largely unpunished in Burundi. According to the complainant, since the State party has not adopted the legislative or other measures needed to prevent torture, it has failed to meet its obligations under article 2, paragraph 1, of the Convention.

3.6 The complainant also invokes article 11 of the Convention and notes that the State party failed to meet its obligations in relation to the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. His detention was unlawful: he was not informed of the charges against him; he did not have access to legal counsel during his detention at the National Intelligence Service premises; and he was not brought before a judge at any time during his detention. As it was materially impossible for him to assert his rights through legal channels, he was unable to challenge his detention or lodge a formal complaint concerning the torture to which he had been subjected. Furthermore, he was not examined by a doctor, despite the critical nature of his condition, nor was he given access to a lawyer. In addition, he was detained in appalling conditions. For these reasons, the complainant concludes

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decision adopted on 24 November 2004, para. 5.3.

<sup>4</sup> The complainant refers to the *Dimitrijevic v. Serbia and Montenegro* decision, para. 5.3.

<sup>5</sup> Article 146 of the Criminal Code.

that the State party failed in its duty to properly monitor the treatment he received during his detention at the premises of the National Intelligence Service.<sup>6</sup>

3.7 The complainant also maintains that the State party has violated article 12 of the Convention in the present case. Under that article, the competent authorities are required to proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.<sup>7</sup> He recalls that it is not necessary, for the purposes of article 12, for a formal complaint to have been lodged. He notes that, in the case in question, the judicial authorities were amply informed of the torture he endured (see paras. 2.18-2.20 above). However, no effective, in-depth and impartial investigation was ever conducted. No investigative procedures were carried out, not even to bring the complainant or the alleged perpetrators in for questioning, despite the fact that the latter had been identified. The complainant therefore concludes that, since a genuine, prompt and impartial investigation into the allegations of torture to which he was subjected was not carried out, the State party acted in violation of its obligations under article 12 of the Convention.

3.8 With regard to article 13 of the Convention, the complainant maintains that the State party had the obligation to guarantee his right to bring a claim before the competent national authorities in order to have his case promptly and impartially examined. In fact, however, despite the formal complaints that he filed (mentioned above), no action was taken in response to his complaints. Worse still, the complainant received death threats and was under constant surveillance by agents identified as belonging to the National Intelligence Service.<sup>8</sup> He recalls that the Committee had noted with concern the reprisals, serious acts of intimidation and threats against human rights defenders, and had stressed the need for Burundi to take effective steps to ensure that all persons reporting torture or ill-treatment are protected from intimidation and from any unfavourable consequences that they might suffer as a result of making such a report (see CAT/C/BDI/CO/1, para. 25).

3.9 The complainant also invokes article 14 of the Convention. He states that, by depriving him of due process, the State party has also deprived him of the enforceable right to compensation for torture. Furthermore, given the inaction 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 2006 concluding observations concerning the State party's initial report (see CAT/C/BDI/CO/1, para. 23). The complainant adds that he has not received any form of rehabilitation to ensure that he recovers as fully as possible in physical, mental, social and financial terms. The crimes committed against the complainant have gone unpunished, given that his torturers have not been convicted, prosecuted, investigated

<sup>6</sup> The complainant recalls that, in its concluding observations concerning the State party's initial report, adopted on 20 November 2006, the Committee expressed concern at the "lack of systematic and effective monitoring of all places of detention, notably through regular unannounced visits by national inspectors and a mechanism for legislative and judicial monitoring" (CAT/C/BDI/CO/1, para. 19). In his initial complaint, the complainant also notes that the State party has not ratified the Optional Protocol to the Convention, which provides for the establishment of a national mechanism for the prevention of torture. [Since then, on 18 October 2013, the State party acceded to the Optional Protocol.]

<sup>7</sup> The complainant refers to communication No. 341/2008, *Sahli v. Algeria*, decision adopted on 3 June 2011, para. 9.6; communication No. 187/2001, *Thabti v. Tunisia*, decision adopted on 14 November 2003, para. 10.4; communication No. 60/1996, *M'Barek v. Tunisia*, decision adopted on 10 November 1999, para. 11.7; and communication No. 59/1996, *Blanco Abad v. Spain*, decision adopted on 14 May 1998, para. 8.2.

<sup>8</sup> Given that he himself is a former member of the Burundian National Police, the police officers with whom he has kept in contact told him of a plan for his imminent execution.



or even questioned, which reveals a violation of his right to redress under article 14 of the Convention.

3.10 The complainant reiterates that the violent acts inflicted upon 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, the abuse endured by the victim in any case constitutes cruel, inhuman or degrading treatment, and on that basis, the State party had the obligation, under article 16 of the Convention, to prevent and repress the commission, instigation or tolerance of such acts by State officials. In addition, the complainant points to the conditions of detention imposed on him from 1 to 6 July 2010, including being continuously handcuffed in a cramped lavatory, deprived of food and forced to drink water from the toilet, which unquestionably constitute inhuman and degrading treatment. In Mpimba prison, where he was transferred, the complainant was also subjected to appalling conditions of detention as a result of the overcrowding prevailing in that prison.<sup>9</sup> The complainant further refers to the Committee's concluding observations relating to the initial report of the State party, in which the Committee had considered the conditions of detention in Burundi as amounting to inhuman and degrading treatment (see CAT/C/BDI/CO/1, para. 17). Lastly, the complainant recalls that he did not receive medical care during the first 12 days of his detention. The medicines needed to treat his condition were provided by his family and the medical examinations prescribed for him were not carried out. The complainant concludes that the State party failed to meet its obligations under article 16 of the Convention.

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

4.1 On 2 December 2013, the State party submitted its observations on the admissibility and the merits of the communication. At the outset, the State party notes that, for several days following his discharge from the national police, the complainant showed antisocial behaviour that led to the initiation of criminal proceedings against him. The complainant was charged with illegal possession of firearms that threatened the national public order. This led the police to arrest and question him, and the case was referred to the public prosecutor for investigation.

4.2 The State party adds that, during the three hearings comprising his trial (on 7 April, 14 June and 5 July 2011), the complainant was assisted by counsel; all hearings were conducted by means of public and adversarial proceedings; the complainant was aware of the charges against him; and he was able to reply freely to the judge's questions. Given the seriousness of the charges, the judicial authorities decided to keep the complainant in detention pending the outcome of the proceedings and denied his request for interim release. The complainant was sentenced on 18 October 2011 to 1 year of rigorous imprisonment by the judge of the Municipality of Bujumbura. Despite this, he chose not to appeal the decision, which consequently became final. Since the complainant had already spent more than a year in prison prior to his conviction, he was released on the date of the decision, namely 18 October 2011.

4.3 As for the complainant's allegations that he was subjected to torture, the State party indicates that the complainant lodged a complaint on 9 February 2012 and that an investigation, registered as No. 7271/ME, was instituted by the prosecutor at Bujumbura city hall on 26 March 2012. The complaint was admitted and was registered in accordance with article 39 of Act No. 1/015 of 20 July 1999, which states that "the public prosecutor shall receive complaints and reports of wrongdoing, and shall determine what action to take in response to them, in particular, whether there are grounds for proceeding to prosecute". The case is still pending. It should also be

<sup>9</sup> In 2011, more than 4,000 people were imprisoned there, even though the maximum capacity of the facility is 800 persons.

noted that the complainant has not complained to the national court of a lack of promptness on the part of the public prosecutor. The complainant rushed to bring a claim before the Committee only four months after lodging his complaint with the public prosecution service, without waiting for the outcome of the complaint or contacting the authorities once more. As a result, the State party submits that, since the complainant has not exhausted domestic remedies, he has demonstrated either a lack of willingness or ignorance of the law, or has abused the right to bring a case before an international legal instance.

### **Complainant's comments on admissibility and on the merits**

5.1 On 6 February 2014, the complainant submitted his comments on the State party's observations. He points out, first of all, that the State party has not disputed the validity of the steps he took to report the acts of torture inflicted on him to the prosecuting, administrative and political authorities or those taken by non-governmental organizations concerned with the protection of human rights. He rejects the argument that he has not exhausted domestic remedies: referring to his initial complaint, he notes that he sought recourse from the judicial system — albeit in vain — on several occasions, having reported the incidents of torture to the prosecuting authorities and to judges of various courts, including, on 6 July 2010, the investigating judge in the case brought against him. On 9 February 2012, he also filed a formal complaint with the public prosecutor, which was supported by photographs taken by observers from the United Nations Office in Burundi two days after his transfer to Mpimba prison. Since no action was taken in response to these complaints, he once more filed a complaint on 5 June 2012. In July 2010, the arrest and torture of Mr. Gahungu and others arrested in the same context were also reported publicly by human rights organizations, the United Nations Independent Expert on the human rights situation in Burundi and the United Nations Office in Burundi. The administrative and political authorities were thus fully aware of the incidents. Yet, more than three and a half years since they occurred,<sup>10</sup> they continue to go unpunished. The complainant further argues that deficiencies in the judicial system and risks to his physical integrity prevented him from taking other steps to assert his rights. In addition, given that they were fully informed of the reported incidents, the authorities had the obligation to conduct a thorough, prompt, impartial and independent investigation into the complainant's allegations of torture.

5.2 Concerning the torture complaint lodged by the complainant on 9 February 2012, which is purportedly still being dealt with by the Bujumbura court of major jurisdiction, the complainant points out that the State party has not provided any evidence that such proceedings are in progress, by referring to either the status of the investigation, investigative procedures or even the related documentary evidence, such as transcripts of hearings or reports, when, in fact, it is the only one that can produce such evidence. Furthermore, research has revealed that case file No. 7271/ME in the investigation that was purportedly initiated actually relates to the case of another person. Lastly, even if such a case file was still pending, it would not represent an obstacle to the admissibility of the complainant's communication, given the amount of time that has elapsed since then. There is no indication that the judicial authorities plan to undertake an effective, thorough, impartial and independent investigation. Yet, according to article 22 of the Act of 20 July 1999 providing for the amendment of the Code of Criminal Procedure, "the public prosecutor's office exercises the public right of action and ensures compliance with the law."<sup>11</sup> With this in mind, the seriousness of the allegations it was called upon to examine should have prompted the public prosecutor's office to proceed to the initiation of criminal proceedings in respect of

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<sup>10</sup> It has now been more than five years.

<sup>11</sup> New Code of Criminal Procedure, art. 47.

the torture that had been reported on numerous occasions by the complainant. In this respect, the complainant maintains that no investigation has been undertaken into the incidents, which occurred three and a half years ago.

5.3 To wait any longer to provide the complainant with redress would constitute a flagrant violation of his right to an effective remedy, especially as he is exposed to the risk of reprisals and fears for his personal safety. The complainant was informed of the existence of a plan for his imminent execution. Despite this intimidation, the complainant nevertheless had the courage to formally lodge a complaint on 9 February 2012 and to lodge it again on 5 June 2012. Since June 2012, the threats have intensified to the point that he lives in permanent hiding and in constant fear of being rearrested and executed. The persons responsible for the acts of torture in question are senior officials in the National Intelligence Service and the Burundian National Police and persons affiliated with the current Government who wield power and strong pressure to prevent any proceedings being initiated against them in the national courts. The risks to the complainant's life and physical and mental integrity are considered to be real and immediate.

5.4 The complainant observes that, pursuant to the Code of Criminal Procedure, the prosecutor's office should have opened an investigation and initiated proceedings.<sup>12</sup> Moreover, the judges of the various courts called upon to examine the complainant's allegations of torture should have requested the opinion of a medical expert.<sup>13</sup> Also pursuant to the Code, the Minister of Justice was empowered to order the Attorney General or the public prosecutor to investigate and prosecute the case.

5.5 With reference to the Committee's jurisprudence,<sup>14</sup> the complainant recalls that, wherever there is reasonable ground to believe that such acts have been committed, the State must automatically initiate an investigation, regardless of the source of the allegations. It is not necessary, for the purposes of article 12 of the Convention, for a formal complaint, or for an express statement of intent to institute and sustain a criminal action, to have been lodged.<sup>15</sup> The complainant concludes that he attempted to invoke the available domestic remedies but that they proved ineffective.

5.6 With reference once more to the Committee's jurisprudence,<sup>16</sup> the complainant adds that the remedies have been unduly prolonged. Even if an investigation into the matter had been instituted, it would not have met the requirements for promptness or effectiveness. In any event, the more than three and a half years<sup>17</sup> that have elapsed since the reported incidents occurred, without any punishment having been imposed on those responsible, clearly constitutes an unreasonable delay.

5.7 As for the State party's arguments that his communication should be deemed inadmissible, the complainant notes that the right to submit a communication to the Committee is granted to all individuals whose rights under the Convention have been

<sup>12</sup> New Code of Criminal Procedure, art. 52.

<sup>13</sup> New Code of Criminal Procedure, art. 346.

<sup>14</sup> See, in particular, *Sahli v. Algeria*, para. 9.6; *Thabti v. Tunisia*, para. 10.4; *M'Barek v. Tunisia*, para. 11.7; *Blanco Abad v. Spain*, para. 8.6.

<sup>15</sup> See communication No. 6/1990, *Parot v. Spain*, decision adopted on 2 May 1995, para. 10.4. See also *Blanco Abad v. Spain*, para. 8.6.

<sup>16</sup> The complainant recalls that, in the case of *Sonko v. Spain*, communication No. 368/2008, decision adopted on 25 November 2011, the Committee was of the view that an investigation that had been under way for just over 19 months and that could not be considered prompt or impartial one was inconsistent with the State party's obligations in that area, in particular, those set forth in article 12 of the Convention. He also recalls that, in the case of *Blanco Abad v. Spain*, the Committee concluded that a period of 10 months to carry out investigative procedures shows the investigative measures not to have satisfied the requirement for promptness in examining complaints, *Blanco Abad v. Spain*, para. 8.7.

<sup>17</sup> Now five years.

violated, given that Burundi accepted the competence of the Committee to receive and consider such complaints under article 22. Thus, by submitting an individual communication to the Committee against the State of Burundi, the complainant merely exercised his right to obtain redress, which is recognized by Burundi itself.

5.8 The complainant also reiterates all his arguments on the merits.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 As required under article 22, paragraph 5 (a), of the Convention, the Committee has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party challenges the admissibility of the complaint on the grounds of a failure to exhaust domestic remedies, inasmuch as a criminal case for torture was opened as a result of the complaint lodged by the complainant on 9 February 2012 and registered with the Bujumbura court of major jurisdiction on 26 March 2012 under case No. 7271/ME. The Committee notes that the State party has indicated that the proceedings are still pending, but it has provided no other information or detail which might help the Committee to ascertain what progress has been made and to judge how effective the investigation might be, despite the fact that the case was brought more than three years ago and concerns events that took place five years ago. The Committee further notes that the complainant has stated that, upon verification, he learned that the case number mentioned by the State party relates to another person's case. The State party has neither denied nor responded to this point. The Committee finds that, in the circumstances, the inaction of the competent authorities has made it unlikely that any remedy that might provide effective reparation can be initiated and that, in any event, the domestic proceedings have been unreasonably lengthy. Accordingly, the Committee considers that it is not precluded from considering the communication under article 22, paragraph 5 (b), of the Convention.

6.3 In the absence of any obstacle to the admissibility of the complaint, the Committee proceeds to its consideration of the merits of the claims submitted by the complainant under articles 1, 2 (para. 1), 11, 12, 13, 14 and 16 of the Convention.

#### *Consideration of the merits*

7.1 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, paragraph 4, of the Convention.

7.2 The Committee notes that, according to the complainant, he was arrested on 1 July 2010 by officials of the National Intelligence Service without being informed of the reasons for his arrest; that, while being taken to the National Intelligence Service offices, he was beaten with, among other things, a rifle butt; that, when he arrived at the National Intelligence Service offices at approximately 6 p.m., he lost consciousness upon being struck on the head with a stone; that during an interrogation that lasted six hours he was kicked and beaten by Intelligence Service officials and Burundian National Police officers using clubs, rifles and belts. The officers hit the complainant on different parts of the body, including his feet, face, shoulders and genitals, causing bruising and bleeding. In addition, a National Intelligence Service official cut off part of his ear lobe. The complainant was then handcuffed and locked in a lavatory measuring 1.5m by 3m on National Intelligence Service premises, even though he was in pain; he remained there for five days without water, food, contact with the outside world or medical care of any kind. He was forced to drink the water

from the toilet to avoid dehydration. The Committee notes that the treatment inflicted on the complainant was probably aimed at forcing a confession from him, since on 6 July 2010 he was asked to sign a statement of uncertain content; he reluctantly agreed to do so because he was completely exhausted.

7.3 Given the specific circumstances surrounding the case, on the basis of the information at its disposal and in the absence of any refutation by the State party, the Committee concludes that the treatment to which the complainant was subjected, including the conditions of his detention and the denial of medical care, constitute acts of torture, within the meaning of article 1 of the Convention.

7.4 The Committee further notes that, in addition to the abuse referred to above, the complainant was subjected to humiliating and punitive treatment, including an attempt to force a stone into his mouth to stifle his cries; being spat at in the face by the head of the National Intelligence Service; and the macabre and barbaric episode when officers tried to make him swallow a portion of his ear lobe, which had been cut off with bicycle pliers. The Committee also notes that the complainant was deprived of his right to visits from his family and his lawyer and his right to medical care. He was not brought before a judge until five days after his arrest. The State party has described only the part of the proceedings relating to the trial and the complainant's conviction; it has abstained from commenting on his arrest and detention in the premises of the National Intelligence Service between 1 and 6 July 2010, during which time he was deprived of all judicial safeguards and tortured. The Committee concludes that these acts also constitute a violation of article 1 of the Convention.

7.5 Regarding article 16, the Committee has taken note of the complainant's claim that, owing to overcrowding, the conditions of detention to which he was exposed at Mpimba prison, where he was transferred on 6 July 2010 and held for more than 15 months, were appalling. Furthermore, the complainant did not receive the medical care his condition required. The Committee recalls its concluding observations on the State party's second periodic report, in which it expressed its alarm at the conditions of detention in places of deprivation of liberty (see CAT/C/BDI/CO/2, para. 15). In the circumstances, the Committee concludes that all the detention conditions to which the complainant was exposed at Mbpimba prison from 6 July 2010 to 24 October 2011 constituted a separate violation of article 16 of the Convention.

7.6 The complainant also invokes article 2, paragraph 1, of the Convention, under which the State party should have taken "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 severely beaten, then detained without immediately being allowed to contact his family or being given access to legal or medical assistance. It was not until 6 July 2010 that the complainant was finally brought before a judge and informed of the charges against him. The State party has produced no item of material evidence, such as relevant registers, capable of refuting the complainant's claims. Accordingly, the Committee finds a violation of article 2, paragraph 1, read in conjunction with article 1 of the Convention.<sup>18</sup>

7.7 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. The complainant claims, in particular, that he was not informed of the charges against him, that he did not have access to a lawyer during his detention at the premises of the National Intelligence Service and that he was not brought before a judge during his detention. He further claims that, as it was materially impossible for him to assert his rights through legal channels, he was

<sup>18</sup> See communication No. 514/2012, *Niyonzima v. Burundi*, decision adopted on 21 November 2014, para. 8.3.

unable to challenge his detention or lodge a formal complaint concerning the torture to which he had been subjected. The complainant has further recalled that he was not examined by a doctor and that he did not have access to legal counsel. Furthermore, the conditions of his detention at the premises of the National Intelligence Service were appalling. The Committee further reiterates its concluding observations on 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 (CAT/C/BDI/CO/2, para. 10). In the present case, the complainant appears to have been held outside the judicial system before being brought before a judge 5 days after his arrest; during his detention at the premises of the National Intelligence Service, he was denied medical assistance despite his worrying condition. Furthermore, he had no access to a lawyer or to his family. In the absence of any compelling evidence from the State party indicating that the complainant's detention was indeed subject to its supervision, the Committee finds a violation of article 11 of the Convention by the State party.

7.8 With regard to articles 12 and 13 of the Convention, the Committee has taken note of the complainant's claims that no investigation has been opened to ascertain the facts of the case despite the many steps taken to report the torture inflicted on him and the formal complaint lodged with the public prosecutor on 9 February 2012, supported by photographs showing the marks of torture on his body. The complainant lodged the complaint again on 5 June 2012 but has received no response. The State party contests the referral of the case to the Committee by the complainant on the grounds that the latter has filed a complaint with the authorities, but it has provided no evidence which might help the Committee to ascertain what progress has been made, to judge how effective the procedure might be or to explain the reasons for such a delay. The Committee considers that so long a delay in initiating an investigation into allegations of torture is patently unjustified and clearly breaches the State party's obligations under article 12 of the Convention, which requires it to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed. 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 to such a complaint by launching a prompt and impartial investigation.<sup>19</sup>

7.9. With regard to article 14 of the Convention, the Committee has taken note of the complainant's allegations that he has not benefited from any form of rehabilitation designed to ensure that he recovers as fully as possible in physical, mental, social and financial terms. The Committee recalls that article 14 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 refers to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it establishes that States parties should ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible. Redress should cover all the harm suffered by the victim and encompass, among other measures, restitution, compensation and guarantees of non-repetition of the violations, taking into account the circumstances of

<sup>19</sup> Communications Nos. 376/2009, *Bendib v. Algeria*, decision adopted on 8 November 2013, para. 6.6 and 503/2012, *Ntikarahera v. Burundi*, decision adopted on 12 May 2014, para. 6.4.

the individual case.<sup>20</sup> Given that no prompt and impartial investigation was undertaken despite the complainant's numerous claims that he was tortured, which were corroborated by several pieces of evidence that have not been refuted by the State party, the Committee concludes that the latter has breached its obligations under article 14 of the Convention.

8. The Committee, acting under article 22, paragraph 7, of the Convention, is of the view that the facts before it reveal a violation of articles 1 and 2 (para. 1), read in conjunction with article 1, and articles 11, 12, 13, 14 and 16 of the Convention.

9. Pursuant to rule 118, paragraph 5, of its rules of procedure, the Committee urges the State party to: (a) conduct an impartial investigation into the incidents in question, with a view to bringing to justice those responsible for the complainant's treatment; (b) grant the complainant appropriate reparation, including measures of compensation for the material and psychological harm caused, restitution, rehabilitation, satisfaction and guarantees of non-repetition; (c) take all necessary steps to prevent any threats or acts of violence to which the complainant or his family might be exposed, in particular as a result of having lodged the present complaint; and (d) inform the Committee, within 90 days from the date of the transmittal of this decision, of the steps it has taken in response to the views expressed above, including compensation for the complainant.

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<sup>20</sup> See *Bendib v. Algeria*, para. 6.7 and *Sahli v. Algeria*, para. 9.7.